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CARES Act Elementary and Secondary Education Provisions

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) was signed into law. The law includes several provisions that apply to elementary and secondary education, including new waiver authority for the Secretary of Education (the Secretary), the creation of the Education Stabilization Fund (ESF), and additional funding for the Project School Emergency Response to Violence program, more commonly known as Project SERV. This In Focus provides an overview of these provisions.

National Emergency Educational Waivers

The COVID-19 Pandemic Education Relief Act of 2020, included as Title III-B of the CARES Act, provides for waivers primarily related to the Elementary and Secondary Education Act (ESEA). Section 3511 of the CARES Act allows the Secretary, upon request of a state educational agency (SEA), local educational agency (LEA), or Indian tribe, to grant waivers of various statutory or regulatory provisions if the Secretary determines that such a waiver is necessary and appropriate due to the coronavirus emergency determined to exist by the President under Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter referred to as the coronavirus emergency).

The Secretary is required to create a streamlined application process for SEAs (including the Bureau of Indian Education [BIE]) and Indian tribes to request a waiver of any statutory or regulatory requirement for an SEA related to educational assessments, accountability, and reporting requirements pertaining to assessments and accountability under Section 1111 of the ESEA or Section 421(b) of the General Education Provisions Act (GEPA) (which concerns the extension of the period available for the obligation and expenditure of appropriated funds). The Secretary may grant such waivers using the streamlined application process if she determines that such waivers are necessary and appropriate due to the coronavirus emergency.

Any school located in a state that receives a waiver of any provisions included under the streamlined process that is identified for comprehensive support and improvement, targeted support and improvement, or additional targeted support and improvement for the 2019-2020 school year under Section 1111 of the ESEA will maintain that identification status for the 2020-2021 school year and continue to receive supports and interventions that are consistent with the school's support and improvement plan in the 2020-2021 school year.

Waivers of ESEA provisions may also be requested under a second waiver request process. For an SEA (including the

BIE), LEA (including a BIE-funded school), or Indian tribe that receives funding under the ESEA and requests a waiver using the waiver process described below, the Secretary may waive statutory and regulatory provisions of the ESEA related to, for example, maintenance of effort (MOE), provisions under the Student Support and Academic Enrichment (SSAE) grant program (Title IV-A), and the definition of professional development that applies to the ESEA. To receive a waiver, the request must describe how the emergency related to the coronavirus restricts the ability of the state, SEA, LEA, Indian tribe, or school to comply with such statutory or regulatory requirements and include an assurance that the SEA, LEA, or Indian tribe will work to mitigate any negative effects that may occur as a result of the requested waiver. The Secretary is required to approve or disapprove a waiver request submitted under this process within 30 days after the date on which the request was submitted.

Any waiver approved by the Secretary under the provisions of the CARES Act may be for a period not to exceed the 2019-2020 academic year, except to carry out the full implementation of any MOE waivers granted during the 2019-2020 academic year. The CARES Act prohibits the Secretary from waiving any statutory or regulatory provision related to civil rights.

Not later than seven days after granting a waiver under Section 3511, the Secretary must notify Congress about the waiver. Not later than 30 days after granting a waiver under Section 3511, the Secretary must publish a notice of her decision to do so in the *Federal Register* and on the U.S. Department of Education's (ED's) website.

In addition, not later than 30 days after the enactment of the CARES Act, the Secretary is required to prepare and submit a report to Congress on any additional waivers under the Individuals with Disabilities Education Act (IDEA), ESEA, and Carl D. Perkins Career and Technical Education Act of 2006 that she believes are necessary to be enacted into law to provide limited flexibility to SEAs and LEAs to meet the needs of students during the coronavirus emergency.

Education Stabilization Fund

The ESF is comprised of three emergency education relief funds: (1) a Governor's Emergency Education Relief (GEER) Fund (Section 18002), (2) an Elementary and Secondary School Emergency Relief (ESSER) Fund (Section 18003), and (3) a Higher Education Emergency Relief (HEER) Fund (Section 18004). The HEER Fund is not discussed further in this In Focus. The ESF has an appropriations level of \$30.750 billion for FY2020. The funds are to remain available through September 30, 2021, and be administered by ED.

