National Title I Association
a National Association of State Title I Directors

Patrick Rooney
Office of State Support
U.S. Department of Education
400 Maryland Ave., SW
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Dear Mr. Rooney,

Thank you for inviting us to comment on which regulations might be removed or revised, per Executive Order 13777, to reduce burden and which are important to keep in place. We value the opportunity to work collaboratively with you to make changes that will help us improve the quality and availability of education for all students. The National Title I Association is a membership organization made up of Directors of programs and their staff from each of the States and territories, charged with managing their State programs under Title I of the Elementary and Secondary Education Act (ESEA). For this reason, our area of expertise is primarily activities conducted under Title I at the State and local level, and those which interact with them, such as the Individuals with Disabilities Education Act (IDEA) and other provisions of ESEA.

As you know, ESEA is currently undergoing a transition with the implementation of the Every Student Succeeds Act (ESSA). This transition has not been as smooth as we had hoped since it has involved the publication and then recall or legislative rescission of several regulations (for example, the elimination of regulations regarding accountability under Title I through the Congressional Review Act). These actions have made implementation somewhat unpredictable. But more importantly, they have made it difficult to determine which regulations and guidance, if any, could be revised to assist us in better serving our students. Nevertheless, listed below are a number of regulations which we believe may prove overly burdensome or unnecessary based on our experience in implementing similar program regulations.

We would also urge the U.S. Department of Education (ED), as a general matter, to make a clearer distinction between which guidance documents are still applicable and which are no longer enforced or have been archived. Access to older versions of documents is still vitally important to determine a State's or district's compliance with requirements in past years or compare versions of documents, and access to those documents should be maintained. However, a watermark or other designation on available documents and PDFs would help better ensure that States, districts, stakeholders, and ED are all on the same page as to which requirements and responsibilities of various parties are current under ESSA.

I. Waiver Requirements for 1% Alternate Assessment Cap at State Level

Regulations published regarding assessments – specifically, the requirements for a State to obtain a waiver on the 1% cap on alternate assessments – are burdensome for States. While the legislation (Sec.

111(b)(2)(D)(ii)(IV)) says only that the limitation on the number of students who can be assessed using an alternate assessment based on alternate achievement standards is explicitly waivable, the regulations promulgated pursuant to this provision (See Sec. 200.6(c)) set out a number of requirements. For example, the State must submit its request at least 90 days prior to the start of the testing window, offering data on the breakdown of students in each subgroup taking alternate assessments, and must make plans to avoid exceeding this cap in the future.

These regulations are impractical. For many students, discussions about which assessments are administered are a conversation which develops throughout the school year, making it extremely difficult to say definitively which students will be taking which assessment so far in advance. The regulations also assume that a State will be able to control how many students take alternate assessments in future years, and make plans not to exceed those caps. But, under IDEA, the assessment administered to a student must be determined by the student's Individual Education Program (IEP) team based on the needs and abilities of the student. Those decisions are made on a local level by the individuals most familiar with the student. The data is not available—or not available timely—to States. To suggest that an individual student not take the assessment deemed most appropriate by the IEP team would require a State to overrule a local decision. It would also put the school and school district at risk of violating IDEA if it follows the suggestion of a State. As educators, our priority should always be what is best for individual students, not meeting an artificial target.

II. Assessments for those students with severe cognitive disabilities and others

The requirement to assess 95% of students with disabilities under Sec. 1111(h), whether through regular assessments or alternate assessments, ignores the fact that there are students for whom no assessment is available or practicable. These include students with the most severe cognitive disabilities who attend school but because of their disability are not able to complete an assessment, and those blind, deaf, or hearing impaired students for whom no alternate assessments are currently available. ED should permit a local educational agency (LEA) or State to not count those students in the denominator when determining compliance. *It is not educationally sound to administer the test to students with severe cognitive disabilities and thereby, penalize the student, school, district and state.* It would also put all parties (school, school district, and state) at risk of violating IDEA.

Likewise, it is unfair to require that English learners whose parents have refused services be counted toward the requirement for all English learners to participate in an English language proficiency assessment. This requirement penalizes a district and State for following the requests of parents and requires that districts and States (and teachers, in State where teacher evaluations are based at least in part on academic assessments) judge student performance against a standard which assumes a level of services that, because of parent refusal, a student is not receiving. To continue to require these assessments regardless represents a loss of instructional time.

III. Uniform Grants Guidance

ED, and the federal government overall, should retain changes made by the Uniform Grants Guidance (UGG). These modifications offered some much-needed guidance on questions of fiscal compliance and reduced administrative burden for States and districts. That said, there were some costs associated with making updates to State- and district-level policies and procedures in order to ensure compliance with the UGG as well as conducting meetings and trainings to ensure understanding. Making additional

changes now would only add to the administrative and training costs and would be unlikely to otherwise reduce administrative costs.

IV. Areas where more clarity is needed

Although this was not addressed in your original request for information, there are a number of areas where we believe more clarity is needed to help States understand expectations for State action, compliance, and enforcement as ESSA implementation continues. These include:

a. Supplement not Supplant. Regulations which would have interpreted the changes to supplement, not supplant in Title I under ESSA were withdrawn before final publication, leaving States and districts with only the statute to rely on. Because of the confusion generated by the publication of draft regulations but no final regulations, States and districts need the U.S. Department of Education (ED) to confirm that this provision applies only to Title I, Part A, and that it supersedes the 2008 guidance (ED should also confirm whether it still plans to apply that guidance to other titles) and thus that this guidance is no longer in effect for Title I. We urge ED to update and clarify its 2008 fiscal guidance to reflect the changes to the supplement, not supplant provision, laying out explicitly the requirements for meeting supplement, not supplant under each Title of ESEA.

b. Transportation for students in foster care. The guidance issued by ED on this subject leaves some questions to be answered, namely how to address the unfunded mandate created for a school district when the local child welfare agency refuses to share in the cost of transportation.

c. Consequences for assessment participation requirement. Clarity is needed from ED on the consequences for States should they not meet the 95% assessment requirement under Sec. 1111(h) of ESEA as amended. Though as State administrators we understand that it is a requirement of the law, it is important to understand the expectations and potential consequences.

   Similarly, ED should either give States full discretion as to how to integrate consequences for not meeting the assessment participation requirement into their accountability system, or clearly set out the expectations for how it should be incorporated. The now-overturned ESSA accountability regulations offered States a number of options; it is not clear now whether these are viable options or whether a State has complete discretion here.

We appreciate the opportunity to work with you to ensure that regulations work for States, districts, schools, teachers, parents and students. Should you have any questions about the comments above, please contact Bob Harmon at bob.harmon@titlei.org.

Sincerely,

Mike Radke, President
National Title I Association