

Prepared Remarks for Vermont House Education Committee

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Good afternoon, my name is Austin Reid and I represent NCSL on education policy before Congress and the administration.

We have received many inquiries on what authority the state legislature has over stimulus funds generally, but specifically the Elementary and Secondary School Emergency Relief Fund, which I will refer to as ESSER.

I am going to limit my testimony to describing the state application process for the three rounds of ESSER funding and describe state legislative involvement in the state-level distribution of those funds.

I am also happy to answer questions you might have on the MOE provisions, for which guidance on the waiver process was recently issued, or any other aspect of the Education Stabilization Fund.

I. Background on the Distribution of the ESSER Fund

As I understand my testimony to concern a recently issued state application template for ESSER III funds, I want to give the full federal context for the processes that Congress and the Department of Education have put in place for the distribution of the three rounds of ESSER funding.

The CARES Act passed on March 27, 2020 created the Education Stabilization fund, which contained within it the ESSER program.

Per the CARES Act, the Secretary of Education was expected to invite state applications within 30 days, but the bill did not outline any specific application requirements.

On April 23, 2020, the U.S. Department of Education put out state applications, which included two questions:

One question asked what information that the SEA might ask for from LEA applications and the other asked whether the SEA would use its 10% set-aside to support remote learning.

According to my analysis of publicly posted applications, state responses to the applications ranged considerably – some provided lengthy explanations, others provided little to no explanation.

On December 27, 2020 the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 provided additional funds to state ESSER accounts.

The law directed the Secretary to distribute ESSER funds to states with existing approved ESSER applications within 30 days, which was initiated by Secretary DeVos on January 5, 2021.

I should note, that while there was no required updated certification and agreement from states, the ESSER II funds did place additional maintenance of effort conditions on states for FY22.

On March 11, 2021 the American Rescue Plan Act provided a third round of funding to the ESSER program.

Unlike the previous two stimulus bills, the legislative language did not reference any requirements for an application process.

My understanding is that application language was excluded to avoid any issues with the Senate Parliamentarian under reconciliation process.

On March 24, 2021, two-thirds of the ESSER III funds through the American Rescue Plan were released without application with the expectation that one-third of funds would be made available once states submitted plans for ESSER implementation.

My understanding is the Department chose this phase distribution to meet immediate state and local education needs, while also providing opportunities for states and districts to contemplate how to invest these funds over the long term.

Last Wednesday April 21, 2021 the Department released the state plan template for states to receive those remaining one-third of funds.

Per the Department's announcement, states must submit their ARP ESSER State plans by June 7, 2021 and the remaining funds will be released once those plans received and reviewed.

According to the Department's letter to state agencies, the plan application is "designed to promote comprehensive planning by SEAs and LEAs for the effective use of ARP ESSER funds to reopen schools safely this spring; support sustained access to in-person instruction throughout the spring, summer, and into next school year; and to address the academic, social, emotional, and mental health needs of students."

The Department also issued an interim final rule, which is reflected in application's contents, which outlines a process through which "an SEA must engage in meaningful consultation with various stakeholder groups on its ARP ESSER plan and give the public an opportunity to provide input on the development of the plan and take such input into account."

My understanding is the Department issued an interim final rule to support the application template since the American Rescue Plan makes no reference to the Secretary's authority to issue applications.

According to federal law, the Secretary of Education is authorized to require the submission of applications for assistance under any applicable program. "Applicable program" is defined in law as any program for which the Department has administrative responsibility, which includes ARP ESSER.

According to the interim final rule, stakeholder engagement must include students; families; Tribal Nations; civil rights organizations, including disability rights organizations; teachers, principals, school leaders, other educators, school staff and their unions, school and district administrators; superintendents; charter school leaders; and other stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children and youth in foster care, migratory students, children who are incarcerated, and other underserved students.

While not mentioned in the interim final rule, the state plan template explains this list is not limited to just the persons or entities outlined in the interim final rule. I would note that the list does not include

any state-level stakeholder such as state legislatures, governors' office, or state board of education members.

According to the application template, SEAs must describe "how the SEA provided the public the opportunity to provide input in the development of the plan, a summary of the input (including any letters of support), and how the SEA took such input into account."

