

ELEMENTARY & SECONDARY SCHOOL EMERGENCY RELIEF (ESSER) FUND OFFICE HOURS I & II FOLLOW UP

Office hours were held June 18 and 19, 2020.

HIGHLIGHTS

UPDATE TO ESSER INITIAL 60-DAY REPORT CLARIFICATION

- The U.S. Department of Education (Department) issued a Clarification for the Initial 60-day Report on June 11, 2020. Item 3.a.i in the Clarification should read, "After one year, an SEA must return to the Department any funds that it did not reserve for administration (up to 1/2 of 1% of its total ESSER award) or that have not been otherwise awarded."
- More information on the 60-day report is provided below.

UPDATE ON CONSOLIDATION OF ADMINISTRATIVE FUNDS

- Sections 8201(a)(2) and 8203(a) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) permit a State educational agency (SEA) and local educational agency (LEA), respectively, to consolidate administrative funds under certain ESEA programs. The Secretary may designate additional programs from which administrative funds may be consolidated.

Under that authority, Assistant Secretary Brogan has designated the ESSER Fund and the Governor's Emergency Education Relief (GEER) Fund as programs under which an SEA or LEA may consolidate administrative funds. Accordingly, an SEA that consolidates ESEA administrative funds may now also consolidate administrative funds under the ESSER Fund and GEER Fund, if applicable.

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

The consolidated administrative funds may be used to administer the programs included in the consolidation as well administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation.

An LEA may consolidate administrative funds under the ESSER or GEER Fund with the approval of the SEA to administer the programs included in the consolidation and, as is the case with the consolidated State administrative funds, for administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation.

UPDATE ON EQUITABLE SERVICES

- On July 1, 2020, the Department published an interim final rule in the *Federal Register* (<https://www.federalregister.gov/documents/2020/07/01/2020-14224/cares-act-programs-equitable-services-to-students-and-teachers-in-non-public-schools>) regarding implementation of the requirement in the Coronavirus Aid, Recovery, and Economic Security (CARES) Act (section 18005) that an LEA receiving funds under the ESSER Fund or GEER Fund provide equitable services to students and teachers in non-public schools located in the LEA. There are

two ways an LEA might receive ESSER funds: as a formula subgrant from the 90 percent of ESSER funds an SEA must allocate to LEAs; or as a discretionary or formula subgrant or a contract from the SEA Reserve. The LEA must provide equitable services with ESSER funds “in the same manner as provided under section 1117 of the ESEA,” as determined in consultation with representatives of non-public schools. Significantly, section 1117 requires the services an LEA provides to non-public school students and teachers be equitable in comparison to services for public school students and teachers.

To provide equitable services that are comparable to those provided to public school students and teachers, an LEA must determine the amount of ESSER funds available for those services—that is, the proportional share. To determine the proportional share, an LEA has several options.

If the LEA is spending its ESSER funds in both Title I and non-Title I schools, it must determine the proportional share based on enrollment in elementary and secondary non-public schools in the LEA that will participate in the ESSER Fund programs compared to the total enrollment in public schools and participating non-public elementary and secondary schools in the LEA.

On the other hand, if an LEA targets its ESSER funds only on students and teachers in its Title I schools, the LEA may base the proportional share on poverty by (1) using the proportional share it used under Title I in the 2019-2020 school year or (2) the count of students ages 5 through 17 from low-income families in non-public schools that will participate in the ESSER Fund programs compared to the total number of students ages 5 through 17 from low-income families in Title I schools and participating non-public elementary and secondary schools in the LEA.

Control of funds for services and assistance provided to non-public school students and teachers under the ESSER Fund programs, 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. And materials, equipment and services must be secular, neutral and nonideological.

Frequently Asked Question (FAQs) related to Equitable Services under the CARES Act are posted here: <https://oese.ed.gov/files/2020/06/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-6-25-2020.pdf>

UPDATE ON CASH MANAGEMENT

- The Department continues to provide ESSER and GEER grantees guidance on their responsibilities for being good stewards of Federal funds—including their responsibilities under the Cash Management Improvement Act (CMIA), P.L. 101-453 (implementing regulations at 31 CFR Part 205) and Uniform Guidance (2 CFR Part 200).

The CMIA, which applies to both GEER and ESSER awards, requires that a State “must limit the amount of funds transferred to the minimum required to meet the State’s actual and immediate cash needs.” See 31 CFR § 205.11(b). In addition, subgrantees, including LEAs, must minimize the time elapsing between the transfer of funds from the State and disbursement by the subgrantee. See 2 CFR § 200.305(b).

As outlined in the ESSER FAQs (<https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>), an SEA and an LEA may use ESSER funds for any allowable expenditure

incurred on or after March 13, 2020, the date the President declared the national emergency due to COVID-19. We know that SEA and LEA reimbursement for allowable expenditures may contribute to large drawdowns to meet obligations incurred prior to the ESSER award date but not before March 13, 2020. If an ESSER grantee has made payments to LEAs that are not aligned with cash management principles, funds from ESSER may need to be returned to the grantee's account in G5. For questions related to **G5 and the refund process**, contact the **G5 Hotline** at 1-888-336-8930 or email edcaps.user@ed.gov.

Additionally, due to the size of the ESSER awards, we encourage each SEA to examine whether the size of its grant necessitates its inclusion in the State's CMIA agreement with the U.S. Department of Treasury. Each SEA will need to work with its State fiscal agency to determine whether the ESSER funds constitute a "Major Federal Program" under 2 CFR § 205.5. If so, the ESSER funds will need to be added to its current CMIA agreement.

POST-AWARD CALLS

Your program officer will be reaching out to you via email to schedule a Post-Award call. The Department will conduct the Post-Award calls in order of the grant award date.

OFFICE HOURS RECAP

For those of you who were able to join us for Office Hours for the ESSER Initial Report, thank you! For those who were not able to join us, we hope you can join us the next time we hold ESSER Grantee Office Hours. We plan to hold other such sessions throughout the grant period. Please contact your program officer with ideas you may have for topics for future Office Hours.

During Office Hours, participants asked questions about the 60-day Initial Report and other ESSER-related topics. Below is a list of general questions raised during Office Hours; neither questions nor answers are verbatim from the Office Hours. Office Hours were not recorded.

QUESTIONS

DIRECTIONS ON THE 60-DAY REPORT

May an SEA request an extension to submit its 60-day report?

Yes, the Department understands that extensions may be necessary as we have only recently distributed clarifications regarding the report.

If you need an extension, please talk with your program officer to make the extension request.

Is there a standard template for the budget reporting requirement? If not, is there a format in which it must be submitted?

Yes, the budget for the SEA Reserve (up to 10% of the full award and inclusive of any administrative costs) must be submitted using the ED 524 form, which is available on our website: <https://www2.ed.gov/fund/grant/apply/appforms/appforms.html>.

As outlined in the Initial Report Clarification, an SEA should complete Section A and Section C of the form. There is no template for Section C, the Budget Narrative. The form is available in Microsoft Word or Portable Document formats and may be submitted in either format.

What is the date the report is due? Is it 60 business or calendar days from the grant award date?

The report is due 60 calendar days from the date of your SEA's award.

To whom or where should we send the report?

The Department prefers each ESSER grantee sends the Initial 60-day report to its state mailbox, [\[State\].OESE@ed.gov](mailto:[State].OESE@ed.gov). These mailboxes are monitored daily. If you choose to send it to your program officer, that is fine as well; we suggest you copy the state mailbox.

REVIEW OF THE 60-DAY REPORTS

What is the review process for the 60-day report? If there are points of concern, will our Program Officer be in touch and work to resolve them?

Department staff will review ESSER 60-day reports against the requirements provided in the certification and agreement, as well as the clarifying information that was sent out via G5 and will contact an SEA with any questions about the information in the report. The Department does not approve the reports.

When an SEA completes the ED 524 form, should the SEA include only the amount it reserves (i.e., up to 10% of the award or "SEA Reserve," including the amount reserved for administrative costs, up to ½ of 1 percent of the full ESSER award), or should the form address the full ESSER Fund award (LEA allocation, SEA Reserve, and administrative costs)?

The budget report is for the amount of funds the SEA reserves (up to 10% of the ESSER award), including any funds reserved for administrative costs.

We ask that you report, in the table of Section A of the ED 524 form, the total amount reserved at the State level (which would include your administrative costs and funds reserved for other State activities). In Section C, the Budget Narrative, please specify the amount of funds you are reserving for administrative costs and the amount you are reserving for State activities, as well as the other required elements of Section C.

If an SEA subgrants all but the ½ of 1% we are permitted to reserve for administrative costs to LEAs under the formula, does the SEA include only the amount it reserves for the administrative costs in the 60-day report?

Yes.

How should an SEA report State Reserve funding that it has yet to determine how to spend?

Funds that have not yet been budgeted may be included in the "Other" category/row of the table in Section A. In your budget narrative in Section C, you can explain the amount that has yet to be budgeted.

In what section should contracts be described?

The amount of SEA Reserve funds budgeted for contracts is reported in the table for Section A, category/row "Contractual." In Section C, the Budget Narrative, an SEA should describe the types of contracts, contract period, etc.

Does the Department need to approve an SEA's budget (as provided in the 60-day report) before an SEA may start spending the funds?

The Department does not approve an SEA's budget before the SEA may begin spending ESSER funds it reserves. As is the case with all activities charged to the ESSER Fund, 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.

If we make changes to the budget after submitting the 60-day report or have funds we have yet to budget, may we revise the 60-day report? Are we required to submit a revision? What is that process?

You may revise your budget, but it is not required that you send in a revised budget to the Department. However, when the Department has the most updated budget information, we can provide better technical assistance. If you choose to submit a revised budget, we ask that you submit it in the same manner as the 60-day report, including the ED 524 Section A table and the Section C narrative.

QUESTIONS ON ALLOWABLE LEA USES OF ESSER FUNDS

Are construction and renovation costs allowable?

Because ESSER funds may be used for "any activity authorized by the ESEA," and construction is an allowable activity under the ESEA's Impact Aid program, an LEA may use ESSER funds for construction, subject to prior written approval by its SEA. See section 18003(d)(1) of the CARES 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 Fund, 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

^[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).

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.)

USE OF STATE FUNDS

How might an SEA use funds it reserves for administrative costs?

An SEA may, but is not required to, set aside up to 1/2 of 1% of its total ESSER award for State administration of the ESSER funds. Should a State choose to set aside funds for administrative costs, those funds must be used to support the administration of the ESSER grant, which could include paying the salaries of SEA personnel working to administer the ESSER award or for other direct or indirect costs related to administering the program.

The amount an SEA reserves for administrative costs must come from the “SEA Reserve,” the amount the SEA retains at the State level (up to ten percent of the SEA’s ESSER grant). Unlike funds set aside for administration, which may only be used for that purpose, SEA Reserve funds may be used to address emergency needs as determined by the SEA resulting from COVID-19. These SEA Reserve funds provide broad flexibility to SEAs similar to the allowable uses of funds by LEAs. An SEA may determine, for example, that SEA salaries and other supports are an emergency need in response to the COVID-19 pandemic that could be covered under the SEA Reserve. An SEA may decide, based on its needs, to reserve less for administration in order to retain more SEA Reserve funds to address its emergency needs.

As is the case with all activities charged to the ESSER Fund, 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.

Do the requirements related to documentation for personnel expenses in the Uniform Guidance (2 CFR § 200.430(i)) apply to ESSER funds?

Yes, in general, the requirements in the Uniform Guidance apply to expenditures of ESSER funds, including the requirements related to documenting personnel expenses in 2 CFR § 200.430(i). Except as described below, this would mean that an LEA maintains the records it generally maintains for salaries and wages, including for employees in leave status, as long as payments to employees in leave status are made consistent with grantee policies and procedures that apply to all employees, whether they are paid with Federal or other funds. See Department Fact Sheet at <https://www2.ed.gov/documents/coronavirus/factsheet-fiscal-questions.pdf> for more information on paying employees in leave status.

An LEA must maintain time distribution records (sometimes called “time and effort” reporting) only if an individual employee is splitting his or her time between activities that may be funded under ESSER and activities that are not allowable under ESSER. However, there will be very few situations when an employee of an LEA would perform multiple activities where some are not allowable under ESSER, and thus would be required to maintain time distribution records, given that an LEA is authorized to use funds on “activities that are necessary to maintain the operation of and continuity of services in [an LEA] and continuing to employ existing staff of the [LEA]” in order to “prevent, prepare for, and respond to” the COVID-19 pandemic. (Section 18003(d)(12).)

QUESTIONS ON PERIOD OF AVAILABILITY OF FUNDS

What is the timeline for awarding, obligating, and liquidating funds under the ESSER Fund?

Section 18003(f) of the CARES Act requires an SEA that receives ESSER funds to “return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds.” Thus, an SEA has one year from the date it receives its ESSER award to make subgrants to LEAs and to award SEA Reserve funds, through contracts or grants or retaining SEA Reserve funds to provide direct services itself.

The period to obligate ESSER funds extends until September 30, 2022. In other words, an LEA has until September 30, 2022 to obligate ESSER funds it receives and an SEA has until September 30, 2022 to obligate ESSER funds it reserves for administrative costs and any SEA Reserve funds that the SEA retains to provide services directly rather than through a grant or contract. Please see Question 10 in the ESSER FAQs, available at <https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf> for additional discussion of the difference between “awarding” and “obligating” ESSER funds.

Under 2 CFR § 200.343(b), ESSER funds must be liquidated within 90 calendar days after the end of the performance period (i.e., no later than December 30, 2022).

If an SEA uses its SEA Reserve to enter into a contract, can the period of the contract run through September 30, 2022?

Yes. However, as is the case with all activities charged to the ESSER Fund, costs and contract terms 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.

MAINTENANCE OF EFFORT (MOE)

When will the Department review waiver requests for maintenance of effort?

As outlined in the MOE FAQs, the Department will review waiver requests after September 2021. Here is the link to the MOE FAQs: <https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf>

MONITORING AND INTERNAL CONTROLS

Assurance 10 of the ESSER Certification and Agreement requires an ESSER grantee to submit an Internal Control and Subrecipient Monitoring Plan within 60 days of receipt of the award. What does the Department expect an SEA to include in its Internal Control and Subrecipient Monitoring Plan?

- Attachment T of the Grant Award Notification outlines the requirements of the internal control plan. It must:
 - Identify the management structure for implementing the ESSER Fund grant, including the key personnel responsible for managing and monitoring recipients;
 - Identify risks, both internal and subrecipient risks, associated with implementing the program based on past performance and identify strategies for mitigating such risks; and Describe how the Grantee will ensure the existence of primary documentation necessary to support fiscal reviews, including audits and Improper Payment assessments, as requested by the Department of the Department’s contractor.

- Attachment T also outlines the requirements of the subrecipient monitoring plan. It must address the Grantee's:
 - Revised risk assessment and ranks prioritizes LEAs with consideration for new criteria identified as a result of receiving ESSER funds;
 - Development and implementation of revised monitoring protocols; and
 - Schedule for subrecipient monitoring, including both programmatic and fiscal issues, based on the Grantee's revised risk assessment.

In reviewing and revising existing internal controls, an SEA may reference the Uniform Guidance, 2 CFR Part 200, linked below, and the General Accounting Office's (GAO) Green Book, referenced in the Uniform Guidance and also linked below. An SEA that has Internal Control plans for other Federal awards may modify them to include ESSER.

What do you expect the Department's monitoring process for ESSER will include and what timeline will it follow?

The monitoring process for ESSER fund grantees is under development and will cover fiscal and program elements. The Department will provide more information when it is available.

Internal control resources:

- Uniform Guidance: PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=39eb812d19c012ee263eefc2283fb67&mc=true&n=pt2.1.200&r=PART&ty=HTML>
- GAO Green Book: <https://www.gao.gov/greenbook/overview>

QUARTERLY REPORTS

Section 15011 of Division B of the Coronavirus Aid, Relief, and Economic Security (CARES) Act requires that a grantee which receives more than \$150,000 report to the U.S. Department of Education (Department) on a quarterly basis. The Department, after consultation with the Office of Management and Budget, currently interprets this CARES Act quarterly reporting requirement to be satisfied through existing federal reporting mechanisms. Specifically, CARES Act quarterly reporting requirements are considered to be met under the more frequent, monthly reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), Pub.L. 109-282, as amended by the Digital Accountability and Transparency Act (DATA Act), Pub.L. 113-101.

RESOURCES

Listed below are the resources we discussed in both sessions of Office Hours.

- The Comprehensive Centers, <https://compcenternetwork.org/>, provide capacity-building services to SEAs, regional educational agencies, LEAs, and schools that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.
- The Department posted a set of FAQs on the Maintenance of Effort (MOE) provision that applies to both ESSER and GEER grantees. Here is the link to the MOE FAQs: <https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf>
- The Department posted the GEER and ESSER certifications and applications.
 - GEER certifications and applications - <https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/>

- ESSER certifications and applications - <https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/geer-certifications-agreements/>
- ESSER FAQs: <https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>

If you missed the office hours and have questions, please contact your program officer through your state mailbox [\[State\].OESE@ed.gov](mailto:[State].OESE@ed.gov).