

# **Frequently Asked Questions**

## **Emergency Assistance to Non-Public Schools (EANS) Program**

as authorized by the

## **Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act)**

and the

## **American Rescue Plan Act of 2021 (ARP Act)**



**U.S. Department of Education  
Washington, D.C. 20202**

**Updated September 17, 2021**

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# **Frequently Asked Questions**

## **Emergency Assistance to Non-Public Schools (EANS) Program**

### **PURPOSE OF THIS DOCUMENT**

The purpose of this document is to answer Frequently Asked Questions related to the Emergency Assistance to Non-Public Schools (EANS) program under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), Pub. L. No. 116-260 (December 27, 2020) (CRRSA EANS) and the American Rescue Plan Act of 2021 (ARP Act), Pub. L. No. 117-2 (March 11, 2021) (ARP EANS). The ARP Act extends the EANS program authorized under section 312(d) of the CRRSA Act. Accordingly, with two exceptions, the requirements of ARP EANS are the same as those in section 312(d) of the CRRSA Act. The two exceptions are: (1) a State educational agency (SEA) may only provide services or assistance under ARP EANS to non-public schools that enroll a significant percentage of students from low-income families and are most impacted by COVID-19; and (2) an SEA may not use ARP EANS funds to provide reimbursements to any non-public school as authorized under section 312(d)(4)(M) of the CRRSA Act. The Department issued final requirements for the ARP EANS program that it posted on its website on July 9, 2021 and published in the *Federal Register* on July 13, 2021 (<https://www.federalregister.gov/documents/2021/07/13/2021-14862/american-rescue-plan-act-emergency-assistance-to-non-public-schools-program>.)

Under the EANS program, each Governor of the 50 States and the Commonwealth of Puerto Rico as well as the Mayor of the District of Columbia may apply to the Department for a formula grant for the purpose of providing emergency services or assistance to non-public schools in the wake of the Coronavirus Disease 2019 (COVID-19). Although a Governor applies for EANS funds, the statute requires that the SEA administer the program; consequently, in accepting an EANS award from the Department, a Governor automatically designates the SEA to administer the EANS program. The SEA will be the payee or fiscal agent in the Department's grants management system (G5) for purposes of accessing Federal funds. To ensure that this administrative structure results in effective implementation of the EANS program consistent with all statutory requirements, Governors must consult with their respective SEAs in providing the application assurances.

Because the CRRSA Act and ARP Act establish a separate EANS program for which eligible non-public schools may apply to an SEA to receive services or assistance, a local educational agency (LEA) is not required to provide equitable services to students and teachers in non-public schools under the CRRSA Elementary and Secondary School Emergency Relief Fund (ESSER II Fund), the Governor's Emergency Education Relief Fund (GEER II Fund), or the ARP Elementary and Secondary School Emergency Relief Fund (ARP ESSER Fund). However, equitable services requirements continue to apply to the ESSER I and GEER I programs under the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act.

For the purpose of this guidance, the following terms apply:

- "EANS": The EANS program as authorized under both the CRRSA and ARP Acts.
- "CRRSA EANS": The EANS program as authorized under the CRRSA Act only.
- "ARP EANS": The EANS program as authorized under the ARP Act only.

The Department initially issued guidance on the CRRSA EANS program on January 15, 2021, which it updated on March 19, 2021. This document updates, and supersedes, that guidance and addresses changes to the EANS program under the ARP Act. The document is organized as follows:

- Information provided in sections A through G apply to both CRRSA EANS and ARP EANS, unless otherwise indicated.

- FAQs in sections A through G that apply only to CRRSA EANS are noted as “*CRRSA EANS ONLY*” preceding the question.
- Section H addresses requirements specific to ARP EANS.
- New questions under sections A through G added after the March 19, 2021, update are identified as “*New September 17, 2021*”.
- Questions with substantive changes or additions to the responses are identified as “*Updated September 17, 2021*”.

Other than statutory and regulatory requirements included in the document (such as those pursuant to the authorizing statute and other applicable laws and regulations), the contents of the guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any right for or on any person. The Department has determined that this document provides significant guidance under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007).

The Department may provide additional or updated information, as necessary, on the Department’s website at:

<https://oese.ed.gov/offices/education-stabilization-fund/emergency-assistance-non-public-schools/> (CRRSA EANS) and <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-emergency-assistance-to-non-public-schools/> (ARP EANS).

If you have questions that are not answered in this document, please email [EANS@ed.gov](mailto:EANS@ed.gov) and include “CRRSA EANS” or “ARP EANS” in the subject line.

## **A. Program Purpose and Awards to Governors**

### **A-1. What is the purpose of the EANS program?**

The purpose of the EANS program is to provide services or assistance to eligible non-public schools to address educational disruptions caused by the COVID-19 emergency. By creating a separate reservation of funds for this purpose, Congress reiterated the need for non-public schools to participate in emergency education relief programs by establishing a separate program, rather than relying on the equitable services requirements that typically apply to elementary and secondary formula grant programs. Consequently, LEAs are not required to provide equitable services for funds received under the CRRSA Act or ARP Act, though equitable services requirements continue to apply to CARES Act programs.

The Department awards EANS funds by formula to each Governor who has an approved CRRSA EANS Certification and Agreement or ARP EANS application. By accepting an EANS award from the Department, a Governor designates the SEA to administer the program and access EANS funds from the Department's grants management system (G5). Governors and SEAs should consult expeditiously on the administration of EANS. To receive services or assistance, an eligible non-public school submits an application to the SEA at such time, in such manner, and accompanied by such information as the SEA may reasonably require to ensure expedited and timely provision of services or assistance.

### **A-2. How does the Department determine the amount of funding available for each State under the EANS program? (Updated September 17, 2021)**

Under the CRRSA Act, Congress provided \$2,750,000,000 for the CRRSA EANS program. Under the ARP Act, Congress provided \$2,750,000,000 for the ARP EANS program. The Department allocates EANS funds to a Governor<sup>1</sup> with an approved CRRSA EANS Certification and Agreement or ARP EANS application based on the State's relative share of children ages 5-17 who are from families at or below 185 percent of the poverty level and enrolled in non-public schools, as determined by the Department on the basis of non-public school enrollment data from the U.S. Census Bureau's American Community Survey Public Use Microdata Sample (PUMS), which can be accessed here: <https://www.census.gov/programs-surveys/acs/microdata.html>. The amount available to each State under the CRRSA EANS program is available at: [https://oese.ed.gov/files/2021/01/FINAL\\_GEERII\\_EANS-Methodology\\_Table\\_1.8.21.pdf](https://oese.ed.gov/files/2021/01/FINAL_GEERII_EANS-Methodology_Table_1.8.21.pdf). The amount available to each State under the ARP EANS program is available at [https://oese.ed.gov/files/2021/04/Final\\_ARP-EANS-Methodology-and-Table-3.16.21.pdf](https://oese.ed.gov/files/2021/04/Final_ARP-EANS-Methodology-and-Table-3.16.21.pdf).

### **A-3. How does a Governor apply for a State's share of ARP EANS funds? (Updated September 17, 2021)**

To apply for a State's allocation for the ARP EANS program, a Governor must submit an application to the Department. It may be submitted immediately but no later than September 9, 2021. The application includes specific requests for information; programmatic, fiscal, and accountability assurances; and other assurances and certifications. The application is available at [https://oese.ed.gov/files/2021/07/ARP-EANS-Application-7.7.21\\_FINAL.pdf](https://oese.ed.gov/files/2021/07/ARP-EANS-Application-7.7.21_FINAL.pdf)

Note that because of the unique administrative structure of the EANS program, under which Governors apply for funding and SEAs are charged with administering the program, Governors must consult with their respective SEA in providing the ARP EANS application assurances, and the Chief State School

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<sup>1</sup> Governors of the Outlying Areas are not eligible to apply for EANS funds. For information on other funding opportunities to the Outlying Areas, please visit the Department's [Education Stabilization Fund to the Outlying Areas](#) website for more information.



Officer or the SEA's authorized representative must sign them in addition to the Governor or Governor's authorized representative. The Department further encourages Governors and SEAs to continue to engage in regular consultation throughout the administration of the EANS program.

**A-4. How long after submitting an ARP EANS application should a Governor anticipate receiving funds? (Updated September 17, 2021)**

By law, the Department must approve or deny an application within 15 days of receiving it and thus, the Department will make ARP EANS funds available as soon as possible after approval of the application. (See section 312(d)(2)(A)(ii) of the CRRSA Act). A list of States, the award amount, the award date, and a link to each State's Certification and Agreement for CRRSA EANS can be found here:

<https://oese.ed.gov/offices/education-stabilization-fund/emergency-assistance-non-public-schools/eans-awards/>; and similar information, when available, for ARP EANS will be posted at:

<https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-emergency-assistance-to-non-public-schools/>.

**B. Administration of the EANS Program/SEA Responsibilities**

**B-1. Who is responsible for administering the EANS program?**

The SEA in a State in which the Governor receives an EANS award is responsible for administering the EANS program. However, the Governor remains the grantee and is responsible for oversight, including ensuring that the SEA implements the program consistent with all relevant requirements. The statute requires Governors to consult with SEAs in carrying out this responsibility. (See section 312(d)(2)(B) of the CRRSA Act).

**B-2. What are an SEA's responsibilities for administering the EANS program? (Updated September 17, 2021)**

An SEA's responsibilities to administer the EANS program include the following:

- Distributing information about the EANS program promptly to non-public schools in the State.
- Creating an application with which any eligible non-public school in the State may apply for services or assistance.
- Ensuring that eligible non-public schools provide the information required by section 312(d)(3)(B) related to enrollment of students from low-income families and a description of the emergency services requested from the SEA.
- Making an application easily available to non-public schools in the State as soon as possible but no later than 30 days after receipt of the EANS funds.
- Approving/denying each non-public school application promptly but no later than 30 days after the SEA receives the application from a non-public school.
- Determining what services or assistance the SEA will provide directly or through LEAs, other public entities, or contractors to each non-public school, as informed by an approved application and consultation, as appropriate, with the non-public school or its representatives.
- Ensuring 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, are in a public agency and a public agency administers the funds, services, assistance, materials, equipment, and property.
- Ensuring that all services or assistance provided, including any materials, equipment, and any other items used to provide such services or assistance, are limited to secular, neutral, and non-ideological purposes.
- Obligating all EANS funds in an expedited and timely manner, to the extent practicable; however, obligating all EANS funds not later than six months after receiving the funds.

- Administering the EANS program in accordance with all applicable requirements.

**B-3. How might an SEA provide information to non-public schools in a timely manner? (Updated September 17, 2021)**

An SEA must distribute information about the EANS program promptly to non-public schools in the State, which would include information on topics such as how to access the application, data requirements, steps for completing the application, and relevant deadlines. In addition, the SEA should seek to distribute information widely, and in various formats (e.g., social media, email, SEA website, and regular mail). The SEA should emphasize that services are available to all eligible non-public schools, including those that may not have participated in any Federal education program in the past (See C-14 for additional criteria for CRRSA EANS and H-2 for ARP EANS eligibility). To assist with the dissemination of information, the SEA might engage with non-public school leaders in the State, such as State-level non-public school associations or State-level working groups. An SEA might also consult with its State ombudsman designated under the Elementary and Secondary Education Act of 1965 (ESEA), who has relationships with such organizations and non-public school officials in the State. State ombudsmen should also support the SEA’s dissemination of information to non-public schools in a timely manner.

**B-4. Must an SEA consult with representatives of non-public schools in the State regarding implementation of the EANS program?**

An SEA would benefit greatly from engaging in timely and meaningful consultation to assist it in establishing the parameters of the program, and it would be difficult to administer the program successfully without doing so. For example, representatives of non-public schools could provide relevant information on sources of poverty data available for non-public school children, criteria to determine those schools most impacted by COVID-19, and services that may best serve their students and teachers. However, there is no statutory requirement that an SEA consult with representatives of non-public schools regarding implementation of the EANS program.

**B-5. Does an SEA automatically have access to its State’s EANS funds once the Department makes an award to the Governor?**

Yes. By accepting an EANS award from the Department, a Governor automatically designates the SEA to administer the EANS program. The SEA will be the payee or fiscal agent in G5 for purposes of accessing Federal funds on the date of award. The Governor must provide the SEA’s financial institution and bank information in the CRRSA EANS Certification and Agreement or ARP EANS application. The SEA, as the agency designated to administer the EANS program, is considered to have “received” EANS funds when the Department makes an award to the Governor. The Governor and the SEA are encouraged to consult each other throughout the process of providing emergency assistance to non-public-school students and teachers.

**B-6. May an SEA reserve EANS funds to administer the program? (Updated September 17, 2021)**

Yes. An SEA may reserve not more than the greater of \$200,000 or one-half of one percent of the State’s EANS allocation for reasonable costs necessary to administer the EANS program. An allocation table for the CRRSA EANS program, including the maximum administrative reservation for each State, can be found here: [https://oese.ed.gov/files/2021/01/FINAL\\_GEERII\\_EANS-Methodology\\_Table\\_1.8.21.pdf](https://oese.ed.gov/files/2021/01/FINAL_GEERII_EANS-Methodology_Table_1.8.21.pdf). An allocation table for the ARP EANS program, including the maximum administrative reservation for each State, can be found here: [https://oese.ed.gov/files/2021/04/Final\\_ARP-EANS-Methodology-and-Table-3.16.21.pdf](https://oese.ed.gov/files/2021/04/Final_ARP-EANS-Methodology-and-Table-3.16.21.pdf).

**B-7. May an SEA consolidate its administrative funds under the EANS program? (Updated September 17, 2021)**

Yes. Under sections 8201(a) and 8203(a) of the ESEA, the Secretary has designated EANS, ESSER I, ESSER II, and ARP ESSER, as well as GEER I and GEER II if administered by the SEA, as programs under which administrative funds may be consolidated. Accordingly, an SEA that consolidates ESEA administrative funds may consolidate administrative funds under the ESSER I, ESSER II, and ARP ESSER; GEER I and GEER II; and the EANS programs. In addition, an SEA may consolidate administrative funds under two or more of ESSER I, ESSER II, ARP ESSER, the EANS programs, and GEER I and GEER II without also consolidating other ESEA program administrative funds, so long as the SEA can demonstrate that the majority of its resources are derived from non-Federal sources. (See section 8201(a) of the ESEA).

Specifically, an SEA may consolidate the one-half of one percent of its ESSER I, ESSER II, and ARP ESSER funds able to be reserved for State administration, the amount of EANS funds available for State administration, and, if the SEA is administering a portion of the GEER I or GEER II funds on behalf of the Governor, a reasonable and necessary amount of those funds. If the SEA consolidates administrative funds under these programs, it is not required to keep separate records for how it uses those administrative funds.

Consolidated administrative funds may be used to administer the programs included in the consolidation as well as for administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation. Note that an SEA may not use its SEA Reserve under ESSER for administrative costs.

**B-8. May an SEA charge indirect costs to its administrative set aside? (Updated September 17, 2021)**

Yes. An SEA may charge indirect costs associated with the direct costs it incurs to administer the EANS program to its administrative set aside. (See section 312(d)(5) of the CRRSA Act).

**B-9. If an SEA contracts to deliver services or assistance under the EANS program, may the contract include costs of the contractor associated with providing such services or assistance?**

Yes. A contract to provide services or assistance to a non-public school may include reasonable and necessary costs associated with providing services or assistance to a non-public school. These costs would not be included in an SEA's reservation of funds to administer the EANS program. If, however, an SEA contracts with another public agency such as an LEA or educational service agency (ESA) to administer the EANS program in its place, administrative costs incurred by the agency would be included in the administrative set aside authorized for the SEA. Costs for providing services or assistance, however, such as costs associated with reimbursing a non-public school for allowable activities, would not be administrative costs.

**B-10. Is there a deadline by which an SEA must obligate EANS funds for services or assistance to non-public schools?**

Under section 312(d)(2)(B)(iii) of the CRRSA Act, the Governor of each State must provide assurance to the Department that the SEA will provide services or assistance to eligible non-public schools. Related to this requirement, under section 312(d)(2)(B)(v), the Governor of each State also must provide assurance that the SEA will obligate funds for services or assistance requested by eligible non-public schools within six months of receiving its funds. If an SEA is in compliance with this and the other requirements in 312(d)(2), section 312(d)(6) requires the SEA to return any unobligated funds remaining six months after

receipt to the Governor for authorized uses under the GEER II Fund through the full period of availability.

If, however, an SEA has approved applications from non-public schools but has not obligated the funds to provide services or assistance within the six-month timeline—for example, because of its procurement requirements—it has not timely obligated funds. In this instance, the SEA should continue with its process and provide the services or assistance as described in the approved applications before determining the amount of unobligated funds that would return to the Governor. An SEA that finds itself in this situation should contact the Department within six months of receiving its EANS award to discuss its progress in implementing the program. The SEA should expect to explain the delay, how the SEA is addressing the delay, and when the SEA will be able to obligate the funds.

**B-11. What does it mean for an SEA to “obligate” EANS funds? (Updated September 17, 2021)**

The regulations at 34 C.F.R. § 76.707 govern when an obligation of Federal funds by an SEA occurs. Specifically, for services or assistance provided through a contract, the obligation is made on the date that the SEA makes a binding written commitment to obtain the services, work, or products. For rental or lease of real or personal property, the obligation is made when the property is first used. An SEA’s approval of a non-public school’s application for EANS services or assistance does not constitute an obligation of EANS funds.

**B-12. Does anything in the CRRSA Act or ARP Act impact deadlines for awarding and obligating ESSER I and GEER I funds under the CARES Act or ESSER II and GEER II funds under the CRRSA Act? (Updated September 17, 2021)**

No. The timelines for awarding and obligating ESSER I and GEER I funds under the CARES Act and ESSER II and GEER II funds under the CRRSA Act remain the same. A State has one year from the date it received ESSER I and GEER I funds to award those funds (typically April/May 2021), and has until September 30, 2022, to obligate them (including the Tydings period). Similarly, a State has one year from the date it received ESSER II or GEER II funds to award those funds (typically January/February 2022) and until September 30, 2023, to obligate them (including the Tydings period).

**B-13. CRRSA EANS ONLY. When an SEA reimburses a non-public school directly for allowable costs, when does an obligation of CRRSA EANS funds occur? (New September 17, 2021)**

Under 34 C.F.R. § 76.707 an obligation occurs when a binding commitment is made. Where an SEA provides reimbursement directly under CRRSA EANS, there is no binding commitment until the funds are provided to a non-public school. Thus, an obligation does not occur until the reimbursement is made. (But see B-14 for obligations under a contract).

**B-14. If an SEA contracts with another entity to implement all or a portion of the EANS program on its behalf, to what extent has the SEA obligated EANS funds? (New September 17, 2021)**

An SEA may provide services or assistance (including reimbursements under CRRSA EANS) directly to non-public schools or it may contract with an individual, association, agency (e.g., an LEA or ESA), or organization to provide such services or assistance. (See D-10). As noted in B-11, when an SEA enters into a contract, the obligation occurs on the date the SEA makes a binding written commitment to obtain services (34 C.F.R. § 76.707). Upon the parties executing the contract, the SEA will have obligated the full amount necessary to meet the terms and conditions of the contract, which may include the costs of providing services or assistance and, with respect to the CRRSA EANS program, reimbursements.

In entering into a contract to implement all or a portion of the EANS program, an SEA must ensure that a public agency, such as the SEA or an ESA, maintains control of the funds and administers such funds, services, assistance, materials, equipment, and property. (For more information on public control of funds requirements, see Section E). Accordingly, if an SEA contracts with a private entity, the SEA or other public agency must ensure that it determines the allowability of all costs, including that they are reasonable and necessary for purposes of providing EANS services or assistance and are allowable under section 312(d)(4) of the CRRSA Act.

**B-15. What are some practices SEAs are using to facilitate the implementation of CRRSA EANS? (New September 17, 2021)**

Examples of general practices some SEAs have proceeded with for implementation of CRRSA EANS include:

- Engaging early in the implementation planning with their State-level non-public school organizations.
- Providing timely and transparent guidance, forms, and information on the SEA’s website.
- Recommending that non-public schools indicate additional services or assistance in their application that they would request should more funds become available (e.g., if fewer schools apply than expected).
- Establishing a key point of contact within the SEA for non-public school representatives to ask EANS-related questions.
- Hosting regularly scheduled State “office hours” to provide updates, respond to questions, and provide non-public school officials an opportunity to share ideas with their colleagues about how EANS services or assistance are meeting their needs.
- Soliciting the assistance of available non-public school organizations to disseminate information and responses to frequently asked questions to their member schools.
- Working with State leadership to streamline the procurement process to ensure timely obligation of funds and program implementation.

**B-16. May an SEA determine the amount of services or assistance available to individual non-public schools prior to knowing the actual number and needs of eligible non-public schools that apply for EANS services or assistance and the amount of their requests? (New September 17, 2021)**

In an effort to estimate the amount of services or assistance that might be available to individual non-public schools under the EANS program to assist the schools in submitting an application, an SEA might have provided all eligible non-public schools in the State with an “allocation” based on, for example, the number of students enrolled in each school times the per-pupil amount of EANS funds available for services or assistance in the State. To the extent that not all eligible non-public schools submitted an EANS application, the SEA could be left with a significant amount of funds for unrequested services or assistance. Because the EANS program does not prescribe a specific formula for determining services or assistance to individual non-public schools but is dependent upon how many schools apply and the extent of their request for services or assistance commensurate with their needs, an upfront pre-determination of the amount of funds available to provide services or assistance to eligible schools may be useful for planning purposes but does not fully meet the statutory requirements. In other words, an SEA may not artificially limit services or assistance to non-public schools before it knows the extent of interest from non-public schools in the State. To avoid this situation initially, an SEA might estimate the amount of services or assistance available but suggest that a non-public school request additional services or assistance in case additional funds become available. To remedy this situation if it has already occurred, an SEA might consider reopening the application process or contacting participating non-public schools

to determine if they have additional needs for services or assistance that can be met with the remaining funds.

**B-17. If an SEA complies with the requirements in section 312(d)(2) of the CRRSA Act but has unobligated EANS funds remaining six months after receiving such funds, what is a State required to do with those funds? (New September 17, 2021)**

To the extent an SEA has complied with the requirements of the EANS program in providing EANS services or assistance to non-public schools and has unobligated funds remaining six months after receiving those funds, the SEA must return the unobligated funds to the Governor. The Governor may use the remaining unobligated EANS funds for any allowable purposes under section 312(c) of the CRSSA Act (i.e., the allowable uses of funds under the GEER II Fund). Prior to returning the unobligated funds, an SEA should contact their EANS Program Officer for additional information and guidance.

**C. Non-Public School Eligibility, Application, and Identification for Services or Assistance**

**C-1. Which non-public schools are eligible to apply for services or assistance under the EANS program? (Updated September 17, 2021)**

For purposes of the EANS program, an eligible non-public school is an elementary or secondary school that—

- Is non-profit;<sup>2</sup>
- Is accredited, licensed, or otherwise operates in accordance with State law;
- Was in existence prior to March 13, 2020, the date COVID-19 was declared a national emergency; and
- Did not, and will not, apply for and receive a loan under the Small Business Administration’s Paycheck Protection Program (PPP) (15 U.S.C. 636(a)(37)) that is made on or after December 27, 2020. This limitation applies for as long as the non-public school is a participant in the EANS program under the CRRSA Act or the ARP Act. (See C-18 for information regarding non-public schools that apply for but do not receive a PPP loan).

For information regarding additional requirements on which non-public schools may participate in the EANS program, see C-14 (CRRSA EANS) and H-2 (ARP EANS).

**C-2. Does a non-public school receive a grant award under the EANS program? (Updated September 17, 2021)**

No. A non-public school does not receive a grant award under the EANS program, nor does it receive an allocation of EANS funds. Rather, a non-public school receives services or assistance provided by the SEA as requested in the school’s application, to the extent resources are available. (See D-12).

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<sup>2</sup> A for-profit non-public school is not eligible to receive services for its students and teachers under the EANS program. Section 316(6) of the CRRSA Act defines a “non-public school” as a non-public elementary or secondary school. Section 316(8) of the CRRSA Act incorporates the definitions in section 8101 of the ESEA for any terms not defined in the CRRSA Act. Section 8101(19) and (45) of the ESEA defines “elementary school” and “secondary school,” respectively, and specifies that they must be non-profit.

**C-3. Are eligible non-public schools under the EANS program the same schools that were eligible for equitable services under ESSER? (Updated September 17, 2021)**

Not necessarily. In addition to the requirements for eligibility of a non-public school under ESSER, section 312(d)(9) of the CRRSA Act precludes from eligibility a non-public school that applies for and receives a loan under the Small Business Administration's Paycheck Protection Program (PPP) (15 U.S.C. 636(a)(37)) that is made on or after December 27, 2020. In addition, under CRRSA EANS, an SEA must prioritize for services or assistance non-public schools that enroll students from low-income families and are most impacted by the COVID-19 emergency. (See C-14). Under ARP EANS, an SEA may only serve non-public schools that enroll a significant percentage of students from low-income families and are most impacted by the COVID-19 emergency. (See H-2).

**C-4. Are faith-based non-public schools eligible to participate in the EANS program?**

Yes. Faith-based non-public schools are eligible to participate in the EANS program to the same extent as other eligible non-public schools. All services or assistance provided under the program must be secular, neutral, and non-ideological.

**C-5. Is a non-public school that serves only preschool children eligible to receive services or assistance under the EANS program?**

Not generally. Under the EANS program, in pertinent part, an eligible "non-public school" is a non-public *elementary* school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to March 13, 2020, the date COVID-19 was declared a national emergency. (Section 316(6) of the CRRSA Act). Under section 8101(19) of the ESEA, incorporated by section 316(8) of the CRRSA Act, an elementary school is a school that provides elementary education, as determined under State law. Therefore, only non-public schools that provide elementary (or secondary) education are eligible for services or assistance under the EANS program. Preschool children who are enrolled in a non-public elementary school that receives EANS services or assistance may be served. (See D-4). However, unless State law considers preschool education to be part of elementary education, a stand-alone non-public preschool is not eligible for services or assistance under the EANS program.

**C-6. May an SEA permit an organization that has governing authority over a group of non-public schools to submit an application on behalf of its member schools?**

Yes. An SEA may permit an organization that has governing authority over a group of non-public schools to submit an application on behalf of its member schools. If such an organization applies on behalf of its member schools, it must clearly indicate for which schools it applies and provide supporting data and other information requested in the application for any and all schools for which it applies.

**C-7. When must an SEA make the application for services or assistance under the EANS program available to non-public schools?**

An SEA should make the application for services or assistance available to non-public schools as soon as possible but must make it available no later than 30 days after receiving the funds. (See B-2 and B-5).

**C-8. What information must an SEA require an eligible non-public school to provide in its application for services or assistance under the EANS program? (Updated September 17, 2021)**

An SEA may require an eligible non-public school to provide information in an application for services or assistance under the EANS program as the SEA deems reasonable to ensure expedited and timely provision of services or assistance. At a minimum, the SEA must request the following information from an eligible non-public school:

- The number and percentage of students from low-income families enrolled in the non-public school in school year (SY) 2019-2020. (See C-11 for CRRSA EANS or H-7 for ARP EANS).
- Information regarding the impact of the COVID-19 emergency on its school so that the SEA may appropriately determine which schools have been most impacted by the COVID-19 emergency. (See C-15 for CRRSA EANS or H-8 for ARP EANS).
- A description of the emergency services or assistance that the non-public school requests be provided by the SEA.
- Whether the non-public school received a loan guaranteed by the Small Business Administration's Paycheck Protection Program (PPP) before December 27, 2020, and the amount of any such loan received.
- An assurance that the non-public school did not, and will not, apply for and receive a PPP loan on or after December 27, 2020. (See C-17 and C-18). The Department does not require an SEA to include any additional information on this assurance.

**C-9. What is the difference between an "application" and "consultation"? (Updated September 17, 2021)**

A non-public school's application serves a similar purpose as consultation under Federal education programs that require equitable services for non-public school students and teachers. That is, it serves as a non-public school's intent to participate, provides required information such as poverty data and other information an SEA may reasonably require, and identifies COVID-19-related needs of the school. An SEA was permitted to use the Department's [sample application template](#) in developing the application non-public schools submitted under the CRRSA EANS program. An SEA may modify and use the sample application template for the ARP EANS program as long as it meets the requirements of the ARP Act.

**C-10. Is a non-public school that received a PPP loan prior to December 27, 2020 eligible to receive services or assistance under the EANS program?**

Yes. A non-public school that received a PPP loan prior to December 27, 2020, may receive services or assistance under the EANS program.

**C-11. CRRSA EANS ONLY. What data may an SEA request a non-public school to provide in its application regarding the number and percentage of students from low-income families enrolled in the non-public school in the 2019–2020 school year? (Updated September 17, 2021). See section H for ARP EANS.**

The CRRSA Act does not prescribe what poverty data an SEA must request from a non-public school in its application. The statute also does not prescribe the poverty threshold an SEA must use. Accordingly, an SEA has flexibility. Considering the short timeframe, the Department encourages an SEA to allow for the use of existing, generally available poverty data to enable reasonable estimates of a school's low-income status rather than requiring a new data collection. An SEA may permit data from multiple sources, within the State and even within a non-public school, provided the poverty threshold is consistent across schools. Although an SEA may develop a survey to collect poverty data, the Department discourages surveys because of the length of time they take. Whatever the data source, an SEA must ensure that it does not require a non-public school to provide personally identifiable information about individual students or their families.

To the extent a non-public school has these data available, the following data sources are recommended:

- Available free or reduced-priced lunch data;
- Scholarship or financial assistance data that identify students whose family income does not exceed 185 percent of the 2020 Federal poverty guidelines;



- E-Rate data; or
- Other relevant data, such as data that the non-public school has provided to the State for purposes of State or local programs that identify students whose family income does not exceed 185 percent of the 2020 Federal poverty guidelines.

If complete actual data from a particular source are unavailable, data may be extrapolated based on a representative sample.

For non-public schools where such data are not available, the following are potential sources of estimates of the number of students from low-income families:

- Data imputing the number of students from low-income families based on the American Community Survey (ACS) or the Small Area Income and Poverty Estimates (SAIPE) program by the U.S. Census Bureau; or
- Proportionality data: the number of students enrolled in a non-public school who reside in a Title I school attendance area multiplied by the percentage of public school students in that same attendance area who are from low-income families. If the non-public school has students who reside in more than one Title I school attendance area, multiple calculations would be necessary.

**C-12. Is there a deadline by which an SEA must require a non-public school to submit its application?**

Although there is no statutory deadline, the Department strongly encourages an SEA to establish and effectively communicate a reasonable deadline for a non-public school to submit its application. For example, an SEA might require applications to be submitted within 30 days of the SEA making the application available in order for the SEA to ensure expedited and timely provision of services or assistance to non-public schools to address educational disruptions. An SEA could extend the deadline, if necessary, as many private schools do not have experience with applications like these and may need more time and assistance to complete them. In addition, establishing a deadline will facilitate the SEA's responsibility to obligate EANS funds within six months of receiving those funds. (See B-10).

**C-13. Is there a deadline by which an SEA must approve or deny an application for services or assistance from a non-public school?**

Yes. An SEA should approve or deny an application from a non-public school as soon as possible and must approve or deny no later than 30 days after its receipt. (See G-4 for more information on deadlines).

**C-14. *CRRSA EANS ONLY.* Must an SEA establish criteria to prioritize non-public schools in approving applications for services or assistance under the CRRSA EANS program? *See section H for ARP EANS criteria.***

Yes. Under section 312(d)(3)(C) of the CRRSA Act, an SEA must prioritize services or assistance to non-public schools that enroll students from low-income families and are most impacted by the COVID-19 emergency. An SEA must consider both factors. In other words, the SEA must have criteria that differentiate among non-public schools based on their enrollment of students from low-income families and the severity of the impact of the COVID-19 emergency on the school. (See C-11 and C-15). The SEA might weight the factors or weight non-public schools based on their strength of meeting the SEA's criteria. An SEA may choose to serve only non-public schools that meet its criteria; or, depending on the EANS funds available and the number of applications it receives, an SEA may also provide services or assistance to non-public schools that the SEA has not prioritized, provided the priority schools receive preference in the amount of services or assistance provided. (See C-15). However an SEA proceeds, it should make its criteria clear to non-public schools so they know the basis on which their application will be evaluated and apply those criteria consistently.

**C-15. CRRSA EANS ONLY. What factors might an SEA consider in prioritizing non-public schools to receive services or assistance under the CRRSA EANS program? See section H for ARP EANS criteria.**

An SEA generally has flexibility with regard to how it prioritizes non-public schools to receive services or assistance under the CRRSA EANS program; however, the statute requires an SEA to target low-income schools and schools most impacted by the COVID-19 emergency. With respect to poverty, an SEA might target those non-public schools that enroll significant numbers or percentages of students from low-income families (e.g., whose family income does not exceed 185 percent of the 2020 Federal poverty guidelines) or meet a minimum threshold of students from low-income families. The SEA might also consider poverty bands, prioritizing schools in the highest bands first. Factors that an SEA might consider in determining non-public schools that are most impacted by the COVID-19 emergency include but are not limited to: (1) rate of community infection; (2) number of COVID-19-related deaths per capita; (3) loss of tuition revenue due to decrease in enrollment; (4) lack of capacity to provide remote learning due to insufficient technological support; and (5) data documenting the extent of learning loss or the social, emotional, or mental health impact attributable to the disruption of instruction caused by the COVID-19 emergency.

An SEA has flexibility to consider other factors in prioritizing non-public schools. For example, an SEA might consider the extent to which a non-public school serves low-income children with unmet needs and did not receive equitable services under a CARES Act program. An SEA might also take information regarding receipt or forgiveness of a PPP loan prior to December 27, 2020, into account in prioritizing services or assistance for non-public schools.

**C-16. How does an SEA determine what services or assistance to provide to individual non-public schools? (Updated September 17, 2021)**

An SEA should make every effort, consistent with available funding and applicable requirements, to provide the full range of services or assistance requested by each eligible non-public school in its application. However, until an SEA knows how many non-public schools apply for services or assistance under the EANS program, it may not be possible for the SEA to precisely determine the type or quantity of services or assistance to provide to an individual non-public school. As a result, the SEA may need to confer with eligible non-public schools with approved applications to determine what services or assistance the SEA will provide based on the services or assistance requested in each non-public school's application and the amount of EANS funds available for providing services or assistance to the school. An SEA should communicate, as soon as possible, the services or assistance available to each non-public school.

The EANS statute does not prescribe how an SEA distributes services or assistance among schools; accordingly, an SEA has flexibility. To determine the amount of EANS funds available to provide services or assistance to individual non-public schools, an SEA might divide the total funds available by the total enrollment in non-public schools with an approved application to obtain a per-pupil amount. The SEA would then multiply that per-pupil amount by the enrollment in an individual non-public school to determine the amount of services or assistance the SEA can provide to that school. Please note that such an approach would not be appropriate prior to an SEA's determining which non-public schools will participate in the EANS program; otherwise, such approach would artificially limit the amount of services or assistance available to participating non-public schools before the SEA knows the extent of interest from non-public schools in the State. (See B-16).

For CRRSA EANS, if an SEA intends to serve both priority and non-priority non-public schools, this methodology would not sufficiently target priority schools because non-priority schools would be treated

equivalently in the distribution of services or assistance. Alternatively, an SEA might calculate the funds available for services or assistance in individual non-public schools giving greater weight to poverty and measures that quantify the impact of the COVID-19 emergency. Such a methodology could be used to target priority non-public schools before non-priority schools. These examples are illustrative and other approaches are allowable. Whatever method an SEA chooses, it should be objective, transparent, and applied consistently among non-public schools in the State.

For ARP EANS, an SEA does not have the issue of differentiating services or assistance among priority and non-priority non-public schools. The SEA may, however, differentiate services or assistance among eligible non-public schools on the basis of poverty or need to address the impact of COVID-19.

**C-17. If a non-public school’s application for services or assistance under the EANS program is denied, may the non-public school apply for a loan under the Paycheck Protection Program (PPP)?**

The PPP is administered by the Small Business Administration and is governed by its requirements and timelines. However, there is nothing in the CRRSA Act that would preclude a non-public school whose application for services or assistance under the EANS program is denied from then applying for a PPP loan on or after December 27, 2020.

**C-18. If a non-public school applies for a PPP loan and is denied a loan, may it apply for services or assistance under the EANS program?**

Yes. A non-public school that applies for a PPP loan on or after December 27, 2020, but does not receive funds under the PPP, may apply for services or assistance under the EANS program, as long as the non-public school meets the requirements and deadlines of the SEA.

**C-19. If an SEA denies an application from a non-public school, is there an appeal or complaint process? (Updated September 17, 2021)**

The CRRSA and ARP Acts do not require an SEA to have a process by which a non-public school may appeal a denial of its application for services or assistance under the EANS program. However, an SEA may choose to establish such a process or may be required under State law or procedures to provide appropriate due process. The CRRSA and ARP Acts similarly do not require an SEA to establish a process to receive complaints from non-public schools regarding EANS. An SEA, however, may wish to use its regular complaint process to resolve complaints under EANS.

## **D. Services or Assistance to Non-Public Schools**

**D-1. What types of services or assistance may a non-public school receive? (Updated September 17, 2021)**

A non-public school may apply to receive services and assistance from the SEA or its contractors to address educational disruptions resulting from the COVID-19 emergency for:

- Supplies to sanitize, disinfect, and clean school facilities (see D-3).
- Personal protective equipment (PPE).
- Improving ventilation systems, including windows or portable air purification systems.
- Training and professional development for staff on sanitization, the use of PPE, and minimizing the spread of infectious diseases.
- Physical barriers to facilitate social distancing.
- Other materials, supplies, or equipment recommended by the CDC for reopening and operation of school facilities to effectively maintain health and safety.

- Expanding capacity to administer coronavirus testing to effectively monitor and suppress the virus.
- Educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning.
- Redeveloping instructional plans, including curriculum development, for remote or hybrid learning, or to address learning loss.
- Leasing sites or spaces to ensure safe social distancing.
- Reasonable transportation costs.
- Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss.

(See section 312(d)(4) of the CRRSA Act).

**Please Note:** Under CRRSA EANS, reimbursement is allowed 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 described in D-8. (See section 312(d)(4)(M) of the CRRSA Act). Under ARP EANS, reimbursements are prohibited for any non-public school. (See section 2002(b) of the ARP Act).

**D-2. What other factors must an SEA consider when determining the allowability of services or assistance for non-public schools?**

To be allowable, an expenditure must be consistent with the cost principles in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), 2 C.F.R. Part 200, including the requirement that a cost be necessary and reasonable for performance of the Federal award. Under 2 C.F.R. § 200.404, “[a] cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”

**D-3. Are services for sanitizing, disinfecting, and cleaning school facilities an allowable use of EANS funds?**

No. Section 312(d)(4)(A) of the CRRSA Act specifically authorizes a non-public school to request “supplies to sanitize, disinfect, and clean school facilities.” This authority does not extend to contracting with a vendor to perform the cleaning. If a non-public school has contracted for cleaning and seeks reimbursement, an SEA may reimburse it for the cost of supplies but not for the full cleaning contract.

**D-4. May preschool children receive services or assistance under the EANS program?**

If preschool children are enrolled in an eligible non-public elementary school that receives services or assistance under the EANS program, preschool children and their teachers may receive allowable services. However, unless State law considers preschool education to be part of elementary education, preschool children enrolled in a stand-alone non-public preschool may not receive services or assistance under the EANS program. (See C-5).

**D-5. Must an SEA provide the ability for non-public schools to request any of the allowable services or assistance, or may the SEA choose which services or assistance it will offer to non-public schools? (Updated September 17, 2021)**

Section 312(d)(4) of the CRRSA Act permits a non-public school receiving services or assistance under the EANS program to use those services or assistance to address educational disruptions resulting from the COVID-19 emergency for any of the activities listed in paragraphs (A) through (M) of that section. An SEA may not restrict a non-public school’s ability to request any authorized services or assistance. The SEA may, however, need to negotiate the services or assistance it will provide based on the State’s

procurement requirements, the amount of EANS funds available for providing such services or assistance to the school, or other reasons. (See C-16). At the same time, such negotiations must ensure that those schools that the SEA has prioritized, based on the number of children from low-income families and the impact from the COVID-19 emergency, are not precluded from participation. (See C-14 and C-15). Note that reimbursements are not allowable under ARP EANS for any non-public school. (See H-1).

**D-6. May EANS funds be used to pay the salaries of non-public school teachers or other staff?**

EANS funds may not be used to provide funds to non-public schools to cover payroll. Under section 312(d)(7) of the CRRSA Act, a public agency must control funds for services or assistance provided to non-public school students and teachers under the EANS program. However, an SEA may contract with a teacher at a non-public school directly to provide secular, neutral, and non-ideological services outside of the teacher's contractual obligation with the non-public school. The non-public school teacher must be employed by the SEA or another public entity for EANS purposes outside of the time he or she is employed by the non-public school, and the non-public school teacher must be under the direct supervision of the SEA or other public entity with respect to all EANS activities. Also, an SEA may contract with a vendor to provide staff, such as nurses or teachers, who will provide services in non-public schools. The contract must be under the control and supervision of the SEA or another public entity.

**D-7. CRRSA EANS ONLY. May a non-public school request reimbursement for COVID-19-related expenses under the CRRSA EANS program? (Updated September 17, 2021)**

Yes. Under the CRRSA EANS program, a non-public school may request reimbursement in its application for expenses it has incurred or will incur for most allowable services or assistance, including those obtained through a contract with a vendor. (See D-1). An SEA may reimburse a non-public school only for expenses for allowable services or assistance under section 312(d)(4)(M) that it incurred on or after March 13, 2020, to prevent, prepare for, and respond to the COVID-19 emergency that have not already been reimbursed with Federal funds, including PPP. Reimbursement under the CRRSA EANS program does not make a non-public school a recipient of Federal financial assistance. (See D-12). With respect to a request in a non-public school's application for reimbursement of future services or assistance, the SEA should have a process in place to review the requested services or assistance to ensure that they are necessary, reasonable, and allowable under the CRRSA Act, and approve reimbursement to the non-public school. Procedures for processing reimbursements, including the timing and frequency, are at the SEA's discretion but should be clearly communicated to non-public school applicants.

To maintain control over the CRRSA EANS funds, the SEA must ensure that the non-public school's expenditures are allowable expenses, that the non-public school has sufficient documentation supporting such expenditures, such as paid invoices, that the school actually received the services or assistance related to those expenditures, and that the SEA or another public agency gains title to materials, equipment, and property for which it provides reimbursement. For example, if a non-public school purchased laptops for students and teachers to facilitate online learning, the SEA may use CRRSA EANS funds to purchase those laptops from the non-public school, thereby also obtaining title for the laptops from the non-public school. Provided these conditions are met, the SEA may continue to allow the laptops to be used by non-public school students and teachers. Please see H-1 for information regarding the prohibition of reimbursements under the ARP EANS program for any non-public school.

**D-8. CRRSA EANS ONLY. Are there otherwise allowable expenses for services or assistance for which an SEA may not reimburse a non-public school?**

Yes. Although an SEA may provide the services or assistance listed below directly to a non-public school or through a contract with an individual, association, agency, or organization under the EANS program (see D-1), the SEA may not reimburse a non-public school for:

- Improvements to ventilation systems (including windows), except for portable air purification systems, which may be reimbursed.
- Any expenses reimbursed through a loan guaranteed under the PPP (15 U.S.C. 636(a)) prior to December 27, 2020.
- Staff training and professional development on sanitization, the use of PPE, and minimizing the spread of COVID-19.
- Redeveloping instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss.
- Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss.

(Section 312(d)(4)(M)).

**D-9. May an SEA subgrant EANS funds to an LEA, ESA, or other entity to provide services or assistance to a non-public school?**

No. Under 34 C.F.R. § 76.50(c), an SEA may not subgrant funds under a formula-grant program unless there is express authority to do so. There is no express authority to subgrant EANS funds in the CRRSA Act.

**D-10. May an SEA contract with another entity to provide services or assistance to non-public schools?**

Yes. An SEA may provide services or assistance (including reimbursements) directly to non-public schools or it may contract with an individual, association, agency (e.g., an LEA or ESA), or organization to provide such services or assistance. Under this authority, an SEA may contract to administer the entirety of the EANS program, consistent with the SEA's procurement procedures. However, the individual, association, agency, or organization must be independent of the non-public schools receiving the services or assistance. Any contract must be under the control and supervision of the SEA or another public agency. (Section 312(d)(7)(B) of the CRRSA Act).

**D-11. If a non-public school is receiving equitable services under a CARES Act program, do the services or assistance provided under the EANS program need to be different?**

No. The services provided to a non-public school under the EANS program may be the same as, or similar to, the equitable services the non-public school is receiving or has received under a CARES Act program. However, the services or assistance must be in addition to what was provided under a CARES Act program. Under the EANS program, services or assistance to non-public schools include those authorized services in section 312(d)(4) of the CRRSA Act (see D-1), nearly all of which are also authorized equitable services under the CARES Act programs.

**D-12. Does receiving services or assistance under the EANS program make a non-public school a "recipient of Federal financial assistance"?**

No. Under the EANS program, a Governor is the recipient of Federal financial assistance and is responsible for ensuring that the SEA administers the EANS program in accordance with applicable laws, including civil rights laws. Section 312(d)(7)(A) of the CRRSA Act requires a public agency (e.g., the SEA) to control and administer EANS funds and keep title to materials, equipment, and property

purchased with the funds. A non-public school whose students and teachers receive services or assistance under the EANS program, even if such services or assistance are delivered through reimbursement, is not a “recipient of Federal financial assistance.” As a result, certain Federal requirements that apply to a recipient of Federal financial assistance are not directly applicable to a non-public school whose students or teachers receive services or assistance under the program, unless the school receives Federal financial assistance for other purposes. Accordingly, non-public schools do not need a data universal numbering system (DUNS) number or to be registered in the System for Award Management (SAM) for purposes of the EANS program.

**D-13. CRRSA EANS ONLY. May an SEA contract with a vendor that enables the creation, management, and accounting of online spending accounts for the reimbursement of supplies and services under the CRRSA EANS program? (New September 17, 2021)**

Yes. As described more fully in D-10, under the CRRSA EANS program an SEA may provide services or assistance through a contract. An online spending account model generally consists of a web-based platform operated by a contractor that enables a non-public school to identify approved vendors from which it may obtain services or assistance. A non-public school then uses the online platform to submit information regarding the goods and services purchased, including supporting documentation such as invoices. As with all reimbursements, as part of this process, the SEA must ensure that the non-public school’s expenditures are allowable expenses, that the non-public school has sufficient documentation supporting such expenditures (e.g., paid invoices), that the school actually received the services or assistance related to those expenditures, and that the SEA or another public agency gains title to materials, equipment, and property for which it provides reimbursement.

**D-14. CRRSA EANS ONLY. May a non-public school receive reimbursement for future purchases under the CRRSA EANS program? (New September 17, 2021)**

An SEA may reimburse a non-public school directly for allowable services or assistance made from March 13, 2020, through the six-month obligation period for the CRRSA EANS program. An obligation of CRRSA EANS funds occurs when the reimbursement is made; therefore, any reimbursement directly by an SEA must also be made within the six-month obligation period. In making the purchases for allowable services or assistance for which it seeks reimbursement, a non-public school may use its own procurement process. (See B-14 for reimbursement under a contract).

**D-15. May EANS funds be used to pay for the installation of equipment or supplies purchased with EANS funds? (New September 17, 2021)**

Yes. To the extent the purchase of supplies or equipment is allowable under the EANS program, EANS funds may be used to pay the costs of installation as long as the SEA can do so consistent with other applicable requirements. Section 312(d)(7) of the CRRSA Act, for example, requires an SEA or another public agency to keep title to materials, equipment and property purchased with EANS funds and the public agency must administer such materials, equipment, and property. Additionally, 34 C.F.R. § 76.661 requires that equipment and supplies purchased with EANS funds must be able to be removed from a non-public school without remodeling the non-public school facility. Moreover, under 34 C.F.R. § 76.662, an SEA is prohibited from using EANS funds for construction. (See E-2).

**D-16. May an SEA use EANS funds to pay for the installation of equipment or supplies purchased by a non-public school for purposes of improving its ventilation system? (New September 17, 2021)**

Yes. EANS funds generally may only be used for the costs of installation of supplies or equipment that is otherwise allowable and not for installation of supplies or equipment that is not otherwise allowable. However, because section 312(d)(4)(C) of the CRRSA Act authorizes the use of funds for improving

ventilation systems, an SEA may use EANS funds to install supplies or equipment that are otherwise unallowable as long as such supplies or equipment are needed to improve a non-public school's ventilation system. For example, as noted in E-2, purchasing new windows for a non-public school using EANS funds would be inconsistent with the public control of funds requirements in section 312(d)(7) of the CRRSA Act and 34 C.F.R. § 76.661. However, to the extent a non-public school uses its own funds to purchase new windows for the purpose of improving ventilation (e.g., replacing windows that do not open with ones that do), an SEA may use EANS funds for the installation of such windows.

