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My name is Jennifer A. Marshall. I am Director of Domestic Policy at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

Introduction

Major federal intervention into local schools began with the Elementary and Secondary Education Act of 1965 (ESEA). Since then, a half-century of continually expanding, ever-shifting federal intervention into local schools has failed to improve American academic achievement.

But it has caused an enormous compliance burden, dissipating dollars and human capital that could have been more effectively directed to achieve educational excellence. The damage should be calculated not only in terms of decades of wasted fiscal and human resources and on-going opportunity costs. We must also take stock of how federal intervention has created a dysfunctional governance system that undermines direct accountability to parents and taxpayers, while at the same time encouraging bureaucratic expansion and empowers special interests.

Specifically, we should count the following costs of compliance with federal policy:

1. The proliferation of federal programs and increased federal prescription to leverage “systemic reform” have created a confusing policy maze that only a limited set of experts can navigate.
2. The growth of state bureaucracies to administer and comply with federal programs has given rise to a “client mentality” that undermines effective educational governance and accountability that ought to be directed toward parents and other taxpayers.
3. The administrative set-asides and red tape associated with federal programs diminishes education dollars as they pass through multiple layers of bureaucracy.

I commend this subcommittee and the larger committee for renewing attention to a pressing problem in education policy today. Serious investigation like this into the scope and effects of federal intervention has not taken place for more than a decade, despite massive growth in the federal role in education. Policymakers need much more information than any of us here today will be able to present. Studies by the Government Accountability Office and others are needed to get a full and updated accounting of the extent and impact of the federal role in schools today. This information is essential to inform policy choices that will restore dollars and decision-making to those closest to the student. Washington’s role currently stands in the way of that objective, and the first order of business is to take stock of that obstacle.

1. The proliferation of federal programs and increased federal prescription to leverage “systemic reform” have created a confusing policy maze.

- Proliferation of Federal Programs

Washington’s role in education has grown to the point where it is difficult to keep track of all the odds and ends of federal intervention into this or that aspect of education. Programs include things like Women’s Educational Equity, the Native Hawaiian Education Program, the Carol M. White Physical Education Program, and the *Challenge* newsletter to spread the word about how to fight drugs and violence in schools.¹

Even the Government Accountability Office (GAO) has had a hard time counting up all the education programs, or even defining what a federal program is. Using a narrow definition that excludes programs that don’t “enhance student learning through school activities and curricula” (which leaves out, for example, food and nutrition programs administered through schools), GAO determined in 2010 that there were 151 K-12 and early childhood education programs housed in 20 executive branch and independent federal agencies, totaling \$55.6 billion in average annual expenditures. According to GAO, 91 percent of these programs are federal grant programs, distributed primarily to state and local school districts. States were eligible for 65 of the grant programs; local districts for 57 programs.²

This multiplication of programs means multiple applications, monitoring of program notices, and program reporting. This increases administrative overhead and erodes coherent, school-level strategic leadership based on the needs of individual students.

No Child Left Behind (NCLB) is the most significant of the federal laws affecting K-12 education. Programs funded under NCLB constituted \$25 billion in 2010. NCLB includes more than 50 programs under 10 titles, running more than 600 pages. NCLB is the eighth reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). The original ESEA included just five titles and 32 pages.

In 2006, the Office of Management and Budget found that No Child Left Behind cost states an additional 7 million hours in paperwork at a cost of \$141 million.³

- Federal Prescription Increased through “Systemic Reform”

Between 1965 and the mid-1990s, the federal role in education focused on *compensatory* and *categorical* aid, aiming to supplement resources for specific student populations (e.g., low-income or English language learners) or categorical purposes. In the mid-1990s, the federal role expanded beyond these specific interventions to leveraging

¹ See *Guide to U.S. Department of Education Programs, Fiscal Year 2010*, at <http://www2.ed.gov/programs/gtep/gtep.pdf>.

² U.S. Government Accountability Office, “Federal Education Funding: Overview of K-12 and Early Childhood Education Programs,” GAO-10-51, January 2010, at <http://www.gao.gov/new.items/d1051.pdf>.

³ *Federal Register*, Vol. 71, No. 202 (October 19, 2006), p. 61,730.

system-wide education reform from Washington. This *systemic* or *comprehensive* reform seeks to influence all aspects of the public school system to produce change in all public schools by working top-down from Washington, D.C. No area of education policy is off limits from federal oversight and federal regulation in this model, opening the door to ever-deeper encroachments into and ever-wider compliance demands on local schools.

For example, No Child Left Behind prescribes in great detail the measurement of student progress on a specified testing regimen for all schools and all students. Each state must complete a “Consolidated State Application Accountability Workbook” to explain in great detail how it will meet the law’s prescriptive requirements for judging student progress.⁴ Most states’ completed “accountability workbooks” run around 50 pages long, though some are much longer. For example, Georgia’s is 95 pages and Florida’s is 128 pages.

Accountability is important, but we also need to ask, accountability *to whom* and *for what*? The accountability prescribed by No Child Left Behind focuses on fine-tuned aggregate calculations that are most useful for bureaucrats to chart school-wide, district-wide, or state-wide progress—information that is useful for the application of federal carrots and sticks. Calculations like “safe harbor” to account for differences in progress among groups are not the kinds of information that empower parents. On the other hand, that kind of detail does absorb countless hours of bureaucratic explanation and compliance calculations on the part of schools, districts, and states.

That’s characteristic of federal intervention as whole: it is distracting because of the many compliance burdens it puts on states and localities, but it also detracts from proper accountability to those who have the most at stake in education, parents and other taxpayers.

- Case Study in Complexity and Prescription: Title I

Title I of NCLB is particularly complex and prescriptive, leading to many hidden costs associated with program administration and compliance with program stipulations.

A Heritage Foundation report by researcher Susan Aud describes the complexity of Title I funding, noting that, due to the increasing complexity of the funding structure, “it is likely that no more than a handful of experts in the country clearly understand the process from beginning to end or could project a particular district’s allocation based on information about its low-income students.”⁵

Because of the complexity in Title I, many dollars are soaked up in administrative costs and never make it to the classrooms. For example, the report estimates that in FY 2004,

⁴ See, for example, Florida’s at <http://www2.ed.gov/admins/lead/account/stateplans03/flcsa.pdf>.

⁵ Susan L. Aud, “A Closer Look at Title I: Making Education for the Disadvantaged More Student-Centered,” Heritage Foundation *Special Report* No. 15, June 28, 2007, at <http://www.heritage.org/Research/Reports/2007/06/A-Closer-Look-at-Title-I-Making-Education-for-the-Disadvantaged-More-Student-Centered>.

there were approximately 8.4 million children in the United States eligible for Title I, Part A. With \$13 billion in funding available in 2007, each child should have been eligible for \$1,500. Yet, in Florida, for example, Title I, Part A funding amounted on average to just \$554 per student.⁶

Title I is a good example of the increasing complexity in federal education funding. Title I, Part A originally comprised just one program, the Basic Grant Program. Today it consists of four grant programs: Basic, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants (EFIG).

There are rules to determine the total grant amount awarded to each state for each of the four programs, using calculations based on the number of eligible children in each state's local education agencies (LEAs). However, the rules for determining eligibility are not uniform across the four programs of Title I, Part A.⁷

Concentration grants are supplemental to the Basic Grant. In order to be eligible for the Concentration Grant, "an LEA must have at least 6,500 eligible students, or else 15 percent of the total number of students must be eligible."

The Targeted and EFIG grants are more complex. A complicated system of weights is applied to determine eligibility. For the Targeted grant, the weights are determined by four thresholds, with five weighting categories for each of the four types of thresholds, as well as "different weights for the percent calculations versus the number-of-children calculations."⁸ Additionally, the rationale for the weights is not completely clear in the legislation.

Determining eligibility for the EFIG is even more complex—including 60 weighting categories—and incorporates not only weights but an "equity factor" for each state.

The kind of complexity we see in just NCLB, Title I, Part A illustrates the overall problem we have today with education resources lost on deciphering, applying, and reporting on federal program specifics.

- **Case Study: Race to the Top**

The Obama Administration's Race to the Top (RTTT) competitive grant program offers a recent example of the compliance burdens that result each time a new strategy emerges from Washington, D.C. Although 41 states exerted enormous energy to apply for \$4.35 billion in federal funding (a "small" program compared to Title I at \$15 billion), just 11

⁶ Ibid.

⁷ Another criticism is that "a uniform number for an entire state" is calculated, instead of "taking into account urban, rural, [and] cost of living" differences. The grant program also contains "hold-harmless provisions," guaranteeing districts with a certain level of poverty funding the next year, regardless of whether poverty levels decrease year to year. Also, because due to the way funding amounts are calculated, "small states...receive a much larger amount per child than larger states, regardless of socioeconomic status." Aud, "A Closer Look at Title I," p. 3.

