

November 29, 2021

Juliana Pearson
PRA Coordinator, Office of Chief Data Officer
U.S. Department of Education
400 Maryland Avenue, SW Room 3W113
Washington, D.C. 20202

Re: ED Docket No. ED-2021-SCC-0096

Dear Mrs. Pearson:

I am writing to provide the comments of the Council of Chief State School Officers (CCSSO) regarding the U.S. Department of Education's ("the Department," or "ED") changes to the data collection form for the Education Stabilization Fund-Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) as published in the Federal Register on October 29, 2021. CCSSO is the nonpartisan, nationwide, nonprofit organization of public officials who head departments of elementary and secondary education in the states, the District of Columbia, the Department of Defense Education Activity, the Bureau of Indian Education and the five U.S. extra-state jurisdictions.

CCSSO appreciates the changes the Department has made to the data collection form in response to state and local feedback submitted earlier this year. We also appreciate the Department's decision to extend the timeline for some reporting requirements. Despite improvements, however, the reporting form still poses many challenges for state and local educational agencies (SEAs and LEAs) that we raised in the first comment period and believe must be addressed. Most significantly, we have concerns with the reporting periods, the use of funds categories, and the activities by subpopulation section. We have outlined our specific comments on these three topics as well as provided additional, section-targeted comments. We appreciate the Department's willingness to consider and apply these comments from the field, as we are all working toward transparency and stronger reporting processes.

The Proposed Reporting Period

As currently stated, the reporting periods align to the federal fiscal year which is not necessarily the same as state fiscal years or state grant cycles for education funds. This means that reported data are likely to change after the reports are submitted and may not provide an accurate spending picture. In cases where the reporting period does not align to the state fiscal year, some of the charges SEAs and LEAs report will be from an open fiscal year. Since accounting can be adjusted while a fiscal year is open, the data reported could change. For example, expenses initially charged to state or local funds may later be moved to ESSER funds as expenses are verified and vice versa. Grant cycles are also important because Coronavirus Aid, Relief, and Economic Security (CARES), Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) and American Rescue Plan (ARP) ESSER funds can all be used for the same expenses. For example, it is possible that expenses initially reported as an ARP ESSER expense could later be moved to CARES or CRRSA ESSER in order to ensure the oldest available funds are spent first.

This report intends to provide a snapshot of spending and planned spending as of September 30th of a given year. Yet, as it currently stands, this snapshot will not be current by the time the report is filed several months later. Therefore, we ask the Department to allow states to choose which funding cycle would best reflect the most accurate picture of how funds are being spent, or to make clear that anything reported at the end of the federal fiscal year is a preliminary report.

Use-of-Funds Categories

We appreciate that the Department has amended the use-of-funds categories that SEAs and LEAs will have to report on in response to feedback CCSSO provided in August. The categories currently included in the reporting form are not from the CARES, CRRSA, or ARP law that Congress approved but are instead new categories developed by the Department. This creates challenges for SEAs and LEAs that have already implemented reporting processes for ESSER funds in the absence of guidance from the Department.

For example, the Department asks SEAs and LEAs to break out spending on physical health and safety into seven subcategories: (a) building and facilities upgrades and maintenance, including ventilation systems and new construction; (b) assistance with meals for students; (c) cleaning and/or sanitization supplies; (d) temporary classroom space to support social distancing; (e) temporary transportation services to support social distancing to and from school; (f) capacity-building to improve disaster preparedness and response efforts, including coordination with State, local, Tribal, and territorial public health departments and other relevant agencies to improve coordinated responses to prevent, prepare for, and respond to the coronavirus; and (g) other health protocols not described above and aligned to guidance from the Centers for Disease Control and Prevention (CDC) such as: vaccines for staff and/or students, COVID-19 testing for staff and/or students, contact-tracing, masks.

While some of these subcategories align to language specifically used in ESSER (like cleaning and/or sanitization supplies), others do not. For instance, none of the three ESSER statutes specifically reference transportation or temporary classroom space. SEAs and LEAs were not instructed on the front end that they would be expected to report on spending this way.

