November 4, 2021

Britt Jung
U.S. Department of Education
400 Maryland Ave. SW, Room 3W113
Washington, DC 20202-8240

RE: Request for Information Regarding the Implementation of Maintenance of Equity Provisions in the American Rescue Plan Act of 2021 (Docket ID: ED-2021-OESE-0115) and Proposed Requirement-American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund (Docket ID: ED-2021-OESE-0116)

Dear Britt Jung:

The undersigned organizations welcome the opportunity to respond to the U.S. Department of Education's (ED's) request for comment regarding the proposed data collection for the local Maintenance of Equity provision in the American Rescue Plan Act (ARP). We submit these recommendations as a collaboration of national organizations seeking to advance shared education equity priorities through federal, state, and local policy advocacy.

We commend the Administration's continued pursuit of feedback from the general public on implementation of the new and critically important Maintenance of Equity (MOEquity) provisions, which represent an important avenue for advancing educational resource equity. These provisions serve as a blueprint for ensuring that high-need school districts and schools do not shoulder a disproportionate share of the burden when there are funding cuts now and in the future.

We believe that it is important to collect the necessary fiscal and staffing data to help implement MOEquity in a way that minimizes the burden on state and local education agencies (SEAs and LEAs) while meeting the goals of the provisions in the American Rescue Plan Act. To that end, we recommend that ED continue to exempt LEAs that are not cutting funding in any of the covered fiscal years, rather than applying a broad enforcement and data collection effort. We also recommend that ED consider a longer timeline that would allow for more accurate reporting and require reporting of only the data necessary to understand whether the requirements have been met.

Finally, we hope that as ED implements MOEquity, it continues to effectively monitor and enforce other key provisions in ESSA that can also improve resource equity, including ensuring that states are publishing complete and timely school-level spending data on report cards and conducting resource allocation reviews.

We recognize that effective enforcement of MOEquity requires balancing the need to provide flexibility to meet the needs of states' and districts' funding systems, while providing enough specificity to enable meaningful implementation. In addition to these broad comments, we offer the attached direct responses to the questions posed in the request for information on state and local MOEquity and the proposed requirement for local MOEquity data reporting. We would welcome the opportunity to meet with ED's leadership to discuss these recommendations. Thank you for your continued focus on ensuring that schools and LEAs serving large proportions of underserved groups of students receive the resources to meet students' needs as we recover from the pandemic.

Sincerely,

All4Ed
Center for American Progress
The Education Trust
National Center for Learning Disabilities
National Urban League
SchoolHouse Connection
Teach Plus
UnidosUS

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RE: Request for Information Regarding the Implementation of Maintenance of Equity Provisions in the American Rescue Plan Act of 2021 (Docket ID: ED-2021-OESE-0115)

**Question 1**: The Department is aware that each State's K-12 education funding system is unique and that State-specific considerations may impact how an SEA implements MOEquity requirements in a manner that is both meaningful and meets the technical requirements of the ARP Act. What types of State-specific considerations (e.g., funding mechanisms, definitions of revenue sources, etc.) are relevant to the implementation of the State and local MOEquity provisions? What types of barriers exist to implementing the MOEquity provisions due to the State-specific approach to education funding? How might guidance or potential rulemaking account for unique State education finance systems so that State MOEquity implementation will be consistent with the goal of maintaining equity?

**Response**: The power of the MOEquity provisions is in their ability to protect high-need schools and districts from funding cuts due to the inequities that are ingrained in too many state and district funding systems and practices. When assessing if states and LEAs have met the MOEquity requirement, it is important to understand whether reductions in funding for high-poverty schools or districts are due to the structure of the funding system rather than fluctuations in other inputs, such as student enrollment.

We believe that MOEquity was intended to protect high-need and high-poverty districts from funding cuts that occur because, for example:

- the system addresses funding shortfalls by cutting a flat percentage of state funding across districts, resulting in larger cuts per student for high-poverty districts that receive more state funding, or
- allocations outside the main formula undermine the equity-focused intent of the main formula.

The pandemic has exacerbated inequities that we already knew existed — particularly for the communities served by the same schools and districts that the MOEquity provisions aim to protect from disproportionate funding and staffing cuts (that are not due to enrollment changes). This is the time to double down to ensure that those communities have the resources they need to support students' instructional; social, emotional, and academic; nutrition; and safety needs. If state funding decisions result in allocations that would violate the MOEquity requirements, then those states should be held accountable for ensuring high-poverty or high-need districts do not experience per-pupil funding cuts.

**Question 2**: The Department recognizes that LEAs with small enrollments may exhibit greater annual variation in per-pupil funding and other calculations based primarily on their size. How might this issue be addressed to ensure the small size of an LEA does not render year-over-year comparisons unreliable, so that State MOEquity implementation will be consistent with the goal of maintaining equity?

**Response**: We appreciate that ED's current FAQ on MOEquity allows some flexibilities to account for fluctuation in per-student measures due to shifts in enrollment in small LEAs, including flexibility to:

- use the enrollment counts that most closely align with the counts used to determine funding or resource allocation, and
- determine that a state has maintained equity for small LEAs within a fact-based "tolerance level."

To improve consistency across states and ensure the 'tolerance level' flexibility aligns with the goals of MOEquity, **we recommend that ED provide additional guidance on how a state may analyze its data to determine the tolerance level and how a state may determine a reasonable maximum tolerance level based on that analysis.**

**Question 3**: MOEquity requires comparisons of "per-pupil funding." Please identify any considerations that are relevant to implementation related to enrollment data and funding sources used in determining per-pupil funding. Are there safeguards that should be considered to ensure that State-specific enrollment methodologies do not distort per-pupil funding levels (e.g., the use of hold harmless provisions or rolling averages)? Since MOEquity calculations are important to inform budget allocation decisions, what data are SEAs and LEAs most likely to have available and rely on for conducting initial MOEquity calculations?

**Response**: The pandemic upended enrollment for the 2021-22 school year, and it is likely that schools and districts will continue to experience unusual shifts in enrollment in the 2022-23 school year. As such, **we recommend that ED extend all flexibilities offered to SEAs and LEAs for meeting MOEquity requirements from FY 2022 into FY 2023**.

**Question 4**: LEAs may be exempted from MOEquity requirements per the ARP Act based on "exceptional or uncontrollable circumstance[s]." What factors should the Department be aware of related to the types of exceptional or uncontrollable circumstances, both specific to FY 2022 implementation and, more generally, to ensure that such exceptions do not contradict the intent of the law and are consistent with the goal of maintaining equity?

**Response**: Existing MOEquity guidance describes not experiencing a reduction in state and local funds as an exceptional circumstance that justifies an exemption from the local MOEquity requirement for FY 2022. We believe this is a helpful exemption that enables ED to focus monitoring on ensuring that high-poverty schools do not disproportionately shoulder the burden of funding or staffing cuts. Thus, we **urge the Department to apply this exemption in FY 2023 so that LEAs that are not experiencing funding cuts continue to be exempted from MOEquity requirements**.

The existing guidance also recognizes exceptional circumstances such as increased one-time expenditures in the base year, volatility in year-over-year changes in very small schools, or significant reductions in expenses because a school no longer supports high-cost needs for a student. We agree that these examples represent exceptional or uncontrollable circumstances, which may exempt an LEA from the requirement. We appreciate that ED has not suggested that shifts in per-pupil funding due to staffing changes (that are not the direct result of changes in student need), such as a more experienced and higher-paid teacher being replaced by a lower-paid teacher, do not represent exceptional or uncontrollable circumstances.

**Question 5**: The purpose of the MOEquity provisions is to ensure that schools and LEAs serving large proportions of underserved groups of students—including students from low-income families, students of color, English learners, students with disabilities, and students experiencing homelessness—receive an equitable share of State and local funds as the Nation continues to respond to the COVID-19 pandemic's impact. In light of this purpose, what other information or related issues should the Department consider to ensure that the purpose of the MOEquity provisions are achieved?

**Response**: We appreciate ED’s focus on ensuring that schools and LEAs serving large proportions of underserved groups of students receive an equitable share of state and local funds as we recover from the pandemic. State, district, and school leaders are facing increased burdens as they meet the social, emotional, and academic development needs of students, address unfinished instruction, and ensure the safety of students and educators in school buildings. In light of that, **we recommend that ED carefully consider additional requirements to facilitate monitoring and enforcement of the state and local MoEquity requirements, balanced with a review of all of the other new and existing data collection requirements** (e.g., the ESSER use of funds data collection and the 2021-22 Civil Rights Data Collection).

