

# **Frequently Asked Questions Education Stabilization Fund Program Outlying Areas-State Educational Agencies (ESF-SEA)**

## **PURPOSE OF THIS DOCUMENT**

The purpose of this document is to answer Frequently Asked Questions related to the Education Stabilization Fund Program for the Outlying Areas-State Educational Agencies (ESF-SEA). Under the ESF-SEA program, established as part of the Education Stabilization Fund in the CARES Act,<sup>1</sup> the Department of Education (Department) allocates funds to the Outlying Areas for the purpose of providing State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), and other education-related entities with emergency assistance as a result of the Novel Coronavirus Disease 2019 (COVID-19).

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

### **Disclaimer**

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

The Department will provide additional or updated information, as necessary, on the Department's website at: <https://oese.ed.gov/offices/education-stabilization-fund/outlying-areas/>.

If you have questions that are not answered in this document, please e-mail [esf.outlying@ed.gov](mailto:esf.outlying@ed.gov).

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

## **1. Who applies to the Department for ESF-SEA funds?**

SEAs in the Outlying Areas – American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands – apply to the Department for ESF-SEA funds. An SEA is the agency primarily responsible for the State supervision of public elementary schools and secondary schools.<sup>2</sup>

## **2. How does an SEA apply for ESF-SEA funds?**

To apply for an Outlying Area’s allocation from the ESF-SEA program, an SEA submitted to the Department, by July 1, 2020, an executed Certification and Agreement that the Secretary sent to the SEA on May 6, 2020. The Certification and Agreement includes specific programmatic, fiscal and accountability assurances, including those related to “maintenance of effort” (MOE). An SEA must also provide information on how it plans to use ESF-SEA funds, including the extent to which the funds will be used for remote learning.

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

## **3. How may the SEA use the funds?**

SEAs may use funds to provide direct services to carry out one or more of the purposes listed in section 18003(d) of the CARES Act (See Appendix A) or to address emergency needs responding to COVID-19.

SEAs may also award subgrants to LEAs, which subgrants may be used for one or more of the purposes listed in section 18003(d) of the CARES Act, or to address emergency needs responding to COVID-19.

SEAs may also award contracts to other entities to carry out one or more of the purposes listed in section 18003(d) of the CARES Act or to address emergency needs responding to COVID-19.

## **4. May SEAs and LEAs reserve ESF-SEA funds for administrative costs?**

The SEA, and LEAs that receive subgrants, may reserve a reasonable and necessary amount of funds for administrative costs. This includes both direct and indirect administrative costs. However, to maximize the funds available for services to students and the public, the Department encourages each SEA and LEA to minimize the amount of administrative costs charged to the program.

## **5. How long are ESF-SEA funds available for obligation by SEAs and subrecipients?**

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<sup>2</sup> The definition of SEA is from ESEA section 8101(49).

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

**6. Is there a deadline by which an SEA must award ESF-SEA funds to subrecipients?**

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

**7. Is a charter school eligible to receive ESF-SEA funds?**

An SEA may award a subgrant to a charter school that is an LEA, as defined in section 8101(30) of the ESEA. A charter school that is not an LEA may not receive a subgrant, but it may receive support under ESF-SEA through the LEA of which it is a part.

**8. How much flexibility does an SEA or LEA have in determining the activities to support with ESF-SEA funds?**

SEAs, and LEAs that receive subgrants, have considerable flexibility in determining how best to use ESF-SEA funds (see Section 18003(d) of the CARES Act, which lists examples of allowable uses of funds). For example, SEAs, and LEAs that receive subgrants, may use ESF-SEA funds for personal protective equipment (PPE), cleaning and sanitizing materials, and similar supplies necessary to maintain school operations and to support in-person instruction during and after the COVID-19 pandemic. SEAs and LEAs that receive subgrants may also use ESF-SEA funds for activities that will support remote learning for all students, especially disadvantaged or at-risk students.

**9. Are ESF-SEA funds subject to all of the requirements of any specific Federal education program if used for an allowable activity under that program?**

No. While ESF-SEA funds may be used for a broad array of potential activities under a number of Federal education statutes (e.g., the statutes set forth in section 18003(d)(1)), the specific statutory requirements of those programs do not apply to the ESF-SEA funds.

**10. Are ESF-SEA funds subject to a supplanting prohibition?**

No. There is no supplanting prohibition with respect to the ESF-SEA funds. As a result, ESF-SEA funds may take the place of non-Federal funds for allowable activities, but subject to the purpose of the CARES Act funds – i.e., the funds must be used to prevent, prepare for, and respond to coronavirus. Also, this program is subject to a maintenance-of-effort (MOE) requirement, which is designed to keep the Outlying Areas from substantially reducing their support for K-12 education.<sup>3</sup>

**11. May an SEA or LEA use ESF-SEA funds for allowable costs incurred prior to receiving grant funds?**

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<sup>3</sup> For further information, please see Section 18008 of the CARES Act and questions below.

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

**12. Should SEAs and LEAs anticipate monitoring or auditing of ESF-SEA funds?**

Yes. The Department will monitor the use of ESF-SEA funds. In addition, ESF-SEA funds are subject to audit requirements under the Single Audit Act and to review by the Government Accountability Office. The Department's Office of the Inspector General may audit program implementation, as may any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.

**13. Is there a requirement to provide equitable services to students and teachers in non-public schools under the ESF-SEA program?**

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

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

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

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

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

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

Equitable services must be provided in accordance with section 8501 of the ESEA. Section 8501(a)(4) of the ESEA requires that expenditures for services to private school students, teachers, and other educational personnel be equal to the expenditures for the public school

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

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

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

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

**18. Is there a maintenance of effort (MOE) requirement for the ESF-SEA program?**

Yes. Outlying Areas must comply with the maintenance of effort requirement in section 18008 of the CARES Act. For assistance in implementing the MOE requirement, Outlying Areas are encouraged to refer to the “Frequently Asked Questions on the Maintenance-of-Effort Requirements Applicable to the CARES Act Programs,” available here: <https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf>