Elementary and Secondary Education Funding

in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136)

This document provides details and analysis for the elementary and secondary education funding provisions and requirements in the CARES Act, enacted on March 28, 2020. (It makes only passing reference to higher education funding provisions.) It is designed to help State education agencies, local school districts, educators, and advocates in making the best use of the funds. In making various suggestions, we of course recognize that agencies, educators, and advocates facing the challenges posed by the pandemic may already be well ahead of us in their thinking.

Most of our focus here is on the portion of the CARES Act called the “Education Stabilization Fund” (Sections 18001-18008 of the Act). However, the Act also provides significant amounts of extra funding for certain existing federal education-related programs, listed later in this document.

This document will be updated or supplemented for major new developments in this funding.

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I. The Education Stabilization Fund

The full provisions of the Education Stabilization Fund (ESF) are described in nearly verbatim detail, adjusted to make it easier to understand, in Appendix 1 (starting on page 14).

A. Fund Components and Amounts

The ESF provides $30.75 billion. It actually consists of six separate pots of funds:

- Three smaller pots that come off the top:
  - Up to ½ of 1% ($153.75 million) for outlying areas;
  - ½ of 1% ($153.75 million) for Bureau of Indian Education programs;
  - 1% ($307.5 million) to States with the highest coronavirus burden;

- Three larger pots:
  - Governor’s Emergency Education Relief Fund ($2.95 billion);
  - Elementary and Secondary School Emergency Relief Fund ($13.23 billion);
  - Higher Education Relief Fund ($13.95 billion).

B. Fund for States with the Highest Coronavirus Burden [Section 18001(a)(3)]

These funds have not been getting much attention—probably because 1% doesn’t sound like much, particularly given the overall size of the CARES Act funding. But $307 million is a significant amount, particularly when concentrated in only some States. It is left to the Secretary of Education to identify which (and how many) States have “the highest coronavirus burden” and will thus receive the funds, as well as to set any conditions on its use within States. The Act merely states that the funds are to support activities under the ESF. The Secretary is required to issue a notice inviting State applications within 30 days of the CARES Act enactment—i.e., by no later than April 27th—and to approve or deny applications within 30 days of receipt. The considerations discussed in this document should be applied as appropriate in your thinking about these funds.

C. Elementary and Secondary School Emergency Relief Fund (ESSER) [Section 18003]

The funds go to State Education Agencies (SEAs) in proportion to their Title I Part A funding under the Elementary and Secondary Education Act (ESEA), and from there at least 90% must be distributed to local educational agencies, also in proportion to their Title I Part A funding. The Secretary of Education must, no later than April 27th, publish a notice inviting SEAs to apply. Secretary DeVos must approve or disapprove State applications within 30 days of receipt. The law does not require that the application include a State plan similar to those required under ESEA, the Individuals with Disabilities Education Act (IDEA), the Perkins Career and Technical Education Act, and other federal programs. We expect that the Secretary’s notice setting out the application form and requirements will be accompanied by guidance that includes guidance on the extent to which, in the view of the U.S. Department of Education (USED), SEAs have discretion to impose additional requirements for LEAs’ use of the federal funds.

Keep in mind the varying educational needs now, while schools are closed and distance learning is being undertaken; during the summer; and in the fall when the new school year is expected to begin (and when steep declines in State and local tax revenues may begin to be felt).
LEA use of the funds. Section 18003(d) provides that the funds may be used by LEAs for any of 12 identified purposes, itemized in Appendix 1 on pages 15-16 below. As you will see, some are quite specific and others quite broad. The following is designed to help you, at both State and local levels, in dealing with both the process and the substance of how the funds are to be used.

Four Important, Overarching Legal Requirements under GEPA

Whatever else appears in the Secretary’s application requirements, there are certain conditions under the General Education Provisions Act (GEPA)¹ that apply to these grants² and that embody important principles for planning and implementing the grants (including the allocation of funds to the various allowable uses).

1. Participatory Planning and Operation. This is required of both the State and each LEA.

   - The SEA must have a signed assurance “that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program” – in this case the ESSER fund.³

¹ This document does not attempt to cover all GEPA assurances and requirements that apply to these grants, but instead identifies four that we believe are particularly important and that may not otherwise receive adequate attention.

² GEPA applies to all “applicable programs,” which “means any program for which the Secretary or the Department [of Education] has administrative responsibility as provided by law or by delegation of authority pursuant to law.” GEPA Section 400(c)(1) [20 U.S.C. Sec. 1221]. The required assurances and descriptions discussed here may appear in separate, already existing “single State applications” and “single local educational agency applications” or in particular State or LEA applications for the programs here. GEPA Sections 441(a) and 442(a) [20 U.S.C. Secs. 1232d(a) and 1232e(a)].

³ GEPA Section 441(b)(7) [20 U.S.C. Sec. 1232d(b)(7) (emphasis added). The State-level required assurance, unlike the LEA-level one, has additional language:

   “(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

   “(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

   “(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Secretary or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

   “(C) the State will hold public hearings on the proposed plans if required by the Secretary by regulation; and

   “(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.”

Assuming that the Secretary does not require the SEAs to submit an actual plan, provisions (A)-(C) will not apply, but (D) will. But in either case, the broader requirement for reasonable opportunities for participation in planning and operation will apply – since everything after that is under “including,” which does not limit the broader requirement (as “by” would).
Each LEA must also must have a signed assurance “that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program.”\(^4\)

These assurances for participatory planning and operation need to be taken seriously and must not be short-changed in the rush of the pandemic. The challenges of providing high-quality education, meeting children’s individual needs, and ensuring the safety and well-being of children and staff call for the engagement of all the groups recognized in these two provisions. As we are seeing on the health-care side of things, commitment and ingenuity from many sources are at a premium in meeting new challenges. While democratic principles and experience tell us that deep and broad engagement from this range of involved and affected people results in both better policies and stronger, more informed commitment to implementing them effectively, this is even truer now. And the social isolation required to deal with the pandemic makes attention to ensuring this engagement all the more important, albeit challenging. These requirements apply to choosing among allowable uses of the funds; shaping of the particular programs, strategies, and specifics within those broad uses; and their implementation.

Strong family engagement both in planning for use of the funds and in implementation, important because of what is at stake, educationally and more, for their children, has become even more important as the home has become the place where the child’s education occurs, often with parents or other family members present and trying to support their children’s learning. As a result, family members who may now be home during the day have an even wider window than usual into their child’s learning, which needs to be tapped consistently in order to address the challenges of effective instruction. The experience that family members gain during this period of school closure should continue to be tapped systematically once schools reopen, especially where the inconsistencies of students’ educational services during this time will need to be addressed. Secondary school students, though not explicitly identified in the language above, are certainly “other interested individuals” and should also be engaged in planning and operation at State and local levels.

Organizations that advocate on behalf of students and families also need to participate effectively at both State and local levels, as they too are important sources of information, ideas, and experience with policy-making, its implementation, and its impact. And they play an important role as advocates in making sure the voices and interests of families and students heard and addressed.

Real engagement and participation in planning isn’t simply about letting people comment on a plan after it’s been fully drafted. It’s an ongoing process of dialogue and authentic partnership across the spectrum of constituents. It also requires ensuring that those people have all the information, in accessible form, and any supports needed to be full and informed participants.

While the elimination of in-person meetings resulting from the pandemic poses additional challenges for participatory planning, organizations are also finding that effective use of technology for virtual meetings, as well as for document sharing, can actually increase the number and engagement of people who would find it easier to participate online than to travel to a meeting, including advocates, community organization staff, and family members -- provided that there is equitable, effective access to the Internet and provision of translators for family members with limited English and use of assistive technology devices and signing for those with disabilities using other modes of communication.

\(^4\) GEPA Section 442(b)(5) [20 U.S.C. Sec. 1232e(b)(5)] (emphasis added).
2. Equitable Access and Participation

- The Secretary must "require each applicant for assistance under an applicable program (other than an individual) to develop and describe in such applicant's application the steps such applicant proposes to take to ensure equitable access to, and equitable participation in, the project or activity to be conducted with such assistance, by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age."\(^5\)

This requirement also applies to both the SEA’s application to the Department and the LEA’s application to the SEA.\(^6\)

The specific recognition of barriers based on gender, race, color, national origin, disability, and age is important. And that portion of the requirement reinforces the various civil rights laws that apply. But it is also important to recognize that while barriers based on those characteristics are “included,” the provision is not limited to them. Indeed, it has become widely apparent that the pandemic and the closing of schools have exacerbated challenges and barriers to equitable access and participation for students in low-income families, as well for homeless students and students in foster care, among others.\(^7\)

In allocating resources, attention to individual student needs is always crucial – both in terms of learning needs and in terms of other factors impacting students’ learning. But it has become both more challenging and more important than ever – both now with schools closed and upon their reopening.