Since these Department-developed reporting categories are only being required now – 20 months after ESSER was first enacted – SEAs and LEAs have not been tracking spending according to these categories. Instead, SEAs and LEAs have relied on existing grants management and accounting systems to administer ESSER funds. Consequently, SEAs and LEAs would have to retroactively assign spending to the new categories, which will be a lengthy and burdensome process that requires multiple data runs and manual calculations in many (if not most) cases. This is one reason we believe, as noted later in this letter, that the Department's estimate of burden hours for this reporting will be a small fraction of the actual number required.

Additionally, this process will not be uniform as many activities will cross spending categories leading to SEAs and LEAs making subjective decisions about how to report their activities. The categorization also may not allow for sufficient nuance to fully capture how SEAs and LEAs deployed their ESSER funds. For example, an SEA or LEA may have used ESSER funds to provide summer enrichment to all students, with priority enrollment for high-need subgroups. The SEA or LEA might then report this expenditure as a summer enrichment activity even though a component of the activity responded to the needs of

vulnerable students. The proposed reporting requirements would thus not fully capture the full picture of how recovery funds are being prioritized or directed.

For these reasons stated above, we strongly urge the Department to only require SEAs and LEAs to report spending in the three broad categories aligned with the laws passed by Congress: (1) supporting physical health and safety; (2) meeting students' academic, social, emotional, mental health and other needs; and (3) operational continuity and other allowed uses. If the Department wishes to retain its list of additional categories introduced in this proposed form, CCSSO supports making this voluntary for an SEA or LEA to further break spending categories out into the proposed subcategories as in (3b.1). If the Department moves forward with this voluntary option, we also hope the Department includes language that clarifies the proposed categories may not fully capture the nature of ESSER-funded activities.

Activities by Subpopulation

As CCSSO expressed in our previous comments, we agree that a focus on the needs of subpopulations is important; however, we remain concerned that the Department's approach will not accurately capture ESSER spending that benefits subpopulations and will be very burdensome to both SEAs and LEAs. For example, Section 4.b2 asks LEAs to report participation in certain activities by student subgroup even though many LEAs do not track student participation this way. While we appreciate that LEAs do not have to report those data this year, they will have to report them next year, presumably for the period covering October 1, 2021 through September 30, 2022, a period that is already underway. This may not be enough time for all LEAs to procure and establish the data systems and personnel needed to collect and track those data. Additionally, there might be significant fluctuation over time in which students participate in which activities. For example, if an LEA is running an intensive reading tutoring program on decoding skills and is using evidence-based instruction and assessment protocols, the students receiving tutoring services will change over time as students master necessary skills. We believe it is not the best use of resources to burden LEAs with collecting these data especially when the data will likely not properly reflect student experiences.

In addition to our comments on the proposed reporting period, use of funds and activities by subpopulation, we have provided the following section-specific suggestions and comments.

Section 1.2 SEA Reserve

This section asks for information about the total amount "retained" for various state-level activities. The word "retained" has a specific meaning for state-reserve funds, meant to distinguish between funds an SEA retains for its own use versus funds an SEA awards to other entities through a grant or contract. To avoid confusion, we recommend using another term, like "reserved," "set aside" or "earmarked."

Secondly, it is unclear why the cells for ESSER I and ESSER II are grayed out for "total amount retained for the allocation of evidence-based summer enrichment programs" and "total amount retained for the allocation of evidence-based comprehensive afterschool programs" but not "total amount retained for implementation of evidence-based interventions aimed specifically at addressing learning loss." We hope the Department will provide clarity on this and ensure the section is uniform.

