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CARES Act Education Stabilization Fund: Background and Analysis

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CARES Act Education Stabilization Fund: Background and Analysis

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) was signed into law. Included in the act was the Education Stabilization Fund (ESF). The ESF is composed of three emergency relief funds: (1) a Governor’s Emergency Education Relief (GEER) Fund, (2) an Elementary and Secondary School Emergency Relief (ESSER) Fund, and (3) a Higher Education Emergency Relief Fund (HEERF). The ESF, administered by the U.S. Department of Education (ED), has an appropriations level of \$30.750 billion for FY2020. These funds are to remain available through September 30, 2021.

From the total appropriation for the ESF, the Secretary of Education 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. The Secretary is required to provide the remainder of the funds to the three emergency education relief funds.

- **GEER Fund:** The FY2020 appropriations for this fund are \$3.0 billion. The funds will be awarded to governors based on each state’s share of individuals ages 5 through 24 and each state’s share of children counted under Section 1124(c) of the Elementary and Secondary Education Act (ESEA). Each governor may choose to use the grants in the following ways: (1) providing emergency funds to local educational agencies (LEAs), (2) providing emergency funds to institutions of higher education (IHEs) serving students within the state, and (3) providing emergency funds to any other IHE, LEA, or education related entity within the state for a broad array of purposes ranging from any activity authorized under various federal education laws to the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.
- **ESSER Fund:** The FY2020 appropriations for this fund are \$13.2 billion. The funds will be awarded to states based on their relative shares of grants awarded under Title I-A of the ESEA. State educational agencies (SEAs) are required to provide at least 90% of the funds to LEAs to be used for myriad purposes such as any activity authorized under various federal education laws, coordination of preparedness and response to the coronavirus emergency, technology acquisition, mental health services, and activities related to summer learning.
- **HEERF:** The FY2020 appropriations for this fund are \$14.0 billion. The majority (90%) of funds are awarded as direct grants to IHEs based on their pre-coronavirus-emergency relative shares of full-time equivalent (FTE) Pell Grant recipients not exclusively enrolled in distance education and FTE enrollment not exclusively enrolled in distance education. At least 50% of each direct grant must be used for emergency financial aid grants to students. A portion (7.5%) of HEERF funds is made available to IHEs that are eligible to participate in programs for minority serving institutions (MSIs) authorized under Title III-A, Title III-B, Title V-A, and Title VII-A-4 of the Higher Education Act (HEA). The remaining 2.5% of HEERF funds is made available to IHEs through the Fund for the Improvement of Postsecondary Education Program (FIPSE) authorized under HEA Title VII-B. Grants under the MSI and FIPSE programs may be used for emergency financial aid grants to students, to cover costs associated with changes to the delivery of instruction due to the coronavirus emergency, and to defray institutional expenses.

The ESF also includes provisions requiring that LEAs use funds received under the GEER Fund and the ESSER Fund to provide equitable services to students and teachers in non-public schools. 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 emergency. The ESF also includes maintenance of effort provisions that apply to state funding for elementary and secondary education and for higher education in FY2020 and FY2021. Funds awarded through the ESF are subject to CARES Act reporting requirements.

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Rebecca R. Skinner
Specialist in Education
Policy

Cassandria Dortch
Specialist in Education
Policy

Joselynn H. Fountain
Analyst in Education Policy

Emma C. Nyhof
Research Assistant

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Introduction

On March 13, 2020, President Trump declared the COVID-19 outbreak a national emergency, beginning March 1, 2020.¹ On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) was signed into law. Included in the act was the Education Stabilization Fund (ESF), which was created “to prevent, prepare for, and respond to coronavirus, domestically or internationally.” The ESF is composed of three emergency relief funds: (1) a Governor’s Emergency Education Relief (GEER) Fund, (2) an Elementary and Secondary School Emergency Relief (ESSER) Fund, and (3) a Higher Education Emergency Relief Fund (HEERF)². The ESF has an appropriations level of \$30.750 billion for fiscal year FY2020³; these funds are to remain available through September 30, 2021. The ESF is administered by the U.S. Department of Education (ED).

This report begins with an overview of the appropriations available for the ESF and the required reservations of funds. It then discusses each of the emergency education relief funds. For the emergency education relief funds for which ED has published grant amounts (i.e., GEER Fund, ESSER Fund, and HEERF), ED’s allocations have been included in this report. This is followed by an overview of the other provisions included in the ESF: assistance to non-public schools, continued payments to employees, definitions, and maintenance of effort (MOE) provisions. The last section of the report discusses reporting requirements included in the CARES Act that apply to amounts awarded through the emergency education relief funds. **Table A-1** in the Appendix shows grant amounts by state for all three emergency education relief funds.

Reservations of Funds (Section 18001)

From the total FY2020 appropriation for the ESF, the following reservations must be made by the Secretary of Education (the Secretary):

- up to 0.5% for the outlying areas,⁴
- 0.5% for the Bureau of Indian Education (BIE), and
- 1% for competitive grants awarded by ED to states with the “highest coronavirus burden.”⁵

From the remaining funds, the Secretary is required to make the following reservations for the three emergency education relief funds:

- 9.8% for the GEER Fund,

¹ The White House, “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak,” March 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>; also at U.S. President (Trump), “Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak,” 85 *Federal Register* 53, March 18, 2020.

² The acronyms used throughout this report are those utilized by the Department of Education in ESF-related materials.

³ The appropriations provided for the ESF have been designated by 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.

⁴ The outlying areas—American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands—are as defined in Section 8101 of the Elementary and Secondary Education Act, as amended. The Secretary is required to allocate up to 0.5% of the total appropriation to the outlying areas on the basis of their relative need as determined by her, in consultation with the Secretary of the Interior.

⁵ Statutory language does not define “highest coronavirus burden” or indicate how this should be determined.

- 43.9% for the ESSER Fund, and
- 46.3% for the HEERF.

For the purposes of the ESF, the definition of *state* includes the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

Table 1 details the amount of funding that must be reserved for the outlying areas, BIE, competitive grants, and each of the emergency education relief funds.

Table 1. Required Reservations of Funds Under the CARES Act Education Stabilization Fund
(Dollars in thousands)

Program	Appropriations
Governor’s Emergency Education Relief Fund	\$2,953,230
Elementary and Secondary School Emergency Relief Fund	\$13,229,265
Higher Education Emergency Relief Fund	\$13,952,505
Subtotal for emergency education relief funds	\$30,135,000
Outlying areas	\$153,750
Bureau of Indian Education	\$153,750
Competitive grants	\$307,500
Subtotal for other reservations of funds	\$615,000
Total appropriation	\$30,750,000

Source: Congressional Research Service (CRS) analysis of the CARES Act.

Note: The Secretary is required to allocate up to 0.5% of the total appropriation to the outlying areas on the basis of their relative need as determined by her, in consultation with the Secretary of the Interior.

Reservation for the Outlying Areas

On May 5, 2020, ED announced that it would award the full 0.5% of the ESF overall appropriation to the outlying areas.⁶ ED calculated grant amounts for each outlying area in accordance with the provisions of the GEER Fund and the ESSER Fund.⁷ ED is awarding 20% of the funds available to the outlying areas under the GEER Fund and 80% under the ESSER Fund. Grant amounts under each fund were determined based on factors that are similar to those used to determine state grant amounts under each fund (see subsequent discussion of each fund).⁸ The grant amounts available to each outlying area are detailed in **Table 2**. To receive available funds under the GEER Fund, the governor of an outlying area must submit a Certification and Agreement document (application) to ED.⁹ To receive available funds under the ESSER Fund, the

⁶ U.S. Department of Education, *Formula Grants to the Outlying Areas*, May 5, 2020, <https://oese.ed.gov/offices/education-stabilization-fund/outlying-areas/>.

⁷ U.S. Department of Education, *Education Stabilization Fund Grants to the Outlying Areas*, <https://oese.ed.gov/files/2020/05/OA-Allocations-Table.pdf>.

⁸ With respect to the number of individuals ages 5-24 in each of the outlying areas, ED used data from the 2010 Decennial Census as annual data are not available for the outlying areas.

⁹ A copy of the application is available at <https://oese.ed.gov/files/2020/05/Governors-ESF-OA-Certification-and-Agreement.pdf>.

SEA of an outlying area must submit a Certification and Agreement document.¹⁰ Outlying areas can use funds received under the GEER Fund and ESSER Fund in similar ways as states (see subsequent discussion of each fund). For each application, the applicant must provide various assurances, respond to questions about the use of funds, and agree to comply with CARES Act reporting requirements. In addition to the reservation for the outlying areas, IHEs in the outlying areas and those in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are also eligible under the HEERF.

Table 2. Allocations Available to the Outlying Areas Under the Education Stabilization Fund

Outlying Area	Amount for Governors Based on ED's GEER Fund Formula	Amount for SEAs Based on ED's ESSER Fund Formula	Total	Percentage Share of Funds Available for the Outlying Areas
American Samoa	\$7,272,191	\$38,321,932	\$45,594,123	29.65%
Commonwealth of the Northern Mariana Islands	\$4,777,211	\$23,163,734	\$27,940,945	18.17%
Guam	\$12,499,963	\$41,521,997	\$54,021,960	35.14%
U.S. Virgin Islands	\$6,200,635	\$19,992,337	\$26,192,972	17.04%
Total	\$30,750,000	\$123,000,000	\$153,750,000	100.00%

Source: Table prepared by CRS based on U.S. Department of Education, *Education Stabilization Fund Allocations to the Outlying Areas*, <https://oese.ed.gov/files/2020/05/OA-Allocations-Table.pdf>.

Reservation for the Bureau of Indian Education

In accordance with listening sessions with stakeholders, the BIE allotment is disbursed as follows: 70% to BIE elementary and secondary schools and early childhood education programs, 20% to tribal colleges and universities (TCUs),¹¹ and 10% for emergency needs determined by the BIE.¹² The BIE may reserve up to 0.5% for administrative costs. Elementary and secondary schools may use the funds in accordance with the ESSER Fund. TCUs may use the funds in accordance with the HEERF except that funds are not required to be expended for student grants.¹³ In addition to the reservation of 0.5% of the ESF for the BIE, TCUs are also separately eligible to receive funds under the HEERF.

¹⁰ A copy of the application is available at <https://oese.ed.gov/files/2020/05/SEA-ESF-OA-Certification-and-Agreement.pdf>.

¹¹ Tribal colleges and universities include BIE operated postsecondary schools and colleges and universities funded under the Tribally Controlled Colleges and Universities Assistance Act (25 U.S.C. §1801 et seq.) and the Navajo Community College Assistance Act (25 U.S.C. §640a note).

