

ESSER II Questions from CCSSO Call January 5, 2020

Period of Availability and Tydings

Q: Can you clarify the period of availability?

A: As noted in the [ESSER II Fact Sheet](#), the ESSER II funds may be used for pre-award costs dating back to March 13, 2020, when the national emergency was declared. Funds are available for obligation by SEAs and subrecipients through September 30, 2023, except that the State must return to the Secretary any funds that the State does not award within one year of receiving such funds.

Q: Will there be waivers for the period of availability? Current year and upcoming year?

A: No. The CRRSA Act does not grant the Secretary the authority to waive requirements related to ESSER II funds, including the period of availability.

Q: What is ESSER II period of availability...does Tydings apply for 12 additional months after 9-30-2022?

A: As noted in the [ESSER II Fact Sheet](#), the ESSER II funds may be used for pre-award costs dating back to March 13, 2020, when the national emergency was declared. Funds are available for obligation by SEAs and subrecipients through September 30, 2023, except that the State must return to the Secretary any funds that the State does not award within one year of receiving such funds.

Reporting

Q: Will the reporting requirements change? It would be helpful to know up front on any variances in the reporting requirements for round 2 so that states will be in a posture to report timely.

A: As noted in the [ESSER II Fact Sheet](#), under the CRRSA Act, each SEA that receives ESSER II funds must meet the CARES Act reporting requirements that apply to ESSER funds and submit a report to the Secretary within six months of award that contains a detailed accounting of the use of ESSER II funds, that includes how the State is using funds to measure and address learning loss among students disproportionately affected by the coronavirus and school closures. More information about the CARES Act reporting requirements that apply to ESSER and ESSER II funds, including how such requirements are satisfied through the Federal Funding Accountability and Transparency Act (FFATA) reporting, can be found at <https://oese.ed.gov/files/2020/11/CARES-Act-Quarterly-Reporting-FINAL-Reissued-11162020.pdf>. In addition, the State will need to submit maintenance of effort (MOE) data. The Department will provide additional information on how to submit data related to MOE and other ESSER II, GEER II, and EANS reporting requirements in the near future.

Q: I assume that EDGAR, GEPA, and 2 CFR reporting and compliance requirements apply to this grant?

A: Yes, as noted in the assurances attached to the Grant Award Notification (GAN) for ESSER II funds, the funds are subject to the Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. The funds are also subject to the General Education Provisions Act (GEPA) requirements.

MOE

Q: Will new baseline data need to be submitted for the modified MOE requirements?

A: As noted in the [ESSER II Fact Sheet](#), under the CRRSA Act, a State that receives ESSER II funds must maintain support for elementary and secondary education and higher education in FY 2022 based on the proportional share of the State's support for elementary and secondary education and higher education relative to the State's overall spending averaged over FYs 2017, 2018, and 2019. This is a different MOE requirement than what was in the CARES Act. While the Department will use the CARES Act MOE baseline data for the CRRSA Act MOE, we will need to collection additional data on overall state expenditures in order to calculate the proportional share. The Department will share information on the MOE reporting requirements and deadlines in the near future.

Q: Can you elaborate on the impact of the ESSER I and ESSER II funds with respect to IDEA's MOE and state MFS requirements?

A: The receipt and use of ESSER funds does not impact the calculation of maintenance of effort (MOE) and State maintenance of financial support (MFS) under the Individuals with Disabilities Education Act (IDEA). While ESSER funds can be used for activities authorized by the Individuals with Disabilities Education Act (IDEA), ESSER funds are not considered to be IDEA funds; as a result, they do not impact the LEA MOE requirement under IDEA. Additionally, ESSER funds are Federal funds, not State funds, thus do not impact the MFS calculation. States must continue to meet the State MFS requirement under the IDEA, and LEAs must continue to meet the LEA MOE requirement under the IDEA. The receipt of ESSER funds does not permit a State or LEA to reduce the amounts otherwise required to be made available or expended pursuant to those requirements.”

Q: Will the new ESSER II MOE requirements apply to ESSER I as well, or will the ESSER I guidance prevail?

A: No. The ESSER I MOE requirements will continue to apply to the ESSER I funds.