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RE: Proposed Requirement-American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund (Docket ID: ED-2021-OESE-0116)

**Recommended Revisions to the Proposed LEA MOEquity Data Reporting Requirement**

**Process and Timeline:** We appreciate ED’s efforts to collect early data on local funding decisions while there is still time to provide technical assistance to change those decisions so that districts meet the MOEquity requirements, while also trying to reduce the reporting burden on SEAs and LEAs. ED assumes that “as part of their routine compliance efforts and effective administration of the affected Federal grants, States already collect and retain the relevant MOEquity data on each LEA’s implementation of the MOEquity requirements and that such data are stored in a single repository… .” Our understanding from the field is that this is not widespread practice. While there are processes in place for states to collect expenditure data, many states do not have a mechanism to collect budget data from districts. Given these challenges and concerns, **we recommend that ED revise its FY 2022 monitoring and enforcement procedures to align with the process and timeline described below.** We recommend the Department apply a similar process for FY 2023 (which may include earlier reporting of FY 2022 expenditure and FY 2023 budget data), only if LEAs that are not making overall funding cuts continue to be considered in compliance.

- **February 2022**: SEAs report — for each LEA (subject to the requirement) overall and for each high-poverty school in the LEA — actual expenditures, enrollment and staffing data for FY 2021; and FY 2022 budgeted allocations, enrollment, and staffing data.

    - If an SEA is unable to submit FY 2022 budget information for an LEA, the SEA must submit an attestation indicating whether the LEA will or will not meet the MOEquity requirement, with a detailed description of the process the LEA took to make that determination. If the LEA will not meet the MOEquity requirement, the explanation must also describe the steps the LEA is taking to reallocate funding and/or resources to its high-poverty schools to ensure that they do not experience disproportionate cuts to funding or staffing.
- **Between February 2022 and July 2022**: ED provides guidance and technical assistance to LEAs (with/through SEAs) that are at risk of being out-of-compliance.
- **September 2022** (or within an ambitious, but reasonable amount of time after the end of the state's fiscal year): SEAs report – for each LEA (subject to the requirement) overall and for each high-poverty school in the LEA – expenditures, enrollment, and staffing for FY 2022
    - We understand that this timeline does not align with the expected timeline for reporting school-level spending data through the ESSA fiscal transparency requirement. To meet this proposed timeline, SEAs should prioritize providing support and technical assistance to LEAs that are making funding cuts so the expenditure data for those LEAs is finalized as soon after the end of the fiscal year as possible.

MOEquity data reporting should reinforce, not compete with the ESSA fiscal transparency requirement. Therefore, all expenditure reporting described above should align with the existing federal school-level spending data reporting requirement or the Local Education Agency Financial Survey (F-33) as appropriate.

**<u>Exempted LEAs</u>:** The proposed rule makes clear that LEAs can be exempt from MOEquity requirements if they experience "exceptional or uncontrollable circumstances" as determined by the Secretary. In addition, current MOEquity guidance indicates that in FY 2022, any LEA that does not experience an overall reduction in state and local funds would be waived from the requirement. The American Rescue Plan Act also exempts small LEAs. **We recommend that ED revise its rule to make clear that LEAs that are not experiencing funding cuts and small LEAs are also exempt from the MOEquity requirement in future fiscal years** to avoid undue burden on already overwhelmed LEAs and SEAs as well as confusion and potential errors in SEA data reporting. **In addition, we suggest that SEAs indicate the reason for the exemption in their reporting.**

**<u>Additional demographic information</u>**: The proposed rule asks for input on additional demographic information that SEAs should publicly post on the identified high-poverty schools. We believe this additional demographic information would be most useful for parents, families, and local communities to understand how LEAs are maintaining equity. We also appreciate ED's commitment to ensuring that data on access to educational resources is reported in transparent ways that can allow families and other community members to make sense of fiscal data. However, to reduce the reporting burden on SEAs, **we recommend that ED strongly encourage, but not require, SEAs to post additional data on demographic information.** Instead, SEAs should focus on ensuring that such demographic data are reported on state and local report cards with the existing fiscal transparency data required under ESSA.

**<u>Ways to reduce potential costs or increase potential benefits</u>**: We appreciate that ED is requesting suggestions to reduce potential costs or increase benefits of this data reporting. While MOEquity data reporting to date has been limited to baseline data aligned with the state provision, we can learn from that reporting to improve reporting of LEA data. Both to reduce the burden (and therefore costs) for

SEAs, and to improve comparability across states (and therefore benefits), **we recommend ED provide an optional reporting template that identifies a preferred file structure that SEAs can use for reporting the data.**