¹² U.S. Department of the Interior, Office of Inspector General, *CARES Act Flash Report: Bureau of Indian Education Snapshot*, No. 2020-FIN-050, July 14, 2020.

¹³ U.S. Department of Education and U.S. Department of the Interior, *Agreement Between the U.S. Department of Education (DOE) and the U.S. Department of the Interior (DOI) – Bureau of Indian Education (BIE)*, June 11-12, 2020.

Competitive Grants

The CARES Act requires the Secretary to reserve 1% of the total appropriation for the ESF to provide competitive grants to the states with the “highest coronavirus burden” to support activities under the ESF. The statutory language does not define “highest coronavirus burden” or indicate how this should be determined. Within 30 days of enactment of the CARES Act, the Secretary is required to issue a notice inviting states to apply for the competitive grants. Upon receipt of an application, the Secretary has 30 days to approve or deny it. The statutory language does not provide for an appeals process for any state whose application has been denied.

On April 27, 2020, ED announced that two types of competitive grants would be awarded: (1) \$180 million will be made available for Education Stabilization Fund—Rethink K12 Education Models Grants (ESF-REM Grants), and (2) \$127.5 million will be made available for Education Stabilization Fund—Reimagining Workforce Preparation Grants (ESF-RWP Grants).¹⁴ Applications to apply for these grants will be available within two weeks of the date of the announcement. Applicants will have 60 days to apply. All applications will be evaluated by a panel of independent peer reviewers.

ESF-REM Grants

The ESF-REM Grant “is aimed at opening new, innovative ways for students to access K-12 education with an emphasis on meeting students’ needs during the coronavirus national emergency.”¹⁵ According to the notice that ED intends to post in the *Federal Register*, awards will be made to states for “activities to help prevent, prepare for, and respond to the devastating effects of COVID-19.”¹⁶ Each SEA can submit only one application and must apply to use ESF-REM Grants under one of three absolute priorities established by ED:

1. microgrants¹⁷ to parents to meet the educational needs of their school-age children, through increased access to high-quality remote learning to support their educational needs;
2. development or expansion of a high-quality course-access program or statewide virtual school; and

¹⁴ U.S. Department of Education, “Secretary DeVos Launches New Grant Competition to Spark Student-Centered, Agile Learning Opportunities to Support Recovery from National Emergency,” press release, April 27, 2020, <https://www.ed.gov/news/press-releases/secretary-devos-launches-new-grant-competition-spark-student-centered-agile-learning-opportunities-support-recovery-national-emergency>.

¹⁵ U.S. Department of Education, “Secretary DeVos Launches New Grant Competition to Spark Student-Centered, Agile Learning Opportunities to Support Recovery from National Emergency,” press release, April 27, 2020, <https://www.ed.gov/news/press-releases/secretary-devos-launches-new-grant-competition-spark-student-centered-agile-learning-opportunities-support-recovery-national-emergency>.

¹⁶ U.S. Department of Education, Notice Inviting Application (NIA) for the FY 2020 Education Stabilization Fund—Rethink K-12 Education Models (ESF-REM) Discretionary Grant Program, Notice for posting in the *Federal Register*, April 27, 2020, <https://oese.ed.gov/files/2020/04/ESF-REM-Notice-Inviting-Applications.pdf>, p. 3 (hereinafter referred to as “ESF-REM notice”).

¹⁷ The notice defines a microgrant as “an account established for a parent that provides funds directly to service providers to expand educational choice. The parent must have easy access to and visibility into the account and it must allow the parent to select particular education services, expenses, or materials, to expand the ability to choose high-quality educational opportunities to meet their needs” (ESF-REM notice, p. 17).

3. new, field-initiated models for providing remote education to meet the specific educational needs of the state.¹⁸

For applicants choosing to provide microgrants under the first absolute priority,¹⁹ a state must provide parents and students with a list of service providers from which the parents and students may select. The list must include more than one education service for remote learning. The notice includes examples of 11 possible remote learning options that could be made available:

1. tuition and fees for a public or private course or program, especially online;
2. concurrent and dual enrollment at a postsecondary institution particularly for career and technical education experiences;
3. special education and related services including therapies;
4. contracted educational services provide by a public or nonpublic school;
5. tutoring;
6. summer or afterschool education programs;
7. testing preparation and examination fees, including Advanced Placement examinations, industry certification exams, state licensure exams, and any examinations related to college or university admission;
8. academic, college, and career counseling services;
9. application fees, including for public and non-public school students;
10. textbooks, curricula, or other instructional materials; and
11. other education-related services and materials that are reasonable and necessary, which may include (but cannot be the only use of the microgrant) computer hardware, software, or other technological devices, including adaptive devices; internet access or hotspots; or textbooks, curricula, or other instructional materials.

The state must provide an online and other method to allow parents and students to select services, ensure that microgrant accounts are established within the project period of the grant, and ensure that each parent is aware of how much funding is available. The state must also establish a parent involvement and feedback process that, for example, describes a way for parents to request services and providers that are not currently offered and to have input on the creation of the list of services and providers. It must also include a “fair and documented”²⁰ process for selecting which students will be served if requests for services from the parents of public and non-public school students exceeds capacity. The state must also ensure that at least 80% of the grant funds are used for services that are directly utilized by public and non-public school students under the microgrants. No more than 5% of the funds may be used for administration.

For a state choosing the second absolute priority,²¹ it can develop or expand a statewide virtual learning or course access program, provided that it also proposes to implement either a statewide course-access program or virtual school. The state’s application also must propose to widely disseminate information on the availability of course-access programs or virtual school programs.

¹⁸ ESF-REM notice, pp. 4-5.

¹⁹ ESF-REM notice, pp. 6-10.

²⁰ ESF-REM notice, p. 9.

²¹ ESF-REM notice, pp. 10-12.

Additionally, it must include a parent involvement and feedback process that, for example, describes a way for parents to request courses or programming that are not currently offered and to provide input on services provided through the project.

Under the third absolute priority,²² applications should “propose projects that demonstrate a rationale and that are designed to create, develop, implement, replicate, or take to scale field-initiated educational models for remote learning.”²³ Proposed projects should address specific needs related to accessing high-quality remote learning opportunities.

In addition, the notice states that an applicant must ensure equitable access for non-public school students under the absolute priority that it proposes to address.²⁴ The notice defines this to mean providing students in non-public schools “with the same opportunity to access program benefits as students attending public schools, which may include proportional provision of services to both public and non-public school students.”²⁵

According to the notice, ED anticipates making 13-14 awards—approximately four awards under each of the priorities—depending on the quality of the applications. Award sizes are expected to range from \$5 million to \$20 million, with an average grant size of \$15 million. The project period for the grants will be up to 36 months.²⁶ Successful applicants are required to meet reporting requirements included in Section 15011 of the CARES Act.²⁷

Applications will be reviewed and assigned a score of up to 100 points. Of these, up to 40 points will be based on the coronavirus burden in each state. Under the requirements of Section 18001 of the CARES Act, the Secretary is required to provide competitive grants to the states with the “highest coronavirus burden” to support activities under the ESF. For the purposes of the ESF-REM grants, ED has established a series of four metrics to determine the coronavirus burden in each state:²⁸ the (1) percentage of the population without broadband access, (2) percentage of students ages 5-17 in poverty, (3) state percentage share of confirmed COVID-19 cases per capita, and (4) percentage of students in rural LEAs. ED has indicated that the third indicator will be updated as of the application due date. These four metrics will account for half of a state’s coronavirus burden score (i.e., up to 20 points).²⁹ The other half of the state’s coronavirus burden score will be determined based on data provided by each state (e.g., coronavirus-related deaths per capita)³⁰ in its grant application. The remaining 60 points will be based on the quality of project services and project plan (up to 35 points) and the quality of the management plan and adequacy of resources (up to 25 points).

²² ESF-REM notice, pp. 12-13.

²³ ESF-REM notice, p. 13.

²⁴ ESF-REM notice, p. 13.

²⁵ ESF-REM notice, p. 15.

²⁶ ESF-REM notice, p. 23.

²⁷ ESF-REM notice, p. 34.

²⁸ U.S. Department of Education, *Education Stabilization Fund—Rethink K12 Education Models Discretionary Grants*, <https://oese.ed.gov/files/2020/07/ESF-REM-Burden-Methodology-Appendix-FINAL-6.29.20.pdf>.

²⁹ ESF-REM notice, pp. 27-28.

³⁰ ESF-REM notice, p. 20.

Grant Awards³¹

Overall, 39 SEAs applied for ESF-REM grants. Of these, 11 received an award. Of the six applicants that applied under the first absolute priority, two SEAs (Louisiana and Tennessee) received grants. Of the 14 applicants that applied under the second absolute priority, four SEAs (Georgia, Iowa, Rhode Island, and Texas) received grants. Of the 19 applicants that applied under the third absolute priority, five SEAs (Maine, New York, North Carolina, South Carolina, and South Dakota) received grants. The average grant award was \$16.4 million. Grant amounts ranged from \$6.9 million for South Dakota to \$20 million for Tennessee. The project period for all grants is scheduled to run through July 31, 2023.

ESF-RWP Grants

These grants are “designed to expand short-term postsecondary programs and work-based learning programs in order to get Americans back to work and help small businesses return to being our country’s engines for economic growth.”³² According to the notice that ED intends to publish in the *Federal Register*,³³ the priorities for the competition will be included in the supplemental notice inviting application. ED anticipates making 8-9 awards. Award sizes are expected to range from \$5 million to \$20 million, with an average grant size of \$15 million. The project period for the grants will be up to 36 months.³⁴ Eligible applicants will be specified in the supplemental notice and may include state economic development or workforce agencies.³⁵

For the purposes of the ESF-RWP grants, ED plans to determine a state’s coronavirus burden based upon objective measures included in the application package, which will be specified in a supplemental notice.³⁶ The measures will include initial unemployment claims filed as a percentage of the civilian labor force and the state percentage share of confirmed coronavirus cases per capita, and any measures identified and provided by the applicant (e.g., other public health measures such as coronavirus deaths per capita).

Governor’s Emergency Education Relief Fund (Section 18002)

As detailed in **Table 1**, almost \$3.0 billion is available for the GEER Fund. The Secretary is required to make grants under this fund to the governor of each state with an approved application. Similar to the competitive grants, the Secretary is required to issue a notice inviting

³¹ The information discussed in this section is available from U.S. Department of Education, *Education Stabilization Fund: Rethink K-12 Education Models Discretionary Grant Program Award Fact Sheet*, July 2020, https://oese.ed.gov/files/2020/07/ESF-REM-Award-Fact-Sheet-7.29.20_FINAL.pdf.