Q: The nonpublic schools receiving ESSER II need to be not-for-profit, correct?

A: Under ESSER II, there are no equitable services requirements for services to non-public schools. Rather, the CRRSA Act includes a separate program of Emergency Assistance for Non-Public Schools (EANS) for which eligible non-public schools may apply to an SEA to receive services or assistance.

Allowable Uses

Q: Is it accurate that State legislatures could target funds to backfill funds for school systems?

A: 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.

Q: Can LEAs use their ESSER2 allocation to fulfill local revenue loss.

A: 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.

Q: To understand the impact of the digital learning on student outcomes, infrastructure changes will be needed and will need to be aligned with overall infrastructure upgrades. Can the SEA portion of these CARES 2 funds be used to address infrastructure modernization efforts?

A: ESSER II funds, including the SEA reserve, may be used towards technology infrastructure. 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 and must be a reasonable and necessary use of funds.

To the extent that infrastructure upgrades involve construction and/or renovation, these are allowable uses of ESSER I and ESSER II funds under “any activity authorized by the ESEA.” Specifically, because construction is an allowable activity under the ESEA’s Impact Aid program, an LEA may use ESSER I/ESSER II funds for construction, subject to prior written approval by its SEA. See section 18003(d)(1) of the CARES Act, section 313(d)(1) of the CRRSA Act, Title VII of the ESEA, and 2 CFR § 200.439(b)(1). Specifically, the Impact Aid definition of “construction” includes remodeling and renovations, under which many activities related to COVID-19 would likely fall.^[1]

As is the case with all activities charged to the ESSER I and ESSER II Funds, construction costs must be reasonable and necessary to meet the overall purpose of the program, which is “to prevent, prepare for, and respond to” the COVID-19 pandemic. See CARES Act Department of Education, Education Stabilization Fund heading and 2 CFR §§ 200.403-200.405. Therefore, any construction activities, including renovations or remodeling, that would be necessary for an LEA to prevent, prepare for, and respond to COVID-19 would be permissible. This might include renovations that would permit an LEA to clean effectively (e.g., replacing old carpet with tile that could be cleaned more easily) or create a learning environment that could better sustain social distancing (e.g., bringing an unused wing of a school into compliance with fire and safety codes in order to reopen it to create more space for students to maintain appropriate social distancing).

Approved construction projects must comply with applicable Uniform Guidance requirements, as well as the Department’s regulations regarding construction at 34 CFR § 76.600. As is the case with all construction contracts using laborers and mechanics financed by federal education funds, an LEA that uses ESSER funds for construction contracts over \$2,000 must meet all Davis- Bacon prevailing wage requirements and include language in the construction contracts that all contractors or subcontractors must pay wages that are not less than those established for the locality of the project (prevailing wage rates). (See 20 U.S.C. 1232b Labor Standards.)

^[1] The Impact Aid program statute defines “construction” as “(A) the preparation of drawings and specifications for school facilities; (B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (C) inspecting and supervising the construction of school facilities; and (D) debt service for such activities.” ESEA section 7013(3).

General questions

Q: Does the ESSER II fund carry the same equitable share requirements as ESSER I

A: Under ESSER II, there are no equitable services requirements for services to non-public schools. Rather, the CRRSA Act includes a separate program of Emergency Assistance for Non-Public Schools (EANS) for which eligible non-public schools may apply to an SEA to receive services or assistance.

Q: Will the ESSER2 funds be a new CFDA#? Or an addition to the existing CFDA#?

A: The ESSER II is under the same CFDA and Alfa, but under the FY21 year instead of under the FY20 year as the ESSER I (CARES Act) funds were.

Q: Are state tables available?

A: Yes, the State allocations table is located here:

https://oese.ed.gov/files/2021/01/Final_ESSERII_Methodology_Table_1.5.21.pdf

Q: Will LEAs be required to submit a new application to the SEA for approval?

