

issuing this AD to prevent an improperly locked elevator attachment. The unsafe condition, if not addressed, could result in failure of the elevator connection and loss of control of the glider.

#### (f) Compliance

Comply with this AD within the compliance times specified, unless already done.

#### (g) Required Actions

Within 90 days after the effective date of this AD, do the following actions concurrently.

(1) Install colored markings on the elevator in accordance with Action 1 in Schempp-Hirth Flugzeugbau GmbH Technical Note No. 278-40/286-36/295-33/328-14/798-4, Revision 1, dated November 12, 2020 (issued as one document).

(2) Revise the existing aircraft flight manual (FM) and service manual (SM) for your glider by replacing the pages specified in Action 2 in Schempp-Hirth Flugzeugbau GmbH Technical Note No. 278-40/286-36/295-33/328-14/798-4, Revision 1, dated November 12, 2020 (issued as one document), as applicable to your glider, with the revised pages for the manual applicable to your glider dated June 2020.

(3) The action required by paragraph (g)(2) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417.

#### (h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in (i)(1) of this AD and email to: [9-AVS-AIR-730-AMOC@faa.gov](mailto:9-AVS-AIR-730-AMOC@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

#### (i) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329-4165; fax: (816) 329-4090; email: [jim.rutherford@faa.gov](mailto:jim.rutherford@faa.gov).

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020-0260, dated November 26, 2020, for more information. You may examine the EASA AD in the AD docket at <https://www.regulations.gov> by searching for and locating it in Docket No. FAA-2021-1170.

(3) For service information identified in this AD, contact Schempp-Hirth Flugzeugbau GmbH, Kребenstrasse 25, 73230 Kirchheim/Teck, Germany; phone: +49 7021 7298-0; fax: +49 7021 7298-199; email: [info@schempp-hirth.com](mailto:info@schempp-hirth.com); website: <https://www.schempp-hirth.com>. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110.

Issued on December 22, 2021.

#### Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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## DEPARTMENT OF EDUCATION

### 34 CFR Chapter II

[Docket ID ED-2021-OESE-0116]

#### Proposed Requirement—American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Proposed requirement.

**SUMMARY:** The Department of Education (Department) proposes a requirement for the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund, under the American Rescue Plan Act of 2021 (ARP Act). This requirement is intended to promote accountability and transparency by requiring each State educational agency (SEA) to post on its website maintenance of equity information for each applicable local educational agency (LEA).

**DATES:** We must receive your comments on or before February 2, 2022.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ.”

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed requirement, address them to U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202. Telephone: (202) 453-5563. Email: [ESSERF@ed.gov](mailto:ESSERF@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** *Invitation to Comment:* We invite you to submit comments regarding the proposed requirement. To ensure that your comments have maximum effect in developing the requirement, we urge you to clearly identify the specific section of the proposed requirement that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed requirement.

During and after the comment period, you may inspect all public comments about the proposed requirement by accessing [Regulations.gov](http://Regulations.gov). You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed requirement. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The ARP ESSER Fund provides nearly \$122 billion to

SEAs and LEAs to help them safely reopen and sustain the safe operation of schools and address the impacts of the COVID-19 pandemic by addressing students' academic, social, emotional, and mental health needs. As a condition of receiving the funds, each SEA and LEA must comply with multiple requirements, including the maintenance of equity requirements in section 2004 of the ARP Act.

*Program Authority:* ARP Act, Public Law 117-2, March 11, 2021.

*Proposed Requirement:* This document contains one proposed requirement.

## Background

The ARP Act provides nearly \$122 billion via the ARP ESSER Fund to SEAs and LEAs to help schools return safely to in-person instruction; sustain the safe operation of schools; and address the academic, social, emotional, and mental health impacts of the COVID-19 pandemic on the Nation's students. Under section 2004 of the ARP Act, SEAs and LEAs must meet new maintenance of equity requirements to receive funds under the ARP ESSER Fund. These provisions ensure that LEAs and schools serving a large share of students from low-income backgrounds do not experience a disproportionate share of reduced funding in fiscal years (FYs) 2022 and 2023, and that, for the highest-poverty LEAs, State funding is not decreased below their FY 2019 level. In addition, the maintenance of equity provisions ensure that each LEA safeguards its high-poverty schools from disproportionate cuts to funding and staffing. On August 6, 2021, the Department issued a Dear Colleague Letter (DCL) to Chief State School Officers and District School Superintendents emphasizing the importance of maintaining equity and addressing specific implementation challenges for FY 2022. On August 6, the Department also issued updated Frequently Asked Questions on the Maintenance of Equity Requirements (FAQs)<sup>1</sup> providing detailed guidance on how each SEA and LEA can maintain equity and comply with the maintenance of equity provisions. In that guidance, the Department indicated that SEAs and LEAs should consider making maintenance of equity data publicly available.

In Appendix A to the FAQs issued in June 2021 and updated on August 6 and October 1, 2021, the Department

required each SEA to report to it baseline and initial data on the State's high-need and highest-poverty LEAs. These data include: a list of the high-need LEAs; the statewide per-pupil amount of State funds provided to all LEAs in FYs 2021 and 2022 as well as the per-pupil amount provided to each high-need LEA in those years; a list of the highest-poverty LEAs; and the per-pupil amount of State funds provided to each highest-poverty LEA in FYs 2019 and 2022. In addition, each SEA was required to submit a list of the high-poverty schools in each LEA that must maintain equity in FY 2022. The Department is posting these data on its website at: <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/maintenance-of-equity/> and will update the website as new data become available. The Department also intends to collect SEA-level maintenance of equity data through each State's annual performance report and will make those data publicly available.

Although data on State-level maintenance of equity will be available on the Department's website, there are not publicly available data for LEA-level maintenance of equity. Accordingly, on October 5, 2021, the Department proposed a requirement<sup>2</sup> to address this need for transparency and accountability consistent with the Department's policy goals of ensuring that schools serving large proportions of historically underserved groups of students—including students from low-income families, students of color, English learners, students with disabilities, migratory students, and students experiencing homelessness—receive an equitable share of State and local funds as the Nation continues to recover from the impact of the COVID-19 pandemic on our education system. To support these goals, and to ensure public accountability for the implementation of the LEA-level maintenance of equity provisions of the ARP Act, the Department proposed to require that each SEA make publicly available information on how each LEA in the State is maintaining fiscal and staffing equity to meet the requirements of section 2004(c) of the ARP Act. Requiring that maintenance of equity data be publicly available would allow parents, families, and local communities to access information on how the LEA is maintaining equity for schools with

high concentrations of students from low-income families. Additionally, public posting of data and information on how each LEA in the State is maintaining equity is an important accountability tool for SEAs and the Department.

In response to the proposed requirement, the Department received 27 comments from States, LEAs, and national organizations. After considering those comments and other stakeholder input, the Department proposes this significantly revised requirement.

Many commenters recommended that the Department extend the reporting deadline to allow more time for SEAs and LEAs to prepare to meet the data reporting requirements and ensure more accurate reporting. The Department recognizes the concerns of grantees regarding accurate data reporting on a constricted timeline. As a result, the Department proposes to adjust the deadline to significantly extend the period for reporting data.

In addition, multiple commenters strongly recommended allowing for increased flexibility in the reporting requirements to accommodate SEAs' and LEAs' different school finance reporting systems. In response to these comments, the Department proposes to specify expanded options available to SEAs for reporting data to allow an LEA to demonstrate that the LEA maintained equity by providing applicable per-pupil expenditure data where appropriate. Specifically, paragraph (d) of the proposed requirement permits an SEA and its LEAs, in meeting and reporting LEA-level maintenance of equity, to rely on the applicable per-pupil expenditure data required to be included on the State report card pursuant to section 1111(h)(1)(C)(x) of the Elementary and Secondary Education Act of 1965 (ESEA). This paragraph would provide an LEA additional flexibility in meeting the LEA-level maintenance of effort requirement by using expenditure data the LEA may already have available for reporting per-pupil expenditures under section 1111(h)(1)(C)(x) of the ESEA without establishing new reporting systems.

Finally, commenters expressed concern over the potential burden that these data reporting requirements would place on SEAs and LEAs, noting that systems may not be in place yet to collect and analyze the data and that developing such systems takes significant amounts of time and labor.

The Department acknowledges these concerns and has addressed them through changes designed to achieve the

<sup>1</sup> See [https://oese.ed.gov/files/2021/08/Maintenance-of-Equity-updated-FAQs\\_final\\_08.06.2021.pdf](https://oese.ed.gov/files/2021/08/Maintenance-of-Equity-updated-FAQs_final_08.06.2021.pdf).

<sup>2</sup> [www.federalregister.gov/documents/2021/10/05/2021-21764/proposed-requirement-american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund](https://www.federalregister.gov/documents/2021/10/05/2021-21764/proposed-requirement-american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund).

benefit of sharing information on State and local funding in order to support students who have been subject to longstanding opportunity gaps in our education system.

Under paragraph (c) of the proposed requirements, each State would be required to publish, by December 31 following each applicable school year, specific data regarding compliance with the LEA-level maintenance of equity requirements. We are specifically requesting comment on whether such data elements would be available on the proposed timeline and, if not, when such data would be available. We also solicit comment as to whether, in the alternative, States would be able to publish data on the same proposed timeline demonstrating how each LEA met the fiscal and staffing equity requirements *generally*, instead of the specific data elements in proposed paragraph (c), and whether it would achieve similar transparency objectives. Under this alternative approach, States would have additional flexibility in the data they use to demonstrate LEA compliance with the requirements, though such an approach could limit cross-State data comparability and provide less certainty for stakeholders regarding the types of data they may reasonably expect from their SEA on LEA implementation.

Finally, given the proposed flexibilities in reporting on LEA-level maintenance of equity, the Department proposes in paragraph (b) that each SEA, by March 31, 2022 for FY 2022 which is the 2021–2022 school year and by November 1, 2022 for FY 2023 which is the 2022–2023 school year, publish on its website a description of how the SEA will ensure that each LEA that is not excepted from LEA-level maintenance of equity requirements is ensuring that its high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA, if any, such that the LEA can make any necessary adjustments in a timely manner. This provision is designed to ensure an SEA has a process for determining that its LEAs actually maintain equity and, if the LEAs do not, are able to make any necessary adjustments in a timely manner.

Several questions in the FAQs on LEA-level maintenance of equity (see generally Questions 22–32) address the data an SEA would report under this proposed requirement. For example, Question 32 discusses LEAs that may be excepted under proposed paragraph (a)(1) from meeting the LEA-level maintenance of equity requirements, including those LEAs that qualify as

having exceptional or uncontrollable circumstances in FY 2022 due to the pandemic. (See also the August 6, 2021, DCL.) Similarly, Questions 23–25 clarify how to identify high-poverty schools under proposed paragraph (a)(2). Question 26 provides information applicable to proposed paragraphs (c)(1) and (2) and (d) on how the amount of per-pupil funding aligns with reporting on per-pupil expenditures under section 1111(h)(1)(C)(x) of the ESEA. Questions 28 and 29 clarify how to determine full-time-equivalent (FTE) staff applicable to proposed paragraphs (c)(3) and (4). Finally, Questions 27 and 30 address how to determine if an LEA has maintained equity in its high-poverty schools for proposed paragraph (c)(5).

#### Proposed Requirement

(a) By March 31, 2022 for FY 2022 which is the 2021–2022 school year and by November 1, 2022 for FY 2023 which is the 2022–2023 school year, a State educational agency (SEA) must publish the following LEA-level maintenance of equity data on its website:

(1) The identity of each LEA in the State that is excepted from LEA-level maintenance of equity requirements under section 2004(c)(2) of the ARP Act for each of the following reasons:

(i) The LEA has a total enrollment of less than 1,000 students.

(ii) The LEA operates a single school.

(iii) The LEA serves all students within each grade span with a single school.

(iv) The LEA has notified the SEA that the LEA demonstrates an exceptional or uncontrollable circumstance under section 2004(c)(2)(D) of the ARP Act and has not implemented an aggregate reduction in combined State and local per-pupil funding.

(v) The LEA has been granted an exception from LEA-level maintenance of equity requirements by the Department due to an exceptional or uncontrollable circumstance under section 2004(c)(2)(D) of the ARP Act and the Department has informed the SEA of this exception.

(2) For each LEA that is not excepted from LEA-level maintenance of equity requirements as detailed in paragraph (a)(1), the schools in the LEA that are identified as “high-poverty schools” as defined in section 2004(d)(4) of the ARP Act.

(b) By March 31, 2022 for FY 2022 which is the 2021–2022 school year and by November 1, 2022 for FY 2023 which is the 2022–2023 school year, each SEA must publish on its website a description of how the SEA will ensure that each LEA that is not excepted from LEA-level maintenance of equity

requirements is ensuring that its high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA, if any, such that the LEA can make any necessary adjustments in a timely manner.

(c) By December 31 following each applicable school year (*e.g.*, December 31, 2022, for FY 2022 which is the 2021–2022 school year) or such other date as the Department may approve upon request from an SEA due to the SEA’s specific circumstances, an SEA must publish the following LEA-level maintenance of equity data on its website for each LEA in the State that is not excepted from LEA-level maintenance of equity requirements as detailed in paragraph (a)(1):

(1) The per-pupil amount of funding for each high-poverty school in the LEA in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(2) The per-pupil amount of funding in the aggregate for all schools in the LEA, on a districtwide basis or by grade span, in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(3) The per-pupil number of full-time-equivalent (FTE) staff for each high-poverty school in the LEA in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published, which may also be indicated as the number of students per FTE staff.

(4) The per-pupil number of FTE staff in the aggregate for all schools in the LEA, on a districtwide basis or by grade span, in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published, which may also be indicated as the number of students per FTEs.

(5) Whether the LEA did not maintain equity for any high-poverty school in FY 2022 or 2023, as applicable for the year for which the data are published.

(d) For the purpose of the reporting required in paragraph (c), an SEA and its LEAs may rely on the applicable per-pupil expenditure data required to be included on the State report card pursuant to section 1111(h)(1)(C)(x) of the Elementary and Secondary Education Act of 1965.

(e) All data required to be published under paragraphs (a)–(d) must be published in a way that is machine-readable and accessible, in a location accessible for parents and families. LEA- and school-level data must be listed by the applicable National Center for Education Statistics LEA ID and school ID, where applicable.

**Executive Orders 12866 and 13563***Regulatory Impact Analysis*

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing the proposed requirement only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected the approach that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed requirement is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

*Potential Costs and Benefits*

The Department has analyzed the costs and benefits of complying with the proposed requirement. Due to the varying capacity and administrative structures of affected entities, we cannot estimate, with absolute precision, the likely effects of the proposed requirement. However, as discussed below, we estimate that the proposed requirement would have a net cost of \$60,000 over two years.

As an initial matter, the Department recognizes that staff at SEAs and LEAs nationwide expend considerable effort every year on education finance, both in their general supervisory capacity and as part of their efforts to comply with the maintenance of equity requirements in the ARP Act. The analysis below is not an attempt to quantify those efforts. Rather, this analysis is limited only to the incremental cost of complying with

the proposed requirement (e.g., through public reporting).

For the purposes of these estimates, the Department assumes that the proposed requirement does not generate any additional data collection or retention burdens beyond those already imposed by the statutory requirement itself. To the extent that these assumptions are incorrect, actual costs borne by States could be higher than those outlined below.

We assume that a representative from each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico (hereafter collectively referred to as States) would review the final requirement. We assume that such review would take, on average, one hour per State for a one-time cost of approximately \$2,800.<sup>3</sup>

We assume that, for each State, a management analyst would spend approximately eight hours, on average, compiling the relevant data and preparing it for posting. Within this estimate, we assume a management analyst would employ any necessary data suppression rules, add NCES identifiers, and make any necessary formatting changes for posting of the data. We assume that posting the data online would take a network administrator (\$59.09<sup>4</sup> per hour) approximately 30 minutes. In total, we assume posting data would cost approximately \$23,900 per year.

