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To: School Business Officials
From: Mark Dunham, Director, Finance Office
Date: May 11, 2020
Subject: CARES Act Summary and Frequently Asked Questions

As a follow up to the webinar discussion of Friday May 8, 2020 please see the information and FAQ's below.

- Use of U.S. Department of Education (ED) grant funds for employee compensation and cancelled activities or travel,
- CARES Act funding, and
- Waivers of certain fiscal requirements authorized by the CARES Act.

ED Grant Funds for Employee Compensation and Cancelled Activities or Travel

As authorized by the federal Office of Management and Budget, on April 8, 2020 the U.S. Department of Education (ED) offered relief in two key areas as described in this fact sheet <https://www2.ed.gov/documents/coronavirus/factsheet-fiscal-questions.pdf>:

- **Employee compensation.** ED will permit grantees and subgrantees to continue to use federal funds to pay employees even if they cannot work on program activities because of closure due to COVID-19. To take advantage of this, grantees and subgrantees must follow uniform policies that give the same treatment to federal and non-federal funds and must maintain time and effort and other documentation. In addition, ED encourages grantees and subgrantees to “consider ways that employees paid with grant funds can support continuing activities, including distance learning opportunities for students served by the grant.”
- **Cancelled activities or travel.** ED will permit grantees and subgrantees to use federal funds to pay costs related to a cancelled grant-related conference, training, or other activity. To take advantage of this flexibility, grantees and subgrantees must first seek to recover nonrefundable costs and exercise any emergency or “act of God” contract provision that might be available. Any cost supported with federal funds must relate to an activity that would have been allowable had it not been cancelled and must otherwise comply with federal cost principles.

Overview of CARES Act Funding

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020. It includes two grant programs to help educational entities prevent, prepare for, and respond to coronavirus:

1. The Elementary and Secondary School Emergency Relief Fund (ESSER), and
2. The Governor's Emergency Education Relief Fund (GEER).

Each program is described briefly below.

ESSER Overview

ED released the application for ESSER funds on April 23, 2020. Once a State applies for ESSER funds, ED has 30 days to approve or deny the application.

Under the CARES Act, ESSER allocations to LEAs are based on the proportion of Title I, Part A funds each LEA received in the most recent fiscal year. (Please note some adjustments may be necessary to comply with Section 1122(c)(3) of the Elementary and Secondary Education Act, which prohibits consideration of Title I, Part A hold harmless amounts in calculating State or local allocations for any other ED program, including ESSER Funds.)

Although ESSER funds are distributed to LEAs based on Title I, Part A allocations, they are not Title I, Part A funds. Therefore, ESSER funds are not required to be allocated to specific schools because school and student eligibility, supplement not supplant, and other Title I requirements do not apply to ESSER. ESSER is its own, separate, flexible program intended to help with the COVID-19 response.

LEAs may spend their ESSER funds on any allowable activity listed below, but please consider:

- The purpose of the ESSER fund is to provide LEAs with emergency relief funds to address the impact COVID-19 has had, and continues to have, on elementary and secondary schools. This includes both continuing to provide educational services while schools are closed and developing plans for the return to normal operations.
- ED expects LEAs will use every effort to spend funds quickly to address exigent student needs.
- ED encourages LEAs to focus on their most important educational needs as a result of COVID-19, including remote learning and assessing and addressing learning gaps resulting from disruptions in educational services.
- We encourage LEAs to use ESSER funds in ways that meet the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, children in foster care, and other vulnerable populations.

In light of these considerations, LEAs that receive ESSER funds may spend them on:

- Any activity authorized by ESEA, IDEA, AEFLA, Perkins, or McKinney Vento;
- Coordination of preparedness and response efforts to COVID-19;
- Providing principals and other school leaders with resources to address individual school needs,
- Activities to address the unique needs of low-income children, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including outreach and service delivery;
- Procedures and systems to improve LEA preparedness and response efforts;
- Training and professional development for LEA staff on sanitation and minimizing the spread of infectious disease;

- Purchasing supplies to sanitize and clean LEA facilities;
- Planning for and coordinating during long-term closures, including how to provide meals, technology for online learning, guidance for carrying out IDEA requirements, and providing educational services consistent with applicable requirements;
- Purchasing educational technology (including hardware, software and connectivity) for the LEA's students;
- Providing mental health services and supports;
- Planning and implementing summer learning and supplemental afterschool programs; and
- Other activities necessary to maintain LEA operations and services and employ existing LEA staff.