³² U.S. Department of Education, “Secretary DeVos Launches New Grant Competition to Spark Student-Centered, Agile Learning Opportunities to Support Recovery from National Emergency,” press release, April 27, 2020, <https://www.ed.gov/news/press-releases/secretary-devos-launches-new-grant-competition-spark-student-centered-agile-learning-opportunities-support-recovery-national-emergency>.

³³ U.S. Department of Education, Notice Inviting Applications (NIA) for the FY 2020 Education Stabilization Fund—Reimagining Workforce Preparation (ESF-RWP) Discretionary Grants Program, Notice for publication in the *Federal Register*, April 27, 2020, <https://oese.ed.gov/files/2020/04/ESF-RWP-Notice-Inviting-Applications.pdf>, p. 3 (hereinafter referred to as the “ESF-RWP notice”).

³⁴ ESF-RWP notice, p. 5.

³⁵ ESF-RWP notice, p. 6.

³⁶ ESF-RWP notice, pp. 2-4.

states to apply for the grants within 30 days of enactment of the CARES Act. Upon receipt of an application, the Secretary has 30 days to approve or deny it. The statutory language does not provide for an appeals process for any state whose application has been denied.

ED has posted the certification and agreement form that governors must complete to receive GEER Funds.³⁷ The form must be returned to ED by June 1, 2020. As part of this application, a governor must provide programmatic, fiscal, and reporting assurances as well as information about how he or she intends to use the funds.

Formula and State Grants

The funds available for the GEER Fund are to be awarded to states based on two formula factors: (1) 60% will be awarded based on each state’s share of individuals ages 5 through 24 relative to the total number of individuals in this age group in all states; and (2) 40% will be awarded based on each state’s share of children counted under Section 1124(c) of the Elementary and Secondary Education Act (ESEA) relative to the total number of children counted under this section for all states. Population estimates for the first factor were available from the U.S. Census Bureau for 2018. Data for the second factor are based on formula child counts used to determine Title I-A grants under the ESEA. These state counts consist of children who are ages 5-17 (1) living in families in poverty, according to estimates from the U.S. Census Bureau’s Small Area Income and Poverty Estimates (SAIPE) program; (2) in institutions for neglected or delinquent children or in foster homes; and (3) in families receiving Temporary Assistance for Needy Families (TANF) payments with income above the federal poverty level.

Table 3 presents state grant amounts under the GEER Fund based on information available from ED.

Table 3. State Grants Based on the CARES Act Governor’s Emergency Education Relief Fund

(Dollars in thousands)

State	State Grant Amount	Percentage Share of Total Funds Available for State Grants
Alabama	\$48,851	1.65%
Alaska	\$6,504	0.22%
Arizona	\$69,196	2.34%
Arkansas	\$30,664	1.04%
California	\$355,227	12.03%
Colorado	\$44,005	1.49%
Connecticut	\$27,882	0.94%
Delaware	\$7,917	0.27%
District of Columbia	\$5,808	0.20%
Florida	\$173,586	5.88%

³⁷ The certification and agreement form is available at <https://oese.ed.gov/files/2020/04/GEER-Certification-and-Agreement.pdf>.

State	State Grant Amount	Percentage Share of Total Funds Available for State Grants
Georgia	\$105,721	3.58%
Hawaii	\$9,993	0.34%
Idaho	\$15,676	0.53%
Illinois	\$108,498	3.67%
Indiana	\$61,591	2.09%
Iowa	\$26,217	0.89%
Kansas	\$26,274	0.89%
Kentucky	\$43,799	1.48%
Louisiana	\$50,277	1.70%
Maine	\$9,274	0.31%
Maryland	\$45,658	1.55%
Massachusetts	\$50,844	1.72%
Michigan	\$89,433	3.03%
Minnesota	\$43,427	1.47%
Mississippi	\$34,663	1.17%
Missouri	\$54,643	1.85%
Montana	\$8,764	0.30%
Nebraska	\$16,358	0.55%
Nevada	\$26,477	0.90%
New Hampshire	\$8,891	0.30%
New Jersey	\$68,865	2.33%
New Mexico	\$22,263	0.75%
New York	\$164,286	5.56%
North Carolina	\$95,639	3.24%
North Dakota	\$5,933	0.20%
Ohio	\$104,917	3.55%
Oklahoma	\$39,919	1.35%
Oregon	\$32,508	1.10%
Pennsylvania	\$104,418	3.54%
Puerto Rico	\$47,812	1.62%
Rhode Island	\$8,704	0.29%
South Carolina	\$48,468	1.64%
South Dakota	\$7,944	0.27%
Tennessee	\$63,582	2.15%
Texas	\$307,026	10.40%

State	State Grant Amount	Percentage Share of Total Funds Available for State Grants
Utah	\$29,190	0.99%
Vermont	\$4,489	0.15%
Virginia	\$66,775	2.26%
Washington	\$56,769	1.92%
West Virginia	\$16,353	0.55%
Wisconsin	\$46,550	1.58%
Wyoming	\$4,701	0.16%
Total appropriation	\$2,953,230	100.00%

Source: Prepared by CRS based on data available from the U.S. Department of Education, Governor’s Emergency Education Relief Fund, State Allocation Table, available at <https://oese.ed.gov/files/2020/04/GEER-Fund-State-Allocations-Table.pdf>.

Notes: Details may not add to totals due to rounding. Percentages were calculated based on unrounded numbers.

Uses of Funds

Grants awarded to governors from the GEER Fund may be used for educational services in three areas:

- A governor may choose to provide 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. Similar to the competitive grants, statutory language does not include a definition for “most significantly impacted by coronavirus” or provide any metrics by which this should be determined. Thus, the criteria used by SEAs to identify LEAs that are eligible to receive emergency education relief funds may differ from state-to-state.
- A governor may choose to provide emergency funds to IHEs serving students within the state that he or she 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. Similar to the competitive grants and the grants to LEAs, statutory language does not include a definition for “most significantly impacted by coronavirus” or provide any metrics by which this should be determined. Thus, the criteria used by the governors to identify IHEs that are eligible to receive emergency education relief funds may differ from state-to-state.
- A governor may choose to provide emergency funds to any other IHE, LEA, or education-related entity within the state that he or she deems “essential for carrying out emergency educational services” to students for any activity authorized by the ESEA;³⁸ the Individuals with Disabilities Education Act

³⁸ The statutory language specifically mentions that the uses of funds under the ESEA include the uses permitted under

(IDEA); the Adult Education and Family Literacy Act; the Carl D. Perkins Career and Technical Education Act of 2006, as amended (Perkins V); Title VII-B of the McKinney-Vento Homeless Assistance Act (Homeless Education); or the Higher Education Act (HEA). Grants may also be awarded to IHEs, LEAs, or education-related entities for the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs. The determination of what qualifies an entity as essential for carrying out emergency educational services to students is not defined in statutory language. Thus, the criteria used by governors to identify these entities may vary from state-to-state.

As part of the assurances that each governor must provide to ED in the GEER Fund application,³⁹ the governor must assure ED that the state will submit, within 45 days of receiving its grants, an initial report that details how the state will award funds to LEAs, IHEs, and other education-related entities. This must include the criteria the state will use for determining those entities that are “most significantly impacted by coronavirus” or “essential for carrying out emergency educational services.” The state must also provide a description of the process and deliberations involved in developing these criteria.

In addition, a governor must include an assurance that the state will comply with the reporting requirements included in Section 15011(b)(2) of Division B of the CARES Act⁴⁰ and submit quarterly reports to the Secretary containing such information as the Secretary may reasonably require. In the application for the GEER Fund, ED notes that reporting may include, for example, information on the specific entities awarded funds; the uses of those funds by the SEA, LEAs, IHEs, and other educational entities; and the number of public and non-public schools that received funds or services.

Reallocation of Funds

Any funds that a governor does not award within one year of receiving them must be returned to the Secretary. The Secretary is required to reallocate such funds to the remaining states based on the formula used to provide the initial amounts.

Elementary and Secondary School Emergency Relief Fund (Section 18003)

As shown in **Table 1**, approximately \$13.2 billion is available for the ESSER Fund. The Secretary is required to make ESSER Fund grants to each SEA with an approved application. Similar to the GEER Fund grants, the Secretary is required to issue a notice inviting states to apply for the grants within 30 days of enactment of the CARES Act. Upon receipt of an application, the Secretary has 30 days to approve or deny it. The statutory language does not provide for an appeals process for any state whose application has been denied.

the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act. Both acts are included in the ESEA, as Title VI-B and Title VI-C, respectively.

³⁹ The certification and agreement form is available at <https://oese.ed.gov/files/2020/04/GEER-Certification-and-Agreement.pdf>.

⁴⁰ See subsequent discussion of CARES Act reporting requirements.

Formula and State Grants

The amount available for the ESSER Fund is to be awarded to states based on their relative shares of grants awarded under Title I-A of the ESEA for the most recent fiscal year. As ED has not yet awarded FY2020 Title I-A grants, these CRS estimates used FY2019 Title I-A grant amounts for the most recent fiscal year. The ESEA requires that Title I-A grant amounts used to determine other formula grants to states be calculated assuming no hold harmless provisions are applied.⁴¹ Thus, ED calculated state grants for the ESSER Fund using FY2019 Title I-A grants with no hold harmless provisions applied.

After reserving up to 10% of the funds received by the state,⁴² each state is required to make subgrants to LEAs in proportion to each LEA’s share of Title I-A grants made to all LEAs in the state during the most recent fiscal year. As with the state grants, the ESEA requires that Title I-A grant amounts used to determine other formula grants to LEAs be calculated with no hold harmless provisions applied.

Table 4 presents state grant amounts under the ESSER Fund prepared by ED.

Table 4. State Grants for the CARES Act Elementary and Secondary School Emergency Relief Fund
(Dollars in thousands)

State	Grant Amount	Percentage Share of Total Funds Available for State Grants
Alabama	\$216,948	1.64%
Alaska	\$38,408	0.29%
Arizona	\$277,423	2.10%
Arkansas	\$128,759	0.97%
California	\$1,647,306	12.45%
Colorado	\$120,994	0.91%
Connecticut	\$111,068	0.84%
Delaware	\$43,493	0.33%
District of Columbia	\$42,006	0.32%
Florida	\$770,248	5.82%
Georgia	\$457,170	3.46%
Hawaii	\$43,385	0.33%
Idaho	\$47,855	0.36%

⁴¹ The requirement to determine state grants with no hold harmless provisions applied is in Section 1122(c)(3) of the ESEA. For more information on Title I-A formulas, see CRS Report R44461, *Allocation of Funds Under Title I-A of the Elementary and Secondary Education Act*.

⁴² For the purposes of this report, it was assumed that each state would reserve the full 10% of funds that may be reserved at the state level. A state may use up to 0.5% of the reserved funds for administrative purposes. The remainder of the funds must be used for emergency needs, as determined by the state, to respond to issues related to the coronavirus emergency.

State	Grant Amount	Percentage Share of Total Funds Available for State Grants
Illinois	\$569,467	4.30%
Indiana	\$214,473	1.62%
Iowa	\$71,626	0.54%
Kansas	\$84,529	0.64%
Kentucky	\$193,187	1.46%
Louisiana	\$286,980	2.17%
Maine	\$43,793	0.33%
Maryland	\$207,834	1.57%
Massachusetts	\$214,894	1.62%
Michigan	\$389,797	2.95%
Minnesota	\$140,137	1.06%
Mississippi	\$169,883	1.28%
Missouri	\$208,443	1.58%
Montana	\$41,295	0.31%
Nebraska	\$65,085	0.49%
Nevada	\$117,185	0.89%
New Hampshire	\$37,641	0.28%
New Jersey	\$310,371	2.35%
New Mexico	\$108,575	0.82%
New York	\$1,037,046	7.84%
North Carolina	\$396,312	3.00%
North Dakota	\$33,298	0.25%
Ohio	\$489,205	3.70%
Oklahoma	\$160,950	1.22%
Oregon	\$121,099	0.92%
Pennsylvania	\$523,807	3.96%
Puerto Rico	\$349,113	2.64%
Rhode Island	\$46,350	0.35%
South Carolina	\$216,311	1.64%
South Dakota	\$41,295	0.31%
Tennessee	\$259,891	1.96%
Texas	\$1,285,886	9.72%
Utah	\$67,822	0.51%
Vermont	\$31,148	0.24%
Virginia	\$238,599	1.80%

State	Grant Amount	Percentage Share of Total Funds Available for State Grants
Washington	\$216,892	1.64%
West Virginia	\$86,640	0.65%
Wisconsin	\$174,778	1.32%
Wyoming	\$32,563	0.25%
Total appropriation	\$13,229,265	100.00%

Source: Prepared by CRS based on data available from the U.S. Department of Education (ED), <https://oese.ed.gov/files/2020/04/ESSER-Fund-State-Allocations-Table.pdf>.

Notes: Details may not add to totals due to rounding. Percentages were calculated based on unrounded numbers.

LEA Uses of Funds

Funds provided to LEAs under the ESSER Fund can be used for a multitude of purposes. LEAs may use them for any activity authorized by the ESEA,⁴³ the IDEA, the Adult Education and Family Literacy Act, Perkins V, and the McKinney-Vento Homeless Education program.

In addition to permitting funds to be used for activities authorized under federal education laws administered by ED, the statutory language authorizes multiple other uses. Many, if not all, of these additional uses of funds are already permitted under the broad authority to use funds under various federal education laws and programs. The last option listed below is particularly broad, authorizing any activities necessary to maintain the operation and continuity of LEA services and to continue to employ existing LEA staff. The additional authorized uses of funds permit support for the following activities and services:

- coordinating preparedness and response efforts of LEAs with state, tribal, and territorial public health departments and other relevant agencies to improve coordinated responses among such entities to prevent, prepare for, and respond to the coronavirus emergency;
- providing principals and other school leaders with resources to address the needs of their individual schools;
- addressing 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 outreach and service delivery activities that will meet the needs of each population;
- developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs;
- training and professional development for LEA staff on sanitation and minimizing the spread of infectious diseases;

⁴³ The statutory language specifically mentions that the uses of funds under the ESEA include uses permitted under the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act. Both acts are included in the ESEA as Title VI-B and Title VI-C, respectively.

- purchasing supplies to sanitize and clean the LEA's facilities, including buildings it operates;
- planning for and coordinating during long-term closures, including how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out IDEA requirements, and how to ensure other educational services can continue to be consistent with all federal, state, and local requirements;
- purchasing education technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between classroom instructors and students, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment;
- providing mental health services and supports;
- 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; and
- supporting other activities that are necessary to maintain the operation and continuity of LEA services and to continue to employ existing LEA staff.

State Uses of Funds

Of the funds received by a state that are not subgranted to LEAs, the state may use up to 0.5% of its allocation for administrative costs. The remainder of the funds must be used for emergency needs, as determined by the SEA, to address issues in response to the coronavirus emergency. The SEA may address these issues through the use of grants and contracts.

Reallocation of Funds

Any funds that a state does not award within one year of receiving them must be returned to the Secretary. The Secretary is required to reallocate such funds to the remaining states based on the formula used to provide the initial amounts.

ESSER Fund Application

On April 23, 2020, in a letter to each state commissioner of education, ED announced the availability of grants under the ESSER Fund and the opening of the application process.⁴⁴ To apply, each state must complete a Certification and Agreement form.⁴⁵ In the letter, ED indicated that once a state submitted a completed Certification and Agreement form, ED would process the application and obligate the funds within three business days.

The Certification and Agreement form requires each state to provide programmatic, fiscal, and reporting assurances. These include, for example, assurances related to the distribution of at least

⁴⁴ Letter from Betsy DeVos, Secretary of Education, to State Commissioner of Education, April 23, 2020, <https://oese.ed.gov/files/2020/04/ESSER-Fund-Cover-Letter.pdf>.

⁴⁵ A copy of the Certification and Agreement form is available at <https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.

90% of the funds received to LEAs, and to the statutory requirement that LEAs provide equitable services to student and teachers in non-public schools. Required assurances also pertain to the provision of technical assistance to LEAs related to remote learning, and the use of funds retained by the SEA.

The application further requires the SEA to provide the information that the SEA may request LEAs to include in their subgrant applications. In addition, it requires the SEA to specify the extent to which the SEA intends to use funds reserved at the state level to support (1) technological capacity and access to support remote learning and (2) 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.”⁴⁶ A governor must also include an assurance that the state will comply with the reporting requirements included in Section 15011(b)(2) of Division B of the CARES Act (see subsequent discussion of CARES Act reporting requirements) and submit quarterly reports to the Secretary containing such information as the Secretary may reasonably require. For example, within 60 days of receipt of funds, the SEA must provide ED with a report that includes a budget specifying how the SEA will use funds reserved at the state level.

Higher Education Emergency Relief Fund (Section 18004)

As shown in **Table 1**, approximately \$14.0 billion is available for the HEERF. The Secretary is required to allocate the HEERF through three programs as follows: (1) 90% is to be allocated as direct grants to IHEs according to the enrollment of students who were not exclusively enrolled in distance education courses prior to the coronavirus emergency; (2) 7.5% is to be made available to programs for minority serving institutions (MSIs) authorized under Title III-A, Title III-B, Title V-A, and Title VII-A-4 of the Higher Education Act (HEA);⁴⁷ and (3) 2.5% is to be made available for the Fund for the Improvement of Postsecondary Education Program (FIPSE) authorized under HEA Title VII-B. An IHE may be eligible to receive an allocation from more than one HEERF program; and an IHE may also be eligible to receive funds from the GEER Fund and the ESF reservations for the outlying areas or BIE, as applicable. **Table 5** provides a breakdown of funding under the HEERF.

Table 5. Appropriations for CARES Act Higher Education Emergency Relief Funds
(Dollars in thousands)

Program/Purpose	Appropriations
Direct grants to institutions of higher education	\$12,557,255
Programs for Minority Serving Institutions	\$1,046,438
Fund for the Improvement of Postsecondary Education	\$348,813
Total Funding	\$13,952,505

Source: CRS analysis of the CARES Act.

Note: Details many not add to totals due to rounding.

⁴⁶ U.S. Department of Education, Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER Fund), April 2020, <https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.

⁴⁷ For more information on Programs for Minority Serving Institutions, see CRS Report R43237, *Programs for Minority-Serving Institutions Under the Higher Education Act*.

Direct Grants to Institutions of Higher Education

The direct grants to IHEs are awarded to public, private nonprofit, proprietary, and postsecondary vocational IHEs, as defined in Section 102 of the HEA. The funds available for direct grants to IHEs, approximately \$12.6 billion, will be awarded based on two formula factors: (1) 75% is based on each IHE's share of full-time equivalent (FTE) enrollment of Pell Grant recipients who were not enrolled exclusively in distance education prior to the coronavirus emergency, relative to the total FTE enrollment of such individuals in all IHEs;⁴⁸ and (2) 25% is based on each IHE's share of FTE enrollment of students who were not Pell Grant recipients and who were not enrolled exclusively in distance education prior to the coronavirus emergency, relative to the total FTE enrollment of such individuals in all IHEs. The first factor primarily allocates funds based on undergraduate enrollment because Pell Grant eligibility is limited to undergraduates and students in postbaccalaureate teacher education programs.⁴⁹ The second factor allocates funds based on undergraduate and graduate enrollment.

On April 9, 2020, ED published IHE allocations based on an approximation of the factors used in the statutory formula.⁵⁰ Because the factors were approximated, ED reserved \$50 million for a subsequent award.⁵¹

Programs for MSIs

The HEA authorizes several grant programs to assist IHEs that serve high concentrations of minority and/or financially needy students. These programs are collectively known as the MSI programs. The CARES Act directs the Secretary to allocate over \$1.0 billion to select MSI programs according to each program's proportional share of funds allocated under the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).⁵²

The CARES Act does not specify how program funds should be distributed among IHEs eligible to participate in the MSI programs. With the exception of the Strengthening Tribally Controlled Colleges and Universities (TCCU) program, the Secretary allocated funds to each eligible IHE in accordance with the formula used to allocate direct grants to IHEs.⁵³ The formula was applied separately to eligible grantees within each MSI program. To determine an IHE's eligibility, ED used its *Eligibility Matrix 2020*, the most recently published list of IHEs eligible under each of

⁴⁸ For a description of the Pell Grant program, see CRS Report R45418, *Federal Pell Grant Program of the Higher Education Act: Primer*.

⁴⁹ Students with a bachelor's degree may be enrolled at least half-time in a postbaccalaureate teacher education program. Half-time enrollment is at least six credit hours in a standard semester. A postbaccalaureate teacher education program does not lead to a graduate degree, is offered by a school that does not also offer a bachelor's degree in education, and leads to certification or licensure necessary for employment as an elementary or secondary school teacher in the state. To be eligible for a Pell Grant, the student enrolled in the postbaccalaureate teacher education program must be pursuing an initial teacher certification or licensing credential within the state.

⁵⁰ Department of Education, "CARES Act: Higher Education Emergency Relief Fund," <https://www2.ed.gov/about/offices/list/ope/caresact.html> (accessed April 15, 2020).