From the total appropriation for the ESF, the Secretary is required to reserve up to 0.5% for the outlying areas, 0.5% for the Bureau of Indian Education, and 1% to provide competitive grants to the states with the “highest coronavirus burden” to support activities under the ESF. For the purposes of the ESF, *state* is defined to include the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico. It is possible that at least a portion of the funds awarded through the competitive grant program could be used to benefit elementary and secondary education.

The Secretary is required to provide the remainder of the funds to the emergency education relief funds. Funds made available under the GEER Fund could potentially benefit elementary and secondary education. Funds provided under the ESSER Fund are focused specifically on elementary and secondary education.

Governor’s Emergency Education Relief (GEER) Fund

The FY2020 appropriation for this fund is about \$3.0 billion. The funds are to be awarded to governors based on each state’s share of individuals ages 5 through 24 and each state’s share of children counted in Section 1124(c) of the ESEA for purposes of awarding Title I-A grants to LEAs. Each governor may choose to use the funds in the following ways: (1) providing emergency funds to LEAs that the SEA “deems have been most significantly impacted by coronavirus” to support these LEAs in providing educational services to their students and to support the “on-going functionality” of the LEA, (2) providing emergency funds to institutions of higher education (IHEs) serving students within the state that the governor determines to “have been most significantly impacted by coronavirus” to support these IHEs in providing educational services and to support the “on-going functionality” of the IHE; and (3) providing emergency support to any other IHE, LEA, or education-related entity within the state that the governor deems “essential for carrying out emergency educational services” to students for a broad array of purposes ranging from any activity authorized under various federal education laws (e.g., the ESEA and Higher Education Act) to the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.

Elementary and Secondary School Emergency Relief (ESSER) Fund

The FY2020 appropriation for this fund is approximately \$13.2 billion. The funds are to be awarded to states based on their relative shares of grants awarded under Title I-A of the ESEA. SEAs are required to provide at least 90% of the funds they receive to LEAs to be used for myriad purposes such as any activity authorized under various federal education laws (e.g., the ESEA, Individuals with Disabilities Education Act), coordination of preparedness and response to the coronavirus, technology acquisition, mental health services, and activities related to summer learning. Funds retained by the SEA must be used for emergency needs, as determined by the SEA, to address issues in response to the coronavirus and for administration.

Other Provisions Related to Elementary and Secondary Education

The ESF also includes provisions related to elementary and secondary education issues such as equitable services, employment, and MOE provisions.

The ESF requires that LEAs use funds received under the GEER Fund or the ESSER Fund to provide equitable services to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools, in accordance with the requirements of Section 1117 of the ESEA. Control of the funds that are used to provide services and assistance to students and teachers in non-public schools, as well as title to materials, equipment, and property purchased with such funds, must remain with a public agency.

In addition, any LEA, state, IHE, or other entity that receives funds under the ESF is required to the greatest extent practicable to pay its employees and contractors during the period of any disruptions or closures related to the coronavirus.

Finally, the ESF includes MOE provisions that apply to state funding for elementary and secondary education in FY2020 and FY2021. A state must provide an assurance that it will maintain support for elementary and secondary education in FY2020 and FY2021 at least at the average level of support provided for elementary and secondary education during the three fiscal years preceding the date of enactment of the CARES Act (i.e., FY2017, FY2018, and FY2019). The Secretary, however, has the authority to waive these ESF MOE requirements to relieve fiscal burdens on states that have “experienced a precipitous decline in financial resources.” The ESF MOE requirements are in addition to the existing ESEA MOE requirements that apply at the state and LEA levels and also can be waived by the Secretary under certain circumstances.

Project SERV

Project SERV was created to provide resources to LEAs and IHEs that have experienced a violent or traumatic crisis that disrupted the learning environment, such as a school shooting or hurricane. The program received \$3.76 million in FY2020.

The CARES Act provides an additional \$100 million for Project SERV to supplement existing funds to prevent, prepare for, and respond to the coronavirus domestically or internationally. In addition to other allowable uses of Project SERV funds, the CARES Act specifically states that the additional funds can be used by elementary, secondary, and postsecondary schools to clean and disinfect affected schools and assist with costs related to counseling and distance learning.

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