May 4, 2023

**VIA ELECTRONIC TRANSMISSION**

The Honorable Miguel Cardona
Secretary
U.S. Department of Education

Dear Secretary Cardona:

As the deadlines for local education agencies (LEAs) to obligate Elementary and Secondary School Emergency Relief (ESSER) program funds appropriated under COVID-19 spending legislation approach, the latest being September 30, 2024, LEAs are reportedly spending federal funds at a dramatically accelerated rate.[1] As of January 2023, school districts were collectively spending funds at reported rate of more than $5 billion per month, nearly twice as fast as the year before.[2] Given the size, scale, and pace of this unprecedented spending, it is critical to ensure that effective oversight mechanisms are in place to prevent waste, fraud, abuse, and mismanagement of taxpayer dollars. Accordingly, we write to request additional information on the oversight the Department of Education (ED) is conducting, including records ED has collected from state education agencies (SEAs) and LEAs through its monitoring reviews.

ED uses several types of monitoring to "ensure compliance of grantees" and "guard against waste, fraud, or abuse of Federal funds."[3] These include comprehensive, focused/targeted, and

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[1] Ben Chapman, *Schools Speed Up Covid-Aid Spending After a Slow Start*, THE WALL STREET JOURNAL (Jan. 24, 2023), https://www.wsj.com/articles/schools-speed-up-covid-aid-spending-after-a-slow-start-11674530227; Marguerite Roza, *The Stakes Are Only Getting Higher for Pandemic School Aid Spending*, THE 74 (Feb. 28, 2023), https://www.the74million.org/article/the-stakes-are-only-getting-higher-for-pandemic-school-aid-spending/; Patrick Wall & Julian Shen-Berro, *Schools on track to meet COVID relief deadlines as spending surges, experts say*, CHALKBEAT (Dec. 19, 2022), https://www.chalkbeat.org/2022/12/19/23517691/schools-esser-covid-spending-stimulus-money-federal; *Frequently Asked Questions: Elementary and Secondary School Emergency Relief Programs Governor's Emergency Education Relief Programs*, U.S. DEPARTMENT OF EDUCATION 67 (Dec. 7, 2022), https://oese.ed.gov/files/2022/12/ESSER-and-GEER-Use-of-Funds-FAQs-December-7-2022-Update-1.pdf.
[2] Ben Chapman, *Schools Speed Up Covid-Aid Spending After a Slow Start*, THE WALL STREET JOURNAL (Jan. 24, 2023), https://www.wsj.com/articles/schools-speed-up-covid-aid-spending-after-a-slow-start-11674530227.
[3] *ARP ESSER Monitoring Update and Quarterly Reviews PowerPoint Presentation*, U.S. DEPARTMENT OF EDUCATION 2 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/FY-22-Monitoring_Webinar-2232022_ppt.pdf.

consolidated monitoring, as well as quarterly monitoring reviews.[4] While comprehensive monitoring entails "a full programmatic and fiscal review" for states that are selected, focused/targeted monitoring is used to address a "specific challenge" in a state, such as "unexpectedly large draw-downs," and relies on an "abbreviated protocol generally based on financial data and information."[5] Consolidated monitoring is a "cross-program review" that looks into the implementation of multiple Federal programs, including ESSER.[6] Quarterly monitoring reviews involve calls with every state and focus on various "high priority" issues such as efforts to address learning loss and SEA monitoring procedures for LEAs.[7] ED also collects data on state and local education agencies' uses of ESSER funding through its annual performance reporting process.[8]

Additional information is necessary for Congress to assess the effectiveness of these monitoring and reporting processes. While ED has stated that it selects grantees for focused, comprehensive, and consolidated monitoring on the basis of risk assessments, it is unclear in certain cases exactly how ED has determined which states should undergo review.[9] Additionally, ED's website includes comprehensive monitoring protocols for funds appropriated under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, also known as ESSER I funds. However, it does not appear to contain monitoring protocols for funds appropriated under the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA), also known as ESSER II funds, or the American Rescue Plan Act (ARPA), also known as ESSER III funds.[10] It is unclear how ED has adapted its ESSER I monitoring protocols to address the additional

[4] *ARP ESSER Monitoring Update and Quarterly Reviews PowerPoint Presentation*, U.S. DEPARTMENT OF EDUCATION 2 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/FY-22-Monitoring_Webinar-2232022_ppt.pdf.

[5] *ARP ESSER Monitoring Update and Quarterly Reviews PowerPoint Presentation*, U.S. DEPARTMENT OF EDUCATION 2 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/FY-22-Monitoring_Webinar-2232022_ppt.pdf; *ARP ESSER Monitoring Update and Quarterly Reviews Webinar Transcript,* U.S. DEPARTMENT OF EDUCATION 2 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/DeptofEducation-FY22Monitoring-Writtentranscript_22322.pdf.

[6] *ARP ESSER Monitoring Update and Quarterly Reviews PowerPoint Presentation*, U.S. DEPARTMENT OF EDUCATION 2 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/FY-22-Monitoring_Webinar-2232022_ppt.pdf.

[7] *ARP ESSER Monitoring Update and Quarterly Reviews PowerPoint Presentation*, U.S. DEPARTMENT OF EDUCATION 2, 5 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/FY-22-Monitoring_Webinar-2232022_ppt.pdf; *see also Quarterly Review Summary: State Support for Local Educational Agencies that Receive American Rescue Plan Funds to Address Learning Loss*, U.S. DEPARTMENT OF EDUCATION (Winter 2023), https://oese.ed.gov/files/2023/02/Quarterly-Review-Summary_Office-of-State-and-Grantee-Relations_-clean-final-version.pdf.

[8] *ESSER Reporting*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/esser-annual-reporting/ (last visited Mar. 15, 2023); *ESF Grantee Help: Elementary and Secondary School Emergency Relief (ESSER) Support*, U.S. DEPARTMENT OF EDUCATION, https://covid-relief-data.ed.gov/grantee-help/esser (last visited Mar. 15, 2023); *see also Elementary and Secondary School Emergency Relief Fund: Fiscal Year 2021 Annual Performance Report*, U.S. DEPARTMENT OF EDUCATION (Dec. 2022), https://api.covid-relief-data.ed.gov/collection/api/v1/public/docs/ESSER%20Fiscal%20Year%202021%20Annual%20Performance%20Report%20Summary.pdf.

[9] *ARP ESSER Monitoring Update and Quarterly Reviews PowerPoint Presentation*, U.S. DEPARTMENT OF EDUCATION 2-3 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/FY-22-Monitoring_Webinar-2232022_ppt.pdf; *ARP ESSER Monitoring Update and Quarterly Reviews Webinar Transcript,* U.S. DEPARTMENT OF EDUCATION 2 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/DeptofEducation-FY22Monitoring-Writtentranscript_22322.pdf.

[10] *ESSER Comprehensive Monitoring Protocols*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/esser-comprehensive-monitoring-protocols/ (last visited Mar. 15, 2023).

requirement under ARPA that LEAs reserve at least 20 percent of their ESSER III funds to address pandemic-related learning loss.[11] ED's website also does not appear to contain finalized protocols for focused or consolidated monitoring.[12]

The protocols that are available suggest that ED has been collecting a substantial amount of information from SEAs and LEAs through its monitoring reviews relating to their management and use of ESSER funds.[13] For example, ED's monitoring protocols appropriately contain a range of open-ended questions.[14] ED's ESSER I grantee protocol asks SEAs to describe what they are doing to monitor LEAs to ensure that they are "meeting requirements that program funds are used only for authorized purposes and in compliance with all applicable Federal statutes, regulations, and the terms and conditions of Federal awards."[15] It also asks SEAs whether they are "aware of any waste, fraud, or abuse regarding ESSER fund grants, subgrants or contracts, either at the State or local level."[16] A separate monitoring form for sub-grantees suggests that LEAs supply ED with additional information, including sample communications between LEAs and SEAs regarding the ways that program funds will be used, copies of final approved budgets, details regarding the steps LEAs are taking during their budget preparation processes to ensure that proposed uses of funds are allowable, and copies of their most recently completed state-level monitoring reviews.[17] ED also appropriately conducts interviews during its monitoring process and requests that SEAs and LEAs provide supporting documentation for many of their open-ended responses.[18] For example,

[11] American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 2001(e)(1), 135 Stat. 4, 20.

[12] *Elementary and Secondary School Emergency Relief Fund*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/ (last visited Mar. 15, 2023).

[13] *ESSER Program Fiscal and Program Requirement Domains – Comprehensive Monitoring*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/files/2021/08/ESSER_GranteeReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023); *ESSER Subrecipient program Fiscal and Program Requirement Domains*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/files/2021/08/ESSER_SubrecipReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023).

[14] *ESSER Program Fiscal and Program Requirement Domains – Comprehensive Monitoring*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/files/2021/08/ESSER_GranteeReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023); *ESSER Subrecipient program Fiscal and Program Requirement Domains*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/files/2021/08/ESSER_SubrecipReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023).

[15] *ESSER Program Fiscal and Program Requirement Domains – Comprehensive Monitoring*, U.S. DEPARTMENT OF EDUCATION 12-13, https://oese.ed.gov/files/2021/08/ESSER_GranteeReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023).

[16] *ESSER Program Fiscal and Program Requirement Domains – Comprehensive Monitoring*, U.S. DEPARTMENT OF EDUCATION 2, https://oese.ed.gov/files/2021/08/ESSER_GranteeReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023)

[17] *ESSER Subrecipient program Fiscal and Program Requirement Domains*, U.S. DEPARTMENT OF EDUCATION 1, 2, 5, https://oese.ed.gov/files/2021/08/ESSER_SubrecipReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023).

[18] *ARP ESSER Monitoring Update and Quarterly Reviews Webinar Transcript,* U.S. DEPARTMENT OF EDUCATION 2 (Feb. 23, 2022), https://oese.ed.gov/files/2022/03/DeptofEducation-FY22Monitoring-Writtentranscript_22322.pdf; *ESSER Program Fiscal and Program Requirement Domains – Comprehensive Monitoring*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/files/2021/08/ESSER_GranteeReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023); *ESSER Subrecipient program Fiscal and Program Requirement Domains*, U.S. DEPARTMENT OF EDUCATION, https://oese.ed.gov/files/2021/08/ESSER_SubrecipReviewSA-Protocol_Cons_Final_Web.docx (last visited Mar. 15, 2023).

ED's monitoring report for Iowa notes that two LEAs that were part of ED's review submitted reports of their actual expenditures using ESSER funds.[19]

While ED has publicly released summary monitoring reports on its website, these reports do not contain the open-ended responses that SEAs and LEAs have submitted to ED, and they do not contain supporting documentation.[20] These records are necessary for Congress to effectively conduct oversight of ED's monitoring activities.

Additional information is also necessary to determine whether problems identified through ED's monitoring process are being fully addressed. In its monitoring reports, ED has given several states low ratings in the area of subrecipient monitoring, indicating that at the time of the reviews, the states did not have sufficient processes and/or resources in place to effectively monitor how their LEAs were managing and using ESSER funds.[21] In these cases, ED has instructed states to take steps to bring their systems up to standard and required that they submit additional information to ED; however, the information and documentation that states have submitted to ED to address its concerns does not appear to be public. ED posts "closeout" letters to its website that contain high-level descriptions of corrective actions ED has required and the steps states have taken in response.[22]

ED also collects information on ESSER spending through its annual performance reporting process, during which ED asks states to report a range of details on how they have spent ESSER funds.[23] Stakeholders have raised concerns that the process ED uses to collect data may be negatively affecting accuracy. Last year, the Council of Chief State School Officers (CCSSO), which represents state heads of elementary and secondary education, publicly raised concerns that ED's data collection form had changed "numerous times" creating "confusion" and making "it difficult for states to be responsive to the Department's requests or establish clear and consistent data collection processes at the state or local levels to ensure accurate, timely data collection and reporting."[24] According to CCSSO, between July 2021 and April 2022, ED "released at least 10

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[19] *CARES ACT Targeted Monitoring Report: Iowa Department of Education (ESSER Funds)*, U.S. DEPARTMENT OF EDUCATION 19 (Jan. 19, 2021), https://oese.ed.gov/offices/american-rescue-plan/performance-and-reporting/final-cares-act-monitoring-report-iowa-dept-of-education-esser-1-19-21/.

[20] *Performance and Reporting*, U.S. DEPARTMENT OF EDUCATION https://oese.ed.gov/offices/american-rescue-plan/performance-and-reporting / (last visited Mar. 15, 2023).

[21] *Performance and Reporting*, U.S. DEPARTMENT OF EDUCATION https://oese.ed.gov/offices/american-rescue-plan/performance-and-reporting/ (last visited Mar. 15, 2023); *see also* 2 C.F.R. § 200.332(d) (2023).

[22] *Performance and Reporting*, U.S. DEPARTMENT OF EDUCATION https://oese.ed.gov/offices/american-rescue-plan/performance-and-reporting/ (last visited Mar. 15, 2023).

[23] *Elementary and Secondary School Emergency Relief (ESSER) Support*, U.S. DEPARTMENT OF EDUCATION, https://covid-relief-data.ed.gov/grantee-help/esser (last visited Mar. 15, 2023); *Education Stabilization Fund Data Download*, U.S. DEPARTMENT OF EDUCATION, https://covid-relief-data.ed.gov/data-download (last visited Mar. 15, 2023); *Education Stabilization Fund*, U.S. DEPARTMENT OF EDUCATION, https://covid-relief-data.ed.gov/ (last visited Mar. 15, 2023); *see also Elementary and Secondary School Emergency Relief Fund: Fiscal Year 2021 Annual Performance Report*, U.S. DEPARTMENT OF EDUCATION (Dec. 2022), https://api.covid-relief-data.ed.gov/collection/api/v1/public/docs/ESSER%20Fiscal%20Year%202021%20Annual%20Performance%20Report%20Summary.pdf.

[24] Letter from Melissa McGrath, Chief of Staff, Council of Chief State School Officers, to Juliana Pearson, PRS Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development, U.S. Department of Education 1 (Apr. 28, 2022), https://www.reginfo.gov/public/do/DownloadDocument?objectID=120814602.

versions of the ESSER data collection form" and "[a]t least four" of these different versions "were marked 'final.'"[25] CCSSO alleged that "annotated forms that include substantive definitions with substantial effects on reporting were developed outside the public notice and comment process" meaning that data would "be reported according to unvetted definitions that will affect public perceptions of how ESSER funds were spent."[26] It also raised concerns that the changes would "likely mean reporting for some states will align to older versions of the form and data may not be comparable across states, depending on which version of the form the state used to obtain data from its LEAs."[27] If accurate, these allegations raise concerns that the data ED releases to the American public may contain significant inconsistencies.

Given the billions of dollars in taxpayer funds at stake, it is imperative that Congress have full and complete information to assess the effectiveness of the processes ED is using to conduct oversight of ESSER funding. Accordingly, please provide the following no later than May 18, 2023.

1. A full and complete list of all lines of oversight ED has undertaken to evaluate how SEAs and LEAs are managing and using ESSER funds since the CARES Act was signed into law on March 27, 2020, including but not limited to all reviews and monitoring activities.

2. For each line of oversight described in response to question 1, please provide the following:

   a) All related internal and external letters and memoranda.

   b) A list of the specific offices at ED responsible for conducting the oversight, a description of their responsibilities, and a breakdown of the number of staff in each office who fulfill the oversight responsibilities.

   c) A full and complete list of all instances of waste, fraud, abuse, and/or mismanagement of ESSER funds that ED has identified through the oversight.

   d) A full and complete list of all states that have undergone or are scheduled to undergo oversight, a description of why each state was selected, and copies of all related risk assessments.

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[25] Letter from Melissa McGrath, Chief of Staff, Council of Chief State School Officers, to Juliana Pearson, PRS Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development, U.S. Department of Education 1-2 (Apr. 28, 2022), https://www.reginfo.gov/public/do/DownloadDocument?objectID=120814602.

[26] Letter from Melissa McGrath, Chief of Staff, Council of Chief State School Officers, to Juliana Pearson, PRS Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development, U.S. Department of Education 2 (Apr. 28, 2022), https://www.reginfo.gov/public/do/DownloadDocument?objectID=120814602.

[27] Letter from Melissa McGrath, Chief of Staff, Council of Chief State School Officers, to Juliana Pearson, PRS Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development, U.S. Department of Education 2 (Apr. 28, 2022), https://www.reginfo.gov/public/do/DownloadDocument?objectID=120814602.

e) All records that ED has collected from SEAs and LEAs. The response should include, but not be limited to, open-ended responses provided by SEAs and LEAs or their representatives to ED in response to questions on ED's monitoring protocols, notes from oral interviews, and all supporting documentation provided by SEAs and LEAs to ED.

f) All records relating to efforts by ED to address issues that were identified through its oversight, including written and electronic communications between ED and state and local officials, follow-up requests relating to corrective actions requested by ED, and information, including supporting documentation, submitted by state and local officials in response to ED's requests for corrective action.

3. Copies of all monitoring protocols ED has used in association with its oversight of ESSER funds since March 27, 2020, including monitoring protocols relating to ESSER II and ESSER III funding.

4. All records relating to the initial creation of ED's ESSER recipient data collection form and all subsequent changes made to that form, including communications among staff and between ED staff and outside stakeholders.

5. All communications between ED staff and outside stakeholders relating to concerns about ED's ESSER recipient data collection form and/or questions about how to report state-level data using that form.

Thank you for your prompt attention to this letter.

Sincerely,

Bill Cassidy, M.D.
Ranking Member
U.S. Senate Committee on Health,
Education, Labor and Pensions
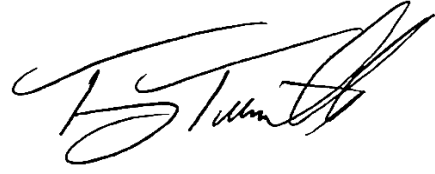
Lisa Murkowski
U.S. Senator

Mike Braun
U.S. Senator

Roger Marshall, M.D.
U.S. Senator

Mitt Romney
U.S. Senator

Tommy Tuberville
U.S. Senator

Markwayne Mullin
U.S. Senator