⁵¹ ED requires IHEs to apply and submit their AY2018-2019 enrollments, or AY2019-2020 enrollments if there was no AY2018-2019 enrollment, to ED by August 15, 2020.

⁵² In FY2020, the Minority Science and Engineering Improvement Program (MSEIP) authorized under HEA Title III-E received \$12.8 million in discretionary appropriations. The CARES Act does not authorize the Secretary to allocate funds to the MSEIP; thus, the program was not included in this analysis.

⁵³ For more information on the methodology used to allocate the funding, see Department of Education, *Methodology for Calculating Allocations for Section 18004(a)(2) of the CARES Act*, <https://www2.ed.gov/about/offices/list/ope/methodologyhbcumsitccusip.pdf>.

the MSI programs.⁵⁴ In cases where an IHE is eligible under more than one MSI program, ED allocated to the IHE the aggregate amount it would receive under each program. ED initially utilized the same methodology for the TCCU program. However, at the request of eligible TCCUs, ED revised its methodology based on the formula used to allocate annual appropriations to TCCUs as described in Section 316 of the HEA.⁵⁵ The Secretary has reserved a portion of the funds for eligible IHEs that were not listed in the *Eligibility Matrix 2020*.

Table 6 provides a list of the MSI programs that were allocated funding, as well as the amount made available under each program through the HEERF.

Table 6. Minority-Serving Institutions Program Allocations for the CARES Act Higher Education Emergency Relief Fund
(Dollars in thousands)

Program	Estimated Allocation
Strengthening Institutions Program (HEA, Title III-A)	\$148,619
Strengthening American Indian Tribally Controlled Colleges and Universities (HEA, Title III-A)	\$50,469
Strengthening Alaska Native and Native Hawaiian-Serving Institutions (HEA, Title III-A)	\$24,735
Strengthening Predominantly Black Institutions (HEA, Title III-A)	\$17,818
Strengthening Native American-Serving, Nontribal Institutions (HEA, Title III-A)	\$6,000
Strengthening Asian American and Native American Pacific Islander-Serving Institutions (HEA, Title III-A)	\$6,123
Strengthening Historically Black Colleges and Universities (HBCUs) (HEA, Title III-B)	\$447,466
Strengthening Historically Black Graduate Institutions (HEA, Title III-B)	\$115,720
Developing Hispanic-Serving Institutions (HEA, Title V-A)	\$193,180
Promoting Postbaccalaureate Opportunities for Hispanic Americans (HEA, Title V-B)	\$17,333
Masters Degrees at HBCUs (HEA, Title VII-A-4)	\$13,716
<i>Subtotal</i>	<i>\$1,038,057</i>
Reserve for subsequent awards	\$8,381
Total	\$1,046,438

Source: Prepared by CRS based on allocations published by the U.S. Department of Education (ED), Formula Allocations for Section 18004(a)(2) of CARES Act published at <https://www2.ed.gov/about/offices/list/ope/allocationshbcutccumsisip.xlsx>.

⁵⁴ The *Eligibility Matrix 2020* is available at <https://www2.ed.gov/about/offices/list/ope/ides/eligibility.html#tips>.

⁵⁵ In general, 60% of appropriated funds are distributed among eligible TCCUs on a pro rata basis, based on the respective Indian student counts. The remaining 40% are distributed in equal shares to TCCUs. The amount distributed shall not be less than \$500,000. When applying the formula to the HEERF funds, ED described its methodology as providing a base amount to all TCCUs and then allocating the remaining amount according to each TCCU's total Indian student count.

FIPSE

The CARES Act directs the Secretary to allocate approximately \$348.8 million to public and private nonprofit IHEs that the Secretary determines to have the greatest unmet needs related to the coronavirus emergency.⁵⁶ The Secretary is required to give priority to IHEs that do not otherwise receive grants of at least \$500,000 through the HEERF. The Secretary has indicated that IHEs that received less than \$500,000 in aggregate from the direct grants to IHEs and MSI programs are eligible to receive an award under the FIPSE fund sufficient to receive a total of \$500,000.⁵⁷ The remaining FIPSE fund (approximately \$15 million) will be awarded competitively.⁵⁸

Aggregated Allocations

Table 7 and **Table 8** present aggregations of IHE allocations at the sector and state levels, respectively, for funds made available under the HEERF. ED published a sector-level summary of the Direct Grants.⁵⁹ To facilitate state- and sector-level reporting of the remaining allocations, CRS, using data available from ED’s Integrated Postsecondary Education Data System (IPEDS), matched each IHE receiving an allocation with its state and institutional sector (e.g., public two-year).⁶⁰

Table 7. Estimated Allocations to IHEs Aggregated at the Sector Level for the CARES Act Higher Education Emergency Relief Fund
(Dollars in thousands)

Sector	Direct Grants ^a	MSI Programs	FIPSE Program	Estimated IHE Allocations under HEERF
Public, less than two-year	\$40,319	NA	\$72,112	\$112,431
Public, two-year	\$2,655,312	\$194,971	\$21,883	\$2,872,165
Public, four-year	\$6,208,906	\$651,334	\$4,672	\$6,864,913
Private not-for-profit, less than two-year	\$11,121	NA	\$12,959	\$24,080
Private not-for-profit, two-year	\$31,470	\$3,622	\$33,579	\$68,671

⁵⁶ Eligibility for FIPSE, as authorized by HEA, is limited to IHEs as defined in HEA Section 101, and thus excludes proprietary IHEs and postsecondary vocational institutions.

⁵⁷ Letter from Betsy DeVos, Secretary of Education, to College and University Presidents, April 30, 2020, <https://www2.ed.gov/about/offices/list/opec/coverletterhbcumsisiptccu.pdf>.

⁵⁸ Ibid.

⁵⁹ Department of Education, Office of Postsecondary Education, “Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act,” 85 *Federal Register* 36494-36504, June 17, 2020.

⁶⁰ IPEDS is a series of surveys conducted annually by ED to gather institutional data on a variety of topics—including student outcomes, student demographics, and institutional finances—from those IHEs that participate in the Title IV aid programs. IHEs that do not participate in the Title IV programs may also report to IPEDS. Although IHEs receiving an allocation may include branch campuses, additional locations, and other entities that cross state lines, the state in which an IHE’s main campus is located was assigned to it (Source: U.S. Department of Education, National Center for Education Statistics, *Report and Suggestions from IPEDS Technical Review Panel #43: Defining an IPEDS Institutions (Part 2)*, 2014, p. 2, https://edsurveys.rti.org/IPEDS_TRP_DOCS/prod/documents/TRP_43_Report_and_Suggestions.pdf).

Sector	Direct Grants ^a	MSI Programs	FIPSE Program	Estimated IHE Allocations under HEERF
Private not-for-profit, four-year	\$2,441,436	\$188,129	\$176,482	\$2,806,048
Proprietary, less than two-year	\$314,170	NA	NA	\$314,170
Proprietary, two-year	\$415,718	NA	NA	\$415,718
Proprietary, four-year	\$388,802	NA	NA	\$388,802
<i>Subtotal</i>	<i>\$12,507,255</i>	<i>\$1,038,057</i>	<i>\$321,687</i>	<i>\$13,866,998</i>
Reserve for subsequent award	\$50,000	\$8,381	\$27,125	\$85,507
Total	\$12,557,255	\$1,046,438	\$348,813	\$13,952,505

Source: Prepared by CRS based on an aggregation of allocations published by the U.S. Department of Education (ED), Formula Allocations for Section 18004 of the CARES Act, available at <https://www2.ed.gov/about/offices/list/ope/caresact.html> as of May 1, 2020; Department of Education, Office of Postsecondary Education, “Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act,” 85 *Federal Register* 36494-36504, June 17, 2020; and Integrated Postsecondary Education Data System (IPEDS) data to facilitate aggregations.

Notes: Details may not add to totals due to rounding. IHE = institution of higher education. NA indicates that under HEA less than two-year IHEs and proprietary IHEs are not eligible for the MSI programs and proprietary IHEs are not eligible for the FIPSE programs.

a. ED published in the *Federal Register* a summary of Direct Grant amounts to be allocated to institutions by sector.

Table 8. Estimated Allocations to IHEs Aggregated at the State Level for the CARES Act Higher Education Emergency Relief Fund
(Dollars in thousands)

State	Direct Grants	MSI Programs	FIPSE Program	Estimated IHE Allocations under HEERF	Percentage Share of Total HEERF Funds
Alabama	\$195,872	\$73,067	\$1,860	\$270,799	1.94%
Alaska	\$9,432	\$3,294	\$1,235	\$13,961	0.10%
Arizona	\$287,601	\$13,007	\$2,703	\$303,312	2.17%
Arkansas	\$120,858	\$14,573	\$1,846	\$137,277	0.98%
California	\$1,707,163	\$82,847	\$32,776	\$1,822,786	13.06%
Colorado	\$167,984	\$4,762	\$3,794	\$176,540	1.27%
Connecticut	\$141,283	\$2,305	\$2,324	\$145,912	1.05%
Delaware	\$34,027	\$11,888	\$1,235	\$47,150	0.34%
District of Columbia	\$47,649	\$8,000	\$2,236	\$57,885	0.41%
Florida	\$739,884	\$68,094	\$14,238	\$822,216	5.89%
Georgia	\$406,119	\$57,515	\$2,994	\$466,628	3.34%
Hawaii	\$31,026	\$22,380	\$200	\$53,605	0.38%

