

# **EXHIBIT A**

## **PART III**

# EXHIBIT 6

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9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12

13  
 14 **STATE OF MICHIGAN, STATE OF**  
**CALIFORNIA, et al.,**  
 15  
 16 Plaintiffs,  
 17  
 18 **v.**  
 19 **ELISABETH D. DEVOS, in her official**  
**capacity as the United States Secretary of**  
**Education, and UNITED STATES**  
**DEPARTMENT OF EDUCATION,**  
 20  
 21 Defendants.  
 22

Civil Case No. 3:20-cv-04478-SK

**DECLARATION OF A. PENDER MAKIN**

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**DECLARATION OF A. PENDER MAKIN**

I, A. Pender Makin, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the Commissioner of Education for the State of Maine. My office is located at the Maine Department of Education in Augusta, Maine. My educational background includes a Master's Degree in Education Leadership. I have been employed as Commissioner since January 2019. Prior to becoming Commissioner, I served as the Assistant Superintendent of Schools in Brunswick, Maine. My responsibilities included: management of federal programs, McKinney-Vento liaison, districtwide emergency preparedness and response planning, budget development, and policy development with the local school board. From 2003-2015, I served as principal of a regional special education secondary school.

2. Section 251-A of Title 20-A of the Maine Revised Statutes describes the duties and responsibilities of the Commissioner as follows:

The commissioner is the chief executive officer of the department [of Education]. In that capacity, the commissioner has primary responsibility for the following:

**1. Enforcing regulatory requirements.** Enforcing applicable regulatory requirements for school administrative units;

**2. Providing technical assistance.** Providing technical assistance to school administrative units; and

**3. Providing educational leadership.** Providing educational public leadership for the State.

Among the Commissioner's specific duties, the Commissioner determines the amount of state funding for Maine's school administrative units through the Essential Programs and Services Funding Act, 20-A M.R.S. § 15670 *et seq.* The Commissioner is responsible for the distribution of funds to Maine's school administrative units (SAUs) and for the oversight of the federal grants that the Department receives.

3. I submit this Declaration in support of the State of Maine's litigation against Elisabeth D. DeVos, in her official capacity as Secretary of Education, and the United States

1 Department of Education (the “Department”) regarding the recently issued Rule entitled  
2 *Providing Equitable Services to Students and Teachers in Non-public Schools*, 85 Fed. Reg.  
3 39,479 (July 1, 2020) (the “Equitable Services Rule” or the “Rule”). I have compiled the  
4 information in the statements set forth below through personal knowledge, through Maine  
5 Department of Education personnel who have assisted me in gathering this information from our  
6 institution, and on the basis of documents that have been provided to and/or reviewed by me. I  
7 have also familiarized myself with the Rule in order to understand its immediate impact on the  
8 Maine Department of Education and public schools in Maine.

9 **Public Education in Maine**

10 4. The Constitution of Maine states, in pertinent part:

11 A general diffusion of the advantages of education being essential to the  
12 preservation of the rights and liberties of the people: to promote this  
13 important object, the Legislature are authorized, and it shall be their duty to  
14 require, the several towns to make suitable provision, at their own expense,  
for the support and maintenance of public schools; . . .

15 Me. Const. Art. VIII, pt.1, 1.

16 5. “It is the intent of the Legislature that every person within the age limitations  
17 prescribed by state statutes shall be provided an opportunity to receive the benefits of a free  
18 public education.” 20-A M.R.S. § 2(1).

19 6. The purpose of the Department of Education is to

20 **1. Supervise public education.** Supervise, guide and plan for a  
21 coordinated system of public education for all citizens of the State . . . ;

22 **2. Interrelation with other programs.** Interrelate public education with  
23 other social, economic, physical and governmental activities, programs and  
services; and

24 . . .

25 **4. Advancement of education.** Encourage and stimulate public interest  
26 in the advancement of education.

27 7. The Department of Education’s role includes approving, regulating, and  
28 overseeing public schools as well as certain private schools, developing state curriculum

1 standards, certifying educators, providing guidance and technical assistance to school  
2 administrative units, applying for and managing federal grants, overseeing the implementation of  
3 federal educational programs, collecting and analyzing data, administering student support  
4 programs, and distributing state education funding.

5 8. Despite the constitutional delegation of funding responsibility to the “several  
6 towns,” and separate from any federal funding, the State of Maine provides more than \$1.2 billion  
7 each year to its 265 school administrative units (including charter schools) (SAUs) and two state  
8 magnet schools. The 599 school buildings in these SAUs educate 175,621 students each year.

9 9. During the 2019-2020 school year, \$49,616,687 of Title I-A funds were allocated  
10 to 192 LEAs in Maine. There were 290 Title I schools.

11 10. During the 2019-2020 school year, 19 private schools within Title I-A LEAs were  
12 eligible for Title I-A equitable services in the amount of \$267,392.

13 **Effects of the COVID-19 Pandemic on Education in Maine**

14 11. The COVID-19 pandemic has drastically impacted K-12 education in Maine.

15 12. The Maine Department of Education immediately mobilized to provide technical  
16 assistance and professional development to educators across Maine to help support the shift to  
17 remote learning beginning the week of March 16, 2020 in all the content areas of Maine’s  
18 Learning Results as well as in trauma informed instruction. The Department deployed our School  
19 Safety Center to coordinate emergency supports.

20 13. Maine’s SAUs have been providing remote instruction since March. The Department  
21 has developed the Maine Schools Reintegration Framework to provide guidance as schools prepare  
22 for the 2020-2021 school year. This was a collaborative partnership with education leaders across the  
23 state, is a work in progress and will be refined as the group gains a sense of the data metrics that will  
24 need to be examined by school leaders in each of the regions of the state. The Department foresees  
25 SAUs using multiple methods of instruction in the fall, including in-person instruction and remote  
26 instruction. The ultimate decisions about what methods of instruction will be used will be made locally  
27 by each SAU.

1           14.     Maine SAUs continue to examine and explore innovative approaches to supporting  
2 students eligible to receive Title I-A interventions. Due to the rural nature of the State of Maine  
3 (more than 64% of Maine students live in rural areas), general best-practice strategies for small and  
4 individualized instruction may be limited due to connectivity, accessibility, and capacity of available  
5 staff. Due to concerns surrounding the safety of in-person instruction over the summer, traditional  
6 Title I-A summer programs have either transitioned to a remote model, or, as schools prepare for the  
7 fall, summer programs have not been implemented. This may further impact “summer slide” and a  
8 student’s academic performance. This will have a significant impact on instruction in the fall as  
9 educators navigate supporting students with increased learning loss as a result of the pandemic and  
10 loss of summer programming.

11           15.     Through stakeholder feedback the Department determined that lack of internet  
12 connectivity was the most significant barrier for students to access remote, online learning  
13 opportunities during the suspension of classroom-based instruction. With \$ 9.2 million in GEER  
14 funds, the Department has met the connectivity needs of 84 percent of public schools (23,805  
15 students). The Department’s intent is to address 100% of the needs in the state. SAUs are  
16 applying for ESSER funds at this time and are including supplies for increasing their capacity for  
17 distance learning and health and safety measures for in person instruction, not knowing what the  
18 school landscape may look like during the next school year.

19           16.     As the Department looks to the future we realize there are significant COVID-  
20 related expenses that will continue to occur: increased costs for child nutrition staff which are not  
21 fully offset by program revenue; unexpected and costly PPE and tools to ensure social  
22 distancing for students, staff, and visiting community members; increased costs for professional  
23 learning for teachers and supplies for staff members to adapt to new instructional modalities;  
24 addressing staffing shortages and the costs for substitutes and long-term substitutes; and  
25 additional support for before and aftercare.

26           17.     As the result of work done by Department staff as well as the Maine Center for  
27 Disease Control, and in order to address the many components of the CDC guidance, it is estimated  
28 that it will cost an additional \$327 million to reopen <sup>4</sup> Maine’s public schools.

1 **CARES Act Funds Received by Maine for K-12 Education**

2 A. Elementary and Secondary School Emergency Relief (ESSER) Funds

3 18. In order to receive the ESSER funds designated for Maine and as required by the  
4 Department, the Maine Department of Education executed a Certification and Agreement form  
5 and submitted it to the Department on April 24, 2020.<sup>1</sup> A true and correct copy of the  
6 Certification and Agreement completed by Maine Department of Education and submitted to the  
7 Department is attached hereto as Exhibit A.

8 19. Within this Certification and Agreement, the Maine Department of Education agreed  
9 to the following terms:

10 I acknowledge and agree that the failure to comply with all Assurances and  
11 Certifications in this Agreement, all relevant provisions and requirements of  
12 the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other  
13 applicable law or regulation may result in liability under the False Claims  
14 Act, 31 U.S.C. § 3729, et seq.; OMB Guidelines to Agencies on  
15 Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR  
16 part 180, as adopted and amended as regulations of the Department in 2 CFR  
17 part 3485; and 18 USC § 1001, as appropriate.

18 ...

19 4. LEAs receiving ESSER funds will provide equitable services to students  
20 and teachers in non-public schools as required under 18005 of Division B  
21 of the CARES Act.

22 ...

23 5. LEA receiving ESSER funds will provide equitable services to students  
24 and teachers in non-public schools located within the LEA in the same  
25 manner as provided under section 1117 of the ESEA, as determined  
26 through timely and meaningful consultation with representatives of non-  
27 public schools.

28 [Ex. A at pp. 1-2.]

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<sup>1</sup> U.S. Dep't of Educ., Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER Fund), CFDA Number 84.425D, April 24, 2020, *available at* <https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.



1           20.     At the time that the Maine Department of Education executed the Certification and  
2 Agreement form, the Department had not yet published its Guidance Document or the Rule.  
3 Accordingly, the Maine Department of Education was unaware that the Department would  
4 subsequently issue guidance or rules to change the required proportional share calculation for  
5 equitable services required under the CARES Act and the private school students eligible to receive  
6 equitable services under the CARES Act.

7           21.     The Department distributed 91% of the funds received, or \$43,793,319, from the  
8 ESSER Fund to the Maine Department of Education on April 29, 2020.

9           22.     Of the ESSER funds received by the Maine Department of Education, the Maine  
10 Department of Education intends to retain \$3,941,398 as permitted by the CARES Act to be utilized  
11 for administration and State Reserve to be used for the Maine Online Opportunities for Sustained  
12 Education (MOOSE).

13           23.     The Maine Department of Education developed an online electronic application  
14 for ESSER funds to be submitted on a rolling basis by the school administrative units. The  
15 Department approved the first applications and began distributing the money on June 4, 2020 and  
16 the Department's ESSER team is reviewing the applications on a daily basis and approving them  
17 as quickly as possible. Upon approval a GAN is sent to the SAU.

18           24.     To date, the Maine Department of Education has distributed \$11,560,354 to 51  
19 eligible LEAs within Maine which represents 29% of LEAs eligible to receive ESSER funds.

20           25.     Using the proportional share calculation set forth in Section 1117 of the  
21 Elementary and Secondary Education Act (ESEA), LEAs in Maine would reserve \$248,000 in  
22 ESSER funds to provide equitable services to private school students.

23           26.     However, using the proportional share calculation set forth in the Department's  
24 Guidance Document and in Option #2 in the Rule, LEAs in Maine would reserve \$ 2.1 million in  
25 ESSER funds to provide equitable services to private school students. Thus, under the  
26 Department's preferred proportional share calculation, private school students in Maine would  
27 have access to an additional \$1,852,000, and public schools would lose this same amount of  
28 funds.

1 **The Department's Rule Significantly Harms the Maine Department of Education**

2 27. For every dollar that is diverted from public schools as a result of the  
3 Department's Guidance Document and Rule, the Maine Department of Education will attempt to  
4 backfill these dollars in the SAUs budgets or, at a minimum, identify additional funds to assist all  
5 SAUs to ensure they have the appropriate resources in place to provide instruction in the fall.

6 28. Even if every LEA in Maine followed Option #1 (Title I-schools only Option) in  
7 proportioning the CARES Act funds for equitable services, the Maine Department of Education  
8 will attempt to identify and/or provide funding to the 223 non-Title I schools in Maine that were  
9 expecting to receive CARES Act funds. In addition, the Department will attempt to identify or  
10 provide funding to Title I schools that are not allowed to use the CARES Act funds to supplant  
11 their budgets, which have been slashed due to the pandemic.

12 29. This increase in funding for public schools will be required immediately. As  
13 Maine remains in the throes of the pandemic, public schools remain desperate for funding as they  
14 continue to transition to remote learning and prepare for the next school year. Policies and  
15 procedures must be developed for remote learning; teachers must be trained to use remote  
16 learning techniques; school buildings must be thoroughly sanitized; and additional staff will have  
17 to be hired due to limitations on class sizes and to cover for staff who are unable to return to in  
18 person instruction or who contract the disease. The costs of reacting to this pandemic are drastic  
19 for public schools and without the funds the CARES Act was intended to provide, the Maine  
20 Department of Education must immediately assist Maine's school administrative units to adjust to  
21 the new realities presented by the pandemic.

22 30. Beyond the additional funding that Maine will be required to expend in lieu of the  
23 designated CARES Act funds, the Department's Guidance Document and Rule have imposed  
24 significant administrative burdens on the Maine Department of Education.

25 31. The Department's ESSER team prepared the electronic application and worked with  
26 the software developer to put it online in less than a week. The team offered three full weeks of  
27 daily ESSER Office Hours to articulate the allowable use of these funds and to answer questions,  
28 which were then posted as FAQs on the Department's COVID web page. For the first four weeks

1 of this work the Department would estimate that at least four staff members each spent over 40  
2 hours per week on this work. Reviewing applications has taken at least four staff members 10-12  
3 hours each, each week.

4 32. As the Department staff endeavored to consider how to address the equitable  
5 services, multiple runs of the scenarios were undertaken by program and data staff, which took  
6 time away from other pandemic-related work.

7 33. The Maine Department of Education staff developed a detailed monitoring Master  
8 Protocol on the State and local levels, as well as refining the risk assessment protocols to  
9 determine the threshold for desk or onsite monitoring. All of these will need to be modified based  
10 on any impacts the Rule will have on these requirements.

11 34. If Maine's SAUs are forced to follow the Rule/Guidance, the Department's  
12 monitoring burden will increase. Both Option #1 and Option #2 will cause additional schools to  
13 be included in the monitoring process, and Option #1 will cause schools that have previously  
14 been receivers to be disqualified, requiring a heightened level of review to ensure that only  
15 eligible schools participate. The additional requirements of the Rule and the inclusion of private  
16 schools that are unfamiliar with the federal grant requirements will require a greater level of  
17 review of compliance documentation relating to reimbursement requests.

18 35. After the Department of Education provided guidance to the field that school  
19 administrative units should follow the language of the CARES Act, and not the Department's  
20 Guidance, Maine's Governor, the Commissioner, and the Department of Education all received  
21 complaints alleging that the Department and the school administrative units were not acting  
22 legally by not following the Guidance. The Commissioner, Department staff, and the  
23 ombudsman under ESSA have had to respond to these complaints. In addition, after the Rule was  
24 announced, a complainant filed a second complaint demanding that the Commissioner follow the  
25 Rule, even though the Rule specifically places the decision between Option #1 and Option #2 on  
26 the SAUs.

27 36. Finally, the Department's Guidance Document and Rule place the Maine Department  
28 of Education in legal jeopardy. The Maine Department of Education was required to certify in its

1 ESSER Fund application that the SEAs and the LEAs will comply with the equitable service  
2 provision of the CARES Act (§ 18005) and “any other applicable law or regulation.” (Ex. A at p. 1.)  
3 Because the Guidance Document and the Rule require LEAs to calculate the proportional share for  
4 equitable services and determine eligibility of private school students for equitable services contrary  
5 to the proportional share calculation and eligibility requirements in the CARES Act, the Maine  
6 Department of Education (and its LEAs) cannot satisfy both the Rule and the CARES Act.  
7 Accordingly, the Department’s Rule forces the Maine Department of Education to violate Section  
8 18005 of the CARES Act, placing the Maine Department of Education in breach of the certification  
9 in the Certification and Agreement and subjecting the Maine Department of Education “liability  
10 under the False Claims Act, . . . [and the] OMB Guidelines to agencies on Governmentwide  
11 Debarment and Suspension (Nonprocurement).” (Ex. A at p. 1.)

12 37. As the LEAs in Maine need to use the ESSER funds as soon as possible to assist  
13 with the numerous pandemic-related challenges, this legal jeopardy will impact the Maine  
14 Department of Education immediately.

15 **The Department’s Rule Significantly Harms the Maine’s K-12 Students**

16 38. The Guidance delayed the roll out of the online electronic application for ESSER  
17 funds by over two weeks while the ESSER Team conferred with legal counsel and the  
18 Commissioner as to the position that the Maine Department of Education would take. This  
19 delayed the ability of the school administrative units to be approved for expenditures already  
20 incurred as of March 13, 2020. The Rule complicates the application process currently underway  
21 and the Department’s ability to advise the school administrative units going forward.

22 39. The Department’s Guidance Document and Rule will result in less funding being  
23 distributed to public K-12 schools in Maine.

24 40. If Maine’s SAUs calculate the proportional share of CARES Act funds for private  
25 school students under Option #1 in the Rule, non-Title I schools in LEAs receiving CARES Act  
26 funds will receive no funds. In Maine, there are approximately 223 non-Title I schools in LEAs  
27 that are eligible to receive CARES Act funds that would not receive any funding. Like all  
28 schools in Maine, these schools are equally impacted by the COVID-19 pandemic and would

1 greatly benefit from the influx of CARES Act funds to assist them through the pandemic. In  
2 addition, there are approximately 290 Title I schools in Maine that would be prohibited from  
3 using CARES Act funds to respond to and prepare for the pandemic as the schools cannot  
4 supplant State and local funding sources under the Rule. This would significantly impact the  
5 Title I schools as many are in desperate need of additional funding to cope with the pandemic,  
6 and to assist students with online, remote learning tools that students often cannot afford within  
7 these Title I schools.

8 41. If LEAs in Maine calculate the proportional share of CARES Act funds for private  
9 school students under Option #2 in the Rule, approximately \$1,852,000 will be diverted from public  
10 schools to private school students, which represents 4.7 % of Maine's total CARES Act funding for  
11 education.

- 12 a. In Portland, Maine's largest city, following the Rule/Guidance would cause 18%  
13 of Portland's ESSER money to flow to private school students (\$346,373 of  
14 \$1,924,299).
- 15 b. In tiny, rural East Machias, following the Rule/Guidance would divert 70% of  
16 East Machias' ESSER money to students at a large private secondary school  
17 (\$38,828 of \$51,110).

18 42. Regardless of how SAUs proportion the CARES Act funds in Maine, the Rule  
19 requires that all private school students receive equitable services. In Maine, during the 2019-2020  
20 school year, approximately 250 private school students in 19 private schools were eligible to  
21 receive equitable services under Title I-A as they were at-risk students within a LEA receiving Title  
22 I-A funds. As the Rule requires all private school students receiving equitable services, the  
23 approximately 250 private school students received equitable services under Title I-A last year will  
24 receive decreased funding and services as the CARES Act funds proportioned for equitable services  
25 will be spread amongst all private school students.

26 43. The Rule will place additional administrative burdens on Maine's SAUs. They will  
27 need to consult with additional private schools in their geographic area. They will have to provide  
28 technical assistance and administer the provision of services for private schools that may not have

1 ever received services under ESEA or IDEA. They will have to track and monitor the distribution  
2 of funds and services across additional private schools. Finally, if they choose Option #1, they will  
3 need to carefully document how the funding is distributed in Title I schools only and not used to  
4 supplant, rather than supplement.

5

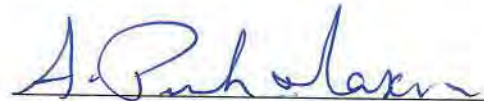
6 I declare under penalty of perjury under the laws of the United States and the State of California  
7 that the foregoing is true and correct and of my own personal knowledge.

8

9 Executed on this 13<sup>th</sup> day of July, 2020 at 6:18 pm Augusta, Maine

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A. Pender Makin  
Commissioner of Education  
Maine Department of Education

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# EXHIBIT A

# 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)

CFDA Number: 84.425D



OMB Number: 1810-0743  
Expiration Date: 10/31/2020

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The OMB control number for this information collection is 1810-0743. The time required to complete this information collection is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain benefit under the Coronavirus Aid, Relief, and Economic Security Act. If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Christopher Tate, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Room 3E229, Washington, D.C. 20202 directly.



## **PROGRAM BACKGROUND INFORMATION**

### **Purpose**

Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Department awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the nation. LEAs must provide equitable services to students and teachers in non-public schools as required under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

### **Eligibility**

SEAs in any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

### **Timeline**

The SEA will have one year, from the date of its ESSER award, to award funds. Any funds not awarded by the SEA within one year of receiving its award will be returned to the Department to be reallocated to other States consistent with the CARES Act.

### **Uses of Funds**

#### **SEAs:**

The SEA must use no less than 90 percent of its allocation to make subgrants to LEAs, including charter schools that are LEAs, based on each LEA's share of funds received under part A of title I of the ESEA in fiscal year 2019. With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to  $\frac{1}{2}$  of 1 percent of the total allocation for administrative costs, and the remaining funds may be used for emergency needs as determined by the SEA to address issues responding to COVID-19. These emergency needs may be addressed through the use of grants or contracts.

#### **LEAs:**

LEAs may use funds for any purposes listed in section 18003(d) of the CARES Act. (See Appendix A.)

### **Program Contact**

For additional information, please contact Christopher Tate by telephone at (202) 453-6047 or by email at [ESSERF@ed.gov](mailto:ESSERF@ed.gov).

## **CERTIFICATION AND AGREEMENT INSTRUCTIONS**

To receive an ESSER Fund allocation, SEAs must submit to the Department the following information:

- A completed cover sheet that includes the signature of the Chief State School Officer or authorized representative. *(Part A of the Certification and Agreement)*
- Programmatic, fiscal, and reporting assurances. *(Part B of the Certification and Agreement)*
- Information on the uses of ESSER funds. *(Part C of the Certification and Agreement)*
- Other assurances and certifications. *(Part D of the Certification and Agreement)*

For purposes of this document, the term “Certification and Agreement” is the application that an SEA is required to file under section 18003(a) of Division B of the CARES Act.

### **Certification and Agreement Submission Information**

An SEA must submit a Certification and Agreement to the Department no later than July 1, 2020.

Please submit your Certification and Agreement to the Department as follows:

Email an electronic version of the ESSER Fund Certification and Agreement in .PDF (Portable Document Format) to [ESSERF@ed.gov](mailto:ESSERF@ed.gov).

### **APPENDICES**

- Appendix A – Authorizing Statute
- Appendix B – State Allocation Table

# ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND (ESSER FUND)

## STATE EDUCATIONAL AGENCY

### PART A: CERTIFICATION AND AGREEMENT COVER SHEET

State: Maine	CFDA Number: 84.425D
Legal Name: Maine Department of Education	DUNS Number: 809045545
Chief State School Officer:	Mailing Address:
Pender Makin, Commissioner	Me. Dept. of Education, 23 SHS, Augusta, ME 04333

State Contact for Elementary and Secondary School Emergency Relief Fund: Chelsey Fortin	
Position and Office:	Director of Policy & Government Affairs
Mailing Address:	Maine Department of Education 23 State House Station Augusta ME 04333-0023
Telephone:	(207) 446-2503
Email address:	chesley.a.fortin@maine.gov

To the best of my knowledge and belief, all the information and data in this agreement are true and correct. I acknowledge and agree that the failure to comply with all Assurances and Certifications in this Agreement, all relevant provisions and requirements of the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate.

Chief State School Officer or Authorized Representative (Typed Name):	Telephone:
Pender Makin	(207) 446-6847

Signature of Chief State School Officer or Authorized Representative:	Date:
<b>Pender Makin</b>	04/24/2020

Digitally signed by Pender Makin  
DN: cn=Pender Makin, o=Maine Department of Education,  
ou=Commissioner, email=pender.makin@maine.gov, c=US  
Date: 2020.04.24 18:48:05 -04'00'

## **PART B: PROGRAMMATIC, FISCAL, AND REPORTING ASSURANCES**

The [Chief State School Officer or his/her authorized representative] assures the following:

1. The SEA will allocate no less than 90 percent of the grant funds under this program to local educational agencies (LEAs) (including charter schools that are LEAs) in the State. Under the ESSER Fund, the SEA will award grants by formula to State educational agencies (SEAs) for the purpose of providing LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that the Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the Nation. This includes both continuing to provide educational services, such as remote learning, while schools and campuses are closed, and developing and implementing plans for the return to normal operations. The SEA will allocate these funds to LEAs on the basis of their respective shares of funds received under title I, part A of the Elementary and Secondary Education Act of 1965 in fiscal year 2019.
2. The SEA will use the remaining funds (hereafter SEA reserve) for emergency needs as determined by the SEA to address issues related to COVID-19, which may be addressed through the use of grants or contracts. From an SEA's reserve, the SEA may use not more than 1/2 of 1 percent of the SEA's total grant for administrative costs.
3. The SEA will ensure that LEAs use ESSER funds for activities allowable under section 18003(d) of Division B of the CARES Act. (See Appendix A.)  
The Department generally does not consider the following to be an allowable use of ESSER funds, under any part of 18003: 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the SEA or LEAs or 2) expenditures related to state or local teacher or faculty unions or associations.
4. The SEA will ensure that LEAs receiving ESSER funds will provide equitable services to students and teachers in non-public schools as required under 18005 of Division B of the CARES Act.
5. The SEA will ensure that an LEA receiving ESSER funds will provide equitable services to students and teachers in non-public schools located within the LEA in the same manner as provided under section 1117 of the ESEA, as determined through timely and meaningful consultation with representatives of non-public schools.
  - The SEA will ensure that a public agency will maintain control of funds for the services and assistance provided to a non-public school under the ESSER Fund.
  - The SEA will ensure that a public agency will have title to materials, equipment, and property purchased with ESSER funds.
  - The SEA will ensure that services to a non-public school with ESSER funds will be provided by a public agency directly, or through contract with, another public or private entity.
6. The SEA will comply with the maintenance of effort provision in Section 18008(a) of Division B of the CARES Act absent waiver by the Secretary pursuant to Section 18008(b) thereof.
7. The SEA and each LEA and any other entity that receives ESSER funds will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of

any disruptions or closures related to COVID-19 in compliance with Section 18006 of Division B of the CARES Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity. CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.