A: An SEA has the discretion to require a new application (or revisions to an LEA's ESSER application) to reflect ESSER II funds for each eligible LEA or to award the ESSER II funds as a supplement to the initial ESSER award without requiring a new or revised application. If an SEA chooses to award the funds as a supplement without requiring a new or revised LEA application, the SEA must take other steps, including having sufficient internal controls and procedures in place when an LEA draws down ESSER II funds, to ensure that its LEAs are using the funds for allowable costs, tracking the ESSER II funds separately from ESSER funds, and complying with all applicable requirements, including those that differ from ESSER (e.g., a different period of availability, no equitable services requirement, additional reporting requirements). An LEA that is eligible for ESSER II funds but did not receive an ESSER award (e.g., because it did not receive a Title I, Part A award in FY 2019 but did receive a Title I, Part A award in FY 2020) must submit a new application to the SEA in order to receive ESSER II funds.

Q: Which year Title I allocations will be used when USDE allocates funds to states - 2019-20 or 2020-21? And which year must states use in allocating funds to LEAs?

A: Section 313(b) of the CRRSA Act requires the Department to allocate the ESSER II Fund based on the proportion that each State received under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) in the most recent fiscal year, which was fiscal year 2020 (the 2020-2021 school year). However, section 1122(c)(3) of the ESEA prohibits the Department from considering the Title I, Part A hold harmless provisions in ESEA section 1122 in calculating State or local allocations for any other program administered by the Secretary, including the ESSER II Fund. Therefore, to determine the ESSER II Fund allocations, the Department used the fiscal year 2020 State shares of Title I, Part A allocations without the application of the hold harmless provisions in ESEA section 1122.

An SEA should calculate its ESSER II LEA allocations based on its current FY 2020 Title I-A allocations. The [ESSER FAQ Technical Appendix](#) discusses how to compute the allocations, but in terms of FY 2019 Title I-A allocations. The principle is the same, just substitute FY 2020 for FY 2019.

Q: Can the ESSER I funds be used for the new allowable uses under the ESSER II as not to create an accounting challenge?

A: As noted in the [ESSER II Fact Sheet](#), the additional LEA allowable uses of funds under the CRRSA Act (addressing learning loss, preparing schools for reopening, and testing, repairing, and upgrading projects

to improve air quality in school buildings) are also permitted under the CARES Act. ESSER I and ESSER II funds need to be tracked separately.

Q: Will SEAs be allocating ESSER II funds to LEAs based on the proportion of Title I-A funds the LEAs received this current fiscal year (20-21) or 19-20?

A: An SEA is required to base ESSER II LEA allocations on Federal fiscal year (FY) 2020 Title I-A allocations awarded to LEAs (funds for the 2020-2021 school year).

Q: Can ESSER 2 funds be used for limited to expenditures dated back to December 21 and forward or does the allowability go further back (beg. of pandemic)?

A: : As noted in the [ESSER II Fact Sheet](#), ESSER II funds may be used for pre-award costs dating back to March 13, 2020, when the national emergency was declared.

Q: For the new ESSER funds, if State allocations are based on FY21 shares, may states use LEA shares from 19-20 or 20-21?

A: An SEA is required to base ESSER II LEA allocations on Federal fiscal year (FY) 2020 Title I-A allocations awarded to LEAs (i.e., the 2020-2021 school year).

Q: The new ESSER II funds using the Title I allocation method, does a nonpublic proportionate share need to be calculated?

A: Under ESSER II, there are no equitable services requirements for services to non-public schools. Rather, the CRRSA Act includes a separate program of Emergency Assistance for Non-Public Schools (EANS) for which eligible non-public schools may apply to an SEA to receive services or assistance.

Q: Will there be further guidance on which data should be used for LEA allocations? 20-21 Title I or wait for 21-22?

A: SEAs must calculate the ESSER II LEA allocations based on its current FY 2020 Title I-A allocations (i.e., Title I allocations for the 2020-2021 school year). The [ESSER FAQ Technical Appendix](#) discusses how to compute the allocations, but in terms of FY 2019 Title I-A allocations. The principle is the same, just substitute FY 2020 for FY 2019.

Q: Will the four insular areas receive funding in 1-3 days as well?

A: Those awards have been made. Information on the CRRSA grants to the outlying areas is available here: <https://oese.ed.gov/offices/education-stabilization-fund/outlying-areas/>

Q: Who do we contact if we have questions?

ESSER: esserf@ed.gov

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EANS: geerf@ed.gov

General questions for USED: covid19@ed.gov

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