

Frequently Asked Questions Education Stabilization Fund Program Outlying Areas – Governors (ESF-Governor)

PURPOSE OF THIS DOCUMENT

The purpose of this document is to answer Frequently Asked Questions about the Education Stabilization Fund Program for the Outlying Areas-Governors (ESF-Governor). Under the ESF-Governor program, established in the CARES Act¹, the U.S. Department of Education (Department) awards grants to Governors for the purpose of providing state educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), and other education-related entities with emergency assistance to address the impact of the Novel Coronavirus Disease 2019 (COVID-19).

This Frequently Asked Questions document seeks to address questions that are not easily answered from a plain reading of the [CARES Act](#) or the [ESF-Governor program Certification and Agreement \(C&A\)](#).

Disclaimer

Other than statutory and regulatory requirements included in the document, such as those pursuant to the authorizing statute and other applicable laws and regulations, the contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any rights for or on any person.

The U.S. Department of Education (Department) may provide additional or updated information as necessary on the Department's website:

<https://oese.ed.gov/offices/education-stabilization-fund/outlying-areas>.

If you have questions that are not answered in this document, please e-mail esf.outlying@ed.gov.

¹ The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020). All citations in this document are to the CARES Act, unless otherwise indicated. The provisions of the CARES Act relevant to the ESF-Governors program and other Department of Education programs are available on the Department's website at <https://oese.ed.gov/files/2020/09/ESF-Governor-Final-FAQs.pdf>

A-1. How does a Governor apply for ESF-Governor funds?

To apply for an outlying area's allocation from the ESF-Governor program, a Governor must submit to the Department, by July 1, 2020, an executed Certification and Agreement that the Secretary sent to the Governor on May 6, 2020. The Certification and Agreement includes specific programmatic, fiscal and accountability assurances, including those related to "maintenance of effort" (MOE). A Governor must also provide information on the extent to which the funds will be used for remote learning.

The term "Certification and Agreement" in these FAQs refers to the Governor's application for ESF-Governor funds. The Certification and Agreement is available at <https://oese.ed.gov/offices/education-stabilization-fund/outlying-areas/>.

A-2. Which entities may receive grants from Governors through the ESF-Governor Fund?

Governors may provide emergency support through grants to SEAs and, where applicable local educational agencies (LEAs), to address impacts of the coronavirus in elementary and secondary schools and to support the ability of these agencies to continue to provide educational services to their students and to support the on-going functionality of the SEA, and where applicable, LEAs. Governors may also provide emergency support through grants to IHEs to address the impacts of the coronavirus on IHEs and to support the ability of such institutions to continue to provide educational services and to support the ongoing functionality of the institutions. In addition, Governors may provide support to any IHE, LEA, or education-related entity within the Outlying Area that the Governor deems essential for carrying out emergency educational services to students, the provision of childcare and early childhood education, social and emotional support, and the protection of education-related jobs. Governors may also contract with education-related entities for their services.

A-3. What is an "education-related entity"?

An education-related entity is an entity within the Outlying Area that provides services that support preschool, elementary, secondary, or higher education. Such entities may include, for example:

- State agencies that oversee or directly provide early childhood education services;
- Public agencies or private entities that coordinate or directly provide early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA);
- Government agencies that oversee or provide vocational rehabilitative services;
- Government mental health agencies;
- Government Higher Education Boards;
- Centralized Government agencies that administer insurance and pension costs for employees of IHEs and LEAs;

- Education-related non-profit organizations;
- Non-public schools;
- For-profit schools;
- For-profit charter management organizations;
- Non-profit and for-profit child-care centers;
- Public libraries;
- Community centers; and
- State or local agencies coordinating food services for students and their families.

A-4. Is a Governor required to award the funds to each category of possible subrecipients (i.e., SEAs, LEAs, IHEs, and education-related entities)?