Finally, we assume that approximately 20 States would need to update their data after initial posting. We assume the updates would take a management analyst approximately 4 hours to complete and would require 30 minutes for a network administrator to post. In total, we assume posting corrections would cost approximately \$4,900 per year.

In general, we believe that the costs outlined above could be offset with funds the States have reserved under the ARP ESSER grant program. The benefit of publicly posting LEA-level maintenance of equity data is to facilitate public accountability so that

<sup>3</sup> The Department assumes a loaded wage rate of \$53.79 per hour based on the average hourly wage rate for management analysts employed in State governments, excluding schools and hospitals ([https://www.bls.gov/oes/current/naics4\\_999200.htm](https://www.bls.gov/oes/current/naics4_999200.htm)), which is multiplied by 1.61 to account for the employer cost for employee compensation (<https://www.bls.gov/news.release/pdf/ecec.pdf>).

<sup>4</sup> The Department assumes a loaded wage rate of \$59.09 per hour based on the average hourly wage rate for network and computer systems administrators employed in State governments, excluding schools and hospitals ([https://www.bls.gov/oes/current/naics4\\_999200.htm](https://www.bls.gov/oes/current/naics4_999200.htm)), which is multiplied by two to account for overhead and benefits.

parents and families will be able to access publicly available information on how each LEA in the State is maintaining fiscal and staffing equity. Additionally, public posting of data and information on how each LEA in the State is maintaining equity is an important accountability tool for SEAs and the Department. As such, we believe the benefit to the general public would far outweigh any burden on States.

#### *Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed requirement easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Would the proposed regulations be difficult to understand for or to explain to someone with literacy challenges or limited English proficiency?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make the proposed requirement easier to understand, see the instructions in the **ADDRESSES** section.

*Intergovernmental Review:* These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

#### *Regulatory Flexibility Act Certification*

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual

revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The proposed regulatory action would affect only States, none of which is a small entity for the purpose of this analysis.

#### *Paperwork Reduction Act*

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). This helps ensure that the public understands the Department’s collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed requirement that an SEA must publish on its website LEA-level maintenance of equity data for each LEA in the State contains an information collection requirement. Under the PRA, the Department has submitted this requirement to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

As discussed in the *Potential Costs and Benefits* section of the *Regulatory Impact Analysis*, this proposed requirement would create cost and burden hours for SEAs. In the following paragraphs, we estimate the cost and burden hours associated with complying with this proposed requirement. Differences between the estimates in the *Regulatory Impact Analysis* and this section are due to differences in calculating the net impact and annual impact of this requirement.

We assume that, for each SEA, including the District of Columbia and the Commonwealth of Puerto Rico, a

management analyst, at an hourly rate of \$53.79, will spend approximately 8 hours compiling the relevant data and preparing it for publication on the SEA website. At an hourly rate of \$59.09, we estimate that posting the data online would take a network administrator approximately 30 minutes. We estimate that posting the LEA-level maintenance of equity data would cost each SEA \$460 and result in 8.5 burden hours annually for a total annual cost of \$23,900, and 442 burden hours.

We estimate that approximately 20 States will need to update their data after initial posting. We assume the updates would take a management analyst approximately 4 hours to complete and would require 30 minutes for a network administrator to post. We estimate posting corrections will cost each SEA \$240 and result in 4.5 burden hours for a total cost of \$4,900, and 90 burden hours.

Collectively, we estimate that this proposed requirement would result in a total estimated cost of \$28,800 and a total estimated burden of 532 hours to the public annually.

The Department is requesting paperwork clearance on the OMB 1810–0759 data collection associated with this proposed requirement. That request will account for all burden hours and costs discussed within this section. Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in this proposed requirement. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by February 2, 2022. Comments related to the information collection activities must be submitted electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) by selecting the Docket ID number ED–2021–OESE–0116 or via postal mail, commercial delivery, or hand delivery by referencing the Docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, Room 6W208D, Washington, DC 20202–8240.

*Note:* The Office of Information and Regulatory Affairs and the Department review all comments related to the

information collection activities posted at [www.regulations.gov](http://www.regulations.gov).

COLLECTION OF INFORMATION

| Information collection activity                    | Estimated number of responses | Hours per response | Total estimated burden hours | Estimated total cost |
|--|-------------------------------|--------------------|------------------------------|----------------------|
| LEA-level Maintenance of Equity Data Posting ..... | 52                            | 8.5                | 442                          | \$23,900             |
| LEA-level Maintenance of Equity Data Updates ..... | 20                            | 4.5                | 90                           | 4,900                |
| Annualized Total .....                             | 72                            | .....              | 532                          | 28,800               |

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Ian Rosenblum,**

*Deputy Assistant Secretary for Policy and Programs, Delegated the authority to perform the functions and duties of the Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2021-28376 Filed 12-30-21; 8:45 am]

BILLING CODE 4000-01-P

**SURFACE TRANSPORTATION BOARD**

**49 CFR Parts 1144 and 1145**

[Docket No. EP 711 (Sub-No. 1)]

**Reciprocal Switching**

**AGENCY:** Surface Transportation Board.

**ACTION:** Notification of public hearing.

**SUMMARY:** The Surface Transportation Board (Board) will hold a public hearing

on March 15 and 16, 2022, concerning the reciprocal switching regulations it proposed in this proceeding. The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423-0001. All interested persons are invited to appear. In addition, the Board will pause the period for ex parte discussions, beginning January 24, 2022, and modify the instructions for ex parte communications in this proceeding to permit ex parte discussions with up to two Board members in the same meeting.

**DATES:** The hearing will be held on March 15 and 16, 2022, beginning at 9:30 a.m., in the Hearing Room of the Board's headquarters and will be open for public observation.<sup>1</sup> The hearing will be available for viewing on the Board's website. Any person wishing to speak at the hearing should file with the Board a notice of intent to participate (identifying the party, proposed speaker, and time requested) as soon as possible but no later than January 27, 2022.

Written comments, including required written testimony by hearing participants, may be submitted by all interested persons by February 14, 2022. Hearing participants are required to submit written testimony by February 14, 2022. Additionally, by the same date, any interested person, including those who will not appear at the hearing, may submit written comments addressing matters related to the proceeding, including the areas of interest identified below.

**ADDRESSES:** All filings should be submitted via e-filing on the Board's website at [www.stb.gov](http://www.stb.gov). Filings will be posted to the Board's website and need not be served on the other hearing participants, written commenters, or any other party to the proceeding.

<sup>1</sup> The Board will provide additional instructions and requirements for facility entry in a subsequent decision. If the Board determines that the hearing should be held virtually, either entirely or in part, the Board will issue a subsequent decision by no later than March 1, 2022, indicating whether that is the case and containing registration instructions.

**FOR FURTHER INFORMATION CONTACT:**

Sarah Fancher at (202) 245-0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** In *Reciprocal Switching (NPRM)*, EP 711 (Sub-No. 1) et al., (STB served July 27, 2016),<sup>2</sup> the Board proposed new regulations under which the Board would exercise its statutory authority to require rail carriers to establish switching arrangements in certain circumstances. The Board received numerous comments in response to the proposal. In addition, Board members have been participating in ex parte meetings with interested persons, and summaries of those meetings are posted in the docket pursuant to the procedure detailed in the *NPRM*. To allow interested persons to submit testimony to update the record, the Board will hold a public hearing and invite comments.

**Background**

Competitive access generally refers to the ability of a shipper or a competitor railroad to use the facilities or services of an incumbent railroad to extend the reach of the services provided by the competitor railroad. The provisions of 49 U.S.C. 11102 and 10705 make three competitive access remedies available to shippers and carriers: The prescription of through routes, terminal trackage rights, and, as relevant here, reciprocal switching. Under reciprocal switching, an incumbent carrier transports a shipper's traffic to an interchange point, where it switches the rail cars over to the competing carrier. The competing carrier pays the incumbent carrier a switching fee for bringing or taking the cars from the shipper's facility to the interchange point, or vice versa. The switching fee is incorporated in some manner into the competing carrier's total rate to the shipper. Reciprocal switching thus enables a competing carrier to offer its own single-line rate to

<sup>2</sup> The proposed rule was published in the **Federal Register**, 81 FR 51149 (Aug. 3, 2016).