For a full description of allowable activities, please see Section 18003(d) of the CARES Act <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

ED has said LEAs may not spend ESSER funds on:

- Bonuses, merit pay, or similar expenditures, unless related to disruptions or closures related to COVID-19;
- Subsidizing or offsetting executive salaries and benefits of individuals who are not LEA employees; or
- Expenditures related to state or local teacher or faculty unions or associations.

ESSER funds will remain available for obligation through September 30, 2022 and will be available for pre-award costs back to March 13, 2020.

GEER Overview

GEER funds are awarded to Governors who have discretion over how to distribute them. ED released the application for GEER funds on April 14, 2020.

Governors may use these funds to:

- Provide emergency support grants to LEAs most significantly impacted by coronavirus (as determined by the SEA) so they can continue to provide educational services and support ongoing functionality;
- Provide emergency support grants to IHEs serving students that have been most significantly impacted by coronavirus (as determined by the Governor) so they can continue to provide educational services and support ongoing functionality; and
- Provide support to any other LEA, IHE, or other educational entity the Governor deems essential for carrying out emergency educational services to students for the following activities:
 - Allowable ESSER activities (see above),
 - Activities under the Higher Education Act,
 - The provision of childcare and early childhood education,
 - Social and emotional support, and
 - The protection of education-related jobs.

GEER funds will be available for obligation through September 30, 2022 and will be available for pre-award costs back to March 13, 2020.

Equitable Services Requirements for ESSER and GEER

LEAs that receive ESSER or GEER funds must provide equitable services to nonpublic schools. The US Department of Education has determined that the LEA in which a nonpublic school is located is responsible for providing equitable services to students and teachers in participating nonpublic schools. Additional information about the ESSER and GEER equitable services requirements can be found in ED's frequently asked questions document [Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Program](#), including: maintaining control of funds, initiating consultation and who is eligible for services.

Reporting

The CARES Act requires entities that receive more than \$150,000 in CARES Act funds to report certain information about their spending quarterly (including how much they received, what projects they supported with CARES Act funds, how much they spent on each project, and information about subgrants and contracts). In addition, ED may impose additional reporting requirements. More information about these requirements is expected.

EDGAR and UGG

GEER and ESSER funds are subject to both the Education Department General Administrative Regulations (EDGAR) and the Uniform Grant Guidance (UGG).

Waivers of Certain Fiscal Requirements

Using authority given by the CARES Act, ED has waived the following requirements:

- **The carryover limit for 2019-2020 Title I, Part A funds.** Normally, LEAs may only carry 15% of their Title I, Part A funds over from one year to the next, a limit SEAs can waive once every three years. This waiver means LEAs are not limited in how much Title I, Part A money they carry over from 2019-2020 to 2020-2021. This is true even for LEAs that already received a carryover waiver from the SEA within the last three years.
- **The period of availability to spend 2018-2019 funds for many ED programs.** Normally, any money awarded on or around July 1, 2018 must be spent by September 30, 2020. This waiver means that LEAs now have an extra year to spend the funds until September 30, 2021. The programs covered by this waiver are:
 - Section 1003 (School Improvement);
 - Section 1003a (Direct Student Services);
 - Title I, Part A (Improving Basic Programs);
 - Title I, Part D, Subpart 1 (Neglected and Delinquent);
 - Title II, Part A (Supporting Effective Instruction);
 - Title III, Part A (English Language Acquisition);
 - Title IV, Part A (Student Support and Academic Enrichment);
 - Title IV, Part B (21st Century Community Learning Centers); and
 - McKinney-Vento Education for Homeless Children and Youth Program.

- **The requirement for LEAs that receive \$30,000 or more in Title IV, Part A funds to conduct a needs assessment.** Normally, LEAs that receive \$30,000 or more in Title IV, Part A funds must conduct a comprehensive assessment of needs for improved access to a well-rounded education, school conditions for student learning, and access to personalized learning experiences. LEAs must then spend Title IV, Part A funds consistent with this needs assessment. This waiver means LEAs will not have to amend the needs assessment conducted for 2019-2020 funds in light of COVID-19 and extended school closures.
- **The requirement for LEAs that receive \$30,000 or more in Title IV, Part A funds to spend funds in three areas.** Normally, LEAs that receive \$30,000 or more in Title IV, Part A funds must spend at least 20% of their allocation on activities to support a well-rounded education, 20% on activities to support safe and healthy students, and some funds to support the effective use of technology. This waiver means LEAs may now spend any remaining 2018-2019 funds and 2019-2020 funds on any allowable Title IV, Part A activity and do not have to spend across all three areas.
- **The limit on spending Title IV, Part A funds on technology infrastructure.** Normally, LEAs may not spend more than 15% of the funds earmarked for technology on purchasing technology infrastructure including devices, equipment, software applications, platforms, digital instructional resources and/or other one-time IT purchases. This waiver means LEAs now are not limited in how much they spend on technology infrastructure using any remaining 2018-2019 funds and 2019-2020 funds.
- **The definition of professional development in Section 8101(42) of ESEA for the 2019-2020 school year.** Normally, professional development activities supported with ESEA funds must, among other things, be sustained, intensive, and collaborative. This waiver means LEAs may now use ESEA funds to support shorter-term professional development if the professional development is otherwise allowable under the relevant program.

CARES Act Frequently Asked Questions

Note: These FAQ's will be updated regularly as additional information becomes available from U.S. Department of Education. This information has been gathered from several sources including the USED, CCSSO, and WestEd.

Use of Elementary and Secondary School Emergency Relief Funds

- 1. Will the state reservation of 0.5% for administrative costs be taken from the total state award of Elementary and Secondary School Emergency Relief Funds (ESSERF) or from the 10% that states may set aside for state-level activities (.5% of 10%)?**

Clarification from USED provides that the 0.5% state reservation for state administration will be calculated based on the total state ESSERF allocation. For example, if a state receives \$100 million of ESSERF funds, it may set aside up to \$10 million for state-level uses of funds. Of that \$10 million, it is permitted to use up to \$500,000 for administrative costs (total state ESSERF allocation of \$100,000,000 x .005) and \$9,500,000 for other SEA-level uses and activities related to COVID-19.

- 2. Will the use of the 90% set aside for LEAs be flexible, with LEAs being permitted to spend the funds on all the same activities permitted under all the major programs in the Elementary and Secondary Education Act (ESEA)?**

Yes, the uses of funds for this money are very flexible. Under the law funds may be used for any activity authorized by ESEA, IDEA, the Adult Education and Family Literacy Act, the Perkins CTE Act, or the McKinney-Vento Homeless Assistance Act in addition to other activities to help with the response to COVID-19 (including preparedness and response efforts, sanitation, professional development, distance learning, and others).

- 3. Does the CARES act specify funding obligation timeframes?**

Funding for the new Education Stabilization Fund will be available for obligation at the Federal level through September 30, 2021. SEAs must award funds to eligible entities within one year of receiving them. Any money that remains unawarded after a year must be returned to USED for reallocation to other states.

- 4. Does the CARES Act include a supplement not supplant requirement?**

No. Neither the Elementary and Secondary School Emergency Relief Fund nor the Governor's Emergency Relief Fund includes a supplement not supplant requirement.

5. How do SEAs determine LEA allocations under the Elementary and Secondary School Emergency Relief Fund?

SEAs must award at least 90% of their Elementary and Secondary School Emergency Relief Funds to LEAs. *LEAs receive funds based on the proportion of Title I, Part A funds they received in the most recent fiscal year.* For example, if an LEA received 10% of a State's Title I, Part A funds in the most recent fiscal year, it would receive 10% of the available Elementary and Secondary School Emergency Relief Funds.

6. Are LEAs that did not receive Title I funds in the most recent fiscal year eligible for Elementary and Secondary School Emergency Relief Funds?

Based on how grant amounts are calculated in the act we don't believe so. LEAs receive Elementary and Secondary School Emergency Relief funds based on their relative share of Title I funds. If an LEA did not receive Title I funds in the most recent fiscal year – either because it was not eligible or because it declined funding – then it would not generate a share of Elementary and Secondary School Emergency Relief Funds.