State	Direct Grants	MSI Programs	FIPSE Program	Estimated IHE Allocations under HEERF	Percentage Share of Total HEERF Funds
Idaho	\$60,036	\$1,087	\$370	\$61,493	0.44%
Illinois	\$438,647	\$11,999	\$13,068	\$463,714	3.32%
Indiana	\$235,548	\$4,035	\$4,285	\$243,868	1.75%
Iowa	\$119,776	\$2,365	\$3,012	\$125,153	0.90%
Kansas	\$104,951	\$5,933	\$2,666	\$113,550	0.81%
Kentucky	\$156,808	\$6,370	\$2,708	\$165,887	1.19%
Louisiana	\$189,864	\$49,503	\$1,908	\$241,275	1.73%
Maine	\$41,093	\$1,145	\$1,802	\$44,040	0.32%
Maryland	\$188,939	\$46,645	\$3,202	\$238,786	1.71%
Massachusetts	\$282,869	\$4,895	\$11,998	\$299,762	2.15%
Michigan	\$354,834	\$7,735	\$6,135	\$368,705	2.64%
Minnesota	\$183,849	\$6,986	\$4,242	\$195,078	1.40%
Mississippi	\$149,058	\$55,147	\$918	\$205,123	1.47%
Missouri	\$205,995	\$11,737	\$13,837	\$231,569	1.66%
Montana	\$31,873	\$8,417	\$715	\$41,006	0.29%
Nebraska	\$67,223	\$1,447	\$1,166	\$69,836	0.50%
Nevada	\$70,279	\$3,133	\$809	\$74,221	0.53%
New Hampshire	\$41,109	\$367	\$2,172	\$43,648	0.31%
New Jersey	\$323,081	\$11,945	\$11,117	\$346,142	2.48%
New Mexico	\$62,283	\$13,408	\$1,096	\$76,787	0.55%
New York	\$920,624	\$28,275	\$42,722	\$991,621	7.11%
North Carolina	\$378,297	\$87,942	\$5,292	\$471,532	3.38%
North Dakota	\$23,287	\$7,219	\$1,319	\$31,825	0.23%
Ohio	\$395,616	\$10,779	\$25,062	\$431,457	3.09%
Oklahoma	\$159,882	\$12,656	\$7,984	\$180,522	1.29%
Oregon	\$127,113	\$3,587	\$4,227	\$134,927	0.97%
Pennsylvania	\$488,108	\$12,892	\$25,753	\$526,753	3.78%
Rhode Island	\$64,731	\$1,653	\$445	\$66,829	0.48%
South Carolina	\$180,498	\$25,729	\$855	\$207,081	1.48%
South Dakota	\$27,147	\$7,284	\$1,960	\$36,390	0.26%
Tennessee	\$237,170	\$30,400	\$9,177	\$276,746	1.98%
Texas	\$1,022,021	\$114,888	\$10,637	\$1,147,546	8.22%
Utah	\$145,933	\$3,934	\$1,465	\$151,332	1.08%
Vermont	\$21,566	\$340	\$2,374	\$24,280	0.17%
Virginia	\$294,391	\$41,014	\$8,446	\$343,851	2.46%

State	Direct Grants	MSI Programs	FIPSE Program	Estimated IHE Allocations under HEERF	Percentage Share of Total HEERF Funds
Washington	\$225,831	\$4,993	\$2,413	\$233,238	1.67%
West Virginia	\$66,559	\$6,139	\$9,359	\$82,057	0.59%
Wisconsin	\$176,734	\$3,991	\$3,700	\$184,425	1.32%
Wyoming	\$13,586	\$29	\$79	\$13,694	0.10%
American Samoa	\$1,618	\$6	\$0	\$1,624	0.01%
Federated States of Micronesia	\$3,640	\$14	\$0	\$3,655	0.03%
Guam	\$5,834	\$23	\$379	\$6,237	0.04%
Marshall Islands	\$1,957	\$8	\$0	\$1,964	0.01%
Northern Mariana Islands	\$1,839	\$7	\$0	\$1,847	0.01%
Palau	\$759	\$3	\$0	\$762	0.01%
Puerto Rico	\$323,782	\$16,347	\$3,373	\$343,501	2.46%
Virgin Islands	\$1,714	\$1,875	\$0	\$3,589	0.03%
Subtotal	\$12,507,255	\$1,038,057	\$321,687	\$13,866,998	99.39%
Reserve for subsequent award	\$50,000	\$8,381	\$27,125	\$85,507	0.61%
Total	\$12,557,255	\$1,046,438	\$348,813	\$13,952,505	100.00%

Source: Prepared by CRS based on an aggregation of allocations published by the U.S. Department of Education (ED), Formula Allocations for Section 18004 of the CARES Act, available at <https://www2.ed.gov/about/offices/list/ope/caresact.html> as of May 1, 2020; and on the use of Integrated Postsecondary Education Data System (IPEDS) data to facilitate aggregations. Isaac Nicchitta, CRS Research Assistant, contributed to the analysis of data presented in this table.

Notes: Details may not add to totals due to rounding. IHE = institution of higher education. An IHE's state is determined by the location of its main campus, as designated in IPEDS.

IHE Uses of Funds

In order to receive HEERF funds, IHEs must submit a Certification and Agreement to the Secretary. The Certification and Agreement establishes the terms and conditions for receipt of funds. The Secretary has required that the IHEs requesting grants under the MSI and FIPSE programs submit the Certification and Agreement by August 1, 2020.

Funds disbursed under the direct grants to IHEs must be used to provide emergency financial aid grants to students and may be used to cover any institutional costs associated with significant changes to the delivery of instruction due to the coronavirus emergency.⁶¹ Institutional costs may include coronavirus-related refunds made to students for housing, food, or other services that

⁶¹ The CARES Act prohibits IHEs from using funds for paying contractors to provide pre-enrollment recruitment activities, for endowments, or for capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.

could no longer be provided, or purchases of hardware, software, or internet connectivity on behalf of students.⁶²

IHEs must use no less than 50% of their direct grant funds to provide emergency financial aid grants to students for eligible expenses⁶³ related to the disruption of campus operations as a result of the coronavirus emergency. IHEs have discretion to determine individual grant amounts and student eligibility.⁶⁴ The emergency financial aid grants are not considered federal student aid as authorized under HEA, Title IV; thus, the amount of the emergency financial aid grant may allow a student to receive total aid in excess of his/her cost of attendance.⁶⁵

The CARES Act does not explicitly establish eligibility criteria for students to receive financial aid grants under HEERF from their IHE. Actions by the Secretary to limit student eligibility based on other federal laws have generated some dissent.⁶⁶ Several Members of Congress have written to the Secretary opposing ED's imposition of eligibility requirements as contradicting congressional intent and harming students.⁶⁷ Three courts have preliminarily enjoined ED from applying some or all eligibility requirements to HEERF financial aid grants at specified IHEs, and that litigation is ongoing.⁶⁸

HEA Section 484 establishes student eligibility requirements for Title IV aid. For example, eligible students must be enrolled in or accepted for enrollment in a program leading to a recognized educational credential (e.g., degree), meet citizenship-related requirements, must not be enrolled in elementary or secondary school, and must submit a financial aid application to the Secretary. Under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), unauthorized immigrants are ineligible for federal public benefits, which include postsecondary education benefits.⁶⁹

Funds disbursed under the programs for MSIs and FIPSE may be used to provide grants to students, and to defray IHE expenses, including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff

⁶² U.S. Department of Education, Recipient's Funding Certification and Agreement for the Institutional Portion of the Higher Education Emergency Relief Fund Formula Grants Authorized by Section 18004(a)(1) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, <https://www2.ed.gov/about/offices/list/ope/caresact.html>.

⁶³ Eligible expenses include food, housing, course materials, technology, health care, child care, and other expenses related to a student's cost of attendance. *Cost of attendance* is defined in HEA to include estimated costs for tuition and fees, books and supplies, room and board, dependent care, and other costs in different amounts for different categories of students.

⁶⁴ Letter from Betsy DeVos, Secretary of Education, to College and University Presidents, April 9, 2020, <https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.pdf>.

⁶⁵ Generally, the HEA prohibits a student from receiving HEA, Title IV aid and other financial assistance in excess of his/her cost of attendance.

⁶⁶ Department of Education, Office of Postsecondary Education, "Eligibility of Students at Institutions of Higher Education for Funds Under the Security (CARES) Act," 85 *Federal Register* 36494-36504, June 17, 2020; Department of Education, "Frequently Asked Questions about the Emergency Financial Aid Grants to Students under Section 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act," <https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf> (accessed April 22, 2020).

⁶⁷ Letter from Michael F. Bennet, United States Senator, Robert Menendez, United States Senator, and Richard J. Durbin, United States Senator et al. to The Honorable Betsy DeVos, Secretary of Education, April 27, 2020; and Letter from Eric Swalwell, Member of Congress, Suzanne Bonamici, Member of Congress, and Steve Cohen, Member of Congress et al. to The Honorable Betsy DeVos, Secretary, United States Department of Education, April 27, 2020.

⁶⁸ *Washington v. DeVos*, No. 2:20-cv-00182-TOR, Order at 36, ECF No. 31; *Oakley v. DeVos*, No. 4:20-cv-03215-YGR, Order at 28, ECF No. 44; and *Noerand v. DeVos*, No. 1:20-cv-11271-LTS.

⁶⁹ 8 U.S.C. §1611(a).

training, and payroll. Grants to students under the MSI and FIPSE programs may only be used to satisfy students' cost of attendance.⁷⁰ The Secretary has limited the student grants to individuals eligible to receive HEA Title IV aid.⁷¹ The CARES Act provides Historically Black Colleges and Universities (HBCUs) and other MSIs with the authority to use prior funds awarded under HEA Title III, Title V, and Title VII to prevent, prepare for, and respond to the coronavirus emergency.

Assistance to Non-public Schools (Section 18005)

This section of the report discusses the equitable services provisions included in Section 18005 of the CARES Act. It also includes a brief discussion of the possible provision of ESF funds directly to non-public schools.

Equitable Services to Students and Teachers in Non-public Schools

An LEA that receives funds under the GEER Fund or the ESSER Fund is subject to equitable services requirements. More specifically, LEAs receiving such funds are required to provide equitable services to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools, in the same manner as Section 1117 of the ESEA. After reserving the required amount of funding to provide services for non-public school students and teachers, the LEA is then required to provide services that are equitable in comparison to services provided to public school students and teachers. Services provided to non-public school students and teachers must be provided in a timely manner. Such services, including materials and equipment, must be secular, neutral, and nonideological.

Under Section 1117 of the ESEA, an LEA's determination of how much funding should be reserved to serve non-public school students is based on the number of low-income students who reside in the school attendance area of Title I-A public schools in the LEA, regardless of where those children attend a non-public school (i.e., at a non-public school located inside or outside the LEA). Funding provided to public schools under Title I-A is based on the percentage of low-income students enrolled in each school. The LEA in which the non-public school student resides is responsible for providing services to students in the school that the non-public school student attends, even if that school is in another LEA.⁷² The provision of Title I-A services is not limited to low-income public school or non-public school students.⁷³

In contrast to the approach just described, non-binding guidance from ED⁷⁴ indicated that the determination of the share of funds available to serve non-public school students from GEER and

⁷⁰ Letter from Betsy DeVos, Secretary of Education, to College and University Presidents, April 30, 2020, <https://www2.ed.gov/about/offices/list/ope/coverletterhbcumsisiptccu.pdf> (accessed April 22, 2020).

⁷¹ Ibid.

⁷² An LEA can also provide equitable services to eligible students attending a private school that is part of a group of private schools by pooling the Title I-A funds that were generated by students from low-income families who reside in participating Title I-A public school attendance areas and attend a private school that is part of the group of private schools for which funds are being pooled. For more information, see U.S. Department of Education, *Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Updated Non-Regulatory Guidance*, October 7, 2019, items B-8 and B-9, <https://www2.ed.gov/about/inits/ed/non-public-education/files/equitable-services-guidance-100419.pdf>.

⁷³ With respect to private school students, "in general, to be eligible for Title I services, a private school child must reside in a participating Title I public school attendance area and must be identified by the LEA as low achieving on the basis of multiple, educationally related, objective criteria" (ibid., Item C-1).

⁷⁴ ED has removed the guidance from its website, as the guidance does not match the Interim Final Rule that ED

ESSER Fund grants received by LEAs should be based on *total enrollment* in non-public schools located in the LEA. The guidance explained that all public school students in the LEA are eligible to be served under the GEER Fund and ESSER Fund. That is, the programs are not limited to serving low-income public school students, so the required equitable services should not be limited to low-income non-public school students. In practice, this means that LEAs would determine the amount of funding to reserve to provide services to non-public school students and teachers based on the total number of non-public school students enrolled in the LEA relative to total public and non-public school enrollment. For some LEAs, this may result in them reserving a substantially larger percentage of the funds they received under the GEER Fund or ESSER Fund than they would have reserved if the calculation had been based only on the number of eligible low-income non-public school students relative to the total number of eligible low-income non-public and public school students.⁷⁵

Some Members of Congress indicated that they did not agree that the guidance issued by ED reflects congressional intent. For example, Senator Lamar Alexander, Chair of the Senate Committee on Health, Education, Labor, and Pensions, stated that he thought, and that he thinks that most of Congress also thought, that the LEAs would reserve funds to serve non-public school students and teachers in the same way that they are reserved under Title I-A. However, he did not say that Secretary DeVos had exceeded any boundaries in issuing the guidance nor did he commit to overturning the guidance, which does not have the force of law.⁷⁶ In addition, several Democratic Members of Congress sent a letter to Secretary DeVos indicating that they did not believe that the ED guidance reflects congressional intent.⁷⁷ The letter argued that the CARES Act's reference to the equitable services provision in Section 1117 of the ESEA requires the determination of how much funding should be reserved to serve students and teachers in non-public schools to be made based on the number of non-public school students who would be included in the count of students used to determine funding for equitable services under Title I-A of the ESEA (i.e., low-income non-public school students) rather than based on the count of all students attending non-public schools in the LEA.

The letter further stated that if Congress had wanted to have funding determined based on the number of students attending all non-public schools and have LEAs serve non-public school teachers and students attending non-public schools located in the LEA, it could have cited the equitable services provisions included in ESEA Section 8501 rather than Section 1117. Under the Section 8501 provision, all non-public school students who are eligible to be served by the relevant program are included in the count used to determine the amount of funding that should be reserved to serve non-public school students and teachers. In addition, the determination of

published in July. The guidance is available from the authors of this report upon request.

⁷⁵ See, for example, Letter from Carissa Moffat Miller, Executive Director, Council of Chief State School Officers, to Secretary Betsy DeVos, Secretary of Education, May 5, 2020, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj73ZLI1cfpAhWRgnIEHZugAZoQFjAAegQIBBAB&url=https%3A%2F%2Fccsso.org%2Fsites%2Fdefault%2Ffiles%2F2020-05%2FDeVosESLetter050520.pdf&usg=AOvVaw2GJDEIYRfzHpWo8Udl7QSC>.

⁷⁶ Andrew Ujifusa, "Sen. Alexander Splits From Betsy DeVos on COVID-19 Aid to Help Private Schools," *Education Week*, May 21, 2021, <http://blogs.edweek.org/edweek/campaign-k-12/2020/05/alexander-devos-COVID-aid-private-schools-CDC-reopening.html>.

⁷⁷ Letter from Robert C. "Bobby" Scott, Chair, Committee on Education and Labor, U.S. House of Representatives, Rosa L. DeLauro, Chair, Committee on Appropriations, Subcommittee on Health and Human Services, Labor, and Education and Other Related Services, U.S. House of Representatives, and Patty Murray, Ranking Member, Committee on Health, Education, Labor, and Pensions, U.S. Senate, to The Honorable Betsy DeVos, Secretary of Education, May 20, 2020, <https://edlabor.house.gov/imo/media/doc/2020-5-20%20Ltr%20to%20DeVos%20re%20Equitable%20Services.pdf>.

eligible non-public school students is based on the number of eligible non-public school students attending non-public schools in an LEA.

Section 10604 of the Heroes Act (H.R. 6800, as passed by the House) would amend Section 18005 of the CARES Act to include a formula to determine the share of funds that must be reserved by LEAs to serve non-public school students and teachers. The formula included in the Heroes Act would require LEAs to reserve funds to serve non-public school students and teachers based on the number of low-income non-public school students counted under Section 1117 for the 2019-2020 school year relative to the number of low-income public school students included in the Section 1117 calculation during the 2019-2020 school year. This also differs from the way that the reservation of funds for equitable services is currently determined under Section 1117 for Title I-A purposes in that the denominator for the Title I-A calculation includes both low-income public and non-public school students. Thus, under the Heroes Act amendment the denominator would be smaller than it would be under the Title I-A equitable services calculation, resulting in LEAs having to reserve a larger share of funds to serve non-public school students and teachers than they would have to reserve based on the Title I-A equitable services calculation. However, this could result in LEAs having to reserve a smaller share of funds than would be reserved under the guidance issued by ED.

As previously discussed, the CARES Act equitable services guidance issued by ED was non-binding. Several states, such as Indiana and Maine, indicated that they would not follow ED's guidance, while Tennessee and Texas have indicated that they would.⁷⁸ Other states asked ED to revise or rescind its guidance.⁷⁹ In response to a letter from the Council of Chief State School Officers⁸⁰ asking ED to clarify its guidance, ED indicated that it planned to issue a rule related to its guidance on equitable services under the ESF.⁸¹ ED also advised any LEAs that were not following the equitable services guidance to “put into an escrow account the difference between

⁷⁸ As of May 29, 2020, at least eight states (Indiana, Maine, Mississippi, New Mexico, Oklahoma, Pennsylvania, Washington, and Wisconsin) had indicated that they would not follow the ED guidance. (Nicole Gaudiano, “At least 8 states buck DeVos push for emergency relief for private school kids,” *Politico*, May 29, 2020; Letter from Jennifer McCormick, Superintendent of Public Instruction, to Superintendents, Program Administrators, and Treasurers of LEAs and Non-Public School Administrators, May 12, 2020, <https://www.doe.in.gov/sites/default/files/grants/final-language-equitable-share-cares-51220.pdf>; Emma Kate Fittes, “Indiana rejects guidance from DeVos to reroute more coronavirus relief to private schools,” *Chalkbeat Indiana*, May 12, 2020, <https://www.ibj.com/articles/indiana-rejects-guidance-from-devos-to-reroute-more-coronavirus-relief-to-private-schools>; Andrew Ujifusa, “Lawmakers Tell Betsy DeVos Her COVID-19 Guidance Is ‘Robbing Public Schools’,” *Education Week*, May 20, 2020, <https://blogs.edweek.org/edweek/campaign-k-12/2020/05/betsy-devos-robbing-public-schools-lawmakers-COVID-19.html>; and Aliyya Swaby, “Texas school districts raise hands for share of \$1.29 billion federal infusion,” *The Texas Tribune*, May 20, 2020, https://www.texastribune.org/2020/05/20/texas-schools-expect-billion-plus-federal-coronavirus-relief-infusion/?utm_source=ECS+Subscribers&utm_campaign=fbd5ccb7d-ED_CLIPS_05_21_2020&utm_medium=email&utm_term=0_1a2b00b930-fbd5ccb7d-53608383).

⁷⁹ Erica L. Green, “DeVos Funnel Coronavirus Relief Funds to Favored Private and Religious Schools,” *The New York Times*, May 15, 2020, <https://www.nytimes.com/2020/05/15/us/politics/betsy-devos-coronavirus-religious-schools.html>.

⁸⁰ Letter from Carissa Moffat Miller, Executive Director, Council of Chief State School Officers, to Secretary Betsy DeVos, Secretary of Education, May 5, 2020, <https://ccsso.org/sites/default/files/2020-05/DeVosESLetter050520.pdf>.

⁸¹ Letter from Secretary Betsy DeVos, Secretary of Education, to Carissa Moffat Miller, Executive Director, Council of Chief State School Officers, May 22, 2020, <https://blogs.edweek.org/edweek/campaign-k-12/Secretary%20DeVos%20Response%20to%20Carissa%20Moffat%20Miller%205%2022%2020.pdf> (letter made available in the following article: Andrew Ujifusa, “DeVos to Release Rule Cementing COVID Aid Push for Private School Students,” *Education Week*, May 26, 2020, <https://blogs.edweek.org/edweek/campaign-k-12/2020/05/devos-covid-aid-private-school-students-rule.html>).

the amount generated by the proportional-student enrollment formula and the Title I, Part A formula.”

On July 1, 2020, ED published an interim final rule providing LEAs with three ways to implement the equitable services provision.⁸² (ED also removed the existing guidance from its website.)

Under one option, an LEA can determine the proportional share based on enrollment in participating non-public elementary and secondary schools in the LEA compared to the total enrollment in public and participating non-public elementary and secondary schools in the LEA (total enrollment option).

The remaining options are available to LEAs only if they agree to use those funds available for public education to serve exclusively students and teachers in public Title I-A schools. If this condition is met, an LEA may determine the share of funds to be reserved to serve students and teachers in non-public schools by either (1) using the proportional share of Title I-A funds calculated by the LEA under Section 1117(a)(4)(A) of the ESEA for the 2019-2020 school year, or (2) determining the number of children ages 5-17 who are from low-income families and attend each non-public school in the LEA that will be participating in a CARES Act program compared to the total number of children ages 5-17 who are from low-income families in Title I-A schools and participating non-public elementary and secondary schools in the LEA. In addition, if an LEA chooses to implement one of the latter two options, the LEA must comply with the supplement not supplant requirement included in Section 1118(b) of the ESEA.⁸³ Among other things, this requirement prohibits the LEA from allocating CARES Act funds to Title I-A schools and then redirecting state or local funds to non-Title I-A schools.

Control of the Funds Used to Provide Equitable Services

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 these funds, must remain with a public agency. The public agency is required to administer such funds, materials, equipment, and property. It must provide agreed-upon services or contract for the provision of such services with a public or private entity. The funds will remain under public control to benefit the students and teachers in non-public schools but not the non-public schools themselves.

