

Top ESSER Allowability Issues

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<u>CARES Act</u>	<u>CRRSAA Act</u>	<u>ARP Act</u>
ESSER: \$13.2 billion	ESSER: \$54.3 billion	ESSER: \$122 billion
GEER: \$3 billion	GEER: \$1.3 billion	GEER: \$0 (Congress did not provide third round of GEER)
Enacted: March 2020	Enacted: December 2020	Enacted: March 2021
Subject Pre-Aug 2020 UGG Rules	Subject Updated UGG Rules	Subject Updated UGG Rules

The Breakdown

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Do all ESSER funds have to be related to COVID?

Yes. "To prevent, prepare for, and respond to coronavirus"

The overall purpose of the CARES Act, CRRSA Act, or ARP Act programs, which is "to prevent, prepare for, and respond to" COVID-19; ESSER FAQs, B-6



NEW ESSER FAQs – May 26, 2021

- Any of the ESSER funds may be used to support all of the allowable uses of funds listed in any of the ESSER Programs (A-1)

https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINAL_b0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf

- Also in ARP ESSER Fact Sheet (March 2021)
- https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf

ESSER 1, 2 and 3 Allowable Uses of funds

1. Any activity allowed under ESEA, IDEA, AEFLA, Perkins, or McKinney-Vento Title VIIB (ESSER 3 not include McKinney-Vento)
2. Coordination of preparedness and response efforts
3. (Only ESSER 1 and 2) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.
4. Activities 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
5. Improve the preparedness and response efforts of LEAs
6. Training and professional development for LEA staff on sanitation and minimizing the spread of infectious diseases

ESSER 1, 2 and 3 Allowable Uses of funds (Cont.)

7. Purchasing sanitization and cleaning supplies for LEA-operated buildings
8. Planning for and coordinating during long-term closures, including for how to provide meals, technology
9. Purchasing educational technology
10. Providing mental health services and supports
11. Summer learning and supplemental afterschool programs
12. (ESSER 2 and 3 Only) Addressing learning loss among students

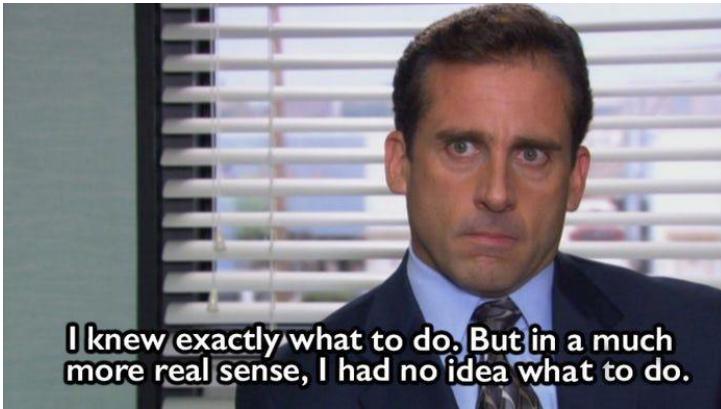
ESSER 1, 2 and 3 Allowable Uses of funds (Cont.)

- 13. (ESSER 2 and 3 Only) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards
- 14. (ESSER 2 and 3 Only) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities
- 15. Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency

ARP ESSER (ESSER 3) – Learning Loss

LEA Use of Funds

- Must reserve at least 20% for learning loss mitigation, including through:
 - Afterschool, summer school, extended day/year programs
 - Targeted to ESEA subgroups, students experiencing homelessness, and children and youth in foster care
- To “address to academic impact of lost instructional time” through evidence-based interventions.
 - Evidence based defined in FAQ A-10 and provides additional materials and links.



ESSER Allowability Issues

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Can I fund a
single project
with ESSER
I, II or III
funds or a
combination
of funds?

Yes, but these are separate grants!

- Each funding stream maintains its identity and continues to be subject to the relevant statutory requirements, including eligibility criteria and scope of authorized activities
- Must maintain separate accounting 34 CFR 76.760
- Track allocability
- ESSER FAQs, A-17

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When do ESSER funds have to be spent?

	CARES – ESSER 1	CRRSA – ESSER 2	ARP – ESSER 3
Start date	March 13, 2020	March 13, 2020	March 13, 2020
Statutory end	September 30, 2021	September 30, 2022	September 30, 2023
Tydings Period	September 30, 2022	September 30, 2023	September 30, 2024

Is ESSER I, II or III subject to supplement not supplant?

No! There is not a supplement not supplant provision in ESSER/GEER




- But, keep in mind general purposes of CARES/CRRSAA: “to prevent, prepare for and respond to the Coronavirus”
- And the MEQ requirement in ARP.
- ESSER FAQs, A-18

Can I use ESSER funds for multi-year contracts? (e.g., subscription to instructional software)

Must "obligate" within the period of availability.

Grant activities carried out through a valid obligation of funds may continue beyond that date; must be liquidated within 120 calendar days after the end of the performance period. ESSER FAQs, E-1

Considerations: how far past the period would the subscription last? Is the cost still allocable to the program (related to the prevention/response to coronavirus)?

2022	2023	2024
		

Can I charge buses and other equipment to ESSER?

Proceed with caution.

Must tie the purchase to the coronavirus (e.g., necessary for social distancing measures)

Must consider other, less expensive alternatives (leasing? Travel vouchers?)

Must have prior approval from the state. (2 CFR 200.439)



Can I pay families to transport students to school?



Yes! Due to bus driver shortages and to facilitate social distancing, districts may use ESSER funds for gas cards, mileage reimbursement, etc. to families that drive students to school.

Can I charge teachers previously charged to state funding to ESSER I, II, III?

Generally, yes!

- ESSER intended to help to maintain employment. LEAs that need to transfer staff to federal funding in order to keep the employees at the district (not reduce staff), could do so under ESSER I, II, III



Can I charge additional benefits or leave?

Yes, under ESSER/GEER – compliance supplement states the CARES funds may be used to continue paying employees during leave and closures “even in the absence of a policy that specifically addresses these circumstances.”

Under other grants (like ESEA, IDEA, etc.)?

- OMB M-20-17; ED April 8 Factsheet: May continue to pay employees with grant funds even if disrupted by coronavirus, according to emergency leave policy. If no policy exists, should create one.
- *OMB temporary flexibility!!! Ended in Sept 2020, but ED cross-references Factsheet in ESSER FAQs, A-16*

Can I provide teachers and “other school personnel” with premium pay?

Yes! (ESSER FAQs, D-6)

- Certification and Agreement Assurance: “CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.”
- Premium pay must be reasonable and necessary
 - Pursuant to an established plan (established in response to pandemic)
 - Consistent with applicable collective bargaining agreements, etc.
- Cites 2 CFR 200.430(f) (incentive pay)



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Can I pay overtime? Supplemental pay for teachers for summer school?

Probably, **Yes!**

- Overtime allowed to salaried custodians and other staff to prepare for a safe reopening of schools and sustain safe school operations (D-4)
- Supplemental pay to recruit, hire, and retain educators who commit to working in a high-need field or school for a minimum number of years is allowed (D-1)

Can ESSER funds be used for COVID testing and vaccinations?

Yes.

SEAs and LEAs should consult with State and local health officials to ensure the adequacy of any SEA or LEA COVID-19 testing program and that testing procedures comply with all applicable laws and requirements including those related to privacy, including the Family Educational Rights and Privacy Act (FERPA) and Protection of Pupil Rights amendment (PPRA), and the confidentiality of information requirements under Part B and Part C of the IDEA.

Vaccination outreach efforts are also allowable.

ESSER FAQs, B-2; B-3

Can I pay incentives to teachers to get the vaccine?

Yes! (ESSER FAQs, B-3). (2 CFR 200.430(b) and (f))

- Coordination of preparedness and response efforts of LEAs with state and public health efforts to prevent, prepare for, and respond to COVID
- May include paid time off and administrative fees required to obtain the vaccination as long as reasonable.

