



Agreement Between

The U.S. Department of Education (DOE)

And

The U.S. Department of the Interior (DOI) - Bureau of Indian Education (BIE)

PROGRAM BACKGROUND INFORMATION

Purpose

Under the Education Stabilization Fund (ESF) established by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, the U.S. Department of Education (Department) is to allocate funds to the Secretary of Interior for programs operated or funded by the Bureau of Indian Education (BIE) to prevent, prepare for, and respond to the Novel Coronavirus Disease 2019 (COVID-19). Specifically, from the amount made available under the ESF, the Secretary of Education must allocate “one-half of 1 percent for the Secretary of Interior in consultation with the Secretary of Education, for programs operated or funded by the Bureau of Indian Education.” Section 18001(a)(2) of the CARES Act. For purposes of this Agreement, this allocation will be referred to as the ESF-BIE Fund.

Funding

BIE’s allotment under the ESF set-aside is \$153,750,000.

Timeline

BIE is encouraged to and will make every effort to distribute funds within 90 days of transfer of ESF-BIE funds from ED.

Uses of Funds

1. BIE must disburse no less than 90 percent of the ESF-BIE Fund to BIE funded schools. For purposes of this document the term “schools” can include BIE-funded K-12 schools¹, early childhood programs, and/or Tribal colleges and universities (TCUs)², as determined by BIE.
2. BIE may use the remaining funds for emergency needs, as determined by BIE, to address issues responding to COVID-19. These emergency needs may be addressed through the use of grants or contracts. They could include, for example:
 - a. Support any education-related entity that BIE deems essential for carrying out emergency educational services to students, the provision of childcare and early childhood education, social and emotional support, and the protection of education-related jobs.
 - b. BIE system-wide support for all of its elementary and secondary schools in response to COVID-19, such as software and remote learning tools.
3. With the funds not awarded, BIE may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.
4. BIE-funded K-12 schools may use the funds for any purposes listed in the Elementary and Secondary School Education Relief Fund (ESSER) section 18003(d).
5. TCUs may use the funds for any purposes listed in the Higher Education Emergency Relief Fund (HEERF) section 18004(c). However, for purposes of this transfer of funds TCUs would not be required to use no less than 50 percent of such funds to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care).

¹ The term “BIE funded K-12 schools” includes BIE operated K-12 schools, K-12 schools operated pursuant to a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. § 2501 et seq.), and K-12 schools operated pursuant to a contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301 et seq.).

² The term “Tribal colleges and universities” includes the BIE operated post-secondary schools, and the tribal colleges and universities and tribal technical colleges funded by the BIE pursuant to the Tribally Controlled Colleges and Universities Assistance Act (25 U.S.C. 1801 et seq.) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note).

Communication and Reporting

BIE and ED will agree to a schedule of meetings for the two agencies to discuss BIE's progress on using ESF CARES Act funds to improve services to students and for ED to provide technical assistance, as needed. In addition, in recognition of the mutual interests of ED and BIE, BIE agrees to submit a first quarter report that includes: a copy of the budget including activities being funded with the amounts reserved under Use of Funds in #2 above; internal controls plan including the plan for monitoring all BIE funded schools' and TCU's Use of Funds in #4 and #5; and information on allocations to BIE-funded schools and other BIE-funded programs. BIE further agrees to submit a third quarter report that includes any updates to the first quarter report. By December 31st, 2021, BIE will provide a final report describing what activities funds supported and the results of these activities.

In addition, BIE will fulfill the reporting obligations in 15011(b)(1) of the CARES Act and provide ED a copy of such reports.

Dispute Resolution

In the event that disputes over the terms and conditions of this Agreement (or adherence thereto) arise among the Department and BIE (Parties), the Parties agree to first seek to resolve the dispute collaboratively. In the event that collaborative resolution is not successful, the Parties will seek mediation of any such dispute through the Office of Management and Budget (OMB) under OMB's general authorities regarding program oversight, management, coordination, and performance consistent with 31 U.S.C. §§ 503(b)-(c). In the alternative, or if the Parties continue to disagree or OMB declines to mediate, the Parties agree to resolve any such dispute by submitting the dispute to the Attorney General of the United States Department of Justice for resolution prior to proceeding to seek resolution of the dispute in any court consistent with Executive Order 12146, section 1-401-1-402.

APPENDICES

Appendix A – Authorizing Statute

Agency Approvals

_____/s/_____

Frank T. Brogan

Assistant Secretary for Elementary and Secondary Education

U.S. Department of Education

Date: Thursday, June 11, 2020

_____/s/_____

Tara Sweeney

Assistant Secretary – Indian Affairs

U.S. Department of the Interior

Date: Friday, June 12, 2020

Appendix A: Relevant Excerpts from the CARES Act, the Emergency Appropriations for Coronavirus Health Response and Agency Operations

DEPARTMENT OF EDUCATION EDUCATION STABILIZATION FUND

For an additional amount for “Education Stabilization Fund”, \$30,750,000,000, to remain available through September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS EDUCATION STABILIZATION FUND

SEC. 18001. (a) ALLOCATIONS.—From the amount made available under this heading in this Act to carry out the Education Stabilization Fund, the Secretary shall first allocate—

- (1) not more than 1/2 of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of Interior;
- (2) one-half of 1 percent for the Secretary of Interior, in consultation with the Secretary of Education, for programs operated or funded by the Bureau of Indian Education; and
- (3) 1 percent for grants to States with the highest coronavirus burden to support activities under this heading in this Act, for which the Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) RESERVATIONS.—After carrying out subsection (a), the Secretary shall reserve the remaining funds made available as follows:

- (1) 9.8 percent to carry out section 18002 of this title.
- (2) 43.9 percent to carry out section 18003 of this title.
- (3) 46.3 percent to carry out section 18004 of this title.

USES of FUNDS

SEC. 18003(d) USES OF FUNDS.—A local educational agency that receives funds under this title may use the funds for any of the following:

- (1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (“IDEA”), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (“the Perkins Act”), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).
- (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 other 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 local educational agencies.
- (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, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20

U.S.C. 1401 et seq.) 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 existing staff of the local educational agency.

USES of FUNDS

SEC. 18004 (c) Uses of funds.—Except as otherwise specified in subsection (a), an institution of higher education receiving funds under this section may use the funds received to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship. Institutions of higher education shall use no less than 50 percent of such funds to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care).

CONTINUED PAYMENT TO EMPLOYEES

SEC. 18006. A local educational agency, State, institution of higher education, or other entity that receives funds under “Education Stabilization Fund”, shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

DEFINITIONS

SEC. 18007. Except as otherwise provided in sections 18001– 18006 of this title, as used in such sections—

(1) the terms “elementary education” and “secondary education” have the meaning given such terms under State law;

(2) the term “institution of higher education” has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);

(3) the term “Secretary” means the Secretary of Education;

(4) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;

(5) the term “cost of attendance” has the meaning given such term in section 472 of the Higher Education Act of 1965.

(6) the term “Non-public school” means a non-public elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;

(7) the term “public school” means a public elementary or secondary school; and

(8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

REPORTING ON USE OF FUNDS

SEC. 15011. (a) In this section—

(1) the terms “agency”, “appropriate congressional committees”, “Committee”, “covered funds”, and “Coronavirus response” have the meanings given those terms in section 15010;

(2) the term “covered recipient”—

(A) means any entity that receives large covered funds; and (B) includes any State, the District of Columbia, and any territory or possession of the United States; and
(3) the term “large covered funds” means covered funds that amount to more than \$150,000.

(b) (1) (A) On a monthly basis until September 30, 2021, each agency shall report to the Director of the Office of Management and Budget, the Bureau of Fiscal Service in the Department of the Treasury, the Committee, and the appropriate congressional committees on any obligation or expenditure of large covered funds, including loans and awards.

(B) Not later than 90 days after the date of enactment of this Act, each agency shall submit to the Committee a plan describing how the agency will use covered funds.

(2) Not later than 10 days after the end of each calendar quarter, each covered recipient shall submit to the agency and the Committee a report that contains—

(A) the total amount of large covered funds received from the agency;

(B) the amount of large covered funds received that were expended or obligated for each project or activity;

(C) a detailed list of all projects or activities for which large covered funds were expended or obligated, including—

(i) the name of the project or activity;

(ii) a description of the project or activity; and

(iii) the estimated number of jobs created or retained by the project or activity, where applicable; and

(D) detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(3) Not later than 30 days after the end of each calendar quarter, the Committee, in consultation with the agency that made large covered funds available to any covered recipient shall make the information in reports submitted under paragraph (2) publicly available by posting the information on the website established under section 15010(g).

(4)(A) Each agency, in coordination with the Committee and the Director of the Office of Management and Budget shall provide user-friendly means for covered recipients to meet requirements of this subsection.

(B) Federal agencies may use existing mechanisms to ensure that information under this subsection is reported accurately.

(c)(1) The Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, the Administrator of the Small Business Administration, and the Chairperson of the Council of Economic Advisors, shall submit to the appropriate congressional committees and publicly release on the website established under section 15010(g) quarterly reports that detail the impact of programs funded through large covered funds on employment, estimated economic growth, and other key economic indicators, including information about impacted industries.

(2)(A) The first report submitted under paragraph (1) shall be submitted not later than 45 days after the end of the first full quarter following the date of enactment of this Act.

(B) The last report required to be submitted under paragraph (1) shall apply to the quarter in which the Committee terminates.