7. Could an SEA award some of its state-level Elementary and Secondary School Emergency Relief Funds to an LEA that did not receive Title I funds in the most recent fiscal year?

The act does not seem to restrict SEAs from doing so. SEAs may use their state-level funds to address emergency needs to respond to coronavirus, including through the use of grants or contracts. This could include granting funds to other entities, such as LEAs that are not eligible for Elementary and Secondary School Emergency Relief funds because they did not receive Title I, Part A funds in the most recent fiscal year.

8. Can the Elementary and Secondary School Emergency Relief Funds benefit any school in the LEA, regardless of a school's Title I, Part A status?

Yes. States must allocate Elementary and Secondary School Emergency Relief Funds to LEAs based on their relative share of Title I, Part A funds, but Elementary and Secondary School Emergency Relief funds are not Title I funds. Therefore, ranking and serving, school and student eligibility, and other Title I requirements do not apply to Elementary and Secondary School Emergency Relief funds.

LEAs may spend their Elementary and Secondary School Emergency Relief funds on any allowable activity listed in Section 18003(d), many of which are likely to be districtwide activities. If an LEA chooses to spend funds to benefit individual schools, for example, to provide principals and other school leaders with resources to address their school's individual needs (Sec. 18003(d)(3)), it may benefit any school regardless of Title I status.

9. Can LEAs use funds to reimburse expenses they are incurring now? E.G. hotspots and tech?

USED has not yet announced how costs incurred prior to the passage of CARES Act will be covered but has allowed for some level of coverage of pre-award costs under previous funding efforts.

10. Does the CARES Act include funds for compensatory education services for students with an Individualized Education Program (IEP)?

For LEAs, the authorized uses of funds under the K12 portion of the Education Stabilization fund include, among others, any activity authorized under ESEA or IDEA. For the funds 10% of each state's allocation reserved by the SEA there is no list of allowable uses of funds laid out in the law only that funds need to be used for emergency needs related to COVID-19 as determined by the SEA. Thus, the K12 portion of the Education Stabilization fund could be used for compensatory services for students with disabilities as determined by the SEA and each LEA.

11. Does the Education Stabilization Fund require funds to be reserved for equitable services for non-public schools?

The law requires the use of Title I's equitable services provisions (Section 1117 of ESEA) in the provision of services to private school children. The funds will be provided to the LEA not the non-public school.

12. Does the CARES Act require LEAs to provide equitable services for private schools?

Yes. Section 18005 of the CARES Act requires LEAs that receive Governor's Emergency Education Relief Funds or Elementary and Secondary School Emergency Relief Funds to provide equitable services in the same manner as provided under Section 1117 of ESEA (that is, in the same manner as equitable services are provided in Title I, Part A).

13. What maintenance of effort (MOE) considerations apply to CARES Act funding?

There are two MOE issues to consider. First, to receive Elementary and Secondary School Emergency Relief Funds or Governor's Emergency Relief Funds States must assure they will maintain support for K-12 and higher education in fiscal years 2020 and 2021 at least to the average spent in the last three fiscal years. USED can waive this requirement for States that have experienced a precipitous decline in financial resources. Second, State and local funds spent on supplemental expenses made as a result of a presidentially declared disaster can be excluded from other programs' MOE calculations (like Title I and other ESEA programs). A mechanism for tracking such spending may be developed to facilitate future calculations.

Use of Funds under the Governor's Emergency Relief Fund

1. How may LEAs spend their Governor's Emergency Relief Funds?

An LEA that receives Governor's Emergency Relief Funds may spend them on activities to support the LEA's ability to continue to provide educational services to its students and to support the LEA's ongoing functionality.

2. Can the Governor's Emergency Education Relief Fund (Section 18002 of the CARES ACT) be used to replace state aid?

No, the Governor's Emergency Education Relief Fund cannot be used to replace state aid. These funds must be used for emergency grants to LEAs and IHEs that are significantly impacted by coronavirus, or to support other education related entities within the state the Governor deems "essential for carrying out emergency educational services." LEAs, IHEs, and other education related entities can use this money flexibly once it is received to provide educational services and to "support ongoing functionality." A state cannot use the funds as replacement for its normal state aid formula. Instead, the state must decide which entities are most impacted by coronavirus, or are essential for carrying out emergency educational services, and allocate the funds there.