## **E. Public Control of Funds**

### **E-1. Must a public agency maintain control of EANS funds used to provide services or assistance to a non-public school?**

Yes. Control of funds for services or assistance provided to a non-public school under the EANS program and title to materials, equipment and property purchased with such funds, must be in a public agency, and a public agency must administer such funds, materials, equipment, and property. In addition, services for a non-public school must be provided by a public agency directly or through contract with another public or private entity. To maintain control of EANS funds, an SEA must maintain records of the equipment and supplies it has provided to each non-public school.

Reimbursements by an SEA to a non-public school for allowable expenses are allowable for CRRSA EANS only under section 312(d)(4)(M) of the CRRSA Act. To maintain control over the EANS funds it uses to reimburse a non-public school, an SEA must ensure that the non-public school's expenditures are allowable expenses, that the non-public school has sufficient documentation supporting such expenditures, such as paid invoices, that the school actually received the services or assistance related to those expenditures, and that the SEA or another public agency gains title to materials, equipment, and property for which it provides reimbursement. (See D-7).

### **E-2. How can an SEA maintain control of services or assistance for allowable activities that might affect the infrastructure of a non-public school?**

Section 312(d)(4)(C) of the CRRSA Act authorizes a non-public school to request services or assistance under the EANS program for "improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school." That authority, however, is tempered by several other provisions. Section 312(d)(7) of the CRRSA Act, for example, requires an SEA or another public agency to keep title to materials, equipment and property purchased with EANS funds and the public agency must administer such materials, equipment, and property. Moreover, 34 C.F.R. § 76.661 requires that equipment and supplies purchased with EANS funds must be able to be removed from a non-public school without remodeling the non-public school facility. Clearly, a portable air purification system could meet these requirements because an SEA could keep title and it could be removed when no longer needed without remodeling the non-public school facility. A ventilation system that is installed and becomes a capital improvement in a non-public school, however, would not meet these requirements. Similarly, new windows would not be permissible, but repairing old windows to facilitate air flow could be allowable. In sum, whether this particular authorized activity is allowable depends on the attendant circumstances.

### **E-3. How may an SEA meet the requirement to retain title to property, equipment, and supplies purchased with EANS funds? (New September 17, 2021)**

Section 312(d)(7)(A) of the CRRSA Act requires a public agency to control EANS funds for services or assistance provided to a non-public school, and retain title to materials, equipment, and property purchased with such funds. (For purposes of the EANS program, property, equipment, and supplies are



defined at 2 C.F.R. § 200.1). These requirements for public control of EANS funds and title to property, equipment, and supplies purchased with EANS funds apply whether an SEA is providing services or assistance directly, through a contract, or through reimbursement.

With respect to property, equipment, and some tangible supplies—e.g., laptops—retaining title is clear; the public agency owns the property, equipment or supplies that it provides to non-public schools for their use during the period of performance of the EANS program. Retaining title is not as clear, however, with respect to consumable tangible supplies—e.g., personal protective equipment (PPE) or cleaning supplies—that are available for a short duration, after which they are consumed. In this case, retaining documentation that the public agency provided such consumable supplies to a given non-public school would be sufficient to meet the public control requirement. If such supplies are not consumed during the period of performance of the EANS program, a public agency must retrieve them for other allowable uses. (See F-1). With respect to a software license, for example, although such license does not have a physical presence, it has value and can be “owned” and controlled by a public agency.

## **F. Fiscal Requirements**

### **F-1. For how long are the services or assistance provided to a non-public school available?** *(Updated September 17, 2021)*

Equipment and supplies purchased with EANS funds for students and teachers in a non-public school may be used for the authorized purposes of the EANS program during the period of performance (i.e., through September 30, 2023, for CRRSA EANS and September 30, 2024, for ARP EANS) or until the equipment and supplies are no longer needed for the purposes of the EANS program (see 34 C.F.R. § 76.661(b); 2 C.F.R. §§ 200.313(a)(1), (c)(1) and 200.314(a)).

In general, once equipment and supplies are no longer needed for purposes of the EANS program, an SEA must remove them from the private school. (34 C.F.R. § 76.661(d)(1)). After equipment and supplies are no longer needed for the purposes of the EANS program, the SEA may continue to use the equipment and supplies in the non-public school to the extent they are needed for other allowable purposes under another Federal education program, such as the ESEA or the Individuals with Disabilities Education Act (IDEA). (See 2 C.F.R. § 200.313(c)). In that case, the SEA must retain title to, and maintain administrative control over, the equipment and supplies or transfer title and control to another public agency such as an LEA providing equitable services under another Federal education program.

### **F-2. Must a State maintain effort to receive EANS funds?** *(Updated September 17, 2021)*

Yes, under the CRRSA EANS program. Under section 317 of the CRRSA Act, a State receiving funds under GEER II, ESSER II, or the CRRSA EANS program must provide an assurance that the State will maintain support for elementary and secondary education and higher education in fiscal year 2022 at least at the proportional levels of the State’s support for elementary and secondary education and higher education relative to the State’s overall spending, averaged over fiscal years 2017, 2018, and 2019.

There are no maintenance of effort (MOE) requirements applicable to the ARP EANS program.

Please see the Department’s [FAQs on MOE](#) for more information.

## **G. Reporting Requirements and Timeline**

### **G-1. Are there specific reporting requirements for the EANS program?**

Yes. Each State must comply with all reporting requirements, including those in Section 15011 of the CARES Act that are satisfied through the Federal Funding Accountability and Transparency Act (FFATA) reporting. The Secretary may require additional reporting in the future. (See also 2 C.F.R. §§ 200.327-200.329).

### **G-2. What information must an SEA report under FFATA for the EANS program?**

An SEA must report through the [FFATA Subaward Reporting System](#) (FSRS) any action obligating \$30,000 or more (effective November 12, 2020) in EANS funds that falls under the definition of a subaward. A subaward under the EANS program is an award made by an SEA to a subrecipient for the subrecipient to carry out part of the EANS program. A subaward may be provided through any form of legal agreement, including an agreement that the SEA considers a contract. Because most of the services or assistance provided to non-public schools under the EANS program will likely be through contracts, it is necessary to examine the nature of the agreement to determine whether the SEA has made a subaward and thus must report it in FSRS. In determining whether an agreement between an SEA and another non-Federal entity casts the non-Federal entity as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement for FFATA reporting purposes. Guidance on making subrecipient versus contractor determinations is set out in 2 C.F.R. § 200.331.

An agreement does not need to meet each of the characteristics called out in 2 C.F.R. § 200.331 for the non-Federal entity to be a subrecipient or a contractor. For example, it is likely that, given the very nature of the EANS program and the type of authorized activities, a contractor would rarely, if ever, provide services or assistance that are ancillary to the operation of the EANS program. Rather, the contractor would provide services or assistance that are the essence of the program—e.g., supplies to sanitize, disinfect, and clean school facilities; personal protective equipment; portable air purification systems; physical barriers to facilitate social distancing; educational technology, including hardware, software, connectivity, assistive technology, and adaptive equipment. Moreover, the SEA, rather than the contractor, would determine the nature of the services or assistance to be provided to specific non-public schools. Under these circumstances, the agreement would likely not be a subaward and thus would not need to be reported in FSRS. On the other hand, an SEA might enter into an agreement with a non-Federal entity to carry out a summer school program to address learning loss in a non-public school. If under the agreement the non-Federal entity determines, for example, who is eligible to receive services, has its performance measured in relation to whether objectives of the EANS program are met, and has responsibility for programmatic decision-making, the agreement would likely be a subaward and must be reported in accordance with FFATA in FSRS. If an SEA contracts with an entity to only provide goods or services that enable the SEA to carry out activities to administer the program, the expenditures would not be considered a subaward and would not need to be reported in FSRS. For example, an SEA might contract to receive support with the review of applications.

If you need further assistance, please contact your State mailbox at [State].[oeese@ed.gov](mailto:oeese@ed.gov).

### **G-3. Will the Department monitor an SEA's implementation of the EANS program?**

The Department will conduct ongoing monitoring of all EANS programs. Grantees should also be prepared for reviews from other entities such as the Office of Inspector General and State auditors.

**G-4. What are the significant deadlines associated with the EANS program? (Updated September 17, 2021)**

Please see the table below.

**SEA EANS Timeline**

Action	Deadline
Make Applications Available to Non-Public Schools*	Promptly and no later than 30 days after the SEA receives the EANS funds
Submission of Non-Public School Applications*	To be established by the SEA (e.g., the Department encourages 30 days)
Approve or Deny Applications*	Promptly and no later than 30 days after receiving the application from a non-public school
Obligate EANS Funds*	Within 6 months of the SEA receiving EANS funds (See B-10)
Unobligated EANS Funds*	SEA consults with U.S. Department of Education; unobligated EANS funds can be used for GEER II activities after 6-month obligation period ends (See B-10) and through the full period of availability.
FFATA Reporting*	Monthly
Annual Reporting*	TBD
Maintenance of Effort Reporting under the CRRSA Act only	Spring 2023
Period of Availability of CRRSA EANS Funds	Through September 30, 2023 (including the Tydings period)
Period of Availability of ARP EANS Funds	Through September 30, 2024 (including the Tydings period)

\*Applies to both CRSSA EANS and ARP EANS

**H. ARP EANS Requirements (New September 17, 2021)**

**H-1. What provisions of CRRSA EANS apply to ARP EANS?**

The ARP Act extends the EANS program authorized under section 312(d) of the CRRSA Act. Accordingly, with two exceptions, the requirements of ARP EANS are the same as those in section 312(d) of the CRRSA Act. The two exceptions are: (1) an SEA may only provide services or assistance under the ARP EANS program to non-public schools that enroll a significant percentage of students from low-income families and are most impacted by the COVID-19 emergency; and (2) an SEA may not use ARP EANS funds to reimburse any non-public school as authorized under section 312(d)(4)(M) of the CRRSA Act.

On July 9, 2021, the Department posted on its website final requirements for the ARP EANS program to (1) make clear that, with the exceptions noted above, the requirements under the CRRSA EANS program apply to the ARP EANS program and (2) establish guidelines to determine that a non-public school enrolls a significant percentage of students from low-income families and is most impacted by the COVID-19 emergency. The final requirements were subsequently published in the *Federal Register* at <https://www.federalregister.gov/d/2021-14862>.

As noted in B-10, the Governor of each State must provide assurance to the Department that the SEA will provide services or assistance to eligible non-public schools and that the SEA will obligate funds for services or assistance requested by eligible non-public schools within six months of receiving its funds. If

an SEA is in compliance with this and the other requirements in 312(d)(2), section 312(d)(6) requires the SEA to return any unobligated funds remaining six months after receipt to the Governor for authorized uses under the GEER II Fund through the full period of availability.

**H-2. How does an SEA determine which non-public schools may receive services or assistance under the ARP EANS program?**

The final requirements require a Governor, in his or her application for ARP EANS funds, to identify the significant poverty percentage and the factors of COVID-19 impact the State will use, after approval by the Secretary, to determine which non-public schools are eligible to receive services or assistance. In addition to meeting the definition of a non-public school in section 316(6) of the CRRSA Act and the eligibility requirement in section 312(d)(9) of the CRRSA Act, a non-public school must meet or exceed the State’s significant poverty percentage and be most impacted by the COVID-19 emergency.

**H-3. Are eligible non-public schools under the CRRSA EANS program the same schools that are eligible for services or assistance under the ARP EANS program?**

Not necessarily. Section 2002(a) of the ARP Act requires that an SEA only provide services or assistance to an eligible non-public school that enrolls a significant percentage of students from low-income families (whose family income does not exceed 185 percent of the 2020 Federal poverty level consistent with the final requirements) and is most impacted by the COVID-19 emergency. It is possible that some non-public schools that received services or assistance under the CRRSA EANS program will not meet the threshold for enrolling a significant percentage of students from low-income families or being most impacted by the COVID-19 emergency under the ARP EANS program. (See H-5 and H-8).

**H-4. Are the allowable uses of funds the same under the ARP EANS program as they are under the CRRSA EANS program?**

Yes, with one exception. Under the ARP EANS program, a non-public school may apply to receive all of the allowable services or assistance in section 312(d)(4) of the CRRSA Act, except for reimbursements. (See D-1). An SEA may provide allowable services or assistance directly to a non-public school or through a contract with an individual, association, agency, or organization.

**H-5. What constitutes a “significant percentage of low-income students”?**

Under the final requirements, a non-public school is considered to enroll a significant percentage of students from low-income families if the percentage of students from low-income families enrolled in the school meets or exceeds 40 percent. Alternatively, a State may propose and, if approved by the Secretary, use an alternate significant poverty percentage based on circumstances in the State, which may be—

- (1) The State’s average percentage of students from low-income families in public and non-public schools;
- (2) The average percentage of students from low-income families in non-public schools in the State that, for example, applied for or participated in the CRRSA EANS program; or
- (3) Other factors that the State demonstrates support an alternate significant poverty percentage.

**H-6. How does a State obtain approval to use an alternate significant poverty percentage?**

A State may propose in its application an alternate significant poverty percentage based on circumstances in the State. To receive approval, a State must provide data and supporting rationale to justify the use of such an alternate. A State may support use of an alternate significant poverty percentage, given that significant poverty may vary from State to State based on a particular State’s relative level of poverty. The final requirements may permit a State to use an alternate significant poverty percentage based on a

State's average percentage of students from low-income families in both public and private schools. The final requirements also allow a State to apply to use an alternate significant poverty percentage based on the average percentage of students from low-income families in non-public schools in the State that, for example, applied for or participated in the CRRSA EANS program. Using such average could take into account existing data unique to non-public schools and at a level ensuring a rigorous standard relative to such schools. Finally, recognizing that there may not be a one-size-fits-all way to show the factors in a particular State, the final requirements also permit a State to use an alternate significant poverty percentage based on measures that the State demonstrates reflect significant poverty and are approved by the Secretary. For example, a State might submit data showing the relative rates of poverty in non-public schools as compared to public schools or the percentage of non-public schools that would be excluded at different thresholds.

The Department will review applications and notify States of the status of their application within 15 days of receipt of an approvable application.

**H-7. What sources of data may an SEA use to obtain a count of students from low-income families enrolled in a non-public school?**

To obtain a count of students from low-income families enrolled in a non-public school, an SEA may use one or more of the following sources of data, provided the poverty threshold is consistent across sources and does not exceed 185 percent of the 2020 Federal poverty level:

- (1) Data on student eligibility for free or reduced-price lunch;
- (2) Data from the E-Rate program administered by the Federal Communications Commission;
- (3) Data from a different source, such as scholarship or financial assistance data; or
- (4) Data from a survey developed by the SEA.

**H-8. How does a State determine whether a non-public school is most impacted by the COVID-19 emergency?**

Under the final requirements, an SEA must determine if a non-public school is most impacted by the COVID-19 emergency based on at least one of the following factors:

- (1) The number of COVID-19 infections per capita in the community or communities served by the non-public school;
- (2) The number of COVID-19 deaths per capita in the community or communities served by the non-public school;
- (3) Data on the academic impact of lost instructional time and the social, emotional, or mental health impacts attributable to the disruption of instruction caused by the COVID-19 emergency; or
- (4) Data on the economic impact of the COVID-19 emergency on the community or communities served by the non-public school.

In addition to using one or more of these factors, an SEA may use other factors included in the State's approved ARP EANS application to determine whether a non-public school is most impacted by the COVID-19 emergency.

**H-9. Must a State provide information to the public regarding how it will determine which non-public schools enroll a significant percentage of students from low-income families and are most impacted by COVID-19?**

Yes, consistent with the final requirements. Following approval of the State's ARP EANS application by the Secretary, an SEA must publish on its website, on or before the date it makes applications for services

or assistance available to non-public schools, (1) the minimum percentage it will use to determine whether a non-public school enrolls a significant percentage of students from low-income families, (2) the source(s) of poverty data it will use to determine counts of students from low-income families in a non-public school, and (3) the factors it will use to identify non-public schools as most impacted by the COVID-19 emergency.