8. The SEA must assure that, when applicable, it will provide technical assistance to LEAs on the use of ESSER funds for remote learning, which includes both distance education as defined in section 103(7) of the HEA and distance learning as defined in ESEA section 8101(14), so that students can continue learning during school closures.
9. The SEA will comply with all reporting requirements, including those in Section 15011(b)(2) of Division B of the CARES Act, and submit required quarterly reports to the Secretary at such time and in such manner and containing such information as the Secretary may subsequently require. (See also 2 CFR 200.327-200.329). The Secretary may require additional reporting in the future, which may include: the methodology LEAs will use to provide services or assistance to students and staff in both public and non-public schools, the uses of funds by the LEAs or other entities and demonstration of their compliance with Section 18003(d), such as any use of funds addressing the digital divide, including securing access to home-based connectivity and remote-use devices, related issues in supporting remote learning for all students, including disadvantaged populations.
10. The SEA will submit to the Department, within 60 days of receiving ESSER funds, a report that will include:
  - A budget for the SEA’s reserve that includes information about the up to 1/2 of 1 percent of the SEA’s total grant for administrative costs and the uses of funds for emergency needs to address issues related to COVID-19; and
  - An Internal Control and Subrecipient Monitoring Plan to ensure that funds are used for allowable purposes in accordance with cash management principles.
11. The SEA will ensure that every recipient and subrecipient of ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
12. The SEA will return to the Secretary any funds received under the ESSER Fund that the SEA does not award within 1 year of receiving such funds.

Chief State School Officer or Authorized Representative (Printed Name):

Signature: Pender Makin	Date: 4/24/2020
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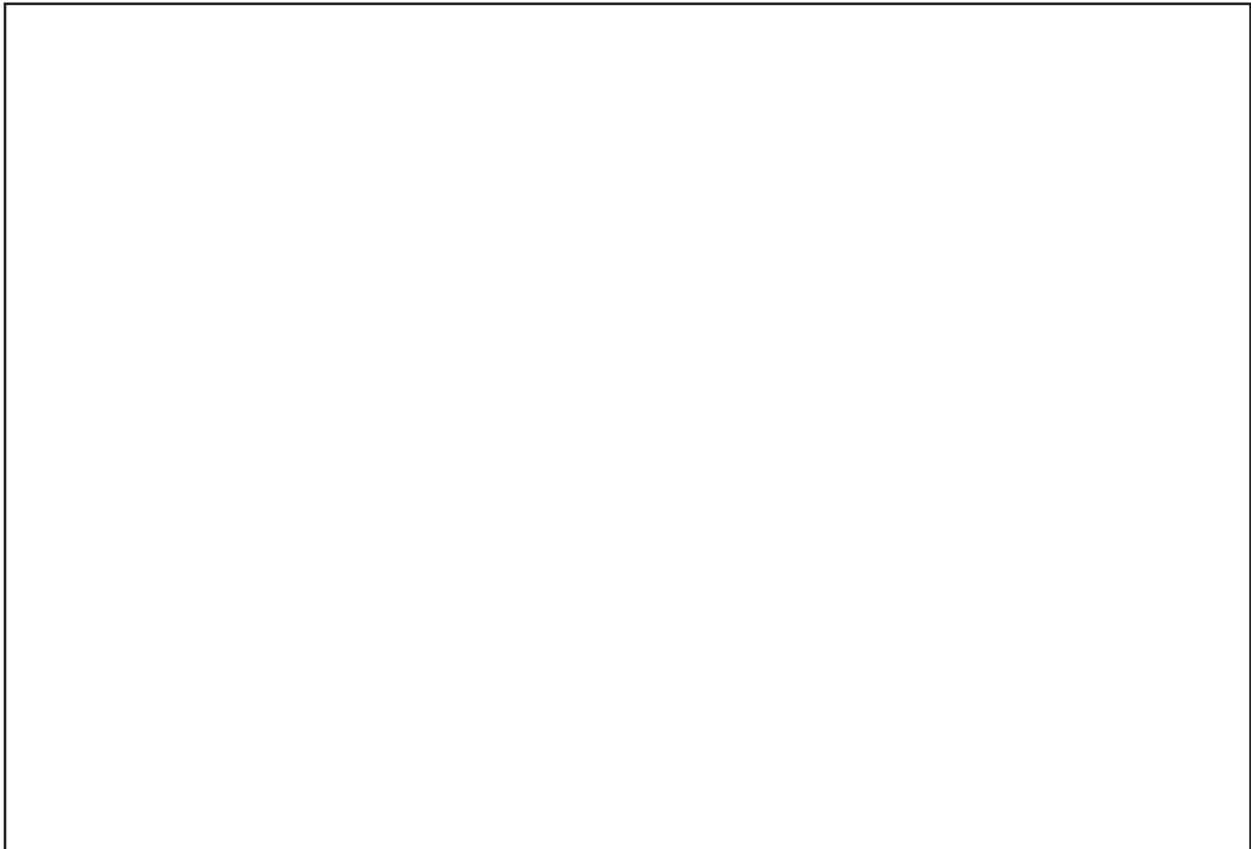
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 DN: cn=Pender Makin, o=Maine Department of Education, ou=Commissioner, email=pender.makin@maine.gov, c=US  
 Date: 2020.04.24 18:48:54 -0400

## **PART C: USES OF ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUNDS**

Section 18003 of Division B of the CARES Act provides in relevant part that grants awarded under the Elementary and Secondary School Emergency Relief Fund be used to support the ability of local educational agencies (LEAs) to continue to provide educational services to their students. The Department requests the following:

1. Information that the SEA may request LEAs to include in their subgrant applications to the SEA. For example, an SEA might propose to include the following in developing its subgrant application:
  - How the LEA will determine its most important educational needs as a result of COVID-19.
  - The LEA's proposed timeline for providing services and assistance to students and staff in both public and non-public schools.
  - The extent to which the LEA intends to use ESSER funds to promote remote learning.
  - How the LEA intends to assess and address student learning gaps resulting from the disruption in educational services.

The above considerations are in addition to the application information requirements from sections 442 and 427 of the General Education Provisions Act (GEPA) (20 U.S.C. § 1232e and § 1228a).



2. The extent to which the SEA intends to use any portion of its SEA reserve (up to 10 percent of its ESSER Fund award) to support:
- technological capacity and access – including hardware and software, connectivity, and instructional expertise – to support remote learning. If so, please describe the strategies the SEA intends to use to serve disadvantaged populations listed in Sec. 18003(d)(4) of the CARES Act; and
  - 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.



**PART D: OTHER ASSURANCES AND CERTIFICATIONS**

The [Chief State School Officer or his/her authorized representative] assures or certifies the following:

1. The SEA will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
2. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the SEAE will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” when required (34 C.F.R. Part 82, Appendix B); and the SEA will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
3. Any LEA receiving funding under this program will have on file with the SEA a set of assurances that meets the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
4. To the extent applicable, an LEA will include in its local application a description of how the LEA will comply with the requirements of section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.
5. The SEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR §§200.400-475) to ensure that LEAs, including charter schools that are LEAs, are using ESSER funds for purposes that are reasonable, necessary, and allocable under the CARES Act.
6. The SEA and other entities will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Chief State School Officer or Authorized Representative (Printed Name):

Signature: Pender Makin <div style="font-size: 8px; margin-top: 5px;">                     Digitally signed by Pender Makin                      DN: cn=Pender Makin, o=Maine Department of Education, ou=Commissioner, email=pender.makin@maine.gov, c=US                      Date: 2020.04.24 18:49:54 -0400                 </div>	Date: 04/24/2020
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## **Appendix A: Relevant Excerpts from Title VIII of Division B of the CARES Act, the Emergency Appropriations for Coronavirus Health Response and Agency Operations**

### DEPARTMENT OF EDUCATION EDUCATION STABILIZATION FUND

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

### GENERAL PROVISIONS EDUCATION STABILIZATION FUND

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

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

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

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

### ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

SEC. 18003. (a) GRANTS.—From funds reserved under section 18001(b)(2) of this title, the Secretary shall make elementary and secondary school emergency relief grants to each State educational agency with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) ALLOCATIONS TO STATES.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

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

(1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (“IDEA”), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (“the Perkins Act”), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).

(2) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

(3) Providing principals and other school leaders with the resources necessary to address the needs of their individual schools.

(4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

(5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

(6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

(7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.

(8) Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.

(9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

(10) Providing mental health services and supports.

(11) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

(e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than 1/2 of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.

(f) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

#### ASSISTANCE TO NON-PUBLIC SCHOOLS

SEC. 18005. (a) IN GENERAL.—A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.

(b) PUBLIC CONTROL OF FUNDS.—The control of funds for the services and assistance provided to a non-public school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

#### CONTINUED PAYMENT TO EMPLOYEES

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

#### DEFINITIONS

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

- (1) the terms “elementary education” and “secondary education” have the meaning given such terms under State law;
- (2) the term “institution of higher education” has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);
- (3) the term “Secretary” means the Secretary of Education;
- (4) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (5) the term “cost of attendance” has the meaning given such term in section 472 of the Higher Education Act of 1965.
- (6) the term “Non-public school” means a non-public elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;
- (7) the term “public school” means a public elementary or secondary school; and
- (8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

#### MAINTENANCE OF EFFORT

SEC. 18008. (a) A State’s application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State’s support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act.

(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.

REPORTING ON USE OF FUNDS SEC. 15011.

(a) In this section—

- (1) the terms “agency”, “appropriate congressional committees”, “Committee”, “covered funds”, and “Coronavirus response” have the meanings given those terms in section 15010;
- (2) the term “covered recipient” (A) means any entity that receives large covered funds; and (B) includes any State, the District of Columbia, and any territory or possession of the United States; and
- (3) the term “large covered funds” means covered funds that amount to more than \$150,000.

...

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

- (A) the total amount of large covered funds received from the agency;
- (B) the amount of large covered funds received that were expended or obligated for each project or activity;
- (C) a detailed list of all projects or activities for which large covered funds were expended or obligated, including—
  - (i) the name of the project or activity;
  - (ii) a description of the project or activity; and
  - (iii) the estimated number of jobs created or retained by the project or activity, where applicable;and
- (D) detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

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

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

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

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

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

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

**APPENDIX B: STATE ALLOCATION TABLE****Elementary and Secondary School Emergency Relief Fund**

STATE	STATE TOTAL	Minimum LEA Distribution <sup>1</sup>	Maximum SEA Reservation	Maximum for SEA Administration <sup>2</sup>
<b>TOTAL</b>	<b>13,229,265,000</b>	<b>11,906,338,500</b>	<b>1,322,926,500</b>	<b>66,146,325</b>
ALABAMA	216,947,540	195,252,786	21,694,754	1,084,738
ALASKA	38,407,914	34,567,123	3,840,791	192,040
ARIZONA	277,422,944	249,680,650	27,742,294	1,387,115
ARKANSAS	128,758,638	115,882,774	12,875,864	643,793
CALIFORNIA	1,647,306,127	1,482,575,514	164,730,613	8,236,531
COLORADO	120,993,782	108,894,404	12,099,378	604,969
CONNECTICUT	111,068,059	99,961,253	11,106,806	555,340
DELAWARE	43,492,753	39,143,478	4,349,275	217,464
DISTRICT OF COLUMBIA	42,006,354	37,805,719	4,200,635	210,032
FLORIDA	770,247,851	693,223,066	77,024,785	3,851,239
GEORGIA	457,169,852	411,452,867	45,716,985	2,285,849
HAWAII	43,385,229	39,046,706	4,338,523	216,926
IDAHO	47,854,695	43,069,226	4,785,470	239,273
ILLINOIS	569,467,218	512,520,496	56,946,722	2,847,336
INDIANA	214,472,770	193,025,493	21,447,277	1,072,364
IOWA	71,625,561	64,463,005	7,162,556	358,128
KANSAS	84,529,061	76,076,155	8,452,906	422,645
KENTUCKY	193,186,874	173,868,187	19,318,687	965,934
LOUISIANA	286,980,175	258,282,158	28,698,018	1,434,901
MAINE	43,793,319	39,413,987	4,379,332	218,967
MARYLAND	207,834,058	187,050,652	20,783,406	1,039,170
MASSACHUSETTS	214,894,317	193,404,885	21,489,432	1,074,472
MICHIGAN	389,796,984	350,817,286	38,979,698	1,948,985
MINNESOTA	140,137,253	126,123,528	14,013,725	700,686
MISSISSIPPI	169,883,002	152,894,702	16,988,300	849,415
MISSOURI	208,443,300	187,598,970	20,844,330	1,042,217
MONTANA	41,295,230	37,165,707	4,129,523	206,476
NEBRASKA	65,085,085	58,576,577	6,508,509	325,425
NEVADA	117,185,045	105,466,541	11,718,505	585,925
NEW HAMPSHIRE	37,641,372	33,877,235	3,764,137	188,207
NEW JERSEY	310,371,213	279,334,092	31,037,121	1,551,856
NEW MEXICO	108,574,786	97,717,307	10,857,479	542,874
NEW YORK	1,037,045,603	933,341,043	103,704,560	5,185,228
NORTH CAROLINA	396,311,607	356,680,446	39,631,161	1,981,558
NORTH DAKOTA	33,297,699	29,967,929	3,329,770	166,489
OHIO	489,205,200	440,284,680	48,920,520	2,446,026
OKLAHOMA	160,950,476	144,855,428	16,095,048	804,752

<sup>1</sup> The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

<sup>2</sup> With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

STATE	STATE TOTAL	Minimum LEA Distribution <sup>3</sup>	Maximum SEA Reservation	Maximum for SEA Administration <sup>4</sup>
OREGON	121,099,019	108,989,117	12,109,902	605,495
PENNSYLVANIA	523,807,198	471,426,478	52,380,720	2,619,036
RHODE ISLAND	46,350,444	41,715,400	4,635,044	231,752
SOUTH CAROLINA	216,311,158	194,680,042	21,631,116	1,081,556
SOUTH DAKOTA	41,295,230	37,165,707	4,129,523	206,476
TENNESSEE	259,891,154	233,902,039	25,989,115	1,299,456
TEXAS	1,285,886,064	1,157,297,458	128,588,606	6,429,430
UTAH	67,821,787	61,039,608	6,782,179	339,109
VERMONT	31,148,360	28,033,524	3,114,836	155,742
VIRGINIA	238,599,192	214,739,273	23,859,919	1,192,996
WASHINGTON	216,892,447	195,203,202	21,689,245	1,084,462
WEST VIRGINIA	86,640,471	77,976,424	8,664,047	433,202
WISCONSIN	174,777,774	157,299,997	17,477,777	873,889
WYOMING	32,562,651	29,306,386	3,256,265	162,813
PUERTO RICO	349,113,105	314,201,795	34,911,311	1,745,566

<sup>3</sup> The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

<sup>4</sup> With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

# EXHIBIT 7

1 XAVIER BECERRA  
 Attorney General of California  
 2 MICHAEL NEWMAN  
 Senior Assistant Attorney General  
 3 SARAH E. BELTON  
 Supervising Deputy Attorney General  
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 JAMES F. ZAHRADKA II  
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 7 Telephone: (213) 269-6402  
 E-mail: Garrett.Lindsey@doj.ca.gov  
 8 *Attorneys for Plaintiff State of California*

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12

13  
 14 **STATE OF MICHIGAN, STATE OF  
 CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

17  
 18 **ELISABETH D. DEVOS, in her official  
 capacity as the United States Secretary of  
 19 Education, and UNITED STATES  
 DEPARTMENT OF EDUCATION,**

20 Defendants.  
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 22  
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 26  
 27  
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Civil Case No. 3:20-cv-04478-SK

**DECLARATION OF KAREN B.  
 SALMON, PH.D.**



**DECLARATION OF KAREN B. SALMON, PH.D.**

I, Karen B. Salmon, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the State Superintendent of Schools at the Maryland State Department of Education (“MSDE”) located in Maryland. I have been employed as State Superintendent of Schools since July 1, 2016.

2. I am responsible for the administration of the MSDE and have general supervision of all professional and clerical assistants of the MSDE. I carry out the educational policies of the State Board of Education, call and conduct conferences of county boards of education and professional personnel on the condition, needs, and improvement of the schools; and prepare and publish pamphlets to stimulate public interest in education, promote the work of education and foster professional insight and efficiency in teachers. I approve contracts for local school systems to purchase school sites, buildings, remodeling costs, and plans for construction of new school buildings. My responsibilities include certificating professional personnel in each public school, and I approve instructional programs in State institutions. I established an Early Childhood Division within MSDE. I am a member of the Governor’s Executive Council.

3. I submit this Declaration in support of the State of Maryland’s litigation regarding the recently issued U.S. Department of Education (“Department”) Rule entitled *Providing Equitable Services to Students and Teachers in Non-public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (the “Equitable Services Rule” or the “Rule”). I have compiled the information in the statements set forth below through MSDE personnel who have assisted me in gathering this information on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Rule in order to understand its immediate impact on the MSDE and public schools in Maryland.

4. The Maryland Constitution requires the Maryland Legislature to “establish throughout the State a thorough and efficient System of Free Public Schools” and “provide by taxation, or otherwise, for their maintenance.” Md. Const. art. VIII, § 1. By statute, the State Board of Education is vested with the general care and supervision of public education. Md.

1 Code Ann., Education §§ 2-201 and 2-205. The State Board determines the educational policies  
2 of the State and enacts regulations for the administration of the public school system. The totality  
3 of statutory provisions gives the State Board the last word on any matter concerning educational  
4 policy or the administration of the system of public education.

5 5. Separate from any federal funding, the Maryland General Assembly provided its  
6 24 LEAs with more than \$7 billion in operating and capital funds for fiscal year 2020-21. The  
7 1,428 school buildings in these districts educate 909,414 students. While the school districts  
8 exercise primary responsibility over budgetary and other decisions within their respective  
9 districts, the MSDE implements federal and State legislative mandates in education and carries  
10 out the policies of the State Board of Education. *See* Md. Code Ann., Education, Title 2.

11 6. MSDE distributed \$219,807,962 of Title I-A funds received for 2019-20 school year  
12 to its LEAs. In Maryland's 24 LEAs 414 schools, educating 201,777 students are identified as Title  
13 I schools and receive Title I-A funds.

