



National Association of Federally Impacted Schools

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November 7, 2016

Mr. James Butler
US Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: Title I - Supplement Not Supplant: ED-2016-OESE-0056

Dear Mr. Butler:

On behalf of the National Association of Federally Impacted Schools (NAFIS) we write in response to the notice of proposed rulemaking, specifically the US Department of Education's proposed regulation on "supplement not supplant" (SNS) under Title I of the Every Student Succeeds Act (ESSA).

The National Association of Federally Impacted Schools (NAFIS) represents more than 1,300 Impact Aid-recipient local educational agencies (LEAs) nationwide, serving more than 10 million federal and non-federal students. Impact Aid is a partnership between communities and the federal government where there is nontaxable property, such as military installations, Indian Trust, Treaty or Alaska Native Claims Settlement Act lands, low-rent housing, and national parks and laboratories. Congress recognized in 1950 that the federal government had an obligation to help meet the local responsibility of financing public education in areas impacted by a federal presence by creating the Impact Aid program.

The US Department of Education (ED) should continue to provide clarity and technical assistance during this major transition and avoid overly prescriptive regulations or guidance outside the scope of ESSA. In addition, ED should consult directly with those who are responsible for implementing the law, including school superintendents, school business officials, and school board members. To date, ED's outreach to federally impacted LEAs has been lacking.

As others in the education community have expressed, we believe this proposed regulation will create a huge administrative burden, encourage decision-making that is driven by compliance targets rather than sound education policy, and undermine local governance. We believe the implications could be more acute for federally impacted LEAs because of the nature of their student populations, their geographic location, the variable timeline of Impact Aid funding, and the potential for significant cost shifts between the start and end of the school year.

The proposed regulation ignores explicit statutory language in ESSA that prohibits the Secretary from prescribing a specific methodology for LEAs to allocate state and local funds among schools. The proposed regulation is in conflict with the spirit of the underlying statute and represents a new, far-reaching federal mandate that dictates how LEAs spend state, local, and Impact Aid funding.

THE NAFIS FAMILY

MISA

Military Impacted
Schools Association

NIISA

National Indian Impacted
Schools Association

FLISA

Federal Lands Impacted
Schools Association

MTLLS

Mid-to-Low-LOT
Schools

The proposed regulation glosses over the realities of school finance, the structure of how and when funds are allocated, the extent to which LEAs have funding flexibility, and patterns of teacher distribution. The proposed regulation undermines the ability of school leaders to equitably and effectively address the needs of all students by restricting the ways resources can be used. In practice, the options for federally impacted LEAs may be further restricted based on the four prescribed methodologies.

NAFIS is concerned that this proposed regulation will undermine the inherent flexibility of Impact Aid funding and force LEAs out of compliance when they are striving to serve federally connected students. School financing and student population shifts are unique for federally impacted LEAs compared to other LEAs. Impact Aid is like the federal government's tax bill and, by design, its use is at the discretion of school leaders. LEAs have no control over the amount of Impact Aid funding Congress will appropriate each year; the current reimbursement rate is only around 55-percent. Federally impacted LEAs provide additional academic and other supports to meet the unique needs of federally connected students, such as military-connected students and students who reside on Indian lands. We are concerned that the proposed regulation could put federally impacted LEAs out of compliance because of their unique funding structure and the work they do to serve all students.

The proposed regulation does not take into account programs or costs where funding is unpredictable between the start and end of the school year. There is a lot of uncertainty for LEAs around the timing and amount of Impact Aid payments.¹ LEAs usually receive an initial payment shortly after annual appropriations are finalized and a final payment the following fiscal year. Typically, LEAs receive two payments in one year: the initial payment for one fiscal year and the final payment from the previous year. The timing is determined by the date a final appropriations bill is enacted and ED's audit and review process. Therefore, LEAs do not know in advance the exact amount of Impact Aid funding they will receive in a given year. We are concerned that LEAs will not have accurate data available on a current-year basis, as the regulation requires, because the revenue that must be distributed in compliance with SNS is in flux. Each year, federally impacted LEAs manage an uncertain budget, however, developing a conservative budget based on estimated Impact Aid and other revenue is entirely different than meeting specific allocation compliance targets for each school. Will LEAs be required to reallocate funding among schools after Impact Aid payments are made to ensure they are in compliance with SNS?

The proposed regulation does not take into account the potential for increased student enrollment during the school year. Schools open their doors to all students regardless of when they arrive, but costs can change dramatically due to fluctuations in student enrollment for federally impacted LEAs. LEAs must make adjustments mid-year, such as when the Department of Defense relocates large numbers of military personnel. Military-connected students attend, on average, six to nine schools between grades K-12.² LEAs may have to hire and shift staff or purchase portable classrooms mid-year to ensure all students in the LEA have access to safe and productive learning environments. If these student increases

¹ See: "Impact Aid Application and Payment Cycle"
http://media.wix.com/ugd/423d5a_cc61cd8b92314da98eea4f5d3c4fb53b.pdf

² Berkowitz, R., & al, e. (2014). *Military Parents' Perceptions of Public School Supports for Their Children*. Children & Schools.

require additional unanticipated spending at a non-Title I school, will the LEA be out of compliance with the proposed regulation?

The proposed regulation does not take into account specialized programs or costs. We are concerned the proposed regulation does not provide flexibility for certain programs an LEA may establish – even if all students in the LEA have equal access to that program. Early childhood, online and AP, language immersion, career and technical education, library or other center-based programs could be at risk.

The Department of Defense, through the Exceptional Family Member Program (EFMP) and compassionate post assignment, designates communities with top-notch educational and medical resources to ensure families that include a family member with a special need have access to appropriate care. As a result, some LEAs located near military installations educate higher-than-average percentages of students with disabilities. LEAs may opt to create a center-based program for students with severe disabilities that include classrooms furnished with the equipment and accommodations necessary to ensure students receive the education and care they need. We are concerned that these types of specialized programs may put an LEA out of compliance.

The requirement to distribute “almost all” state and local funds to schools is unclear and highly problematic. The proposed regulation is unclear about how to handle costs traditionally financed at the LEA-level, some of which are subject to legal obligations (such as debt service, employee health benefits and retirement obligations, and Impact Aid Section 7003(d) Children with Disabilities) that conflict with the proposed regulation.

- Variation in staffing costs: If financial incentives are required for hard-to-staff schools or hard-to-staff subjects, how will compliance be determined? What are the implications of the methodology based on teacher salaries at a time that many states face unprecedented teacher shortages? Federally impacted LEAs, including Indian lands LEAs, fund recruitment activities, teacher housing, and other incentives to attract and retain teachers. At the same time, substitute teacher expenditures are likely to be higher due to the geographic isolation of schools within rural LEAs.
- Transportation costs, including fleet costs: How should these costs be allocated to schools? What if transportation costs are higher in non-Title I schools because of the geographic makeup of the LEA? This is particularly relevant for rural and federally impacted schools. In some cases, bus routes are longer *because* of where federal property is situated within an LEA.
- Technology: broadband technology costs may differ from school to school within an LEA due to the geographic nature of the community. In addition, an LEA may implement a districtwide one-to-one program one school at a time. The narrow window in which compliance is measured overlooks expenditures that even out over a number of years. Would the spending for this initiative, when it is being integrated at a non-Title I school, put an LEA out of compliance?
- New buildings, emergency repairs, and maintenance: New or expanded buildings are typically based on long-range planning. If facilities for non-Title I schools are older or require emergency repairs, then how would spending on these costs impact compliance? LEAs may transfer Impact Aid funds into a capital account or use Impact Aid for facility expenditures – as it could for local revenues. What restrictions does the proposed regulation place on the ability of local leaders to direct Impact Aid funds for capital projects? What are the compliance implications for LEAs that receive Impact Aid Section 7007 construction or Section 7008 facilities funding?
- Local obligations under levies or bonds: We are concerned the proposed regulation could erode support for local levy or bond initiatives because it mandates how funds must be allocated to schools. Does the proposed regulation override the decision of local taxpayers by forcing LEAs to

equalize construction spending? What are the compliance implications for LEAs that are contractually obligated to use Impact Aid to pay down a bond? Access to local revenue may be extremely limited or non-existent in federally impacted LEAs and this proposed regulation could make it even more challenging to build local support for levy or bond initiatives.

The Special Rule would effectively force LEAs to equalize Impact Aid funding. Proposed accountability regulation Section 200.35 requires that Impact Aid funding be disaggregated with state and local funds (rather than with federal funds) for per-pupil expenditure (PPE) reporting on the state and local report cards. NAFIS has previously expressed concerns with this proposal because: Impact Aid funds are neither state nor local funds; the Impact Aid application and payment cycle does not align with standard education data reporting deadlines; and the National Center for Education Statistics collects and reports Impact Aid as federal funding, so the proposed regulation would establish two different standards. We believe this reporting requirement will create confusion for both SEAs and LEAs because there will be two different PPE definitions (one for the accountability regulation and one for Impact Aid that is used for the computation of general comparable districts, heavily impacted eligibility, and state equalization). This confusion will be amplified because Impact Aid is accounted for differently in different states. For example, one state's law specifies that Impact Aid is federal funding.

The SNS Special Rule refers to the proposed accountability reporting regulation, turning a reporting requirement into one with substantive accountability implications. The Special Rule would force a de facto equalization of Impact Aid funding and nullifies its inherent flexibility.

The proposed regulation will undermine the flexibility of Impact Aid and the ability of LEAs to address the unique needs of federally connected students. We are concerned that innovative approaches to increase academic achievement, close achievement gaps, increase the graduation rate, and target resources to support federally connected students will be stifled by the proposed regulation. At the same time, school leaders will be collecting and reporting data for the new military student identifier and increasing community engagement with the new tribal consultation provisions in ESSA. Investing in Title-I schools and schools with federally connected students should not be mutually exclusive!

- Military-connected students: Research has shown that deployment can impact both academic outcomes and behavioral health for military-connected students.³ LEAs go the extra mile, from student-to-student welcome clubs that address mobility to live-streaming graduation ceremonies for deployed parents. LEAs provide additional academic and support services for students to address the stresses that come with parental deployment. Education is a quality-of-life and readiness issue for military families. School leaders must have the flexibility to target resources for these students.
- American Indian and Alaska Native students: Research suggests that culturally relevant curriculum, including Native language instruction, can impact academic achievement.⁴ LEAs need to be able to target resources to improve academic outcomes, offer Native language

³ Richardson, A., & et. al. (2011). *Effects of Soldiers' Deployment on Children's Academic Performance and Behavioral Health*. Santa Monica: Rand Corporation. <http://www.rand.org/pubs/monographs/MG1095.html>

⁴ Demmert, W. G., & Towner, J. C. (2003). *A Review of the Research Literature on the Influence of Culturally Based Education and the Academic Performance of Native American Students*. Portland: Northwest Regional Educational Laboratory. <http://educationnorthwest.org/sites/default/files/cbe.pdf>

instruction and culturally relevant curriculum, foster community engagement, and meet the challenges associated with poverty, geographic isolation, and historical trauma.

LEAs that are not in compliance cannot simply increase local funding. It is unrealistic for ED to suggest that states and LEAs may “elect to provide additional state and local educational funding,” rather than shift funds if they do not meet the prescribed SNS compliance tests. This logic represents a lack of understanding of school finance, state levying caps and restrictions, and overestimates the control that school leaders have over state and local funding. LEAs have no control over whether or not the federal government acquires property in their communities. Examples of federally impacted LEAs include one LEA with only two taxpayers; one LEA where a maximum tax levy yields less than \$6,000 annually; LEAs where taxes are higher than neighboring LEAs, but they still bring in less revenue; and LEAs where school leaders have exhausted their options to increase local tax revenue. By encompassing nontaxable federal land, federally impacted LEAs are at a unique financial disadvantage when it comes to generating local revenue.

We agree with the equity principle that is the foundation of ESSA. What is more, we know that federally impacted LEAs strive to offer a quality education for all of their students. We are concerned that the proposed regulation will undermine these very efforts by forcing LEAs to make decisions based on regulatory compliance targets rather than what is in the best interest of students.

Thank you for considering the uniqueness of federally impacted LEAs as you work to develop a final rule.

Sincerely,



Hilary Goldmann
Executive Director



Jocelyn Bissonnette
Director Government Affairs

CC: Health, Education, Labor, and Pensions Committee, US Senate
Education and the Workforce Committee, US House of Representatives
Congressional Impact Aid Coalition
Impact Aid Program Office, US Department of Education