

**Congress of the United States**  
**Washington, DC 20515**

February 22, 2019

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Secretary DeVos:

We write regarding the proposed Supplement not Supplant Non-Regulatory Informational Document published on the U.S. Department of Education (Department) website for public comment on January 25, 2019. We urge you to abandon this proposal and engage in negotiated rulemaking and robust public comment to promulgate a meaningful standard for compliance with the requirements of Sec. 1118(b) of the *Elementary and Secondary Education Act* (ESEA), 20 U.S.C. 6321, as amended by the *Every Student Succeeds Act*, P.L. 114-95.

The supplement, not supplant requirement is a longstanding fiscal accountability requirement accompanying the federal investment in Title I, Part A that is critical to fulfill the statutory purpose of Title I-A and to ensure the effective use of federal funds. ESEA Sec. 1118(b) states that districts must “*demonstrate that the methodology used to allocate State and local funds to each school receiving [Title I, Part A funds] ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving [Title I, Part A funds].*” Title I-A is intended to provide schools with federal funding in addition to state and local investment, in an effort to ensure students in poverty have access to the services and supports they need to fulfill their academic potential.

Contrary to Congressional intent in drafting Sec. 1118(b), the Department’s guidance gives districts absolute flexibility – well beyond the flexibility intended by Congress – to determine whether federal funds have been used to truly supplement state and local investment in high-poverty schools. The Department’s proposal merely encourages districts to use a methodology that is “*neutral with regard to whether a school receives Title I, Part A funds,*” which stops short of ensuring high-poverty schools receive the State and local funds to which they are entitled. Additionally, the proposal lacks any encouragement that districts make public their methodology, robbing parents, educators, and communities of even basic transparency in the allocation of federal funds.

Subregulatory guidance is not legally enforceable. We fear leaving this fiscal requirement unregulated and without a meaningful standard against which the Department can enforce compliance, will lead to abuse of the intended flexibility and an erosion of the effectiveness of the federal investment. Congress articulated the importance of regulation on supplement, not supplant within ESEA, making it one of only three issue areas – along with standards and assessments – on which the Department was required to hold negotiated rulemaking. While the Department may not support the draft rule that was promulgated under the previous

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administration, that does not change Congress' intent to direct the Department to issue a regulation on supplement, not supplant, not guidance. In short, lack of a compliance standard is irresponsible. The ambiguous and opaque nature of the proposed guidance will allow districts to continue – and potentially worsen – state and local underinvestment in high-poverty schools, free from necessary public and federal accountability. In so doing, it undermines the bipartisan intent of the program.

For the reasons articulated here, we reiterate our call for you to abandon this draft proposal and engage in negotiated rulemaking to arrive at a meaningful and legally binding standard for compliance with ESEA Sec. 1118(b). Students and taxpayers deserve nothing less.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Chairman  
Committee on Education and Labor  
U.S. House of Representatives



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**PATTY MURRAY**  
Ranking Member  
Committee on Health, Education, Labor  
and Pensions  
U.S. Senate



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**ROSA L. DELAURO**  
Chairwoman  
Subcommittee on Labor, Health and Human  
Services, Education, and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives