



Karen B. Salmon, Ph.D.
State Superintendent of Schools

TO: Members of the State Board of Education

FROM: Karen B. Salmon, Ph.D.

DATE: April 14, 2020

SUBJECT: Flexibility for States in the Elementary and Secondary Education Act of 1965 (ESEA) on K-12 Education Funding

PURPOSE:

To review the *Flexibility for States in the Elementary and Secondary Education Act of 1965 (ESEA) on K-12 Education Funding* that the Assistant Secretary of Elementary and Secondary Education, Frank T. Brogan, offered to states in his letter dated Friday, April 3, 2020.

BACKGROUND/HISTORICAL PERSPECTIVE:

As a result of the extraordinary circumstances created by the COVID-19 pandemic and resulting school closures and in addition to the Flexibility for States in ESEA on Assessment and Accountability Requirements previously granted, the Coronavirus Aid, Relief, and Economic Security (CARES) Act authorizes the Secretary of Education, Betsy DeVos, to provide additional flexibility through waivers of specific requirements. In light of this on-going national emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and to assist in planning for how to resume education, the U.S. Department of Education is offering additional flexibilities under the CARES Act.

Pursuant to the authority under the CARES Act, states are able to request waivers of the following provisions:

- Section 1127(b) of Title I, Part A of the ESEA so that your State educational agency (SEA) may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for fiscal year (FY) 2019 Title I, Part A funds.
- Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of FY 2018 funds for programs in which your SEA participates under its approved consolidated State plan until September 30, 2021.
- Section 4106(d) of Title IV, Part A of the ESEA related to local educational agency (LEA) needs assessments for the 2019-2020 school year.
- Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA with respect to content-area spending requirements for FYs 2018 and 2019 Title IV, Part A funds.
- Section 4109(b) of Title IV, Part A of the ESEA with respect to the spending limitation for technology infrastructure for FYs 2018 and 2019 Title IV, Part A funds.

- Section 8101(42) of the ESEA, which defines “professional development,” for activities funded for the 2019-2020 school year.

EXECUTIVE SUMMARY:

Given that Maryland schools have been closed since March 16, 2020, through the waivers, the Maryland State Department of Education (MSDE) would be able to approve a Local Education Agency (LEA) to carry over more than 15 percent of its Title I, Part A funds, even if the LEA had received approval to exceed this limitation in the past three years. The MSDE would be able to extend for itself and its subgrantees the period of availability of FY 2018 funds for programs included in the consolidated State plan to allow additional time to obligate those funds. The MSDE would also be able to permit an LEA or consortium of LEAs to use its Title IV, Part A funds to best meet its needs without regard to content-area spending requirements, spending limits on technology infrastructure, or completing a needs assessment. Finally, by waiving the definition of professional development, the MSDE and subgrantees would be able to conduct time-sensitive, one-time or stand-alone professional development focused on supporting educators to provide effective distance learning.

All materials provided by the U.S. Department of Education are attached for review. The U.S. Department of Education has promised a response within one business day to any State that submits a waiver request using the optional waiver template. Maryland would not be required to complete public notification in advance of submitting the request, but rather may notify the public of the request and the opportunity to comment at the same time as the submission or shortly thereafter.

ACTION:

Request permission to submit a waiver for *Flexibility for Maryland on the Elementary and Secondary Education Act (ESEA) K-12 Economic Funding* for the 2019-2020 school year.

ATTACHMENTS:

Letter from Frank T. Brogan, the Assistant Secretary for Elementary and Secondary Education, to Chief State School Officers dated April 3, 2020

Waiver template provided by the U.S. Department of Education addressed to The Honorable Frank T. Brogan



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 3, 2020

Dear Chief State School Officer:

The President recently signed into law the [Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#), Pub. L. No. 116-136 (March 27, 2020), which provides substantial relief to children and educators who have been profoundly affected by the Novel Coronavirus Disease (COVID-19). I understand that many of you have questions about the CARES Act, especially available funding, and we will be providing additional information to you as soon as possible. In the interim, you are welcome to submit CARES Act questions by e-mail to COVID-19@ed.gov.