Students who were already behind and not meeting grade-level standards before the pandemic – disproportionately from low-income families, of color, with disabilities, learning English, in foster care, and/or homeless – are at risk of falling further behind and of becoming disconnected from school altogether. Equal effective access to distance learning technology is just one piece of the challenges and needs for these children that must be met.

Further, lower-income families are disproportionately less likely to have jobs that can be done from home. For those who are laid off, there are the family stresses from having even less income with which to meet basic human needs. For those who continue to work outside the home, aside from the greater

\(^5\) GEPA Section 427(b)) [20 U.S.C. Sec. 1228a(b)]. The purpose of this requirement is found in subsection (a):

“The purpose of this section is to assist the Department in implementing the Department’s mission to ensure equal access to education and to promote educational excellence throughout the Nation, by—

“(1) ensuring equal opportunities to participate for all eligible students, teachers, and other program beneficiaries in any project or activity carried out under an applicable program; and

“(2) promoting the ability of such students, teachers, and beneficiaries to meet high standards.”

\(^6\) “Applicant” means a party requesting a grant or subgrant under a program of the U.S. Department of Education. [34 C.F.R. Sec. 77.1.]

\(^7\) Note also that Title I and the Carl D. Perkins Career and Technical Education Act call for attention to that wider set of population groups.
risks of contracting the virus and of passing it on to their children, they are not available to assist their children in effectively and consistently making use of distance learning.

Allowable uses of ESSER funds particularly addressed to equity and meeting needs:

- **Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.** [Allowable use #(4)]

- **Any activity authorized by ESEA, IDEA, the Adult Education and Family Literacy Act, the Perkins CTE Act, and the education provisions of the McKinney-Vento Homeless Assistance Act.** [Allowable use #1.] Each of these major federal education programs either is either devoted to meeting the educational needs of one or more particular population groups of students or has a substantial focus within it on attending to the needs of a variety of those populations. For instance, the Perkins Career and Technical Education Act has provisions regarding “special populations” (which is defined to include all the populations identified in allowable use #(4) above) for non-discrimination, actions to overcome barriers resulting in unequal rates of participation or success in programs, and services to meet their needs. The federal requirements of these laws remain in effect during the pandemic. This allowable use is a vehicle for channeling more resources to the listed programs where they are working well and for improving them when needed.

- **Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.** [Allowable use #3.] LEAs will receive ESSER funds in proportion to their Title I funds (i.e., based on their numbers of low-income children). But unlike Title I funds, which then go to higher-poverty schools in the district based on their numbers of low-income students, there is no federal formula for then distributing funds to each school. So the principle in this use of funds is important – providing the resources necessary to address the needs of individual schools, with the recognition (clear in Title I and other federal laws) that schools with higher proportions of low-income students or of students who experience other challenges to learning require more resources to meet their needs. In using these new funds to address those school needs, it is also important to remember that the Title I fiscal requirements remain in effect. These requirements seek to ensure that a district’s higher-poverty Title I schools (a) get all the State and local funds that they would otherwise receive in the absence of the Title I funds, so that the federal funds “supplement, not supplant” those State and local funds; and (b) the State and local funds provide services that are comparable to the other schools in the district (again, so that the federal money provides additional resources).

Other allowable uses of ESSER funds speak to needs affecting all students, but draw specific attention to particular students:

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8 CARES Act Sec. 18003(d)(4). [Allowable uses in the other bullets also key to parallel numbers in Sec. 18003(d).]

9 Indeed, given the nature of the educational needs resulting from the pandemic and the impact of school closure, there is, for good reason, no fixed expectation for how much of the resources and services are provided directly from the district and how much from and through individual school administrations.

10 For “supplement, not supplant” and “comparability of services” in section 1118(b) and (c) of ESEA.
• Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care. [Allowable use #11.]

• Planning for and coordinating during long-term closures, including for how to: provide meals to eligible students, provide technology for online learning to all students, how to provide guidance for carrying out requirements under IDEA, and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements. [Allowable use #8.]

• Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment. [Allowable use #9.]

*Timing Demands*: The descriptions of the steps to ensure equitable access and participation are required as part of the ESSER applications – both the State’s application to the Secretary and LEAs’ applications to the SEA -- so agencies, educators, families, and advocates will have to participate quickly in developing them, but not at the expense of participatory development of plans that are well thought out to effectively address those needs. At the same time, further planning and refining should not end with the submission of the application.

3. Effective Practices / Learning from Each Other

➢ The SEA must have a signed assurance “that the State will adopt and use proper methods of administering each applicable program, including — . . . .

   "(B) providing technical assistance, where necessary, to such agencies, institutions, and organizations [responsible for carrying out each program],

   "(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations,

   "(D) the dissemination throughout the State of information on program requirements and successful practices.” ¹¹

➢ Each LEA must have a signed assurance “that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.” ¹²

Administrators, teachers, and other education personnel are hungry for ways of meeting students’ needs in this extremely challenging context. There is a lot of variety among the plans and adoptions

¹¹ GEPA Section 441(b)(3) [20 U.S.C. Sec. 1232d(b)(3)].

¹² GEPA Section 442(b)(8) [20 U.S.C. Sec. 1232e(b)(8)].
being undertaken across states and school districts. Some of that variation is part of creative processes, while some of it reflects differences in quality and adequacy, and we have seen that this in turn correlates at least in part with variations between resource-rich and less resource-rich districts. The expectation and capacity for quickly but accurately sharing, learning, and using relevant practice and research is critical, and needs to be addressed now at both State and LEA levels.

4. Monitoring

- The SEA must have a signed assurance “that the State will adopt and use proper methods of administering each applicable program, including—
  “(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,
  * * * *
  “(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation.”

Monitoring is not only about whether funds were spent for allowable purposes. In particular, as part of ensuring that the programs are carried out in accordance with all applicable statutes, regulations, program plans, and applications, attention should be given specifically to the three other GEPA requirements above – participatory planning and operation, equitable access and participation, and effective practice provisions. The monitoring of those three requirements should be built into the planning of them. And that monitoring should be (in the parlance of assessment) not just “summative,” at the end of the programs’ operation, but “formative,” along the way, so that the SEA, LEAs, educators, and advocates can make constructive use of it to improve these three functions. This should be addressed by the State as part of its planning. But regardless of whether and how well the SEA does so, it should be built in by each LEA as part of its planning.

The Intersection of the Four Key Requirements

The four requirements are mutually reinforcing. Each is important for successful implementation of the others:

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13 GEPA Section 441(b)(3) [20 U.S.C. Sec. 1232d(b)(3)]. GEPA also allows the Secretary to require the State to submit a plan for monitoring local agencies [Section 440(a), GEPA Sec 20 U.S.C. Sec. 1232c(a)].

GEPA also requires other, related State and local assurances:
- That each program will be administered by the SEA and the LEA in accordance with all applicable statutes, regulations, program plans and applications [Sections 441(b)(1) and 442(b)(1), 20 U.S.C. Sec. 1232d(b)(1) and 1232e(b)(1)];
- That the SEA will evaluate the effectiveness of covered programs in meeting their statutory objectives at intervals (of at least once every three years) and with procedures set by the Secretary [Section 441(b)(4), 20 U.S.C. Sec. 1232d(b)(4)];
- That SEAs and LEAs will submit reports and maintain records [Sections 441(b)(6) and 442(b)(4), 20 U.S.C. Sec. 1232d(b)(6) and 1232e(b)(4); and
- That SEAs and LEAs will use of proper fiscal control and fund accounting procedures [Sections 441(b)(5) and 442(b)(3), 20 U.S.C. Sec. 1232d(b)(5) and 1232e(b)(3)].
• Active, robust participation in the planning and implementation, including by educators, students, families, and their advocates, is important for: Identifying equity-based needs and problems, for devising approaches and solutions, and for ensuring that they are effectively implemented; building and growing a shared knowledge base of effective practice in confronting new and rapidly changing challenges; and successful monitoring that accurately identifies problems and that insists on and contributes effective responses.

• Equity lenses and equity-based resources and expertise are needed for: ensuring that participatory planning and implementation is inclusive and successful; for ensuring that effective practices are aimed at overcoming educational barriers and reach the schools and educators serving students most in need; and as a key focus of effective monitoring;

• Effective monitoring is a critical component in order to turn the requirements and assurances for participatory planning and implementation, equity, and effective practices into reality.

New Thinking Required

It is not enough for the State and LEAs to automatically rely on whatever has been done in the past to comply with these four requirements in regard to other federal programs. First, the quality, effectiveness, and thoroughness of past efforts in these areas -- to build real partnerships with educators, students and families, advocates, and other community resources in the planning and implementation of programs; to ensure equity in access and successful participation and overcome barriers to it faced by the full range of students; to create an ongoing educational culture that successfully creates shares, absorbs, adopts, and adapts effective and innovative practices; and to effectively, critically, and constructively monitor its programs and use the results for real improvement -- has been uneven at best, with varying degrees of attention. These are complex tasks, and the capacity to carry them out effectively has itself been subject to inequalities. Second, doing these tasks successfully during the COVID-19 crisis is both more challenging and more necessary. So yes, we should be learning from what has previously been done in each of the four areas -- both successfully and less so, but with fresh perspective and a determination to fulfill their full meaning. The pandemic, for all its horrible consequences, has also stimulated, in areas beyond education, innovative thinking and a new look at existing structures and fault lines.

Other Considerations in Determining the Use of the ESSER Funds

1. Twelve Allowable Uses / Many Needs

It is useful to think of the 12 allowable uses of funds as an enumeration of many important functions that do indeed need to be carried during this period. None are things that can be ignored without putting at peril the effectiveness of education of children or their health and safety and that of the people who educate them. Use of these funds, then, should be based on a realistic analysis of what it takes to carry out each function adequately and effectively and what are the other resources available to do so. (And that thinking needs to happen through the required participatory planning process discussed above. As with other aspects of the pandemic, creative thinking is at a premium.)
2. Relevance of Career and Technical Education and the Perkins Act

The pandemic’s impact on the economy and the massive increase in unemployment makes career and technical education (as well as postsecondary education) especially important in preparing for the post-COVID world.

Beyond that general point, however, there is a particular feature of career and technical education (CTE) that deserves attention. Under the Perkins Act, the definition of CTE includes providing students with strong experience in, and comprehensive understanding of, all aspects of an industry (AAI). Engaging students in all aspects of an industry – including planning, finance, management, labor, principles of technology, health, safety, and environmental issues, and community issues – has a range of important benefits that are always relevant but particularly useful now. Recent events – and the way that we are all, through various media, getting a deeper look into how various sectors of our economy work (or fails to) -- have put an exclamation point on the rapidity of economic, technological and social transformations in the labor market and various industries and the perils of conceiving of CTE as solely preparing students with a fixed set of skills to perform in a particular job. In contrast:

- Students studying and working on all the basic issues facing an industry gain transferrable skills that equips them to (a) stay with an occupation whose specific skills requirements change, (b) move to a different job within that industry, or (c) work in an entirely different industry, which faces analogous issues.

- It empowers them as workers to understand those various aspects, and not just in isolation from each other but in how these aspects interact in the real world (as we are seeing today), and thereby better prepared to control their own fate, rather than being mere victims of larger forces.

- An AAI approach can help them create new economic opportunities. Engaging with all the aspects noted above provides precisely the skills needed for community economic development and entrepreneurship, starting and growing new enterprises to address unmet community needs.

To reap these benefits and others from AAI, however, it needs to be fully and systematically integrated into entire CTE programs and student experiences, not just by having a few distinct lesson plans on different aspects.

14 Among them:

- Avoiding schools’ sorting students for unequal futures: AAI forms the platform to ensure that young teenagers who may be interested in, for example, health and biomedicine are not sorted so that some are trained to become hospital aides while different courses prepare others for college and potentially medical school. An AAI program focuses on the health industry as a whole, with all students actively exploring the industry’s many aspects (in-depth physiology, biomedical research, health care clinics, epidemiological study of their community, examination of health care policy, etc.). The richness of AAI as the basis for academic-technical integration assures students and their parents that they are not limiting their academic horizons, including their postsecondary education options.

- Providing a rich platform for integrating career-technical skills with academic skills (also required by Perkins) at a high and challenging level across all academic disciplines, rather than conceiving it as just enough academic skills relevant to performing a particular job.

CLE has a long history of leadership on AAI policy and implementation.

15 As the health industry example in the previous footnote illustrates.
D. Governor’s Emergency Education Relief Fund (GEER) [Section 18002]

This $3 billion pot is allocated to States on a formula weighted 60% by relative population (ages 5-24) and 40% by relative share of children (ages 5-17) living in families below the poverty line (or in families receiving TANF Temporary Assistance for Needy Families grant, or living in institutions for neglected and delinquent children, or being supported in foster with public funds).

These funds go to the governor of each State, rather than the SEA. The governor is then permitted to use the funds, in any proportion, for any of three purposes:

- Emergency support through grants to LEAs that the SEA deems have been most significantly impacted by coronavirus to support ability of those LEAs to continue to provide educational services to their students and to support the on-going functionality of the institution;
- Emergency support through grants to institutions of higher education (IHEs) that the SEA deems have been most significantly impacted by coronavirus to support ability of those IHEs to continue to provide educational services to their students and to support the on-going functionality of the institution;
- Support to any other IHE, LEA, or education-related entity the Governor deems essential for carrying out emergency educational services to students for authorized activities described in allowable use number (1) of ESSER [above, i.e. any activity authorized by ESEA, IDEA, the Adult Education and Family Literacy Act, the Perkins CTE Act, the Education for Homeless Children and Youth portion of the McKinney-Vento Act] or the HEA, the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.

Note that for emergency grants to LEAs (but not IHEs), it is the SEA that determines which LEAs have been most significantly impacted. (ED encourages the SEAs to consult with the governors in doing so.)

On April 14th, the Department of Education released the application form and related materials for the GEER Fund. Governors must submit their application by no later than June 1st.

The Department’s cover letter to governors, notice of fund availability (which contains reporting provisions), application (called “Certification and Agreement”), and table of allocations to each State can all be found through https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/, or by going to the Department’s overall Coronavirus web site: https://www.ed.gov/coronavirus.

While the application requirements are limited, in keeping with the GEER provisions in the Act, it does ask certain questions related to the State’s intentions, if any, for using the funds to support use of remote learning techniques and technologies. The page asking those questions is attached to the end of this document as Appendix 2 (on page 17).

16 Note also the following statements in the application package:

- “Generally speaking, the Department does not expect administrative or executive salaries and benefits for IHEs, SEAs, or the other education related entities referenced at § 18002(c)(3) to be a lawful purpose for GEER funds.” [footnote continued on next page]
The application includes the GEPA SEA assurances discussed in the ESSER portion of this document, including a certification that LEAs will have on file with the State a set of the LEA assurances discussed above and that each LEA application will include a description of how it will comply with the equity provision discussed. See the discussion above of those SEA and LEA requirements in your consideration of these requirements in GEER.

II. Other Education-Related Funding in the CARES Act

Safe Schools and Citizenship Education. This is a separate allocation of $100 million of additional funding for the “Safe Schools and Citizenship Education” program, to remain available through September 30, 2021, “to prevent, prepare for, and respond to coronavirus, domestically or internationally, to supplement funds otherwise available for “Project SERV (School Emergency Response to Violence), which provides short-term support for education-related services to LEAs and IHEs in which the learning environment has been disrupted due to a violent or traumatic crisis), including to help elementary, secondary and postsecondary schools clean and disinfect affected schools, and assist in counseling and distance learning and associated costs.”

The CARES Act allocations also include additions to:

- Child Nutrition -- $8.8 billion
- Supplemental Nutrition Assistance Program (SNAP) -- $15.8 billion
- Head Start - $750 million
- Child Care and Development Block Grants -- $3.5 billion
- Bureau of Indian Education Schools -- $69 million [separate from the ESF allocation]
- Rural Utilities (including for distance learning) -- $25 million
- Agency for Toxic Substances (guidance on school cleaning) $5 million

III. Other Non-Education Federal Assistance to States and Localities

Whether in the form of direct financial aid to States and localities or in helping to provide assistance and services to individuals and other entities that typically draw on State and local funds, the scope and size of non-education parts of the Corona-related relief packages yet to come should not be ignored by education advocates. Not only do they help address the larger context that impinges on children and education. They also help reduce the overall strain on State and local budgets in which funding for schools must be placed alongside the need to fund other State and local functions, particularly as the pandemic results in lower State and local tax revenue.

“Similarly, the Department does expect increased reporting requirements if these funds are used for payments to education related entities. If a State, in the exercise of its discretion, allows GEER funds to be used accordingly, then it must report the amount of GEER funds (a) (i) used for, to subsidize, or to offset administrative or executive salaries and benefits and/or (ii) provided to or for the benefit of state, local, or IHE teacher or faculty unions or associations; and (b) a detailed description of the evidence providing a reasoned basis for the determination such funds (if any) are necessary to provide educational services to students and/or to support the on-going functionality of a LEA or IHE, or are otherwise specifically authorized by the plain statutory language and context of § 18002(c)(3) of the CARES Act.”
IV. More Federal Assistance for Education to Come?

Some of the major membership organizations of K-12 educators and administrators, along with the National PTA, have been pushing for addition K-12 funding beyond the CARES Act, including:

- Emergency funding of at least $175 billion to States to support LEAs (with strict protections related to supplementing, not supplanting, State and local funds);
- Increases of $13 billion for IDEA and $12 billion for Title I;
- $2 billion for the E-rate program to support remote learning;
- Explicit support for school facility modernization as part of any infrastructure funding;
- Inclusion of State and local governments, including school districts, as employers in the payroll tax credit provision that was enacted for business and non-profit agencies (but not State and local governments) in the Family First Coronavirus Response Act.

Proposals for additional K-12 funding such as this will be raised when Congress considers enacting another major coronavirus relief bill, beginning in early May at the earliest (rather than in the more immediate package to provide additional funds for small business loans (along with some additional funds for hospitals and virus testing). The prospects for these proposals are unclear.
Appendix 1

EDUCATION STABILIZATION FUND

Detailed Summary

For “Education Stabilization Fund,” $30.75 billion, to remain available through September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally.

Sec. 18001. [Allocations and Reservations]

(a) The Secretary shall first allocate:

1. Not more than $30.75 billion, to remain available through September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally.

(b) Reservations (after initial allocations above)

1. 9.8% [$3 billion] to carry out section 18002 [Governor’s Emergency Education Relief Fund]

2. 43.9% [$13.2 billion] for section 18003 [Elementary and Secondary Education Emergency Relief Fund]

3. 46.3% $14 billion for section 18004 [Higher Education Emergency Relief Fund]

Sec. 18002. Governor’s Emergency Education Relief Fund

(a) Grants – Under 18001(b)(1). Notice to governors inviting applications within 30 days of enactment, approval or denial within 30 days of receipt

(b) Allocations to States:

60% based on relative population aged 5-24;

40% based on children counted under ESEA section 1124(c) – i.e., children (ages 5-17) living in families below the poverty line (or in families receiving TANF Temporary Assistance for Needy Families grant, or living in institutions for neglected and delinquent children, or being supported in foster with public funds).

(c) Uses of funds – May be used for:


18 Secretary refers to the Secretary of Education throughout, except where indicated.
(1) emergency support through grants to LEAs that the SEA deems have been most significantly impacted by coronavirus to support ability of those LEAs to continue to provide educational services to their students and to support the on-going functionality of the institution;

(2) emergency support through grants to institutions of higher education (IHEs) that the SEA deems have been most significantly impacted by coronavirus to support ability of those IHEs to continue to provide educational services to their students and to support the on-going functionality of the institution;

(3) support to any other IHE, LEA, or education-related entity the Governor deems essential for carrying out emergency educational services to students for authorized activities described in section 18003(d)(1) [below] or the HEA, the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.

(d) Reallocation – Governor will return to Secretary any funds under this section not awarded within one year of receipt, which are then reallocated to the remaining States in accordance with (b).

Section 18003. Elementary and Secondary School Emergency Relief Fund

(a) Grants – Under 18001(b)(2). Emergency relief grants to SEAs. Notice inviting applications to SEAs within 30 days of enactment. Decisions on applications within 30 days of receipt.

(b) Allocations to States – Same proportion as under ESEA Title I Part A.

(c) Subgrants to LEAs. At least 90% to LEAs (including charter schools that are LEAs) in proportion to their grants under Title I Part A.

(d) Uses of funds: May be used by LEAs for any of the following:

(1) Any activity authorized by ESEA (including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act), IDEA, the Adult Education and Family Literacy Act, the Carl D. Perkins Career and Technical Education Act, or subtitle B of title VII [the education portion] of the McKinney-Vento Homeless Assistance Act.

(2) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

(3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.

(4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

(5) Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.
(6) **Training and professional development** for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

(7) Purchasing **supplies to sanitize and clean the facilities** of a local educational agency, including buildings operated by such agency.

(8) **Planning for and coordinating during long-term closures**, including for how to: provide meals to eligible students, provide technology for online learning to all students, how to provide guidance for carrying out requirements under IDEA, and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.

(9) **Purchasing educational technology** (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

(10) **Providing mental health services and supports**.

(11) Planning and implementing **activities related to summer learning and supplemental afterschool programs**, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) **Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ their existing staff**.

**Section 18004. Higher Education Emergency Relief Fund** [not addressed here]

**Section 18005. Assistance to Non-Public Schools.** Requires that LEAs receiving funds under sections 18002 or 18003 provides equitable services to students and teachers in non-public schools in the same manner as is provided under ESEA Title I, section 1117, as determined in consultation with those schools, and with similar requirements for public control of the funds.

**Section 18006. Continued Payments to Employees.** LEAs, States, IHEs, and other entities receiving Education Stabilization Funds shall, to the greatest extent practicable, continue to pay their employees and contraries during any coronavirus-related period of disruption or closure.

**Section 18007. Definitions.** [For elementary education, secondary education, institution of higher education, State, cost of attendance, non-public school, public schools, and other terms defined in ESEA.]  

**Section 18008. Maintenance of Effort.** States must maintain support for elementary and secondary and for higher education in fiscal years 2020 and 2021 at least at the levels provided in the State’s average for the 3 fiscal years prior to enactment of the CARES Act. *However*, the Secretary may waive this requirement for purposes of relieving fiscal burdens on States that have experienced “a precipitous decline in financial resources.”
Appendix 2

[Questions from the Secretary’s Certification-and-Agreement (the GEER Application)]

GOVERNOR’S EMERGENCY EDUCATION RELIEF FUND
PART C: USES OF GOVERNOR’S EMERGENCY EDUCATION FUNDS

Section 18002 of Division B of the CARES Act provides in relevant part that grants awarded under the Governor’s Emergency Education Relief Fund be used to support the ability of local educational agencies (LEAs) and institutions of higher education (IHEs) to continue to provide educational services to their students. The Department is interested in learning how and to what extent each State intends to use the award, or a portion of the award, to establish, develop, improve, or expand the availability, accessibility, capacity, and use of remote learning techniques and technologies which includes both distance education as defined in section 103(7) of the HEA and distance learning as defined in ESEA section 8101(14). The Department requests the following information:

1. Does the State intend to use any of the awarded funds to support remote learning for all students?
   a. Please describe whether the State considered conducting an assessment of the barriers to implementing effective remote learning for all students, or utilizing an existing assessment, to help target resources toward greatest needs.
   b. With respect to LEAs, please describe how the State intends to use the funds to help students and teachers adopt or improve remote learning that serves all students, including students with disabilities, students from low-income families, charter school students, and non-public school students.
   c. With respect to IHEs, please describe how the State intends to focus expenditures to ensure that all institutions – public and private – have the needed supports to continue executing their missions and educating their students.

2. Does the State intend to use any of the awarded funds to support technological capacity and access – including hardware and software, connectivity, and instructional expertise – to support remote learning for all students? If so, please describe how the State will achieve its goals for both LEAs and IHEs.
   a. Please describe the strategies used to serve disadvantaged populations listed in Sec. 18003(d)(4) of the CARES Act.

3. Does the State intend to use any of the awarded funds to support remote learning by developing new informational and academic resources and expanding awareness of, and access to, best practices and innovations in remote learning and support for students, families, and educators? If so, please identify, generally, the resources, best practices, and innovations that the State intends to develop and expand.