14 7. Maryland has 236 private schools, serving 62,204 students, that participate in  
15 Maryland's nonpublic textbook and technology program and are eligible to participate in Title I-  
16 A equitable services. Maryland has a total of 855 pre-K-12 private and church exempt schools  
17 serving 108,313 students. Under Option #2 of the Department's rule, Maryland LEAs must  
18 provide equitable services to all 855 private schools and not just for the 236 schools eligible to  
19 participate in Title I-A equitable services.

20 8. The COVID-19 pandemic has drastically impacted public education in Maryland.  
21 The closure of schools, starting on March 16, 2020, to slow the spread of the Novel Coronavirus  
22 (COVID-19) in school communities around the State, created challenges for local school systems.  
23 Initially, all schools were closed from Monday, March 16 through Friday, March 27, 2020.  
24 Beginning Monday, March 30, school systems began to implement their continuity of learning  
25 plans. The State Board of Education waived regulations regarding graduation, assessments,  
26 service learning, number of school days, and athletics to allow LEAs flexibility to transition to  
27 continuity of learning environments.  
28

1           9. Families and students throughout the State, and particularly in low income areas,  
2 lacked home computers and devices to access on-line learning. Internet connectivity in poor  
3 urban and rural areas was lacking. Schools needed to purchase devices and access to internet  
4 services. Schools worked around the clock to ensure continuity of learning continued. To meet  
5 student nutrition needs, schools served millions of meals.

6           10. MSDE provided LEAs technical assistance and guidance for developing continuity  
7 of learning plans. I met with each of the LEA superintendents regularly to ensure the transition to  
8 on-line and virtual instruction. MSDE personnel worked tirelessly to ensure the 24 LEAs had  
9 timely and accurate guidance to implement continuity of learning. I am part of the Maryland  
10 Governor's team to ensure a unified response and strategy to addresses the pandemic.

11           11. The economic crisis resulting from the pandemic cannot be overstated. MSDE is  
12 expecting the Maryland Department of Budget and Management to propose a \$200,000,000  
13 reduction in education funding for fiscal year 2021.

14                           **CARES Act Funds Received by Maryland For K-12 Education**

15           A. Elementary and Secondary School Emergency Relief (ESSER) Funds

16           12. In order to receive the ESSER funds designated for Maryland and as required by  
17 the Department, the MSDE executed a Certification and Agreement form and submitted it to the  
18 Department on April 24, 2020. A true and correct copy of the Certification and Agreement  
19 completed by the MSDE and submitted to the Department is attached hereto as Exhibit A.

20           13. Within this Certification and Agreement, the MSDE agreed to the following terms:

21                           I acknowledge and agree that the failure to comply with all Assurances and  
22                           Certifications in this Agreement, all relevant provisions and requirements of  
23                           the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other  
24                           applicable law or regulation may result in liability under the False Claims Act,  
25                           31 U.S.C. § 3729, et seq.; OMB Guidelines to Agencies on Government wide  
26                           Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted  
27                           and amended as regulations of the Department in 2 CFR part 3485; and 18  
28                           USC § 1001, as appropriate.

26                           ...

27                           4. LEAs receiving ESSER funds will provide equitable services to students  
28                           and teachers in non-public schools as required under 18005 of Division B  
                              of the CARES Act.

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...

5. LEA receiving ESSER funds will provide equitable services to students and teachers in non-public schools located within the LEA in the same manner as provided under section 1117 of the ESEA, as determined through timely and meaningful consultation with representatives of non-public schools.

[Ex. A at pp. 1-2.].

14. At the time that the MSDE executed the Certification and Agreement form, the Department had not yet published its Guidance Document or the Rule. Accordingly, the MSDE was unaware that the Department would subsequently issue rules to change the required proportional share calculation for equitable services required under the CARES Act and the private school students eligible to receive equitable services under the CARES Act.

15. The Department approved MSDE’s application and distributed \$207,834,058 from the ESSER Fund to the MSDE on April 29, 2020. MSDE intends to retain \$20,783,406 as permitted by the CARES Act to improve the virtual learning opportunities in Maryland. To accomplish this, Maryland will develop on-line courses for students, on-line professional development for teachers, collaborate with regional stakeholder in developing virtual schools.

16. To obtain ESSR funds, LEAs were required to submit an application to MSDE for review and approval before receipt of Notice of Grant Award. To date, the MSDE has distributed \$185,043,226 to 23 eligible LEAs within Maryland, which represents 99% of the funds to the LEAs eligible to receive ESSER Funds. Corrections to the remaining school system’s application is expected shortly, and the funds will be released pending the corrections.

17. Using the proportional share calculation set forth in Section 1117 of the Elementary and Secondary Education Act (ESEA), LEAs in Maryland would reserve an estimated \$2,508,760 in ESSER funds to provide equitable services to private school students in the 236 private schools eligible to participate.

18. However, using the proportional share calculation set forth in the Department’s Guidance Document and in Option #2 in the Rule, LEAs in Maryland would reserve approximately \$18,143,913 in ESSER funds to provide equitable services to private school

1 students in the 855 private schools in the State. Thus, under the Department’s preferred  
2 proportional share calculation, private school students in Maryland would have access to an  
3 additional approximately \$15,000,000 of ESSER funds, and public schools would lose this same  
4 amount of funds. These amounts could change based on the actual number of participating  
5 private schools.

6 B. Governor’s Emergency Education Relief (GEER) Funds

7 19. Maryland received \$45,700,000 from the GEER Fund on April 22, 2020. MSDE  
8 received \$10,000,000 to be distributed to LEAs for technology projects. Other funds are expected  
9 to be distributed for additional technology projects. Those funds have not yet been distributed to  
10 the LEAs in Maryland.

11 20. If LEAs in Maryland calculate the proportional share of CARES Act funds for  
12 private school students under Option #1 in the Rule, non-Title I schools in LEAs receiving  
13 CARES Act funds will receive no funds. In Maryland, within LEAs that are eligible to receive  
14 CARES Act funds, there are approximately 1,014 non-Title I schools that would not receive any  
15 funding under Option #1. Like all schools in Maryland, these schools are equally impacted by the  
16 COVID-19 pandemic and would greatly benefit from the influx of CARES Act funds to assist  
17 them through the pandemic.

18 21. Even if every LEA in Maryland followed Option #1 (Title I-schools only Option)  
19 in proportioning the CARES Act funds for equitable services, the non-Title I schools are not  
20 allowed to use other State or local funds to supplant or supplement their budgets. Non-Title I  
21 schools will suffer increased harms because they cannot add any additional funding to help them  
22 deal with the expenses resulting from the pandemic.

23 22. In the face of expected \$200,000,000 finding cuts from the State and anticipated  
24 cuts by local governments, Maryland’s public schools remain desperate for funding as they  
25 continue to prepare for next school year. The costs of reacting to this pandemic are drastic for  
26 public schools and without the funds the CARES Act was intended to provide, essential funding  
27 may not be available for all of the additional equipment, training, and staff needed to reopen  
28 schools in the midst of the pandemic.

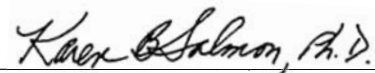
1           23.     Beyond the additional funding that Maryland will be required to expend in lieu of  
2 the designated CARES Act funds, the Department's Guidance Document and Rule have imposed  
3 significant administrative burdens on the MSDE directly. MSDE fiscal policy personnel spent a  
4 minimum of 100 hours of time developing technical assistance guidance, providing LEAs data,  
5 training materials, memoranda, letters, webinars, and sample documents regarding proportioning  
6 the CARES Act funds. MSDE personnel gave technical assistance to LEAs through webinars,  
7 guidance documents, sample documents, and individual assistance through email and telephone  
8 calls.

9           24.     MSDE fiscal policy personnel worked over and above the responsibilities in their  
10 normal job descriptions to ensure LEAs were given timely and accurate information in an ever  
11 changing and complex environment. They completed this work in addition to other priorities  
12 necessitated by the pandemic and normal business operations.

13           25.     MSDE delayed for a month distributing funding due to confusion created by the  
14 Department's interpretation of the equitable service requirements. Now that the ESSR funds have  
15 been distributed, MSDE personnel will coordinate monitoring and oversight of the CARES funds.  
16 MSDE will have to collect and maintain the documents submitted by the LEAs.

17  
18 I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and  
19 correct.

20  
21 Executed on this 17 day of July, 2020

22  
23 

24 \_\_\_\_\_  
25 Karen B. Salmon  
26 State Superintendent of Schools  
27  
28

# EXHIBIT A

# 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)

CFDA Number: 84.425D



OMB Number: 1810-0743  
Expiration Date: 10/31/2020

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The OMB control number for this information collection is 1810-0743. The time required to complete this information collection is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain benefit under the Coronavirus Aid, Relief, and Economic Security Act. If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Christopher Tate, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Room 3E229, Washington, D.C. 20202 directly.

Exhibit A



## **PROGRAM BACKGROUND INFORMATION**

### **Purpose**

Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Department awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the nation. LEAs must provide equitable services to students and teachers in non-public schools as required under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

### **Eligibility**

SEAs in any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

### **Timeline**

The SEA will have one year, from the date of its ESSER award, to award funds. Any funds not awarded by the SEA within one year of receiving its award will be returned to the Department to be reallocated to other States consistent with the CARES Act.