The purpose of today's message is to discuss flexibility in K-12 education funding, in particular the Elementary and Secondary Education Act of 1965 (ESEA), as the CARES Act authorizes the Secretary to provide additional flexibility through waivers of specific requirements. As you know, on March 20, 2020, Secretary DeVos provided flexibility with respect to certain requirements in Title I, Part A of the ESEA regarding statewide assessments, accountability and school improvement, and some reporting requirements for the 2019-2020 school year due to the unprecedented challenges you are facing due to COVID-19. In light of this on-going national emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and to help you in your planning for how to resume education, today I am writing to offer additional flexibilities under the CARES Act.

Pursuant to the authority under the CARES Act, I am inviting you to request waivers of the following provisions:

- Section 1127(b) of Title I, Part A of the ESEA so that your State educational agency (SEA) may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for fiscal year (FY) 2019 Title I, Part A funds.
- Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of FY 2018 funds for programs in which your SEA participates under its approved consolidated State plan until September 30, 2021.
- Section 4106(d) of Title IV, Part A of the ESEA related to local educational agency (LEA) needs assessments for the 2019-2020 school year.
- Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA with respect to content-area spending requirements for FYs 2018 and 2019 Title IV, Part A funds.
- Section 4109(b) of Title IV, Part A of the ESEA with respect to the spending limitation for technology infrastructure for FYs 2018 and 2019 Title IV, Part A funds.
- Section 8101(42) of the ESEA, which defines "professional development," for activities funded for the 2019-2020 school year.

Through these waivers, your SEA would be able to approve an LEA to carry over more than 15 percent of its Title I, Part A funds, even if the LEA had received approval to exceed this limitation in the past three years. Your SEA would be able to extend for itself and its subgrantees the period of availability of FY 2018 funds for programs included in your consolidated State plan to allow additional time to obligate those funds. Your SEA would also be able to permit an LEA or consortium of LEAs to use its Title IV, Part A funds to best meet its needs without regard to content-area spending requirements, spending limits on technology infrastructure, or completing a needs assessment. Finally, by waiving the definition of professional development, your SEA and subgrantees would be able to conduct time-sensitive, one-time or stand-alone professional development focused on supporting your educators to provide effective distance learning.

400 MARYLAND AVE., SW, WASHINGTON, DC 20202
<http://www.ed.gov/>

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

I want to continue to thank you for the work you are doing to help ensure learning continues for all your State's students in this difficult time. The U.S. Department of Education is committed to supporting you with every tool at our disposal and extending all flexibilities within our control.

If you are interested in receiving one or more of these waivers on behalf of your SEA and its subgrantees, please submit your request to OESE.TitleI-a@ed.gov. I am enclosing a streamlined template for your convenience that includes a checklist to designate the waivers you desire. My staff is committed to providing a response within one business day to any SEA that submits a waiver request using this optional waiver template. I recognize that you have many questions and will need additional supports, including the possibility of additional waivers, as you deal with the COVID-19 national emergency.

If you have additional questions or concerns regarding these waivers, contact us at OESE.TitleI-a@ed.gov. We are also interested in your input on other requirements for which you anticipate a need for a waiver that are not currently covered by the CARES Act. If you have suggestions, please submit those to COVID-19@ed.gov. If you have general questions regarding COVID-19 and how the Department can best support you, please contact COVID19@ed.gov. I encourage you to continue to monitor information regarding COVID-19 from the Centers for Disease Control and Prevention at www.cdc.gov/coronavirus/ and at our website, www.ed.gov/coronavirus.

Thank you for your continued commitment to our nation's students during these extraordinary circumstances.

Sincerely,

A handwritten signature in black ink that reads "Frank T. Brogan". The signature is fluid and cursive, with the first name "Frank" and last name "Brogan" clearly legible.

Frank T. Brogan
Assistant Secretary
for Elementary and Secondary Education

Enclosure

cc: Council of Chief State School Officers
State Title I, Part A Directors
State Title I, Part C Directors
State Title I, Part D Directors
State Title II, Part A Directors
State Title III, Part A Directors
State Title IV, Part A Directors
State Title IV, Part B Directors
State Title V, Part B, Subpart 2 Directors
State Assessment Directors
McKinney-Vento Homeless Assistance Directors

This template is an example that may be used for the submission of a request for waivers of the requirements noted below. Note that the Department will accept, process, and approve any appropriate waiver request; for assistance please contact OESE.TitleI-a@ed.gov. However, the Department plans to respond in one business day to a State educational agency that follows this example and provides all necessary information in an accessible way.

The Honorable Frank T. Brogan
Assistant Secretary for Elementary and Secondary Education
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Assistant Secretary Brogan:

I am writing to request waivers, pursuant to section 3511 of Division A of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116-136 (H.R. 748), 34 Stat. 281 (Mar. 27, 2020), of the requirement(s) enumerated below on behalf of the State educational agency (SEA) and its subgrantees (e.g., local educational agencies (LEAs)).

State:

Please check all that apply:

- Carryover limitation in section 1127(b) of the Elementary and Secondary Education Act of 1965 (ESEA) for Federal fiscal year (FY) 2019 Title I, Part A funds (i.e., the Title I, Part A funds that will become carryover funds on October 1, 2020): the requirement that limits an SEA's ability to grant to its LEAs a waiver of the 15 percent Title I, Part A carryover limitation in section 1127(a) more than once every three years.

Period of availability of funds in section 421(b) of the General Education Provisions Act (GEPA): to extend the period of availability of FY 2018 funds for programs in which the SEA participates under its approved consolidated State plan until September 30, 2021. The programs are (check all that apply):

- Title I, Part A of the ESEA (Improving Basic Programs Operated by LEAs), including the portions of the SEA's Title I, Part A award used to carry out section 1003 school improvement, section 1003A direct student services, if applicable, and Title I, Part D, Subpart 2
- Title I, Part B of the ESEA (State Assessment Formula Grants)
- Title I, Part C of the ESEA (Education of Migratory Children)
- Title I, Part D, Subpart 1 of the ESEA (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk)
- Title II, Part A of the ESEA (Supporting Effective Instruction)

- Title III, Part A of the ESEA (English Language Acquisition, Language Enhancement, and Academic Achievement)
- Title IV, Part A of the ESEA (Student Support and Academic Enrichment Grants)
- Title IV, Part B of the ESEA (21st Century Community Learning Centers)
- Title V, Part B, Subpart 2 of the ESEA (Rural and Low-Income School Program)
- McKinney-Vento Education for Homeless Children and Youth Program

The following requirements in Title IV, Part A of the ESEA (check those that apply). Note: These requirements are only applicable to LEAs that received \$30,000 or more in Title IV, Part A funds:

- Needs assessment requirements in section 4106(d) for the 2019-2020 school year.
- Content area spending requirements in section 4106(e)(2)(C), (D), and (E): the requirements to use a minimum percentage of Title IV, Part A funds for activities under sections 4107, 4108 and 4109 for FY 2019 funds and any available FY 2018 carryover funds.
- Spending limitation in section 4109(b): the 15 percent limit on the use of funds under section 4109 to purchase technology infrastructure for FY 2019 funds and any available FY 2018 carryover funds.
- The definition of professional development in section 8101(42) of the ESEA for the 2019-2020 school year.

I am requesting these waiver/waivers because it is not possible to obligate funds on a timely basis as originally planned due to extensive school closures in the State. In addition, my State needs increased flexibility in the use of Title IV, Part A funds to support continuity of services due to these school closures. The school closures also present unique needs with respect to professional development for educators to meet the immediate needs of children whose education has been severely disrupted by school closures. These closures are in response to extraordinary circumstances for which a national emergency has been duly declared by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and will protect the health and safety of students, staff, and our communities.

In seeking these waivers, I assure that:

- The SEA will use, and ensure that its subgrantees use, funds under the respective programs in accordance with the provisions of all applicable statutes, regulations, program plans, and applications not subject to these waivers.
- The SEA will work to mitigate, and ensure that its subgrantees work to mitigate, any negative effects, if any, that may occur as a result of the requested waivers.
- The SEA will provide the public and all LEAs in the State with notice of, and the opportunity to comment on, this request by posting information regarding the waiver request and the process for commenting on the State website.

Thank you for your consideration.

Sincerely,

Chief State School Officer (or Authorized
Representative)

Digital Signature

OR

Typed Name and Date

By typing my name here, I am affirming
submission of this waiver on behalf of the State.