⁸ Ibid.

states ultimately won RTTT awards. Many states' grant applications totaled hundreds of pages; some states even sent representatives to Washington to give presentations on why their state deserved the additional funding. Florida's Race to the Top application, for example, totaled 327 pages and included a 606-page appendix. Illinois' application was 187 pages plus a 644-page appendix, and California submitted an application totaling 131 pages in length with a 475-page appendix. Some states submitted lengthy applications without receiving awards. Louisiana, for example, submitted an application totaling 260 pages with a 417-page appendix. The significant amount of time and money expended on the state's thorough grant application will not be recouped by taxpayers.⁹

- **Not Just Legislation: Regulations and Guidance**

Education regulations can be found in Title 34 of the Code of Federal Regulations. Hundreds of pages are dedicated to specifying the operation of the Department of Education's elementary and secondary education programs. The Title I program has 65 pages of regulations to accompany it, prescribing everything from setting and measuring progress on academic standards, to outreach to parents, to identifying "highly qualified teachers."¹⁰

The complexity of these regulations is illustrated by the section that describes the duties of a paraprofessional. The regulations dictate that a paraprofessional can have seven specific duties and may *not* perform duties other than those listed. Furthermore, the paraprofessional may not perform his or her duties unless under the direct supervision of a teacher who meets the several requirements of a "highly qualified teacher," as outlined by the regulations. The regulations also provide three components of what "direct supervision" means.¹¹

More than 60 pages dictate the operation of federal Impact Aid, defining each step from the application process to the distribution of funds. The regulations include how the Secretary determines the "timely filing" of an application and how local education agencies are to "count the membership of...federally connected children."¹²

In addition to regulations, the Education Department has issued guidance on elementary and secondary education on 100 occasions since the passage of No Child Left Behind.¹³

⁹ U.S. Department of Education, Race to the Top Fund, States' Applications, Scores and Comments for Phase I, at <http://www2.ed.gov/programs/racetothetop/phase1-applications/index.html> (March 10, 2011).

¹⁰ Code of Federal Regulations, Title 34, pp. 455-520, at http://www.access.gpo.gov/nara/cfr/waisidx_10/34cfr200_10.html (March 9, 2011).

¹¹ Code of Federal Regulations, Title 34, p. 503, at http://edocket.access.gpo.gov/cfr_2010/julqtr/pdf/34cfr200.59.pdf (March 9, 2011).

¹² Code of Federal Regulations, Title 34, pp. 524-586, at http://www.access.gpo.gov/nara/cfr/waisidx_10/34cfr222_10.html (March 9, 2011).

¹³ "Significant Guidance Documents," at <http://www2.ed.gov/policy/gen/guid/significant-guidance.doc>.

2. The growth of state bureaucracies to administer and comply with federal programs has given rise to a “client mentality” that undermines effective educational governance and accountability that ought to be directed toward parents and other taxpayers.

Federal intervention beginning in the mid-1960s has shifted state education systems’ orientation toward this new funding source and led to increased state education bureaucracy.

Before the 1965 passage of ESEA, the role of state departments of education varied according to each state’s need. ESEA converted them into a network of state education agencies (SEAs) charged with disseminating federal grants to local districts and implementing federal education policy. A massive growth in state education bureaucracy followed: between 1966 and 1970, Congress appropriated \$128 million for SEAs, and their staff doubled during that period.¹⁴ Growth in the last half-century has been dramatic: in the early 1960s, just 10 state education agencies had more than 100 employees. By 2002, five state education agencies had more than 1,000 employees.¹⁵ Federal funding significantly underwrites state-level education bureaucracy. In fiscal year 1993, 41 percent of SEA funding came from the federal government.¹⁶

Administrative bloat resulting from federal regulations does not stop at the SEA level; it trickles down to the school level. Trends since the 1950s indicate that the number of teachers as a percentage of school staff has declined significantly. In 1950, more than 70 percent of elementary and secondary instructional staff was composed of teachers; by 2006, teachers made up just slightly more than 51 percent of public school staff. Administrative support staff increased from 23.8 percent to 29.9 percent during that same time period.¹⁷

Another problem with this bureaucratic bloat is the fact that the proliferation of federal programs seems to be reflected in a lack of integration within the program-oriented divisions of state education agencies. Similarly, local administrative staff seem to operate in silos when it comes to federal programs. As a 2010 GAO report noted, “Of the district staff who had administrative responsibilities, two-thirds reported administrative responsibilities for only 1 [program]; few staff had responsibility for more than 3 programs.”¹⁸

¹⁴ Department of Health, Education, and Welfare, Office of Education, “State Departments of Education and Federal Programs: Annual Report Fiscal Year 1970,” pp. 1, 4.

¹⁵ Fred C. Lunenburg and Allan C. Ornstein, *Educational Administration: Concepts and Practices*, Fifth Edition (Belmont, CA: Thompson/Wadsworth, 2008).

¹⁶ U.S. General Accounting Office, “Education Finance: Extent of Federal Funding in State Education Agencies,” GAO/HEHS-95-3, October 1994, p. 2.

¹⁷ U.S. Department of Education, National Center for Education Statistics, “Digest of Education Statistics, 2008,” at http://www.nces.ed.gov/programs/digest/d08/tables/dt08_080.asp?referrer=list (March 10, 2011).

¹⁸ U.S. General Accounting Office, “Federal Education Funding: Allocation to State and Local Agencies for 10 Programs,” GAO/HEHS-99-180, September 1999, p. 25, at <http://www.gao.gov/archive/1999/he99180.pdf>.

