The Honorable Miguel A. Cardona, Ed.D.
Secretary of Education
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202

July 22, 2022

Dear Secretary Cardona:

States and districts are continuing to act with urgency in investing ESSER dollars in schools and classrooms to meet the immediate needs of students. However, the sobering reality is that the impact of the pandemic on academic growth and student mental health is deep and far reaching. For many students, including our most vulnerable student groups, learning recovery will take years. It's clear that an equitable, effective student recovery will require districts and states to make the best possible use of all resources available to them, including ESSER dollars. To maximize ESSER's impact, activities should be permitted through December 2026 under the Department's late liquidation authority. The Department has recognized the importance of leveraging one-time ESSER funding into longer-term investments to make "educational systems better for students, educators, staff, schools, and their communities post-pandemic" and extending the liquidation period would be consistent with this goal.

We are thus writing to confirm late liquidation guidance the Department recently issued, especially with respect to ARP ESSER funds, and to propose some additional clarifications. Although this letter centers on ARP ESSER funds, we request that the Department extend this guidance to CARES and CRRSA funds as well. We urge the Department to move quickly in response to this request to reflect the urgent need for clarity in the field as educators work to leverage these critical resources to their maximum effect.

First, we are seeking to confirm, per the Department of Education's May 13, 2022 letter to AASA, the School Superintendents Association, that the Department plans to grant liquidation extensions for any ARP ESSER funded project that meets the following criteria: 1) the project is targeted to the overall purpose of the ARP ESSER program, which is "to prevent, prepare for, and respond to" COVID-19, 2) the expenses charged are allowable under ESSER and applicable federal regulations, *and* 3) the expenses have been properly obligated for specific purposes consistent with the regulations in 34 CFR § 76.707 by September 30, 2024 (for ARP ESSER). This would include not only agreements related to school infrastructure projects, but also service agreements and licensing agreements that support COVID recovery, such as tutoring programs, summer school, professional learning, and online instructional materials.

Second, we are seeking clarity around the liquidation extension timeline. In the Department's May 13th letter, you state, "Upon approval, grantees may have up to 18 months beyond the end of the obligation period, although requests for longer may be considered related to extraordinary circumstances. Under a liquidation extension, the delivery of goods and services may continue to be provided through the end of the liquidation period, so long as a timely and valid obligation had been made pursuant to 34 C.F.R. § 76.707." We want to reaffirm that an 18-month extension (through March 31, 2026 for ARP ESSER) for all projects that meet the above-stated criteria is most welcome. However, to ease the burden on school districts and states, we request that you consider extending the liquidation extension period to December 31, 2026 so districts and states can use funds through the end of the 2025-2026 school year. The U.S. Department of Treasury extended the liquidation deadline for recipients of Coronavirus State and Local Fiscal Recovery Funds through December 31, 2026, so long as funds are properly obligated by the obligation deadline, to "provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds." We also note that while U.S Department of Education guidance has generally limited the late liquidation period to 18 months, 31 U.S.C. 1552(a) allows the Department to extend the liquidation period for up to 4 years from the state/local obligation deadline (through September 30, 2028 for ARP ESSER).

Third, districts and states may be hesitant to make these investments with ESSER funds if they do not have confidence that a valid and timely obligated expense will be deemed eligible for a liquidation extension well in advance of the need for the extension. Critical budget decisions are made many months in advance of the start of a new school year. The sooner districts and states know whether a liquidation extension can be granted, the better able they will be to plan for the most effective and efficient use of ESSER funds. Therefore, we encourage the Department to review liquidation extension requests as far in advance as possible, and we note nothing in the regulation that authorizes the Department to extend the liquidation period limits the Department from granting such extensions in advance.

We also encourage the Department to consider a process by which liquidation extension requests can be granted in a timely manner, given the extraordinary burden on districts, states, and the Department that reviewing requests on a case-by-case basis would present. Rather than reviewing requests case-by-case, we recommend that the Department acknowledge that the circumstances necessitating extension of ESSER's liquidation period, such as supply, service, and staffing shortages, are so widespread at this time as to justify providing SEAs an opportunity to apply for a blanket liquidation extension that allows all districts in their state to seek additional time to liquidate funds by certifying that they will be used for allowable activities and properly obligated by the statutory deadline. SEAs can then monitor these certifications as part of their regular ESSER monitoring processes, and districts' auditors can monitor fund usage as well. An approach like this balances concerns about local, state, and federal capacity to manage many extension requests against the need for robust controls to protect the integrity of taxpayer funds.

Additionally, we encourage the Department to expand on its guidance that "the delivery of goods and services may continue to be provided through the end of the liquidation period, so long as a timely and valid obligation had been made pursuant to 34 C.F.R. § 76.707." This is extremely welcome guidance, and it is very important that states, districts, and auditors trust it. In particular, it would help if the Department could clarify the significance of federal cost principles that require federally-supported expenses to be incurred during the program's budget period. We are aware that some auditors interpret this principle to mean funds cannot pay for goods and services beyond the grant period, which is traditionally aligned to the end of the obligation period in the Department's Grant Award Notices (plus an additional year for programs covered by the Tydings Amendment). Federal regulations, however, define a grant's budget period as the period in which "recipients are authorized to expend the funds." Because a liquidation extension extends the period in which recipients can expend (that is, draw down and pay out) funds, it presumably also extends the period in which services can be carried out under federal cost principles as long as those services relate back to a timely and valid obligation. It would be very helpful, however, if the Department could reaffirm this interpretation.

We appreciate your consideration of this request and look forward to continuing to work in partnership with the Department of Education as we support our students and schools in recovering from the COVID-19 pandemic.

Sincerely,

National Member Organizations:
AASA, The School Superintendents Association
Council of Chief State School Officers
Council of Great City Schools
Association of School Business Officials International
Association of Education Service Agencies
National Rural Education Association
Large Countywide and Suburban District Consortium

National Service Providers:
Achievement Network
Education Resource Strategies
Instruction Partners
Leading Educators
New Leaders
New Teacher Center
Student Achievement Partners
Teaching Lab
TNTP

cc: The Honorable Roberto J. Rodríguez, Assistant Secretary, Office of Planning, Evaluation and Policy Development

Submitted on behalf of the above organizations by Joanne Weiss, former chief of staff to U.S. Secretary of Education Arne Duncan. Please direct questions to joanne.weiss@gmail.com and she will coordinate responses.