

Commonly Asked Questions about Allowable ESSER Activities

February 25, 2021

Many states have asked questions about using ESSER funds for additional pay, transportation, high quality instructional materials and curricula, real property or modular classrooms, construction and renovations, and addressing budget shortfalls. This document outlines information and considerations for those costs.

General ESSER Spending Considerations

- All activities supported with ESSER funds must relate to preventing, preparing for, and responding to COVID-19.¹
- ESSER does not contain a supplement not supplant requirement.²
- ESSER I and ESSER II funds can be spent on the same activities.³
- ESSER is governed by the Uniform Grant Guidance (UGG) and the Education Department General Administrative Regulations (EDGAR). Among other requirements, all expenses paid with ESSER funds must be necessary and reasonable under the circumstances.⁴ What might be necessary and reasonable in one circumstance might not be in another.

Additional Pay

When the U.S. Department of Education (ED) awarded ESSER I and II funds to states it noted the funds “generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.”⁵ This does not mean all bonuses, merit pay, or similar expenditures are unallowable, only those unrelated to COVID-related disruptions or closures.

For example, a local educational agency (LEA) might use **local ESSER funds** to provide employees with additional pay to:

- Address recruitment or retention challenges in light of the pandemic,
- Provide additional compensation to teachers and other staff that work in-person,
- Provide additional compensation to teachers and other staff that have assumed new duties because of COVID,
- Incentivize effective teachers to move to schools with vulnerable students that have been disproportionately impacted by the pandemic, or

¹ U.S. Department of Education, [ESSER II Fact Sheet](#) and [GEER II Fact Sheet](#), 2021.

² See, for example, U.S. Department of Education, [Frequently Asked Questions about the Elementary and Secondary School Emergency Relief Fund \(ESSER Fund\)](#), 2020, Q&A 6.

³ ESSER I and ESSER II were created by two different laws. ESSER I was created by the Coronavirus Aid, Relief, and Economic Security Act (CARES) in March 2020, and ESSER II was created by the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) in December 2020. While CRRSA lists three categories of allowable local ESSER activities that were not specifically listed in CARES (addressing learning loss, school facility repairs and improvements, and improving indoor air quality in school facilities), the U.S. Department of Education (ED) clarified these activities are also allowable under CARES. [ESSER II Fact Sheet](#).

⁴ [2 CFR § 200.403\(a\)](#) and [2 CFR § 200.404](#).

⁵ See, for example, U.S. Department of Education, [Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund \(ESSER Fund\)](#), 2020, p. 3. Similar language was included in the ESSER Grant Award Notices issued to SEAs.

- Provide additional pay to substitute teachers where there is a shortage.⁶

Other pay strategies could also be permissible if the LEA can connect the strategy to issues resulting from COVID-19.

State educational agencies (SEAs) could use **ESSER state-reserve funds** for additional pay related to COVID-19 if the SEA determines it is an emergency need.⁷ For example, an SEA could subgrant state-reserve funds to an LEA (or other entity) to provide additional pay for staff, or an SEA could use state-reserve funds to provide additional pay to SEA staff.

Please note an entity that uses ESSER funds to pay employee compensation must meet the UGG's documentation requirements.⁹ In general, this should be a relatively straightforward process.¹⁰ Also, incentive compensation must be given pursuant to an established plan, which could be established in response to COVID.¹¹

Transportation

The Elementary and Secondary Education Act (ESEA) limits the use of ESEA funds for transportation in certain circumstances,¹² but that limitation does not apply to ESSER.

An LEA could use **local ESSER funds** for a variety of transportation costs like:

⁶ Depending on the design and purpose of the additional pay program, local ESSER funds could be used for additional pay as an Impact Aid activity (CARES, Sec. 18003(d)(1) and CRRSA, Sec. 313(d)(1)), as an activity to provide principals and other school leaders the necessary resources to address their school needs (CARES, Sec. 18003(d)(3), and CRRSA, Sec. 313(d)(3)), as an activity to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth (CARES, Sec. 18003(d)(4), and CRRSA, Sec. 313(d)(4)), or as an activity to maintain the operation and continuity of LEA operations and continuing to employ existing staff (CARES, Sec. 18003(d)(12) and CRRSA, Sec. 313(d)(15)).

⁷ ESSER state-reserve funds must be used for "emergency needs as determined by the state educational agency to address issues responding to coronavirus which may be addressed through the use of grants or contracts." (CARES, Sec. 18003(e) and CRRSA, Sec. 313(e)). Informal guidance distributed to states by ED in July 2020 noted, "SEA Reserve funds provide broad flexibility to SEAs similar to the allowable uses of funds by LEAs." See U.S. Department of Education, [ESSER Office Hours Follow Up](#), 2020, p. 6.

⁸ Governors can award GEER funds to LEAs in one of two ways. First, Governors can award emergency support grants to LEAs most significantly impacted by COVID as determined by the SEA. CARES, Sec. 18002(c)(1) and CRRSA, Sec. 312(c)(1). LEAs can use GEER emergency support grants to continue to provide educational services to their students and to support the on-going functionality of the LEA. Second, Governors can award GEER funds to provide support to any LEA (as well as other education related entities) that the Governor deems essential for carrying out emergency educational services to students. CARES, Section 18002(c)(3) and CRRSA, Sec. 312(c)(3). For both types of GEER awards, spending options are flexible. U.S. Department of Education, [Frequently Asked Questions about the Governor's Emergency Education Relief Fund \(GEER Fund\)](#), 2020, Q&A A-15.

⁹ [2 CFR § 200.430\(i\)](#).

¹⁰ [ESSER Office Hours Follow Up](#), p. 6.

¹¹ [2 CFR § 200.430\(f\)](#).

¹² ESEA, Section 8526.

- Running additional bus routes with fewer students to permit physical distancing, and
- Where appropriate, reimbursing families for mileage expenses, if families provide transportation.¹³

SEAs could also use **ESSER state-reserve funds** for transportation related to COVID if the SEA determines it is an emergency need.¹⁴ For example, an SEA could subgrant state-reserve funds to LEAs to help support transportation activities.

Please note if an entity uses ESSER funds for a capital expense, like purchasing additional buses, it must receive prior written approval.¹⁶ LEAs (and other entities that receive ESSER subgrants) receive prior approval from their SEA, and SEAs receive prior approval from ED. Non-state subgrantees, such as LEAs, must also follow the UGG's equipment management rules.¹⁷

**High Quality
Instructional
Materials and
Curricula and
Related
Professional
Development**

While most federal education programs like Title I, Part A and IDEA, Part B limit services to certain students, those limits do not apply to ESSER. Accordingly, if related to COVID-19 response, ESSER funds could be used to purchase high-quality instructional materials, curricula, and related professional development district wide, for a subset of schools or students, or both.

For example, an LEA could use **local ESSER funds** to purchase:

- A new, evidence-based K-2 reading curriculum districtwide and related professional development to address unfinished learning and accelerate early literacy skills,¹⁸
- Districtwide curriculum with both online and in-person options,
- Additional materials and teacher training to implement Advanced Placement (AP) classes in schools, and where necessary provide additional support so that all students, particularly vulnerable students, can access and succeed in AP classes,
- Social and emotional learning programs,

¹³ Transportation costs could be supported as an Impact Aid activity (CARES, Sec. 18003(d)(1) and CRRSA, Sec. 313(d)(1)), as an activity to address the unique needs of vulnerable student populations (CARES, Sec. 18003(d)(4) and CRRSA, Sec. 313(d)(4), as an activity to implement procedures and systems to improve LEA preparedness and response efforts (CARES, Sec. 18003(d)(5) and CRRSA, Sec. 313(d)(5), or as an activity to maintain the operation and continuity of LEA services (CARES, Sec. 18003(d)(12) and CRRSA, Sec. 313(d)(15). For additional transportation considerations, see U.S. Department of Education, [ED COVID-19 Handbook Volume 1: Strategies for Safely Reopening Elementary and Secondary Schools](#), 2021, pp. 15-16.

¹⁴ See footnote 7.

¹⁵ See footnote 8.

¹⁶ [2 CFR § 200.439](#).

¹⁷ [2 CFR § 200.313](#). Please note that states may use state policies and procedures for equipment. 2 CFR § 200.313. Entities that are not states, such as LEAs, must follow the equipment standards in 2 CFR § 200.313(c) - (e).

¹⁸ For more information, please see CCSSO, [A Nation of Readers: How State Chiefs Can Help Every Child Learn to Read](#), 2021.

- Multi-Tier System of Support (MTSS) materials, such as Tier 2 and Tier 3 interventions aligned to strong Tier 1 curriculum, as well as related screening tools, and
- Career and technical education programming.¹⁹

SEAs could use **ESSER state-reserve funds** for high-quality instructional materials, curricula, and related professional development in response to COVID-19 if the SEA determines it is an emergency need.²⁰ An SEA could subgrant state-reserve funds to an LEA (or other entity) to support their costs. An SEA could also spend state-reserve funds directly for things like providing guidance to LEAs on high quality instructional materials and curricular options, providing relevant statewide professional development, providing coaches to work with teachers in implementing high-quality curricula, contracting with outside entities with relevant expertise to support LEAs in identifying and implementing high-quality curricula, and the like.

Please note if an entity uses ESSER funds to purchase materials or curricula it must follow the UGG's procurement rules.²²

Acquisition of Real Property or Modular Classrooms An LEA could use **local ESSER funds** to acquire real property or modular classrooms if needed to respond to COVID-19.²³ For example, additional space might help an LEA to re-open schools in person consistent with CDC guidelines.

SEAs could use **ESSER state-reserve funds** to support the acquisition of real property or modular classrooms if the SEA determines it is an emergency need.²⁴ For example, an SEA could subgrant state-reserve funds to LEAs (or other entities) to support these costs.

¹⁹ Local ESSER funds could be used for curriculum, high-quality instructional materials, and related professional development as an Impact Aid activity (CARES, Sec. 18003(d)(1) and CRRSA, Sec. 313(d)(1)), as an activity to provide principals and other school leaders the necessary resources to address their school needs (CARES, Sec. 18003(d)(3), and CRRSA, Sec. 313(d)(3)), as an activity to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth (CARES, Sec. 18003(d)(4), and CRRSA, Sec. 313(d)(4)), as an activity to address learning loss (CRRSA, Sec. 313(d)(12)), or as an activity to maintain the operation and continuity of LEA services (CARES, Sec. 18003(d)(12) and CRRSA, Sec. 313(d)(15)).

²⁰ See footnote 7.

²¹ See footnote 8.

²² [2 CFR §§ 200.317 – 200.327](#). Please note that states may use state policies and procedures for procurement and must following certain federal contracting requirements. 2 CFR § 200.317. Entities that are not states, such as LEAs, must follow the procurement standards in §§200.318 through 200.327.

²³ These costs could be supported as an Impact Aid activity (CARES, Sec. 18003(d)(1) and CRRSA, Sec. 313(d)(1)), as an activity to address the unique needs of vulnerable student populations (CARES, Sec. 18003(d)(4) and CRRSA, Sec. 313(d)(4), as an activity to implement procedures and systems to improve LEA preparedness and response efforts (CARES, Sec. 18003(d)(5) and CRRSA, Sec. 313(d)(5), or as an activity to maintain the operation and continuity of LEA services (CARES, Sec. 18003(d)(12) and CRRSA, Sec. 313(d)(15)).

²⁴ See footnote 7.

SEAs could also spend state-reserve funds directly on such costs, for instance to support state schools.

Please note if an entity uses ESSER funds for a capital expense, it must receive prior written approval.²⁶ LEAs (and other entities that receive ESSER subgrants) receive prior approval from their SEA, and SEAs receive prior approval from ED. The entity must also follow the UGG's real property and/or equipment management rules.²⁷

Construction and Renovation ED confirmed ESSER funds can be used for construction and renovation costs when reasonable and necessary to prevent, prepare for, and respond to the COVID-19 pandemic.²⁸

For example, an LEA might use **ESSER local funds** to undertake construction or renovation to:

- Help an LEA to clean effectively, like replacing old carpet with tile that is easier to clean, or
- Support physical distancing, like bringing an unused wing of a school into compliance with fire and safety codes to create more space.²⁹

SEAs could also use **ESSER state-reserve funds** to support construction and renovation if the SEA determines it is an emergency need.³⁰ For example, an SEA could subgrant state-reserve funds to LEAs to help support their costs.

Please note an entity that uses ESSER funds for construction or renovation must comply with all relevant UGG rules, EDGAR rules,³² and Davis-Bacon prevailing wage rules.³³

²⁵ See footnote 8.

²⁶ [2 CFR § 200.439](#).

²⁷ For real property see [2 CFR § 200.311](#). For equipment see [2 CFR § 200.313](#).

²⁸ [ESSER Office Hours Follow Up](#), pp.5- 6.

²⁹ [ESSER Office Hours Follow Up](#), pp.5- 6.

³⁰ See footnote 7.

³¹ See footnote 8.

³² [34 CFR § 76.600](#). Note that this regulation addresses the SEA's role in construction on historic sites and approving drawings and applies the standards from another set of regulations for direct programs (34 CFR §§ 75.600-75.617) to state-administered programs.

³³ [ESSER Office Hours Follow Up](#), pp.5- 6. Note: Davis Bacon wage rules apply to both construction and minor remodeling. 20 U.S.C. § 1232b.

**Budgetary
Shortfalls**

ED confirmed that **ESSER local funds** can be used to assist with budget shortfalls resulting from the pandemic. Specifically:

As with all uses of ESSER I or II funds, a proposed use of funds must be “to prevent, prepare for, and respond to” COVID-19. This means that ESSER funds may be used to bridge budget shortfalls if the deficit is related to the coronavirus and the ESSER funds are needed for education-related expenses.

Please keep in mind that under both the CARES Act and CRRSA, ESSER funds are not subject to a supplement, not supplant, requirement and there is no maintenance of effort requirement at the LEA level. However, LEAs should be mindful that existing maintenance of effort requirements in other federal programs, such as Title I, continue to apply, and that federal funds such as ESSER funds cannot be included in local maintenance of effort calculations for these other programs.³⁴

Similar considerations apply to **ESSER state-reserve funds**, except that ESSER I and ESSER II are all subject to state-level maintenance of effort (MOE) requirements that limit how much states can cut from their state education budgets.³⁵ Assuming MOE is met, an SEA could use ESSER state-reserve funds for things like maintaining SEA staff if the SEA determines that is an emergency need.³⁶

Please note if an entity uses ESSER funds to pay for employee compensation, the entity must meet the UGG’s documentation requirements.³⁷

³⁴ U.S. Department of Education, [ESSER II Q&A Follow Up CCSSO Call](#), 2021, pp. 2-3.

³⁵ For more information about CARES’s MOE requirements (applicable to ESSER I and GEER I), please see U.S. Department of Education, [Frequently Asked Questions on the Maintenance-of-Effort Requirements Applicable to the CARES Act Programs](#), 2020. For more information on CRRSA’s MOE requirements (applicable to ESSER II and GEER II), please see CCSSO, [CRRSA ESSER and GEER Maintenance of Effort Requirements](#), 2021.

³⁶ See footnotes 7 and 8.

³⁷ [2 CFR § 200.430\(i\)](#).