Funds Potentially Available to Non-public Schools under the ESF

Although none of the funds received by LEAs under the GEER Fund or the ESSER Fund will go directly to non-public schools, it is possible that non-public schools could receive such funds under the GEER Fund as an “education related entity” that is deemed essential for carrying out emergency educational services to students. The statutory language does not appear to prohibit non-public schools from receiving funds in this capacity. In addition, statutory language does not limit the student beneficiaries under the GEER Fund to public school students only. While non-public schools will not receive any of the funds provided to LEAs under the ESSER Fund, it is possible that an SEA, using funds it reserved, could choose to make a grant or enter into a

⁸² U.S. Department of Education, “CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools,” 85 *Federal Register* 39479-39488, July 1, 2020.

⁸³ The CARES Act did not apply a supplement not supplant requirement to either the GEER Fund or the ESSER Fund. For more information about the Title I-A supplement not supplant requirement, see CRS In Focus IF10405, *Fiscal Accountability Requirements That Apply to Title I-A of the Elementary and Secondary Education Act (ESEA)*.

contract with a private school to address emergency needs in responding to issues associated with the coronavirus pandemic. This does not appear to be a prohibited use of funds.

Continued Payment to Employees (Section 18006)

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 periods of any disruptions or closures related to the coronavirus emergency. As entities receiving funds are required to comply with this requirement only to the greatest extent practicable, this provision does not ensure that their employees or contractors will continue to be paid during such periods.

Definitions (Section 18007)

The ESF includes a section with definitions that apply only to the ESF program. These include specific definitions of elementary education, secondary education, IHE, Secretary, state, non-public school, and public schools. There is also a provision that indicates that if any of the other terms used in the ESF are defined in Section 8101 of the ESEA, the term shall have the meaning given to it by that section.

Of particular note is the definition of *state* that applies to the GEER Fund and ESSER Fund. For its purposes, state is defined to include the 50 states, the District of Columbia, and Puerto Rico. Thus, the District of Columbia and Puerto Rico are treated as states with respect to the allocation of funds under these two emergency education relief funds.

For purposes of the HEERF, the definition of IHE includes IHEs in the 50 states, the District of Columbia, Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Maintenance of Effort (Section 18008)

The ESF includes two maintenance of effort (MOE) requirements—one that applies to state support for elementary and secondary education and one that applies to state support for higher education. If a state applies for a grant under the GEER Fund or the ESSER Fund, the grant application must include assurances that the state will meet both MOE requirements.

For elementary and secondary education, the state must provide an assurance that it will maintain support 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.⁸⁴

Similarly, for higher education the state or outlying area must provide an assurance that it will maintain support in FY2020 and FY2021 at least at the average level of support provided for higher education during the three fiscal years preceding the date of enactment of the CARES Act. For the purposes of determining state support for higher education, states must include state funding to IHEs and state need-based financial aid. States do not have to include support for capital projects, support for research and development, or tuition and fees paid by students.

⁸⁴ Typically, this will be FY2017, FY2018, and FY2019.

The Secretary, however, has the authority to waive these MOE requirements to relieve fiscal burdens on states that have “experienced a precipitous decline in financial resources.” In deciding whether to grant such a waiver, it is up to the Secretary to determine whether such a decline in financial resources has occurred.

Applicable CARES Act Reporting Requirements

In addition to reporting requirements that may be established by the Secretary, Section 15011(b)(2) of Division B of the CARES Act includes reporting requirements that must be met by governors under the GEER Fund, SEAs under the ESSER Fund, and IHEs under the HEERF. Not later than 10 days after the end of each calendar quarter, the entity that applied for federal funds under one of the emergency education relief funds must submit a report to ED and the Pandemic Response Accountability Committee that includes the total amount of funds received under the ESF. It must also include a detailed list of all projects or activities for which funds were expended or obligated, including their names, a description of them, and the estimated number of jobs created or retained by them. Additionally, it must include detailed information on any level of subcontracts or subgrants awarded by the governor or his/her subcontractors or subgrantees. The information included in these reports must be made public by the Pandemic Response Accountability Committee not later than 30 days after the end of each calendar quarter.

Appendix. State Grants Under the Education Stabilization Fund

Table A-1 compiles state grants for the Governor’s Emergency Education Relief (GEER) Fund, the Elementary and Secondary School Emergency Relief (ESSER) Fund, and amounts provided to IHEs in each state under the Higher Education Emergency Relief Fund (HEERF) based upon IHE allocations published by ED, to provide a summary of state-level estimates for the majority of the funds provided through the Education Stabilization Fund.

Table A-1. GEER Fund, ESSER Fund State Grants, and HEERF IHE Grants Aggregated at the State Level for the CARES Act Education Stabilization Fund
(Dollars in thousands)

State/Entity	GEER Fund: Grant Amount	ESSER Fund: Grant Amount	HEERF: Allocations	Estimated Funding Provided to the State or IHEs in the State	Percentage Share of ESF Available
Alabama	\$48,851	\$216,948	\$270,799	\$536,598	1.78%
Alaska	\$6,504	\$38,408	\$13,961	\$58,873	0.20%
Arizona	\$69,196	\$277,423	\$303,312	\$649,931	2.16%
Arkansas	\$30,664	\$128,759	\$137,277	\$296,700	0.98%
California	\$355,227	\$1,647,306	\$1,822,786	\$3,825,319	12.69%
Colorado	\$44,005	\$120,994	\$176,540	\$341,539	1.13%
Connecticut	\$27,882	\$111,068	\$145,912	\$284,862	0.95%
Delaware	\$7,917	\$43,493	\$47,150	\$98,560	0.33%
District of Columbia	\$5,808	\$42,006	\$57,885	\$105,699	0.35%
Florida	\$173,586	\$770,248	\$822,216	\$1,766,050	5.86%
Georgia	\$105,721	\$457,170	\$466,628	\$1,029,518	3.42%
Hawaii	\$9,993	\$43,385	\$53,605	\$106,984	0.36%
Idaho	\$15,676	\$47,855	\$61,493	\$125,024	0.41%
Illinois	\$108,498	\$569,467	\$463,714	\$1,141,679	3.79%
Indiana	\$61,591	\$214,473	\$243,868	\$519,932	1.73%
Iowa	\$26,217	\$71,626	\$125,153	\$222,995	0.74%
Kansas	\$26,274	\$84,529	\$113,550	\$224,354	0.74%
Kentucky	\$43,799	\$193,187	\$165,887	\$402,873	1.34%
Louisiana	\$50,277	\$286,980	\$241,275	\$578,532	1.92%
Maine	\$9,274	\$43,793	\$44,040	\$97,107	0.32%
Maryland	\$45,658	\$207,834	\$238,786	\$492,278	1.63%
Massachusetts	\$50,844	\$214,894	\$299,762	\$565,500	1.88%
Michigan	\$89,433	\$389,797	\$368,705	\$847,934	2.81%

State/Entity	GEER Fund: Grant Amount	ESSER Fund: Grant Amount	HEERF: Allocations	Estimated Funding Provided to the State or IHEs in the State	Percentage Share of ESF Available
Minnesota	\$43,427	\$140,137	\$195,078	\$378,642	1.26%
Mississippi	\$34,663	\$169,883	\$205,123	\$409,669	1.36%
Missouri	\$54,643	\$208,443	\$231,569	\$494,655	1.64%
Montana	\$8,764	\$41,295	\$41,006	\$91,065	0.30%
Nebraska	\$16,358	\$65,085	\$69,836	\$151,279	0.50%
Nevada	\$26,477	\$117,185	\$74,221	\$217,883	0.72%
New Hampshire	\$8,891	\$37,641	\$43,648	\$90,181	0.30%
New Jersey	\$68,865	\$310,371	\$346,142	\$725,378	2.41%
New Mexico	\$22,263	\$108,575	\$76,787	\$207,624	0.69%
New York	\$164,286	\$1,037,046	\$991,621	\$2,192,953	7.28%
North Carolina	\$95,639	\$396,312	\$471,532	\$963,483	3.20%
North Dakota	\$5,933	\$33,298	\$31,825	\$71,056	0.24%
Ohio	\$104,917	\$489,205	\$431,457	\$1,025,580	3.40%
Oklahoma	\$39,919	\$160,950	\$180,522	\$381,392	1.27%
Oregon	\$32,508	\$121,099	\$134,927	\$288,534	0.96%
Pennsylvania	\$104,418	\$523,807	\$526,753	\$1,154,978	3.83%
Puerto Rico	\$47,812	\$349,113	\$343,501	\$740,427	2.46%
Rhode Island	\$8,704	\$46,350	\$66,829	\$121,884	0.40%
South Carolina	\$48,468	\$216,311	\$207,081	\$471,860	1.57%
South Dakota	\$7,944	\$41,295	\$36,390	\$85,629	0.28%
Tennessee	\$63,582	\$259,891	\$276,746	\$600,219	1.99%
Texas	\$307,026	\$1,285,886	\$1,147,546	\$2,740,458	9.09%
Utah	\$29,190	\$67,822	\$151,332	\$248,344	0.82%
Vermont	\$4,489	\$31,148	\$24,280	\$59,917	0.20%
Virginia	\$66,775	\$238,599	\$343,851	\$649,225	2.15%
Washington	\$56,769	\$216,892	\$233,238	\$506,899	1.68%
West Virginia	\$16,353	\$86,640	\$82,057	\$185,051	0.61%
Wisconsin	\$46,550	\$174,778	\$184,425	\$405,753	1.35%
Wyoming	\$4,701	\$32,563	\$13,694	\$50,958	0.17%
Other entities ^a	NA	NA	\$19,678	\$19,678	0.07%
Reservation for subsequent awards	NA	NA	\$85,507	\$85,507	0.28%
Total	\$2,953,230	\$13,229,265	\$13,952,505	\$30,135,000	100.00%

Source: Prepared by CRS based on data available from the U.S. Department of Education (ED), Governor's Emergency Education Relief (GEER) Fund, State Allocation Table, available at <https://oese.ed.gov/files/2020/04/>

GEER-Fund-State-Allocations-Table.pdf; Elementary and Secondary School Emergency Relief (ESSER) Fund, State Allocation Table, available at <https://oese.ed.gov/files/2020/04/ESSER-Fund-State-Allocations-Table.pdf>; data from the Higher Education Emergency Relief Fund (HEERF), ED Formula Allocations, available at <https://www2.ed.gov/about/offices/list/ope/caresact.html> as of May 1, 2020, and data from the Integrated Postsecondary Education Data System (IPEDS) which were used to aggregate aid allocated to IHEs at the state level. As is specified earlier in this report, these state-level aggregations are estimates because some IHEs have branch campuses in more than one state.

Notes: Details may not add to totals due to rounding. NA = not applicable. Percentages were calculated based on unrounded numbers.

- a. The other entities are Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Author Information

Rebecca R. Skinner
Specialist in Education Policy

Joselynn H. Fountain
Analyst in Education Policy

Cassandra Dortch
Specialist in Education Policy

Emma C. Nyhof
Research Assistant

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