



GOVERNOR GREG ABBOTT

February 22, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Cardona:

This letter serves as the State of Texas' request to waive the requirements of Section 317 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA), Pub. L. 116-260, Div. M, Tit. III, enacted on December 27, 2020. CRRSA appropriates funds that would provide necessary relief for non-public schools that serve an important role in educating Texas students. Because I cannot certify that Texas will meet the maintenance of effort requirement of Section 317(a), I respectfully request a waiver pursuant to Section 317(b).

The Texas Legislature is currently meeting to determine the appropriations for the 2022-2023 biennium, but final decisions will not be known before the final budget is adopted in late May of 2021. I cannot presume to know the outcome of that process. While I know the Legislature shares my commitment to education, as evidenced by the passage of House Bill 3 in 2019, the State has many other critical and significant demands. To begin, the Legislature is already considering how to help Texans recover from last week's winter storm, an effort that cannot be hampered by my certification today.

At the onset of the COVID-19 pandemic in Texas, the State's fiscal position was strong. The pandemic, however, initiated a series of swift and severe pressures on the state economy. The fiscal impacts of COVID-19 were intensified by a price war in the oil market and a subsequent collapse in demand and production, and Texas experienced a precipitous decline in financial resources. Nearly two million Texans filed for unemployment insurance benefits between March 14 and May 9, triple the number of claims filed in all of 2019. By September, that number rose to nearly 3.5 million. In response, Texas Comptroller of Public Accounts Glenn Hegar issued a revised revenue estimate, noting a loss of \$11.57 billion, down 9.5 percent from the October estimate. Despite efforts by state leaders to reduce spending, the financial effects of the COVID-19 pandemic and energy sector slowdown will linger into the upcoming biennium. The

Comptroller's recently released Biennial Revenue Estimate makes clear that uncertainty still abounds for fiscal years 2022 and 2023.

Even as the State of Texas requests this waiver, please allow me to detail some of the ways in which state leadership has utilized the Governor's Emergency Education Relief Fund (GEER) to benefit our students. State leaders allocated \$175 million to post-secondary education to shore up the State's need-based financial aid program in response to an increase in demand in the context of the COVID-19 pandemic, fund improvements in online learning as institutions transitioned to this modality, and further enhance data infrastructure capabilities, all of which will aid students both immediately and for years to come. The State's K-12 education agency utilized \$30 million worth of GEER funding to provide students with severe cognitive disabilities additional support for the critical services they require, such as high-quality personalized programs. These additional services were intended to help those most affected by the pandemic in their transition to virtual education. Finally, a portion of GEER funding supported the Texas Home Learning platform, which provides instructional content and courses for multiple grade levels. The Texas Home Learning funding also provided for a remote dyslexia instructional platform to help address the unique needs of these students in transitioning to home learning. As evidenced by these initiatives, GEER funds were used to benefit the education agencies and students the State has deemed most significantly impacted by the COVID-19 pandemic.

These investments are in addition to the significant increases in K-12 and post-secondary education made during the Texas Legislature's 2019 session. The Legislature added a total of \$11.5 billion in state funds to increase K-12 funding, including salary increases for classroom teachers and other educators, and to provide school district property tax relief. The Legislature also provided an additional \$913.5 million in state funds for institutions of post-secondary education. This included increases in formula funding to all institutions and targeted investments in infrastructure and promising initiatives.

The State of Texas previously certified, and later verified, that it was in compliance with the maintenance of effort requirements of the Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted on March 27, 2020. The State has committed to support both elementary and secondary education, and post-secondary education, at greater levels in fiscal years 2020 and 2021 than the average of fiscal years 2017, 2018, and 2019.

As you are no doubt aware, CRRSA modified the maintenance of effort calculation in two critical ways. First, it left the base years constant while extending the target year to 2022. Second, it changed from an overall level of support of education to one based on education as a proportion of the State's overall level of spending.

This calculation change causes two problems with the requested state certification. First, the Texas Legislature is constitutionally required to meet once every two years and thus has a biennial budget. This means that the request asks the State to certify that it will comply with

The Honorable Miguel Cardona
February 22, 2021
Page 3

certain requirements just as the Legislature is beginning to consider the State's two-year budget. While I have no doubt the Legislature will comply with the spirit of the maintenance of effort requirement, making such assertions would be premature at this time.

Second, changing the maintenance of effort requirement to a proportion of total state spending will disproportionately affect fast-growth states with complex needs, such as Texas. In addition to the statutory requirement to fund the cost of enrollment increases in our Pre-K-12 schools, the State must consider increasing Medicaid costs and caseload growth, additional funding for our highway transportation system, increased investment in behavioral health, improvements in our Child Protective Services system, and a number of other critical priorities. This does not even take into account one-time funding needs such as the \$3.7 billion the State provided to repair the damage wrought by Hurricane Harvey, and the \$1.68 billion the State invested in the Texas Infrastructure Resiliency Fund and the Flood Infrastructure Fund to help ameliorate similar disasters in the future. Further, this change would penalize the Legislature for providing assistance to Texans recovering from last week's winter storm and for making needed investments in the State's energy infrastructure. The current maintenance of effort calculation pits legitimate needs and investments against our commitment to improving both elementary and secondary education and post-secondary education.

The State of Texas deeply appreciates the support Congress has given to students and institutions of education across the nation. We further commit to providing significant support to those institutions as we respond to, and emerge from, the COVID-19 pandemic. By receiving a waiver as contemplated in Section 317(b) of CRRSA, Texas can ensure this aid will be swiftly distributed to those students and institutions most impacted by the COVID-19 pandemic. We appreciate your timely attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott", written in a cursive style.

Greg Abbott
Governor

GA:bfk

U.S. Department of Education

Certification and Agreement for Funding

Emergency Assistance to Non-Public Schools Program under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act)

CFDA Number: 84.425R



OMB Number: 1810-0741
Expiration Date: Nov. 30, 2023

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 1810-0741. The time required to complete this information collection is estimated to average .5 hours (or 30 minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4537. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: GEERF@ed.gov.

PROGRAM BACKGROUND INFORMATION

Purpose

Under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), Pub. L. No. 116-260 (December 27, 2020), Congress authorized the Emergency Assistance to Non-Public Schools (EANS) program as part of the Act's Governor's Emergency Education Relief Fund. The U.S. Department of Education (Department) will award a portion of the GEER Fund to Governors as a supplement to the CARES Act's GEER I Fund. Those funds, which we refer to as the GEER II Fund, will appear in the Department's grants management system (G5) without any additional paperwork. In addition, the Department will award a formula grant to each Governor with an approved EANS Certification and Agreement¹ for the purpose of providing emergency services or assistance to non-public schools in the wake of Coronavirus Disease 2019 (COVID-19). By accepting an EANS award from the Department, a Governor automatically designates the State educational agency (SEA) to administer the EANS program. An SEA will be the payee or fiscal agent in G5 for purposes of accessing Federal funds.

Eligibility

Governors in all 50 States and the Commonwealth of Puerto Rico, as well as the Mayor of the District of Columbia.

Funding

The Department will award \$2,750,000,000 to Governors with an approved Certification and Agreement based on each State's relative share of children aged 5-17 who are from a family at or below 185 percent of the poverty level and who are enrolled in non-public schools. The amount each State is eligible to receive is indicated in the allocation table in Appendix B.

Timeline

The Department intends to make an award to a Governor within one business day of receiving an approvable Certification and Agreement. An SEA, as the agency designated to administer the EANS program, must make an application available to non-public schools no later than 30 days after receipt of the funds and approve or deny an application from a non-public school no later than 30 days after receiving it. The SEA must, to the extent practicable, obligate all funds for services or assistance to non-public schools in the State in an expedited and timely manner, but not later than six months after receiving the funds. (An SEA is considered to have received EANS funds on the date the Department makes the grant award to the Governor.) An SEA that complies with its responsibilities under the EANS program but has unobligated funds remaining six months after receiving those funds must return them to the Governor for any authorized use under the GEER II Fund. Before the SEA returns EANS funds to the Governor, it should notify the Department.

Types of Services or Assistance

A non-public school receiving services or assistance under the EANS program shall use such services or assistance to address educational disruptions resulting from COVID-19 for:

- A. supplies to sanitize, disinfect, and clean school facilities;

¹ For purposes of this section, Certification and Agreement is the application referenced in Section 312(d)(1)(A) of the CRRSA Act.

- B. personal protective equipment (PPE);
- C. improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school;
- D. training and professional development for staff on sanitation, the use of PPE, and minimizing the spread of infectious diseases;
- E. physical barriers to facilitate social distancing;
- F. other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention (CDC) for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff during the qualifying emergency;
- G. expanding capacity to administer coronavirus testing to effectively monitor and suppress coronavirus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff at the non-public school;
- H. educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning;
- I. redeveloping instructional plans, including curriculum development, for remote learning, hybrid learning, or to address learning loss;
- J. leasing of sites or spaces to ensure safe social distancing to implement public health protocols, including guidelines and recommendations from the CDC;
- K. reasonable transportation costs;
- L. initiating and maintaining education and support services or assistance for remote learning, hybrid learning, or to address learning loss; or
- M. reimbursement for the expenses of any services or assistance described above that a non-public school incurred on or after March 13, 2020, except for services or assistance under (C) (other than portable air purification systems, which are an allowable reimbursable expense), (D), (I), and (L)) or any expenses reimbursed through a loan guaranteed under the Paycheck Protection Act (15 U.S.C. 636(a)) as of December 27, 2020.

CERTIFICATION AND AGREEMENT INSTRUCTIONS

GENERAL INSTRUCTIONS

To receive the State's allocation under the EANS program, a Governor must submit a complete, signed Certification and Agreement, in PDF, by email, to the U.S. Department of Education (Department) at GEERF@ed.gov no later than February 8, 2021. The Certification and Agreement must include the following, each of which requires the signature of the Governor or authorized representative:


- A completed Certification and Agreement cover sheet. *(Part A)*
- Programmatic, fiscal and reporting assurances. *(Part B)*
- Other assurances and certifications. *(Part C)*

APPENDICES

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

EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS PROGRAM

**PART A: CERTIFICATION AND AGREEMENT COVER SHEET
(CFDA No. 84.425R)**

<p>Legal Name (Office of the Governor): Office of the Texas Governor</p>	<p>DUNS Numbers: Office of the Governor: State Educational Agency (SEA): 179260856</p>
<p>Address (Street Number and Name, City, State, Zip Code): P.O. Box 12428 Austin Texas 78711 (512) 463-2000</p>	<p>Contact Information for SEA Representative: Name: Cory Green Position & Office: Associate Commissioner for Grant Compliance and Administration Street Number and Name, City, State, Zip Code: 1701 N. Congress Ave., Austin, TX 78701-1494 Telephone: (512) 463-8992 or (512) 565-2688 (cell) Email address: cory.green@tea.texas.gov</p>
<p>SEA Financial Institution Name: TX COMP AUSTIN Address (Street Number and Name, City, State, Zip Code): 208 E. 10th Street Austin, TX 78701-2436 Telephone: ABA Number: 114900164 Account Number: 463600701 Contact Name/Telephone: Patricia Vela (512) 463-2227</p>	<p>Corresponding Bank (if applicable) Name: Address (Street Number and Name, City, State, Zip Code): Telephone: ABA Number: Telegraphic Abbrev:</p>
<p>To the best of my knowledge and belief, all of the information in this Certification and 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 Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), Pub. L. No. 116-260 (December 27, 2020), or any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729 <i>et seq.</i>; 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, and other enforcement actions.</p>	
<p>Governor or Authorized Representative of the Governor (Typed Name): Luis Saenz</p>	<p>Telephone: 512-463-1762</p>
<p>Signature of Governor or Authorized Representative of the Governor: </p>	<p>Date: 02/22/2021</p>


**EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS PROGRAM
PART B: PROGRAMMATIC, FISCAL, AND REPORTING ASSURANCES**

The Governor or his/her authorized representative assures the following:

- Funds will be used to provide services or assistance to non-public schools to address educational disruptions resulting from COVID-19 consistent with Section 312(d) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act) and all other applicable requirements. By accepting an EANS award from the Department, the Governor designates the State educational agency (SEA) to administer the EANS program and to draw down funds from the Department's Grants Management System (G5). The SEA will distribute information about the EANS program to non-public schools and make an application easily available no later than 30 days after receipt of the EANS funds, which is also the same time as the Governor receives the grant award. The SEA will process each non-public school application promptly but no later than 30 days after the SEA receives the application from a non-public school. The SEA will ensure that services or assistance is provided to any eligible non-public school that--
 - is a non-public school as described under Section 312(d)(3)(C);
 - submits an application that meets the requirements under Section 312(d)(3)(B); and
 - requests allowable services or assistance under Section 312(d)(4).
- The SEA will prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by the qualifying emergency.
- The SEA will, to the extent practicable, obligate all EANS funds in an expedited and timely manner, but not later than six months after receiving the funds.
- The SEA will administer the EANS program in accordance with the statute, including Section 312(d)(3)(B), which specifies that an application from a non-public school must include the following:
 - the number and percentage of students from low-income families enrolled by the non-public school in the 2019-2020 school year;
 - a description of the emergency services authorized under Section 312(d)(4) that the non-public school requests be provided by the SEA;
 - whether the non-public school requesting services or assistance received a Paycheck Protection Program loan that was made before December 27, 2020, and the amount of any such loan.
- The SEA will ensure the control of funds for the services or assistance provided to a non-public school, and title to materials, equipment, and property purchased with EANS funds, will be in a public agency and a public agency will administer such funds, services, assistance, materials, equipment, and property.
- The SEA will ensure that all services or assistance provided under the EANS program, including materials, equipment, and any other items, will be secular, neutral, and non-ideological.
- The SEA will not use EANS funds to provide direct or indirect financial assistance to scholarship-granting organizations or related entities for elementary or secondary education or to provide or support vouchers, tuition tax credit programs, education savings accounts, scholarships, scholarship programs, or tuition-assistance programs for elementary or secondary education, except for students who receive or received such assistance under the Governor's

Emergency Education Relief (GEER I) Fund under the Coronavirus Aid, Relief, and Economic Security (CARES) Act for the 2020-2021 school year, and only for the same assistance provided such students.

- The Governor will comply with the maintenance of effort provision in Section 317 of the CRRSA Act absent waiver by the Secretary pursuant to Section 317(b) thereof.
- The Governor will comply with all reporting requirements at such time and in such manner and containing such information as the Secretary may reasonably require. (See also 2 CFR 200.328-200.329).
- The SEA and any entity providing assistance or services under the EANS program will cooperate with any examination of records 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.
- The Governor will return to the Secretary any funds received under the EANS program that the Governor does not award or obligate within one year of receiving such funds.
- The Governor has consulted with the SEA on the Certification and Agreement, particularly the assurances herein.

Governor or Authorized Representative of the Governor (Typed Name):	
Luis Saenz	
Signature: 	Date: 02/22/2021


**EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS PROGRAM
PART C: OTHER ASSURANCES AND CERTIFICATIONS**

The Governor or his/her authorized representative assures or certifies the following:

- The State 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.

- 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; and the State will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR part 82, Appendix B).

- The State and other entities will comply with the provisions of all applicable acts, regulations, and assurances; the provisions of the Education Department General Administrative Regulations in 34 CFR parts 76, 77, 81, 82, 84, 86, 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 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Governor or Authorized Representative of the Governor (Typed Name): Luis Saenz	
Signature: 	Date: 02/22/2021

Appendix A: Relevant Excerpts from Title III of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act)

Section 312(d) EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS. —

(1) PROGRAM AUTHORIZED.—

(A) **IN GENERAL.**—With funds reserved under subsection (a)(2), the Secretary shall allot the amount described in subparagraph (B) to the Governor of each State with an approved application under paragraph (2) in order to provide services or assistance to non-public schools under this subsection. The Governor shall designate the State educational agency to administer the program authorized under this subsection.

(B) **AMOUNT OF ALLOTMENT.**—An allotment for a State under subparagraph (A) shall be in the amount that bears the same relationship to the total amount of the funds reserved under subsection (a)(2) as the number of children aged 5 through 17 at or below 185 percent of poverty who are enrolled in non-public schools in the State (as determined by the Secretary on the basis of the best available data) bears to the total number of all such children in all States.

(2) APPLICATIONS FROM STATES. —

(A) **APPLICATION REQUEST AND REVIEW.**—The Secretary shall—

- (i) issue a notice inviting applications for funds reserved under subsection (a)(2) not later than 30 days after the date of enactment of this Act; and
- (ii) approve or deny an application not later than 15 days after the receipt of the application.

(B) **ASSURANCE.**—The Governor of each State, in consultation with their respective State educational agency, shall include in the application submitted under this paragraph an assurance that the State educational agency will —

- (i) distribute information about the program to non-public schools and make the information and the application easily available;
- (ii) process all applications submitted promptly, in accordance with subparagraph (3)(A)(ii);
- (iii) in providing services or assistance to non-public schools, ensure that services or assistance is provided to any non-public school that,
 - (I) is a non-public school described in paragraph (3)(C);
 - (II) submits an application that meets the requirements of paragraph (3)(B); and
 - (III) requests services or assistance allowable under paragraph (4);
- (iv) to the extent practicable, obligate all funds provided under subsection (a)(2) for services or assistance to non-public schools in the State in an expedited and timely manner; and
- (v) obligate funds to provide services or assistance to non-public schools in the State not later than 6 months after receiving such funds under subsection (a)(2).

(3) APPLICATIONS FOR SERVICES OR ASSISTANCE.

(A) **APPLICATION REQUEST AND REVIEW.**—A State educational agency receiving funds from the Governor under this subsection shall--

- (i) make the application for services or assistance described in subparagraph (B) available to non-public schools by not later than 30 days after the receipt of such funds; and
- (ii) approve or deny an application not later than 30 days after the receipt of the application.

(B) APPLICATION REQUIREMENTS.—Each non-public school desiring services or assistance under this subsection shall submit an application to the State educational agency at such time, in such manner, and accompanied by such information as the State educational agency may reasonably require to ensure expedited and timely provision of services or assistance to the non-public school, which shall include--

- (i) the number and percentage of students from low-income families enrolled by such non-public school in the 2019–2020 school year;
- (ii) a description of the emergency services authorized under paragraph (4) that such non-public school requests to be provided by the State educational agency; and
- (iii) whether the non-public school requesting services or assistance under this subsection received a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) that was made before the date of enactment of this Act and the amount of any such loan received.

(C) TARGETING.—A State educational agency receiving funds under this subsection shall prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by the qualifying emergency.

(4) TYPES OF SERVICES OR ASSISTANCE.—A non-public school receiving services or assistance under this subsection shall use such services or assistance to address educational disruptions resulting from the qualifying emergency for--

- (A) supplies to sanitize, disinfect, and clean school facilities;
- (B) personal protective equipment;
- (C) improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school;
- (D) training and professional development for staff on sanitation, the use of personal protective equipment, and minimizing the spread of infectious diseases;
- (E) physical barriers to facilitate social distancing;
- (F) other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff during the qualifying emergency;
- (G) expanding capacity to administer coronavirus testing to effectively monitor and suppress coronavirus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff at the non-public school;
- (H) educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning;
- (I) redeveloping instructional plans, including curriculum development, for remote learning, hybrid learning, or to address learning loss;
- (J) leasing of sites or spaces to ensure safe social distancing to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention;
- (K) reasonable transportation costs;
- (L) initiating and maintaining education and support services or assistance for remote learning, hybrid learning, or to address learning loss; or
- (M) reimbursement for the expenses of any services or assistance described in this paragraph (except for subparagraphs (C) (except that portable air purification systems

shall be an allowable reimbursable expense), (D), (I), and (L)) that the non-public school incurred on or after the date of the qualifying emergency, except that any non-public school that has received a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) as of the day prior to the date of enactment of this Act shall not be eligible for reimbursements described in this paragraph for any expenses reimbursed through such loan.

(5) ADMINISTRATION.—A State educational agency receiving funds under this subsection may reserve not more than the greater of \$200,000 or one-half of 1 percent of such funds to administer the services and assistance provided under this subsection to non-public schools.

(6) REALLOCATION.—Notwithstanding paragraph (1)(A), each State educational agency receiving funds under this subsection that complies with paragraph (2) but has unobligated funds remaining 6 months after receiving funds under this subsection shall return such remaining unobligated funds to the Governor, to use for any use authorized under subsection(c).

(7) PUBLIC CONTROL OF FUNDS. —

(A) IN GENERAL.—The control of funds for the services or assistance provided to a non-public school under this subsection, 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, services, assistance, materials, equipment, and property.

(B) PROVISION OF SERVICES OR ASSISTANCE.—

(i) PROVIDER.—The provision of services or assistance to a non-public school under this subsection shall be provided --

(I) by employees of a public agency; or

(II) through contract by such public agency with an individual, association, agency, or organization.

(ii) REQUIREMENT.—In the provision of services or assistance described in clause (i), such employee, individual, association, agency, or organization shall be independent of the non-public school receiving such services or assistance, and such employment and contracts shall be under the control and supervision of such public agency described in subparagraph (A).

(8) SECULAR, NEUTRAL, AND NON-IDEOLOGICAL. -- All services or assistance provided under this subsection, including providing equipment, materials, and any other items, shall be secular, neutral, and non-ideological.

(9) INTERACTION WITH PAYCHECK PROTECTION PROGRAM.—(A) IN GENERAL.—In order to be eligible to receive services or assistance under this subsection, a non-public school shall submit to the State an assurance, including any documentation required by the Secretary, that such non-public school did not, and will not, apply for and receive a loan under paragraphs (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)(37)) that is made on or after the date of enactment of this Act.

(B) ALLOWANCE.—A non-public school that received a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) that was made before the date of enactment of this Act shall be eligible to receive services or assistance under this subsection.

(e) RESTRICTIONS.—

(1) Funds provided under this section shall not be used --

(A) to provide direct or indirect financial assistance to scholarship granting organizations or related entities for elementary or secondary education; or

(B) to provide or support vouchers, tuition tax credit programs, education savings accounts, scholarships, scholarship programs, or tuition-assistance programs for elementary or secondary education.

(2) EXCEPTION.—Notwithstanding paragraph (1), a State may use funds provided under subsection (a)(1) to provide assistance prohibited under paragraph (1) only to students who receive or received such assistance with funds provided under section 18002(a) of division B of the CARES Act (20 U.S.C. 3401 note), for the 2020-2021 school year and only for the same assistance provided such students under such section.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be interpreted to apply any additional restrictions to funds provided in section 18002(a) of division B of the CARES Act (20 U.S.C. 3401 note).

(f) REALLOCATION.—Each Governor shall return to the Secretary any funds received under paragraph (1) or (2) of subsection (a) that the Governor does not award or obligate not later than 1 year after the date of receipt of such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b) for uses authorized under subsection (c).

DEFINITIONS

SEC. 315. Except as otherwise provided in sections 311 through 316 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 ;
- (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 HEA .
- (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;
- (8) any other term used that is defined in section 8101 of the ESEA of 1965) shall have the meaning given the term in such section; and
- (9) the term “qualifying emergency” has the meaning given the term in section 3502(a)(4) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136).

MAINTENANCE OF EFFORT

Section. 317. (a) At the time of award of funds to carry out sections 312 or 313 of this title, a State shall provide assurances that such State will maintain support for elementary and secondary education, and for higher education (which shall include State funding to institutions of higher education and state needs-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 year 2022 at least at the proportional levels of such State’s support for elementary and secondary education and for higher education relative to such State’s overall spending, averaged over fiscal years 2017, 2018, and 2019.

(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.

Section 315. Except as otherwise provided in sections 311 through 316 of this title, as used in such sections—

Appendix B: State Allocation Data

Under section 312(d)(1)(B) of the CRRSA Act, the Secretary awards EANS funds to Governors based on their proportional share of children aged 5-17 who are at or below 185 percent of the poverty level and are enrolled in non-public schools in the State. The Department used school enrollment and poverty data from the American Community Survey (ACS) 5-Year (2014-2018) Public Use Microdata Sample (PUMS) to determine the relative shares of such children in each State.

STATE	EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS PROGRAM (Based on section 312(d) of the CRRSA Act)
TOTAL	\$2,750,000,000
ALABAMA	45,502,043
ALASKA	5,367,703
ARIZONA	54,413,531
ARKANSAS	22,872,412
CALIFORNIA	187,475,843
COLORADO	28,433,931
CONNECTICUT	15,831,765
DELAWARE	4,965,788
DISTRICT OF COLUMBIA	5,312,618
FLORIDA	212,978,041
GEORGIA	79,175,146
HAWAII	9,815,286
IDAHO	19,581,608
ILLINOIS	84,489,804
INDIANA	81,656,000
IOWA	26,271,345
KANSAS	26,667,139
KENTUCKY	40,817,799
LOUISIANA	55,566,230
MAINE	12,751,099
MARYLAND	35,878,533
MASSACHUSETTS	24,225,048
MICHIGAN	86,776,841
MINNESOTA	41,907,253
MISSISSIPPI	31,353,423
MISSOURI	67,550,224
MONTANA	12,816,385
NEBRASKA	17,272,129
NEVADA	19,375,550
NEW HAMPSHIRE	7,069,209
NEW JERSEY	68,749,847
NEW MEXICO	17,282,330
NEW YORK	250,113,323
NORTH CAROLINA	84,824,393

NORTH DAKOTA	3,998,745
OHIO	154,896,274
OKLAHOMA	30,986,191
OREGON	27,595,419
PENNSYLVANIA	150,022,294
PUERTO RICO	104,161,180
RHODE ISLAND	7,148,776
SOUTH CAROLINA	39,981,327
SOUTH DAKOTA	7,773,070
TENNESSEE	72,838,359
TEXAS	153,168,245
UTAH	23,978,187
VERMONT	4,284,369
VIRGINIA	46,618,019
WASHINGTON	46,263,028
WEST VIRGINIA	9,052,260
WISCONSIN	77,492,001
WYOMING	4,602,637