While myself and other colleagues who represent state and local interests in federal education policy are still fully reviewing the application template, thus far we are hard-pressed to find ways in which the Department of Education would deny state applications based on the length or quality of the responses.

II. What are other legislatures considering with ESSER II and ESSER III?

I now want to turn my attention to how state legislatures are contemplating and legislating on the ESSER program.

According to our comprehensive tracking of state plans for ESSER I funds, no legislatures that we are aware of took any substantive action to appropriate the ESSER I funds at the local level or state-level.

I believe this was largely a product of legislatures being out of session and thus allowing the executive branch to appropriate and administer emergency federal funds, either according to state law or by issuing temporary emergency powers to the executive branch while the legislature remained out of session.

I know that Wisconsin's ESSER I set-aside plan was reviewed by the legislature's joint fiscal committee and that Alaska's GEER and ESSER set-aside plan were as well.

This year, however, we are seeing far more legislatures incorporate the ESSER II and ESSER III, as well as GEER II, funds into state appropriations processes.

To date, we have tracked a number of state bills that have directed the state agencies discretionary 10% set-aside for ESSER II and ESSER III.

Given that FY22 budget processes are in progress and ESSER III funds were only recently made available, I expect the list of state legislation to expand.

I will state by reviewing enacted legislation as well as pending and proposed legislation the ESSER state set-aside.

Enacted:

[Hawaii](#): The Legislature appropriated ESSER I and ESSER II funds to offset budget reductions that would otherwise result in layoffs or pay cuts to unionized employees working at the school level.

[Idaho](#): The legislature's Joint Finance-Appropriations Committee required that \$6.1m of the \$19 million ESSER II set-aside must be given to two charter schools that saw large enrollment increases. The remaining funds were left available to be spent by the Idaho State Board of Education.

[Michigan](#): The legislature appropriated \$160.1 million of the ESSER II set-aside funding in various categorical spending areas: \$90.0 million for K-8 summer programs; \$45.0 million for high school credit recovery programs; \$17.4 million for before- and after-school programs operated by districts or

intermediate school districts (ISDs); \$4.9 million for benchmark assessments; and, \$2.7 million for administration by the Michigan Department of Education (MDE). The bill leaves roughly \$5.5 million in 'discretionary' ESSER funds unspent and available for future appropriation.

[New York](#): Appropriated ESSER II and ESSER III set-aside funds through the state FY22 budget.

[North Carolina](#): Legislature appropriated ESSER II state set-aside across 15 line items. The bill requests up to \$10 million be distributed to ensure every public school unit in the state receives at least \$180.00 per pupil. The bill allocates roughly \$70 million to public schools to provide additional mental health support services, school nutrition services, literacy training programs, services for at-risk children, and security. The bill also directs another \$66 million to be held in reserve for schools to address learning loss during the summer.

[Virginia](#): Legislature directed \$8.8m of ESSER II state set-aside to develop a through year student growth assessment in grades three through eight.

[Wisconsin](#): The Joint Finance Committee overrode the Department of Public Instruction's ESSER II set-aside proposal. Instead, the legislature established a minimum grant amount of \$100,000 for all districts in Wisconsin. Then any LEA that did reach a \$395 per pupil allocation would be eligible for additional funds based in part on the total number of in-person instructional hours provided during the entirety of the 2020-21 school year.

Pending:

Montana: The Legislature is proposing to allocate \$13.4 million in [ESSER II](#) and [ESSER III](#) funds for database modernization at the Office of Public Instruction.

[Ohio](#): The Ohio House passed HB170 that would prohibit the Ohio Department of Education from spending ARP Act emergency needs funds and subjects ODE's other state activity funds under the ARP Act and its allocation for emergency needs under the CARES Act and CRRSA to Controlling Board approval before they can be spent or encumbered. The Controlling Board provides legislative oversight over certain capital and operating expenditures by state agencies and has approval authority over various other state fiscal activities.

Proposed:

[Florida](#): Governor DeSantis announced a proposal to provide \$1,000 bonuses to public school principals and full-time classroom teachers for grades Pre-K through 12th grade in Florida with ESSER III funds and a \$100m Civic Literacy Excellence Initiative with ESSER II funds.

That concludes my prepared remarks, I am happy to answer any questions about my remarks or the Education Stabilization Fund that you may have.