### **Uses of Funds**

#### **SEAs:**

The SEA must use no less than 90 percent of its allocation to make subgrants to LEAs, including charter schools that are LEAs, based on each LEA's share of funds received under part A of title I of the ESEA in fiscal year 2019. With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to  $\frac{1}{2}$  of 1 percent of the total allocation for administrative costs, and the remaining funds may be used for emergency needs as determined by the SEA to address issues responding to COVID-19. These emergency needs may be addressed through the use of grants or contracts.

#### **LEAs:**

LEAs may use funds for any purposes listed in section 18003(d) of the CARES Act. (See Appendix A.)

### **Program Contact**

For additional information, please contact Christopher Tate by telephone at (202) 453-6047 or by email at [ESSERF@ed.gov](mailto:ESSERF@ed.gov).

## **CERTIFICATION AND AGREEMENT INSTRUCTIONS**

To receive an ESSER Fund allocation, SEAs must submit to the Department the following information:

- A completed cover sheet that includes the signature of the Chief State School Officer or authorized representative. (*Part A of the Certification and Agreement*)
- Programmatic, fiscal, and reporting assurances. (*Part B of the Certification and Agreement*)
- Information on the uses of ESSER funds. (*Part C of the Certification and Agreement*)
- Other assurances and certifications. (*Part D of the Certification and Agreement*)

For purposes of this document, the term “Certification and Agreement” is the application that an SEA is required to file under section 18003(a) of Division B of the CARES Act.

### **Certification and Agreement Submission Information**

An SEA must submit a Certification and Agreement to the Department no later than July 1, 2020.

Please submit your Certification and Agreement to the Department as follows:

Email an electronic version of the ESSER Fund Certification and Agreement in .PDF (Portable Document Format) to [ESSERF@ed.gov](mailto:ESSERF@ed.gov).

### **APPENDICES**

- Appendix A – Authorizing Statute
- Appendix B – State Allocation Table

**ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF  
FUND (ESSER FUND)**

**STATE EDUCATIONAL AGENCY**

**PART A: CERTIFICATION AND AGREEMENT COVER SHEET**

State: **Maryland**

CFDA Number: **84.425D**

Legal Name:

DUNS Number:

**Maryland State Department of Education**

**001969443**

Chief State School Officer:

Mailing Address:

**Karen B. Salmon, Ph.D.**

**200 West Baltimore Street**

**Baltimore, Maryland 21201**

State Contact for Elementary and Secondary School Emergency Relief Fund: **Amalie Brandenburg**

Position and Office: **Deputy Superintendent, Office of Finance**

Mailing Address: **200 West Baltimore Street  
Baltimore, Maryland 21201**

Telephone: **410-767-0011**

Email address: **amalie.brandenburg@maryland.gov**

To the best of my knowledge and belief, all the information and data in this agreement are true and correct. I acknowledge and agree that the failure to comply with all Assurances and Certifications in this Agreement, all relevant provisions and requirements of the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate.

Chief State School Officer or Authorized Representative (Typed Name):

Telephone:

**Karen B. Salmon, Ph.D.**

**410-767-0462**

Signature of Chief State School Officer or Authorized Representative:

Date:



**April 24, 2020**

## **PART B: PROGRAMMATIC, FISCAL, AND REPORTING ASSURANCES**

The [Chief State School Officer or his/her authorized representative] assures the following:

1. The SEA will allocate no less than 90 percent of the grant funds under this program to local educational agencies (LEAs) (including charter schools that are LEAs) in the State. Under the ESSER Fund, the SEA will award grants by formula to State educational agencies (SEAs) for the purpose of providing LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that the Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the Nation. This includes both continuing to provide educational services, such as remote learning, while schools and campuses are closed, and developing and implementing plans for the return to normal operations. The SEA will allocate these funds to LEAs on the basis of their respective shares of funds received under title I, part A of the Elementary and Secondary Education Act of 1965 in fiscal year 2019.
2. The SEA will use the remaining funds (hereafter SEA reserve) for emergency needs as determined by the SEA to address issues related to COVID-19, which may be addressed through the use of grants or contracts. From an SEA's reserve, the SEA may use not more than 1/2 of 1 percent of the SEA's total grant for administrative costs.
3. The SEA will ensure that LEAs use ESSER funds for activities allowable under section 18003(d) of Division B of the CARES Act. (See Appendix A.)  
The Department generally does not consider the following to be an allowable use of ESSER funds, under any part of 18003: 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the SEA or LEAs or 2) expenditures related to state or local teacher or faculty unions or associations.
4. The SEA will ensure that LEAs receiving ESSER funds will provide equitable services to students and teachers in non-public schools as required under 18005 of Division B of the CARES Act.
5. The SEA will ensure that an LEA receiving ESSER funds will provide equitable services to students and teachers in non-public schools located within the LEA in the same manner as provided under section 1117 of the ESEA, as determined through timely and meaningful consultation with representatives of non-public schools.
  - The SEA will ensure that a public agency will maintain control of funds for the services and assistance provided to a non-public school under the ESSER Fund.
  - The SEA will ensure that a public agency will have title to materials, equipment, and property purchased with ESSER funds.
  - The SEA will ensure that services to a non-public school with ESSER funds will be provided by a public agency directly, or through contract with, another public or private entity.
6. The SEA will comply with the maintenance of effort provision in Section 18008(a) of Division B of the CARES Act absent waiver by the Secretary pursuant to Section 18008(b) thereof.
7. The SEA and each LEA and any other entity that receives ESSER funds will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of

any disruptions or closures related to COVID-19 in compliance with Section 18006 of Division B of the CARES Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity. CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.

8. The SEA must assure that, when applicable, it will provide technical assistance to LEAs on the use of ESSER funds for remote learning, which includes both distance education as defined in section 103(7) of the HEA and distance learning as defined in ESEA section 8101(14), so that students can continue learning during school closures.
9. The SEA will comply with all reporting requirements, including those in Section 15011(b)(2) of Division B of the CARES Act, and submit required quarterly reports to the Secretary at such time and in such manner and containing such information as the Secretary may subsequently require. (See also 2 CFR 200.327-200.329). The Secretary may require additional reporting in the future, which may include: the methodology LEAs will use to provide services or assistance to students and staff in both public and non-public schools, the uses of funds by the LEAs or other entities and demonstration of their compliance with Section 18003(d), such as any use of funds addressing the digital divide, including securing access to home-based connectivity and remote-use devices, related issues in supporting remote learning for all students, including disadvantaged populations.
10. The SEA will submit to the Department, within 60 days of receiving ESSER funds, a report that will include:
  - A budget for the SEA's reserve that includes information about the up to 1/2 of 1 percent of the SEA's total grant for administrative costs and the uses of funds for emergency needs to address issues related to COVID-19; and
  - An Internal Control and Subrecipient Monitoring Plan to ensure that funds are used for allowable purposes in accordance with cash management principles.
11. The SEA will ensure that every recipient and subrecipient of ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
12. The SEA will return to the Secretary any funds received under the ESSER Fund that the SEA does not award within 1 year of receiving such funds.

Chief State School Officer or Authorized Representative (Printed Name):

**Karen B. Salmon, Ph.D.**

Signature:



Date: **April 24, 2020**

## **PART C: USES OF ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUNDS**

Section 18003 of Division B of the CARES Act provides in relevant part that grants awarded under the Elementary and Secondary School Emergency Relief Fund be used to support the ability of local educational agencies (LEAs) to continue to provide educational services to their students. The Department requests the following:

1. Information that the SEA may request LEAs to include in their subgrant applications to the SEA.

**Local School Systems (LSS) in Maryland are implementing the State’s Continuity of Learning plan and have identified a number of priorities necessary to support continued delivery of education services to all students. Maryland’s draft LSS ESSER Application will focus on the LSS’s implementation of the Continuity of Learning Plan, require the LSS to identify their priorities and provide specific details on the process for identifying those priorities. LSSs will be asked to include the plans for assessing and addressing student learning gaps as a result of the school closure. Finally, the application will include a budget and budget narrative that describes the planned use of ESEER funds as well as a timeline for implementing the identified priorities.**

**The above considerations will be in addition to the application information requirements from sections 442 and 427 of the General Education Provisions Act (GEPA) (20 U.S.C. § 1232e and § 1228a).**

2. The extent to which the SEA intends to use any portion of its SEA reserve (up to 10 percent of its ESSER Fund award) to support:
  - technological capacity and access – including hardware and software, connectivity, and instructional expertise – to support remote learning. If so, please describe the strategies the SEA intends to use to serve disadvantaged populations listed in Sec. 18003(d)(4) of the CARES Act; and
  - 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.

**Maryland will issue additional grants to LSSs for initiatives and activities necessary to implement the State’s Continuity of Learning Program for all students. The primary focus will be on procuring devices to increase access to remote learning. A secondary focus will include initiatives that support a remote learning infrastructure. These activities could include purchasing remote help desk and network management installation tools and services to effectively manage security and software updates on devices distributed to staff and students; purchasing subscription services that allow teachers to communicate with students and team members, and that will enable therapists to deliver services to students virtually. A third focus will include initiatives that support increased access to remote learning through professional development for staff, parent outreach and family technology training. A fourth focus includes initiatives that support a return to traditional delivery of education services. Activities could include the repair, replacement, refurbishing, and sanitizing of devices purchased and utilized to enable remote learning so that these devices**

**can be re-deployed to classrooms when schools reopen.**

**Local school systems have identified the several areas of need to continue implementing the State's Continuity of Learning Plan. These include, but are not limited to:**

- **Internet Access**
- **Devices for students and staff**
- **Security upgrades**
- **Learning Management System upgrades, new content**
- **Professional Development for teachers and staff**
- **Outreach and communication to families, technology training**
- **Expanded Summer Learning Programs**
- **Compensatory services for students with disabilities**
- **Academic Intervention programs**
- **Additional extended learning programs**

## PART D: OTHER ASSURANCES AND CERTIFICATIONS

The [Chief State School Officer or his/her authorized representative] assures or certifies the following:

1. The SEA will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
2. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the SEAe will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B); and the SEA will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
3. Any LEA receiving funding under this program will have on file with the SEA a set of assurances that meets the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
4. To the extent applicable, an LEA will include in its local application a description of how the LEA will comply with the requirements of section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.
5. The SEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR §§200.400-475) to ensure that LEAs, including charter schools that are LEAs, are using ESSER funds for purposes that are reasonable, necessary, and allocable under the CARES Act.
6. The SEA and other entities will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Chief State School Officer or Authorized Representative (Printed Name):

**Karen B. Salmon, Ph.D.**

Signature:



Date: **April 24, 2020**



## **Appendix A: Relevant Excerpts from Title VIII of Division B of the CARES Act, the Emergency Appropriations for Coronavirus Health Response and Agency Operations**

### DEPARTMENT OF EDUCATION

#### EDUCATION STABILIZATION FUND

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

### GENERAL PROVISIONS

#### EDUCATION STABILIZATION FUND

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

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

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

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

#### ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

SEC. 18003. (a) GRANTS.—From funds reserved under section 18001(b)(2) of this title, the Secretary shall make elementary and secondary school emergency relief grants to each State educational agency with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) ALLOCATIONS TO STATES.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

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

- (1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (“IDEA”), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (“the Perkins Act”), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).
  - (2) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.
  - (3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.
  - (4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.
  - (5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.
  - (6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.
  - (7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.
  - (8) Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.
  - (9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
  - (10) Providing mental health services and supports.
  - (11) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
  - (12) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.
- (e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than 1/2 of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.
- (f) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

#### ASSISTANCE TO NON-PUBLIC SCHOOLS

SEC. 18005. (a) IN GENERAL.—A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.

(b) PUBLIC CONTROL OF FUNDS.—The control of funds for the services and assistance provided to a non-public school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

#### CONTINUED PAYMENT TO EMPLOYEES

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

#### DEFINITIONS

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

- (1) the terms “elementary education” and “secondary education” have the meaning given such terms under State law;
- (2) the term “institution of higher education” has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);
- (3) the term “Secretary” means the Secretary of Education;
- (4) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (5) the term “cost of attendance” has the meaning given such term in section 472 of the Higher Education Act of 1965.
- (6) the term “Non-public school” means a non-public elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;
- (7) the term “public school” means a public elementary or secondary school; and
- (8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

#### MAINTENANCE OF EFFORT

SEC. 18008. (a) A State’s application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State’s support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act.

(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal

<sup>1</sup> The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

<sup>2</sup> With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

REPORTING ON USE OF FUNDS SEC. 15011.

(a) In this section—

- (1) the terms “agency”, “appropriate congressional committees”, “Committee”, “covered funds”, and “Coronavirus response” have the meanings given those terms in section 15010;
- (2) the term “covered recipient” (A) means any entity that receives large covered funds; and (B) includes any State, the District of Columbia, and any territory or possession of the United States; and
- (3) the term “large covered funds” means covered funds that amount to more than \$150,000.

...

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

- (A) the total amount of large covered funds received from the agency;
- (B) the amount of large covered funds received that were expended or obligated for each project or activity;
- (C) a detailed list of all projects or activities for which large covered funds were expended or obligated, including—
  - (i) the name of the project or activity;
  - (ii) a description of the project or activity; and
  - (iii) the estimated number of jobs created or retained by the project or activity, where applicable;and
- (D) detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

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

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

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

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

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

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

<sup>1</sup> The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

<sup>2</sup> With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

**APPENDIX B: STATE ALLOCATION TABLE****Elementary and Secondary School Emergency Relief Fund**

STATE	STATE TOTAL	Minimum LEA Distribution <sup>1</sup>	Maximum SEA Reservation	Maximum for SEA Administration <sup>2</sup>
<b>TOTAL</b>	<b>13,229,265,000</b>	<b>11,906,338,500</b>	<b>1,322,926,500</b>	<b>66,146,325</b>
ALABAMA	216,947,540	195,252,786	21,694,754	1,084,738
ALASKA	38,407,914	34,567,123	3,840,791	192,040
ARIZONA	277,422,944	249,680,650	27,742,294	1,387,115
ARKANSAS	128,758,638	115,882,774	12,875,864	643,793
CALIFORNIA	1,647,306,127	1,482,575,514	164,730,613	8,236,531
COLORADO	120,993,782	108,894,404	12,099,378	604,969
CONNECTICUT	111,068,059	99,961,253	11,106,806	555,340
DELAWARE	43,492,753	39,143,478	4,349,275	217,464
DISTRICT OF COLUMBIA	42,006,354	37,805,719	4,200,635	210,032
FLORIDA	770,247,851	693,223,066	77,024,785	3,851,239
GEORGIA	457,169,852	411,452,867	45,716,985	2,285,849
HAWAII	43,385,229	39,046,706	4,338,523	216,926
IDAHO	47,854,695	43,069,226	4,785,470	239,273
ILLINOIS	569,467,218	512,520,496	56,946,722	2,847,336
INDIANA	214,472,770	193,025,493	21,447,277	1,072,364
IOWA	71,625,561	64,463,005	7,162,556	358,128
KANSAS	84,529,061	76,076,155	8,452,906	422,645
KENTUCKY	193,186,874	173,868,187	19,318,687	965,934
LOUISIANA	286,980,175	258,282,158	28,698,018	1,434,901
MAINE	43,793,319	39,413,987	4,379,332	218,967
MARYLAND	207,834,058	187,050,652	20,783,406	1,039,170
MASSACHUSETTS	214,894,317	193,404,885	21,489,432	1,074,472
MICHIGAN	389,796,984	350,817,286	38,979,698	1,948,985
MINNESOTA	140,137,253	126,123,528	14,013,725	700,686
MISSISSIPPI	169,883,002	152,894,702	16,988,300	849,415
MISSOURI	208,443,300	187,598,970	20,844,330	1,042,217
MONTANA	41,295,230	37,165,707	4,129,523	206,476
NEBRASKA	65,085,085	58,576,577	6,508,509	325,425
NEVADA	117,185,045	105,466,541	11,718,505	585,925
NEW HAMPSHIRE	37,641,372	33,877,235	3,764,137	188,207
NEW JERSEY	310,371,213	279,334,092	31,037,121	1,551,856
NEW MEXICO	108,574,786	97,717,307	10,857,479	542,874
NEW YORK	1,037,045,603	933,341,043	103,704,560	5,185,228
NORTH CAROLINA	396,311,607	356,680,446	39,631,161	1,981,558
NORTH DAKOTA	33,297,699	29,967,929	3,329,770	166,489
OHIO	489,205,200	440,284,680	48,920,520	2,446,026
OKLAHOMA	160,950,476	144,855,428	16,095,048	804,752

<sup>1</sup> The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

<sup>2</sup> With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

STATE	STATE TOTAL	Minimum LEA Distribution <sup>3</sup>	Maximum SEA Reservation	Maximum for SEA Administration <sup>4</sup>
OREGON	121,099,019	108,989,117	12,109,902	605,495
PENNSYLVANIA	523,807,198	471,426,478	52,380,720	2,619,036
RHODE ISLAND	46,350,444	41,715,400	4,635,044	231,752
SOUTH CAROLINA	216,311,158	194,680,042	21,631,116	1,081,556
SOUTH DAKOTA	41,295,230	37,165,707	4,129,523	206,476
TENNESSEE	259,891,154	233,902,039	25,989,115	1,299,456
TEXAS	1,285,886,064	1,157,297,458	128,588,606	6,429,430
UTAH	67,821,787	61,039,608	6,782,179	339,109
VERMONT	31,148,360	28,033,524	3,114,836	155,742
VIRGINIA	238,599,192	214,739,273	23,859,919	1,192,996
WASHINGTON	216,892,447	195,203,202	21,689,245	1,084,462
WEST VIRGINIA	86,640,471	77,976,424	8,664,047	433,202
WISCONSIN	174,777,774	157,299,997	17,477,777	873,889
WYOMING	32,562,651	29,306,386	3,256,265	162,813
PUERTO RICO	349,113,105	314,201,795	34,911,311	1,745,566

<sup>3</sup> The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

<sup>4</sup> With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.