Section 2.2b Identifying Students for Supports

We recommend revising this to one question that more clearly aligns with the law. The law does not require SEAs to allocate state reserve funds to ensure support for students most impacted by COVID-19; rather, the law requires SEAs to ensure that certain activities carried out with ARP ESSER funds address the disproportionate impact of the pandemic on certain student subgroups. SEAs have been following the law and have taken these provisions seriously to ensure that supports are provided equitably to those students who most require them. However, the currently listed question asks about implementation of an allocation methodology that is not required by law rather than the services provided to address the needs of the most affected students. While the Department might ask how services funded with state reserve funds satisfy ESSER requirements, there is no ESSER requirement to allocate state reserve funds in any specific way.

We recommend revising Section 2.2 to one question that is more clearly aligned with the law, such as: How did the SEA ensure the activities funded through ARP ESSER's set-asides for evidence-based activities to address learning loss, evidence-based summer enrichment programs, and evidence-based comprehensive after-school programs address the disproportionate impact of the pandemic on the identified student subgroups?

2.3d, 2.4c, ESSER SEA Reserve Awards to Non-LEAs

Please clarify that this section applies only to subgrants to non-LEAs (that is, not to contracts), as contractors do not expend funds and are rather paid for services. Alternatively, consider language such as "amount expended by non-LEA (subgrantees) or by SEA (contracts) for the ESSER state reserve."

Section 3.b7 and 3.b8 Reengaging Students

Please clarify whether these questions apply only to ESSER-funded initiatives to reengage students or more broadly to any activity regardless of how funded.

Section 3.c

We appreciate the Department's clarification that there is no requirement to allocate ESSER funds directly to schools. However, it is unclear how the Department expects LEAs to report spending in this section. The language for questions b-e requests information regarding the "average amount expended per pupil at or on behalf of" students at various schools. It is unclear how "per pupil at or on behalf of" is defined. This lack of clarity could have serious implications. For example, if a district runs and pays for a summer learning program that seven schools participate in, and two are Title I schoolwide, two are Title I targeted assistance, two are Title I-eligible but not participating in the program, and one is not Title I eligible, how should that expenditure be captured in the report? Would the LEA have to track the number of students from each type of school that participated in the program and divide that by the total number of students in each respective school? Could the activity be captured as a district-level expense and not need to be reported by each school? This clarification is needed because many kinds of district-level activities benefit individual schools—such as transportation, curriculum, teacher bonuses, out-of-school time programs, construction, health and safety costs and building services among others. It is unclear how the Department expects LEAs to derive school-level per-pupil expenditure numbers in these cases.

Section 4.a1

The law does not require LEAs to use or allocate ESSER funds to ensure support for students most impacted by COVID-19. Rather, LEAs must ensure that certain activities they carry out with ARP ESSER funds address the disproportionate impact of the coronavirus on certain student subgroups. Since this section is not focused on the activities required by law, we recommend rephrasing this question in a manner that does not imply that LEAs have less flexibility in using the funds than permitted by law.

Section 4.c1

It is not clear why the report focuses on the particular staff categories included in this section of the survey and not others. These categories do not necessarily reflect the full range of supports LEAs provide to students through staff. For example, focusing on the number of special educators might miss investments LEAs make in general educators to better serve students with disabilities in general education settings. SEAs and LEAs might interpret the instructions to imply a preference for services delivered through special educators even if services would be better delivered in less restrictive environments through classroom teachers.

Estimate of the Survey's Burden

Finally, we note that the earlier estimated burden of this report as 10 hours per SEA response and 5 hours per LEA response has increased significantly, and that the new estimates are 140 hours per SEA response and 140 hours per LEA response. We believe this new estimate is still quite low, particularly given the retroactive work SEAs and LEAs would need to do to meet the requirements of the current survey.

Thank you for the opportunity to provide CCSSO's comments on this important topic. We appreciate your responsiveness to CCSSO's previous comments. CCSSO and our members are deeply committed to transparency and equity in education, and we have been working closely with SEAs and LEAs to ensure that the COVID-19 response is effective and provides support to those who need it the most. If we can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Carissa Moffat Miller
Chief Executive Officer
Council of Chief State School Officers