

The federal government approved the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) on March 27, 2020, as part of its efforts to address economic and other damage caused by the coronavirus disease 2019 (COVID-19) pandemic.

As part of the CARES Act, Congress created the Education Stabilization Fund to provide support to K-12 schools, higher education institutions and other education-related organizations. The details regarding federal distributions to K-12 schools through the state government are coming into focus, including the just-announced availability of a major portion of Education Stabilization Fund allocations.

The Education Stabilization Fund is basically an umbrella term for three pots of money: (1) the Higher Education Emergency Relief Fund; (2) the Governor's Emergency Education Relief Fund (GEER Fund); and (3) the Elementary and Secondary School Emergency Relief Fund (ESSER Fund). This report will focus on the latter two – the GEER Fund and the ESSER Fund, which are of significance to Ohio K-12 school districts.

## GEER Fund

GEER Fund allocations amount to approximately \$2.95 billion nationwide, including **more than \$104 million** for the state of Ohio. Generally speaking, this money is to be used to provide emergency support to local education agencies (including public and private K-12 schools) and institutions of higher education most significantly impacted by COVID-19 to support their ability to provide education and to support their "ongoing functionality." These funds may also be used to support local education agencies, institutions of higher education and other education-related entities deemed essential to carry out emergency educational services, provide childcare and early childhood education, provide social and emotional support, and protect education-related jobs.

According to US Secretary of Education Betsy DeVos, GEER Funds are "extraordinarily flexible." The US Department of Education "will not micromanage" how these funds are spent, but governors are encouraged to "focus these resources on ensuring that all students continue to learn most likely through some form of remote learning." FAQs will be posted on the US Department of Education's website.

The availability of these funds was announced by the US Department of Education earlier this month. After Ohio receives its allocation, ultimate awards to school districts and others are to be expedited, but must be made within a year. There is no set formula established by the federal government for ultimate distribution of GEER Funds; the state will determine the best uses of the money to deal with COVID-19 impacts, and will provide details on the process for distributing it.

## ESSER Fund

Nationwide, the federal government is allocating more than \$13.2 billion to support public K-12 schools and public charter schools through the ESSER Fund. Ohio has been allocated **more than \$489 million** in total. As mentioned above, the US Department of Education just announced the release of ESSER Fund allocations. The Ohio Department of Education (ODE) will be the applicant for the funds, with the US Department of Education intending to process the application within three business days.

Of the amount received by Ohio, the vast majority – 90% – shall be distributed to K-12 school districts and others on a formulaic basis relating to Title I allocations. ODE expects these funds to be distributed most quickly once received from the federal government. Upon receipt, school districts may use the funds for the following purposes specified in the CARES Act: (1) any activity authorized by the Elementary and Secondary Education Act of 1965 (ESEA), including the Individuals with Disabilities Education Act (IDEA), the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act), etc.; (2) improvement of coordinated governmental responses to COVID-19; (3) providing principals and other school leaders with the resources necessary to address the needs of their schools; (4) activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, homeless students and foster care youth; (5) improvement of preparedness and response efforts; (6) training and professional development on sanitation and minimizing the spread of infectious diseases; (7) purchase of supplies to sanitize and clean facilities; (8) planning for and coordinating during long-term closures, including how to provide meals to eligible students, technology for online learning to all students, IDEA guidance, etc.; (9) purchase of educational technology; (10) providing mental health and support; (11) planning and implementing summer and supplemental afterschool programs; and (12) other activities necessary to maintain the operation and continuity of services and "continuing to employ existing staff."

With respect to the remaining 10% of ESSER Fund allocations, after a reservation for state administrative costs, the federal money is to be distributed (through grants or contracts) for emergency needs as determined by state departments of education to address COVID-19 issues. ODE will provide information regarding the guidelines and mechanisms for obtaining – and accounting for – such discretionary funding (and other ESSER Fund allocations).

As with GEER Fund grants, Secretary DeVos has mentioned that ESSER Fund grants have “very few bureaucratic strings attached” and has encouraged using the money to invest in “technology, distance learning resources, training and long-term planning that will help education continue for both teachers and students, no matter where learning takes place.” In addition, as with GEER Fund grants, unused ESSER Fund grants must be returned by state governments within a year.

Note that states applying for Education Stabilization Fund grants must commit to maintaining financial supports to elementary and secondary schools in fiscal years 2020 and 2021 at the average level of support provided during the three preceding fiscal years. However, the Secretary of Education may waive this requirement for states that have “experienced a precipitous decline in financial resources.”

Additionally, Education Stabilization Fund grant recipients are to continue paying employees and contractors “to the greatest extent practicable” during the period of COVID-19-related disruptions or closures. This is less of a concern for Ohio public schools, which have continued paying employees under R.C. §§ 3319.08 and 3319.081, but it is a good reminder for school districts that are considering reductions in force or other workforce reduction measures. While not a mandate, the CARES Act does carry the strong preference for maintaining as many employees and/or contractors on the payroll as possible.

## Additional Funds Available

In addition to these sweeping grants under the Educational Stabilization Fund umbrella, the CARES Act provides for other grant opportunities to support education efforts. For instance, \$100 million is targeted for Project SERV for use by elementary and secondary schools and institutions of higher education to respond to the immediate effects of COVID-19 on students, including to help schools clean and disinfect affected schools, and to assist in counseling and distance learning. The act also includes \$750 million being made available for Head Start grants; and \$25 million being made available specifically for distance learning, telemedicine and broadband support to support rural communities’ access to telecommunications-enabled information, audio and video equipment, as well as related advanced technologies for students, teachers and medical professionals. More information on those grant programs will be forthcoming.

Finally, the CARES Act includes opportunities for states to apply for waivers of certain federal requirements. States could apply for targeted waivers from sections of Every Student Succeeds Act (ESSA) dealing with several funding mandates. For example, they could seek to get waivers from ESSA’s requirement for states to essentially maintain their education spending in order to tap federal funds; they could seek a waiver to make it easier to run school-wide Title I programs regardless of the share of low-income students in districts and schools; districts could seek to carry over as much Title I money as they want from this academic year to the next one (rather than facing a 15% cap); or they could seek waivers from adhering to ESSA’s definition of professional development.

The Secretary of Education has the power to grant significant relief from accountability statutes under ESSA, and it requires her to report to Congress 30 days after the bill becomes law about any recommendations she has to grant schools “limited flexibility” from several education laws, including IDEA. Schools could also seek waivers from a provision of Title IV that caps the share of money that can be spent on internet-connected devices. Essentially, state and schools could get waivers from several accountability and testing requirements, as well as several funding requirements related to how much they spend year-over-year. Districts could also seek to use a higher share of Title IV grants to purchase devices. The status of these waivers is still up in the air at this point, particularly as the Department of Education struggles to address IDEA issues caused by COVID-19 school closures.

School districts should work promptly to identify priority uses for CARES Act funding, lay the groundwork for discretionary grants, work with ODE to obtain federal funding as soon as the state receives it and makes it available and, as a general matter, track lost revenue and expenses due to COVID-19. Districts should also consider whether they want to suggest waiver requests for ODE to make to the federal government. Counsel should be contacted with any questions.

## Contacts

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