No. A Governor has wide discretion in determining the entities in the Outlying Area that will receive ESF-Governor funds. A Governor can choose to fund only SEAs, only LEAs, only IHEs, only education-related entities, or any combination thereof. The Governor can deem any LEA, IHE, or education-related entity as “essential” for carrying out emergency educational services to students, providing childcare and early childhood education, providing social and emotional support, and protecting education-related jobs.

A-5. May a Governor or a subrecipient use ESF-Governor funds to pay for costs incurred prior to receiving grant funds?

Yes. A Governor or a subrecipient may use ESF-Governor funds for any allowable expenditure incurred on or after March 13, 2020, the date the President declared the national emergency due to COVID-19.

A-6. May a Governor or subrecipient use ESF-Governor funds to defray the costs of administering the program?

The Governor and any SEA, LEA, IHE or education-related entity that receives a subgrant may reserve a reasonable and necessary amount of funds for administrative costs. This includes both direct and indirect administrative costs. However, to maximize the funds available for services to students and the public, the Department encourages the Governor and each subgrantee to minimize the amount of administrative costs charged to the program.

A-7. May a Governor set a specific administrative cost cap on subrecipients to maximize the amount of funding available for services?

Yes. To maximize the funds available for services to students and the public, the Department encourages each Governor to limit the amount that subrecipients can charge for direct administrative costs in carrying out their ESF-Governor projects.

A-8. How long are ESF-Governor funds available for obligation by Governors and subrecipients?

ESF-Governor funds are available for obligation by Governors and subrecipients through September 30, 2022.

A-9. Is there a deadline by which Governors must award ESF-Governor funds to subrecipients?

No, but the Department encourages Governors to award ESF-Governor funds within one year of receipt.

A-10. How does a Governor award funds to subrecipients?

Emergency support to SEAs, LEAs and IHEs is awarded through subgrants. Support provided to other education-related entities may be provided through either subgrants or contracts.

A-11. Must an SEA, LEA or IHE submit an application to the Governor in order to receive an award under the ESF-Governor program?

The Governor will determine the process by which subrecipients will receive awards under the ESF-Governor program.

A-12. How much flexibility does an SEA, LEA IHE or education-related entity have in determining the activities to support with ESF-Governor funds?

Unless otherwise restricted by the Governor at the time he or she awards ESF-Governor funds, SEAs, LEAs, IHEs and education-related entities (subrecipients) have considerable flexibility in determining how best to use ESF-Governor funds to prevent, prepare for, or respond to COVID-19. In addressing the impact of COVID-19, subrecipients may use these funds for, among other things, activities that are authorized under the ESEA or the HEA.

If the Governor awards funds to a subrecipient for essential activities, the subrecipient may use the funds to carry out emergency educational services to students, provide childcare and early childhood education, provide social and emotional support, or protect education-related jobs.

A-13. How may a Governor or subrecipients use ESF-Governor funds to support continued education for all students through distance education?

Effective distance education, or remote learning, includes home access to the internet, devices, high-quality accessible digital education content and tools, and training for teachers. In addition to encouraging Governors and subrecipients to address immediate

distance education needs, the Department encourages them to consider ways to invest ESF-Governor funds in technology infrastructure and professional development and training that will improve capacity to provide comprehensive distance education that will have lasting effects.

This may include –

- Providing off-campus access to reliable, high-speed internet for students and teachers through the purchase of internet connected devices/equipment, mobile hotspots, LTE service plans, or installation of WiFi on school buses or Community WiFi Hotspots in underserved communities;
- Purchasing hardware and software applications for students and teachers;
- Providing access to high-quality digital learning content, apps, and tools that can be used to design and deliver engaging and relevant learning experiences that are accessible to all students;
- Covering costs associated with making materials accessible for students with disabilities or English learners;
- Providing professional development and training for teachers on effective or innovative strategies for the delivery of instruction through the use of technology;
- or
- Hiring or continuing to employ existing staff to support students and teachers as they teach and learn online.

