



**Memo to ACSI Schools:  
Updated Information Re: Emergency Assistance for Non-Public Schools (EANS)  
January 11, 2021**

**Update #1, February 5, 2021:** *The U.S. Department of Education's (USDE) announced that the deadline for governors to apply for EANS has been extended to February 22, 2021. (The original deadline was February 8). Schools have more time to encourage their governor to participate in EANS, preferably in coordination with their private and religious school colleagues.*

**Update #2, February 5, 2021:** *The USDE updates weekly the list of states which have applied for EANS at [this link](#).*

**Update #3, February 5, 2021:** *The USDE issued [FAQs](#) (as of 1/15/2021) which clarify that USDE does not consider EANS services/materials or even EANS reimbursements to be federal financial assistance (FFA). See especially FAQ D-7. Be aware that the Administration can change the FAQs should it choose to do so. FFA is discussed below in more tentative terms because the Memo predates the USDE's FAQs. The discussion of FFA from ACSI's January 29<sup>th</sup> Webinar does reflect the FAQs as does the Webinar's [PowerPoint](#).*

**Overview:**

Last Friday, January 8, 2021, members of the ACSI legal legislative department participated in a conference call with the U.S. Department of Education (USDE) to obtain updates on the Emergency Assistance to Non-Public Schools (EANS) Program. The following reflects the most current information on this program.

**Background:**

Congress passed a combined next-round COVID relief *and* massive omnibus spending bill shortly before the December 21, 2020, midnight deadline to fund the government. President Trump signed the combined bill on Sunday, December 27, 2020, shortly before the *next* government funding deadline of December 29. The new law is called the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSA). On Monday, December 28, 2020, the president also issued an [executive order on school choice](#). Please find the original ACSI Memo on the new COVID relief [here](#).

The new COVID relief law does three things for private schools:

- It authorizes emergency funding exclusively for private schools.
- It authorizes another round of Paycheck Protection Program (PPP) loans.
- It extends for one year a universal charitable deduction for non-itemizers.

Emergency funding for private schools comes in the form of a second round of GEER (Governors Emergency Education Relief) Fund (GEER II) which includes \$2.75 billion in dedicated aid for private schools to be administered by a public agency. This program is called "Emergency Aid for Non-Public Schools (EANS)." A private school must choose between EANS or the new round of PPP. Private schools may not participate in both. Further, the new law does *not* include equitable services under its second round of funding for the Elementary and Secondary School Emergency Relief (ESSER) Fund.

On January 8, 2021, the U.S. Department of Education (USDE) issued guidance relating to the EANS program in GEER II. That information may be found [here](#).

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## Key Points on EANS:

- USDE guidance gives governors until February 8, 2021, to apply for EANS funds. Governors do not have to do so. Schools will want to tell their governors to apply.
- The funds are divided among the states on the basis of the state's population at 185% of poverty in private schools.
- The state education agency (SEA) will be the public agency to administer EANS.
- The SEA must "prioritize" assistance to private schools that "enroll low-income students and are most impacted by the qualifying emergency." This vague language will bear watching.
- The SEA must notify private schools about the program and schools must apply for relief. Once the USDE approves a governor's "certification and agreement," the USDE will award the state its EANS funds within one business day. SEAs then have 30 days to create an application for private schools to use and give them time to apply.
- EANS funds must be obligated within six months of an approved state application. Unobligated funds revert to the governor's GEER fund which does not require private sector school assistance. This creates an incentive for a state to delay the program; schools should be alert to this reality.
- Private schools may apply EANS funds to 12 uses authorized in the law (see below).
- The law requires a public agency to maintain control of the funds in a fashion similar to the use of equitable services in existing programs. This suggests schools should not become recipients of federal financial assistance under EANS.
- The law allows EANS to be used for reimbursements of past expenses of private schools for the uses allowed in the law. That process may implicate a school's becoming a recipient of federal financial assistance, though we have been assured that it "should not." Schools will want to be aware of this. We await further guidance on that question from USDE. Also note:
  - A private school cannot be reimbursed with EANS funds for expenses it has already paid for with a PPP loan.
  - The bill specifies what EANS may be used for, but not all uses may be reimbursed.
  - Whether or not reimbursement will be considered federal financial assistance is unclear and further federal guidance is needed.
- The law bans any use of GEER II for school choice measures such as scholarship tax credits, vouchers, and the like.
- A private school may not participate in both EANS and the new round of PPP. Schools that received a PPP loan *prior to* December 27, 2020, remain eligible for EANS.

**How should Christian schools respond?** The new COVID relief law gives schools an opportunity to access services in a way that appears to protect them from becoming recipients of federal financial assistance. Schools that wish to engage in EANS need to reach out to their governors and SEAs immediately and urge them to participate in the program. Governors need to apply for their portion of funds and schools would want to urge governors to do so as the first step to securing assistance. Remember, control of the funds will remain with the SEA; schools will receive services and materials on the list of 12 authorized uses.

**Sample Letter to Governor.** Schools can use this USDE [sample letter](#) to a governor as a model. It can also be simplified to say that *"as a private sector religious school, the only way to access emergency assistance is through EANS. Please do not leave our students without emergency services during a pandemic. Please fill out a federal '[certification and agreement](#)' at your earliest convenience."* If appropriate, add that the school is meeting in-person, so the need for sanitation, personal protective equipment, and other services is great.

**What are the 12 uses authorized under EANS?** EANS funds can be used for the following purposes:

- (A) supplies to sanitize, disinfect, and clean school facilities.
- (B) personal protective equipment.

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

**Note on reimbursements:** The law allows EANS funds to be used to reimburse schools for purchases already made for these purposes, *except* for the items in paragraphs C, D, I, and L which are *not* eligible for reimbursement (with the further exception that allows reimbursement for *portable* air purification systems). As noted above, it is unclear whether reimbursements constitute federal financial assistance.

**Which program – EANS or PPP – is best for your school?** Please see below.

**Where can you find more information about EANS?** The U.S. Department of Education’s [new website](#) includes the details on Emergency Assistance to Non-Public Schools, including the following:

- [USDE Press Release](#), January 8, 2021.
- [Notice](#) - Announcement of the fund.
- [Letter to Governor](#) - a sample letter from USDE Secretary Betsy DeVos already sent to governors; it includes the allocation, and instructions on the application.
- [EANS Allocation Table](#) - state by state list of allocations.
- [Fact Sheet](#) - Table to compare GEER I and GEER II, more thorough FAQs to come.
- [Certification and Agreement](#) - This the form that the Governors must submit to apply for EANS.

### **Considerations for Choosing EANS or PPP**

Private schools may participate in *either* the second round of PPP *or* the new EANS program, not both. (A PPP loan received before December 27, 2020, does not disqualify a school from EANS). Here are things Christian schools may consider in making that choice:

#### **Who is eligible?**

**PPP:** Applicants for a second-draw PPP loan must demonstrate that their gross receipts in any 2020 quarter are at least 25% less than the same 2019 quarter. This might be a decisive factor for a school.

**EANS:** All private schools are eligible, but the law requires SEAs to prioritize those which enroll low-income students and are most impacted by COVID. How each SEA interprets this is a variable to consider.

### **For what purposes may funds be used?**

**PPP:** May be used for payroll, including benefits, mortgage interest, rent, utilities, and more.

**EANS:** The law provides 12 specific COVID-related uses such as supplies for sanitation, professional development on sanitation, improved ventilation, education technology, expanded space, physical barriers, etc. (See above.)

### **Will a school become a recipient of federal financial assistance (FFA)?**

**PPP:** Yes. However, such status should last only during the length of the loan. More information from ACSI that a school may consider on this issue is [here](#). The SBA's [FAQs](#) make clear how long FFA status applies: "any legal obligations that you incur through the receipt of this loan are not permanent" and "no longer apply" "once the loan is paid or forgiven." This [resource](#) offers more detail. Whether a new Administration will change this is unknown.

**EANS:** A school should not become a recipient of federal financial assistance under EANS because a public agency will maintain control of funds. (This is similar to the process of equitable services where schools receive assistance or supplies.) However, it is not clear whether or not FFA is implicated when a school which receives reimbursements under EANS for earlier expenses. We have been told it "should not" make a school a recipient of FFA, but we await further guidance expected from USDE.

### **How soon will a school gain access to funding or services?**

**PPP:** Loans begin again January 11, 2021, and continue through March. A school could access loans relatively quickly.

**EANS:** This program will take longer for schools to access services. Governors have until February 8 to apply for EANS funds and states have 30 days after receipt of funds to make an application available to private schools in that state. The SEA then has 30 days after receiving a school's application to approve or deny it. The question is how quickly a governor and SEA will choose to implement EANS. It must be noted that EANS funds that remain unobligated six months after the state receives them will revert to the general GEER fund for use at the governor's discretion.

### **How much emergency aid might a school expect?**

**PPP:** The school will determine how much to borrow according to its own capacity and within the requirements of the law.

**EANS:** The school will receive assistance/services from an SEA or its agent(s) according to its place within the SEA's priorities based on low-income student enrollment and the impact of the emergency. This depends on how the SEA establishes and implements those priorities.

**Where can schools find more information about PPP?** The Small Business Administration (SBA) website provided the following updates:

[Letter from the Administrator: SBA Guidance on Accessing Capital](#) for Minority, Underserved, Veteran and Women-Owned Business Concerns (01-06-21)

Interim Final Rule: [Paycheck Protection Program \(PPP\) as Amended by the Economic Aid Act](#) (01-06-21)

Interim Final Rule: [Paycheck Protection Program \(PPP\) Second Draw Loans](#) (01-06-21)