In this way, federal programs detract from integrated, strategic education leadership at the state, local and building level.

3. The administrative set-asides and red tape associated with federal programs diminishes education dollars as they pass through multiple layers of bureaucracy.

The federal Department of Education has spent the past three decades taxing states, running that money through the Washington bureaucracy, and sending it back to states and school districts. But for 30 years, this spending cycle has failed to improve education.

A dollar gleaned from state taxpayers and sent to the federal Department of Education is then sent, through complex funding formulas or grant programs (see the Title I discussion above), back to state education agencies. SEAs in turn send that money to local education agencies, which in turn send that money to individual schools. Each step along the way diminishes the funds available to local schools as a result of administrative set-asides and other spending. By one 1998 estimate, between just 65 to 70 cents of every dollar makes its way to the classroom.¹⁹

A 1999 GAO study of 10 specific federal programs found that by the time a “federal” dollar reached a local school district, between 1 to 17 percent of the funding had been drained on administration. GAO found that “Overall, 94 percent of the federal education funds received by the states for these 10 programs [studied] was distributed to local agencies such as school districts. If the \$7.3 billion appropriation for the Title I program is excluded, the overall percentage of funds states allocated to local agencies drops to 86 percent.”²⁰

The same 1999 GAO report found that “too much federal funding may be spent on administration and that school personnel are incurring ‘hidden’ administrative costs as they spend time fulfilling administrative requirements related to applying for, monitoring, and reporting on federal funds.”²¹ The report noted the difficulty in determining what constitutes administrative activities because “what is considered administration varies from program to program.”²²

Even the federal funds that reach school districts are not immune from the administrative compliance burden. Reports from school districts provide real-life examples of the administrative burden felt from heavy-handed federal regulations. A Fairfax County, Virginia, school district, for example, noted:

¹⁹ *Education at a Crossroads: What Works and What's Wasted in Education Today*. Subcommittee Report. Subcommittee on Oversight and Investigations of the Committee on Education and the Workforce. U.S. House of Representatives. One Hundred Fifth Congress, Second Session (July 17, 1998), at <http://www.eric.ed.gov/PDFS/ED431238.pdf>

²⁰ Ibid.

²¹ U.S. General Accounting Office, “Federal Education Funding: Allocation to State and Local Agencies for 10 Programs.”

²² Ibid.

“The school division lengthened the standard teacher contract from 194 days to 195 just to allow for extra [NCLB] training time. The cost of setting aside a single day to train the roughly 14,000 teachers in the division on the law’s complex requirements is equivalent to the cost of hiring 72 additional teachers. The law also affects paraprofessionals: an extra day’s training equates to the cost of hiring about ten additional instructional assistants. There are roughly 1,000 administrators who require training as well. A day’s training represents the cost for four additional assistant principals. Thus, each day out of the year that is set aside to explain the law results in a missed opportunity to assign 86 instructional personnel year-round to interface directly with the community’s children and work directly to address their academic needs.”²³

The administrative compliance burden siphons resources that should be directed to students. Moreover, it is unclear whether the reports required of states are always used in a meaningful way by the U.S. Department of Education. During a lecture delivered in April, 2007 at the Heritage Foundation, then Rep. Pete Hoekstra (R-Mich.) recalled his visits to the U.S. Department of Education as chairman of a House subcommittee on oversight and investigations:

“We’d knock on doors, asking, ‘Do any of you read the reports? Who reads these reports and this paperwork that comes back from the states, and who issues these rules and regulations? Have you ever been to Colorado? Is there anybody here from Michigan?’ — you’d have to go through the building for a while before you’d find somebody — ‘And is anybody here from the Second Congressional District of Michigan?’ No, but they’re putting together all these mandates and requirements without knowing the parents, kids, school boards, or the economic conditions of the people that they’re writing all these rules and regulations for.”

Conclusion:

The federal role in education has created an enormous compliance burden for states and local schools. Some of this can be quantified in terms of paperwork, time, and resources. But the cost of compliance should also be calculated in terms of the erosion of good governance in education. The proliferation of federal programs and the ever-increasing prescription of federally driven systemic reform distract school-level personnel and local and state leaders from serving their primary customers: students, parents, and taxpayers. The status quo engenders a client mentality as officials at the state and local level are consumed with calibrating the public education system to Washington’s wishes. To succeed, education reform must be more accountable directly to parents and taxpayers.

²³ “The Cost of Fulfilling the Requirements of The No Child Left Behind Act for School Divisions in Virginia and Report to the Governor and General Assembly on the Costs of the Federal No Child Left Behind Act to the Virginia Department of Education,” Virginia Department of Education, September 2005, at http://www.doe.virginia.gov/federal_programs/esea/reports/appendices_cost_fulfilling_requirements.pdf.

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