A-14. Is there a requirement to provide equitable services to students and teachers in non-public schools under the ESF-Governor program?

Yes. Equitable services, as determined through timely and meaningful consultation with non-public school officials, must be provided to students and teachers in non-public elementary and secondary schools in accordance with 8501 of the ESEA.

A-15. Must an SEA, LEA, or another public agency maintain control of ESF-Governor funds used to provide equitable services?

Yes. Control of funds for services and assistance provided to non-public school students and teachers under the ESF-Governor program, and title to materials, equipment and property purchased with such funds, must be in a public agency, and a public agency must administer such funds, materials, equipment, and property. In other words, no funds may go directly to a non-public school. In addition, services for non-public school students and teachers must be provided by a public agency directly or through contract with another public or private entity.

A-16. Must an SEA or LEA offer to provide equitable services under the ESF-Governor program to students and teachers in all non-public schools located in the SEA or LEA, even if a non-public school has not previously participated in equitable services under Title VIII of the ESEA?

Yes. An SEA or LEA must offer to provide equitable services under the ESF-Governor program to students and teachers in all non-public schools located in the SEA or LEA, even if a non-public school has not previously participated under Title VIII of the ESEA.

A-17. How does an SEA or LEA determine the proportional share of funds that must be reserved to provide equitable services to non-public school students and teachers under the ESF-Governor program?

Equitable services must be provided in accordance with section 8501 of the ESEA. Section 8501(a)(4) of the ESEA requires that expenditures for services to private school students, teachers, and other educational personnel be equal to the expenditures for the public school program, taking into account the number and educational needs of the children to be served. An SEA or LEA calculates equal expenditures strictly on the basis of the relative enrollments of public and private school students, on the assumption that these numbers also accurately reflect the relative needs of students and teachers in public and private schools. However, it is permissible for an SEA or LEA to use other factors relating to need and not base equal expenditures only on relative enrollments. For more information on equitable services please see the ESSA Fiscal Non-Regulatory Guidance: <https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf> and the previously existing non-regulatory guidance document “Title IX, Part E Uniform Provisions, Subpart 1—Private Schools” [available at: <http://www2.ed.gov/policy/elsec/guid/equitableserguidance.doc>], which remains applicable except as otherwise provided in the ESSA Fiscal Non-Regulatory Guidance.

A-18. May an SEA or LEA use CARES Act funds to reimburse private schools for allowable COVID-19 related expenses that the private school incurred on or after March 13, 2020?

Under section 8501(d)(1) of the ESEA, control of funds for services and assistance provided to non-public school students and teachers under the CARES Act programs, and title to materials, equipment and property purchased with such funds, must be in a public agency, and a public agency must administer such funds, materials, equipment, and property. Further, services must be provided by a public agency or through a contract between the public agency and an individual, association, agency, organization, or other entity (Section 8501(d)(2) of the ESEA). Thus, in general, an SEA or LEA may not reimburse a non-public school for purchases the non-public school made or services that the non-public school procured.

However, under limited emergency circumstances related to responding to COVID-19, an SEA or LEA may use CARES Act funds to reimburse a private school for the costs of services procured or materials or equipment purchased with other funds on or after March 13, 2020. Before reimbursing such costs, the SEA or LEA must determine that the expenses are allowable under the CARES Act and the services, materials, or equipment are secular, neutral, and non-ideological. Further, the SEA or LEA must take title to any materials or equipment for which reimbursement is provided.

A-19. Is there a maintenance of effort (MOE) requirement for the ESF-Governor program?

Yes. Outlying Areas must comply with the maintenance of effort requirement in section 18008 of the CARES Act. For assistance in implementing the MOE requirement, Outlying Areas are encouraged to refer to the “Frequently Asked Questions on the Maintenance-of-Effort Requirements Applicable to the CARES Act Programs,” available here:

<https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf>