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Late Liquidation Period for Elementary and Secondary Education Funds Provided During COVID-19 Pandemic

In response to the COVID-19 pandemic, Congress enacted several programs that provided federal funds "to prevent, prepare for, and respond to coronavirus" in elementary and secondary education, or provided funds that could be used for that purpose. These programs include the Elementary and Secondary School Emergency Relief (ESSER) Fund, Governor's Emergency Education Relief (GEER) Fund, Emergency Assistance to Non-Public Schools (EANS) program, and Homeless Children and Youth (ARP-HCY) program, which made grants to states (i.e., the 50 states, the District of Columbia, and Puerto Rico). Funds were also appropriated for programs providing similar types of support to the outlying areas and the Bureau of Indian Education (BIE). Each of these programs was authorized under the Education Stabilization Fund (ESF) or provisions appropriating funds for similar purposes in response to the pandemic.

Funds for ESF programs for states were authorized and funded by the three acts below. Each act also provided funds for the outlying areas and the BIE.

- Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136), which authorized *ESSER I* and *GEER I*;
- Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA; Division M of the Consolidated Appropriations Act, 2021 [P.L. 116-260]), which authorized *ESSER II*, *GEER II*, and *EANS I*; and
- American Rescue Plan Act of 2021 (ARPA; P.L. 117-2), which authorized *ESSER III*, *EANS II*, and *ARP-HCY*.

These acts collectively provided $200.1 billion in appropriations for state programs and $1.4 billion for the outlying areas. The programs are administered by the U.S. Department of Education (ED).

This In Focus focuses on changes to the period for the liquidation of funds obligated under the aforementioned programs for states and the outlying areas and potential issues for congressional consideration.

Obligation and Liquidation Periods

Each program had a statutorily defined period of obligation (availability) during which grantees were required to obligate the funds awarded and a later date by which the obligated funds had to be expended (liquidated). Section 421 of the General Education Provisions Act (GEPA), commonly referred to as the *Tydings period*, extends the period of obligation of funds by governors, state educational agencies (SEAs), local educational agencies (LEAs), and outlying areas by one year beyond the period of availability included in statutory language. Thus, with the inclusion of the Tydings period, the period of availability of funds was through September 30, 2022, for the CARES Act; through September 30, 2023, for the CRRSAA; and through September 30, 2024, for the ARPA. Following the Tydings period, a grantee or subgrantee (e.g., LEA) must liquidate the obligated funds within 120 days or within the ED-approved period of a liquidation extension. Funds not liquidated accordingly are to revert to the U.S. Department of the Treasury.

For state-administered programs (which include the programs administered by the outlying areas) in accordance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, ED may extend the period for the liquidation of funds beyond the 120-day period following the Tydings period by approving late liquidation requests. These flexibilities apply to the ESSER Fund, GEER Fund, EANS program, ARP-HCY, and funds provided to the outlying areas.

Using ED-developed templates, ED permitted an SEA (or outlying area) to request an extension of up to 14 months beyond the automatic 120-day period to liquidate properly obligated funds, for a total extension of 18 months. For ESSER I and GEER I, the 14-month period ended on March 28, 2024. For ESSER II, GEER II, and EANS I, the 14-month period ended on March 28, 2025. For ESSER III, EANS II, and ARP-HCY, the 14-month period was to end on March 28, 2026. Similarly, the outlying areas could use ED-developed templates to request an extension of up to 14 months beyond the automatic 120-day period to liquidate funds received under the CARES Act, CRRSAA, and ARPA. The templates were posted prior to the end of the period of obligation of funds. For example, the ESSER III and EANS II extension templates were posted on January 9, 2024. After the 18-month period expires, ED "will no longer grant late liquidation requests, except under extraordinary circumstances or in cases involving lengthy construction contracts." SEAs and the outlying areas could not request extensions beyond the 14-month period, however, using the ED-developed templates.

State Late Liquidation Requests

As discussed previously, ED indicated that it would accept requests from SEAs and outlying areas to extend the liquidation period for funds awarded under each of the aforementioned programs using the ED-developed templates provided the funds were properly obligated by the relevant deadline. Data on these requests, their disposition, and the amount of funds for which an extension was granted were provided to CRS by ED on March 5, 2025. According to ED, the data were current as of February 28, 2025.

Based on the data provided by ED, 47 states had submitted and received approval for a liquidation extension for at least one of the programs discussed in this In Focus. In addition, some states had applications for liquidation extensions under ESSER II, EANS I, EANS II, or ARP-HCY that were either under review or pending approval by ED. Overall, 164 liquidation extension requests submitted by the states had been approved, allowing $4.8 billion (2.4% of total state grant awards) to be expended for up to 14 months beyond the automatic 120-day extension period to liquidate funds. Of these funds, $3.3 billion (69.5% of the total approved for late liquidation extensions) in ESSER III funds was approved for the late liquidation extension. The states that had not submitted a request for any liquidation extensions as of February 28, 2025, were Louisiana, Washington, and West Virginia. The aforementioned unpublished data provided to CRS suggest that no requests for a liquidation extension had been denied. Each of the outlying areas received approval for at least one liquidation extension request, totaling $384 million (27.1% of total grant awards to outlying areas).

ED Termination of Late Liquidation Period

On March 28, 2025, ED sent a letter to State Chiefs of Education, including the outlying areas, indicating that ED had "reconsidered" state requests for late liquidation extensions and was modifying the extensions of the late liquidation period for the ESF, "including all programs funded by the CRRSA and ARP acts," to end that day at 5:00 p.m. ET. As discussed above, ED had previously made late liquidation templates available in advance of the expiration of the period of obligation for the relevant programs. In making this new announcement, ED indicated that states "could not rely on the Department adhering to its original decision" and this was "especially true because the extension was a matter of administrative grace" and that "any reliance on a discretionary extension subject to reconsideration by the agency was unreasonable." The letter also stated that "extending deadlines for COVID-related grants ... years after the COVID pandemic ended is not consistent with the Department's priorities and thus not a worthwhile exercise of its discretion."

In the same letter, ED indicated that it will consider extensions to the liquidation period on an individual project-specific basis. In making a request, a state or outlying area has to explain "how a particular project's extension is necessary to mitigate the effects of COVID on American students' education" and "why the Department should exercise its discretion" to grant a state's request.

On April 3, 2025, ED followed up with additional details about how an application for an extension to the liquidation period for an individual project could be submitted. It indicated that it will review "each request as it is received and work to provide a response as quickly as possible."

Possible Issues

The withdrawal of the late liquidation extension authority that ED previously approved occurred on the last day on which funds provided under the CRRSAA could be expended based on the up-to-14-month late liquidation extensions requests. The ED-approved authority for late liquation of ARPA funds had originally extended through March 28, 2026. Based on data available from USAspending.gov on May 13, 2025, a total of $17.4 billion in ESF funds had not yet been expended, including $14.7 billion in ESSER III funds.

As states and outlying areas received different grant amounts and have been expending these funds at different rates, some entities may be more affected by ED's change in policy than others. For example, based on the May 2025 spending data, 87.91% of ESSER III funds had been spent by states. However, this percentage ranged from 51.44% in the District of Columbia to 95.55% in Iowa. In terms of dollars remaining for liquidation, this ranged from $18.7 million in Hawaii to $1.2 billion in California.

State education chiefs (e.g., Mississippi) have argued in letters to the Secretary of Education that the withdrawal of the late liquidation authority will cause financial hardship for schools and disrupt student services. For example, the Mississippi letter noted that "districts have contractual obligations that cannot simply be terminated without significant financial, educational, and legal consequences."

On April 10, 2025, 16 states, the District of Columbia, and the governor of Pennsylvania sued ED and the Secretary of Education over ED's withdrawal of the late liquidation extension authority. The lawsuit says that the change in ED policy "triggered chaos" for SEAs and LEAs and has created a "massive, unexpected funding gap that is causing serious harm to the public, cutting off vital education services, all to the detriment of the students whom Congress intended to benefit."

As of May 9, 2025, ED reported receiving over 250 project-specific requests for late liquidation extensions from 32 states and outlying areas. Of these, ED had reviewed and issued determinations for 129 project-specific requests. If an extension request is denied, the state agency may appeal the decision consistent with 2 C.F.R. §200.342.

For More Information About the ESF

CRS Report R47027, *Education Stabilization Fund Programs Funded by the CARES Act, CRRSAA, and ARPA: Background and Analysis*

CRS Report R48186, *Education Stabilization Fund: Expenditures for Elementary and Secondary Education*

Rebecca R. Skinner, Specialist in Education Policy
Isobel Sorenson, Research Assistant

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