Can I provide incentives to students and members of their households to get vaccinated?

Yes! ESSER funds may be used “to provide reasonable incentives to students, consistent with state parent or guardian medical consent laws, [] and their household members to get vaccinated.”

- Incentives must be reasonable.

ED FAQs: <https://oese.ed.gov/files/2021/07/FAQ-21.pdf>



Can I charge construction costs to ESSER funds?

Yes, but many requirements must be met!

- ✓ Prior written approval from SEA (200.439)
- ✓ General cost principles (reasonable, necessary, allocable)
- ✓ Procurement requirements
- ✓ Construction regulations 76.600 (including Davis-Bacon wage requirements)
- ✓ Timely implementation!! (ESSER 1- 2022, ESSER 2- 2023, ESSER 3- 2024)
- ESSER FAQ B-6

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What is construction?

Construction – ?

Minor Remodeling – means minor alterations in a previously completed building. The term also includes the extension of utility lines. The term does not include building construction, structural alterations, building maintenance, or repairs. (34 CFR 77.1)

Maintenance and Repair Costs – incurred for utilities, janitorial services, repair, etc. or upkeep of a building and equipment which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition. (2 CFR 200.452)

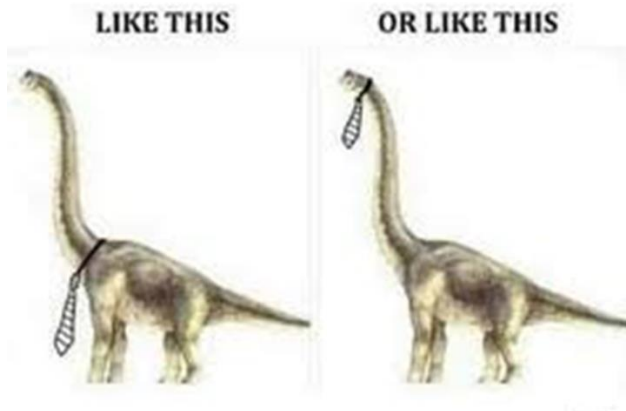
Equipment and other Capital Expenditures – additions, renovations, improvements to land, buildings, or equipment which materially increase their value or useful life. (2 CFR 200.439; 200.1)

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IF A BRACHIOSAURUS WORE A TIE, WOULD HE WEAR IT



Construction

v

Minor remodeling

v

Capital expenditures

v

Maintenance

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76.600 – Where to find construction regulations

A state or subgrantee shall comply with the rules on construction that apply to applications and grantees under 34 CFR 75.600 – 75.627.

State performs functions of Secretary (Sec. 75.602 (preservation of historic sites) and Sec. 75.605 (approval of drawings and specifications))

ED since said 75.601 and 75.605 do not apply!



75.600 – Use of a grant for construction

Sections 75.601 – 75.615 applies to an applicant that requests funds for construction

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Can I charge renovation and improvements to a school facility to ESSER funds?

Includes: replacing old carpet with tile, bringing unused space into compliance for social distancing, creating more space for social distancing, replacement, repairing, or upgrading HVAC systems, window and door repair and replacement, etc.

ESSER FAQ B-7



Can I charge renovation and improvements to a school facility to ESSER funds? (cont.)

Yes, but ... same requirements may apply as for construction.

"These projects are also subject to prior written approval ... *and applicable* UG requirements, Davis-Bacon prevailing wage requirements and all of the Dept's *applicable* regulations regarding construction at 34 CFR 76.600 and 75.600-75.618." ESSER FAQ B-7



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Replacing carpet
with hard surface
floors.



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New fence
around outdoor
classroom area



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Installation of new
HVAC system.



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Installing “room dividers” within previously completed building to increase social distancing



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Touchless toilets and sinks



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Replacing Windows



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Purchasing modular units / trailer to implement social distancing.



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Davis-Bacon Act

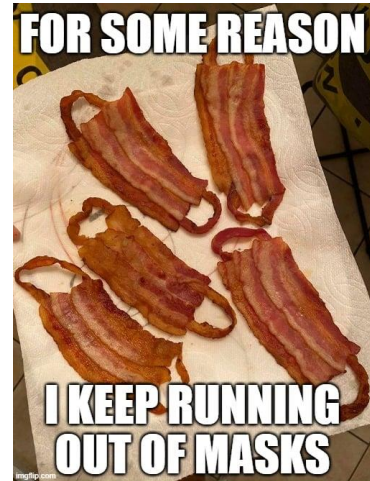
Must pay workers no less than the locally prevailing wage & fringe benefits for corresponding work in the area.

Applies to all federally-funded contracts in excess of \$2,000, includes:

- Construction
- Alteration
- Repairs
- Painting & decorating, etc.

<https://www.dol.gov/agencies/whd/governmentcontracts/construction/regions>

ESSER FAQ B-6



Does the Buy American Act apply to ESSER?

No, but ..

- Domestic Preference - should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States 200.322.
- Geographical Preference Prohibition - Must prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposal, except where applicable Federal statutes expressly mandate or encourage geographic preference.
 - Exception: architectural and engineering services 200.319(c)

ESSER FAQs, A-20

Can we sole source out construction and other ESSER projects?

Maybe.

SEAs - if an SEA has flexibility under its State procurement procedures to allow a sole source contract, particularly during an emergency such as the COVID-19 pandemic, the SEA may procure contracts with ESSER funds in accordance with that flexibility.

LEAs -

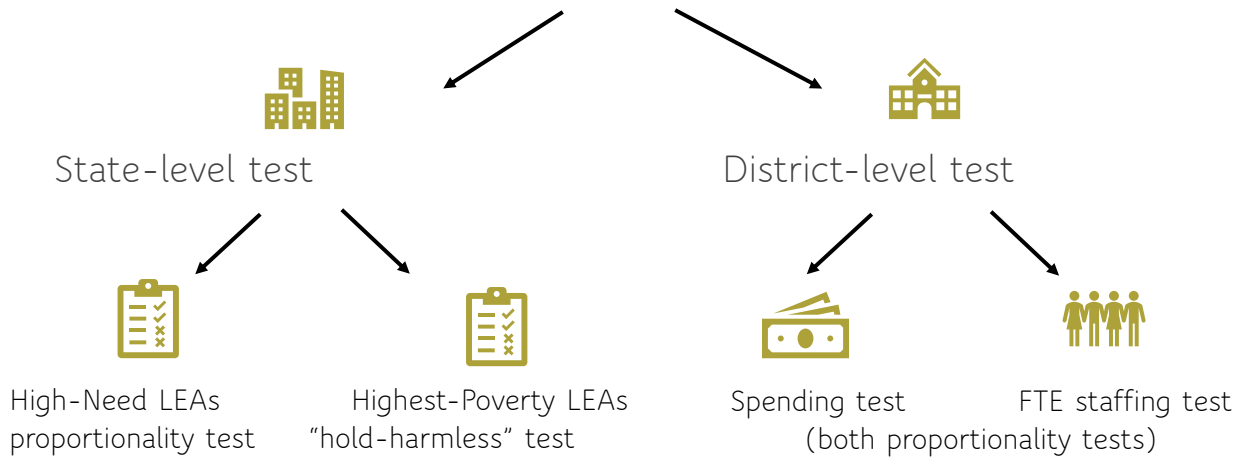
- An LEA may determine that its response to the COVID-19 pandemic qualifies as a public exigency or emergency that does not permit the delay that would result from competitive bidding. Under these circumstances, and to the degree doing so is consistent with its own policies and procedures, an LEA could use noncompetitive procurement. ESSER FAQs, C-27



Oh My MOEquity!

[Guidance published](#) June 2021,
updated August 2021

Maintenance of Equity



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LEA-Level Requirement: Funding

LEA cannot reduce **per-pupil funding** for "high-poverty school" more than total reduction divided by number of students currently enrolled in LEA

- Applies to 2022 and 2023 as compared to 2021
- State and local funding combined



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LEA-Level Requirement: Staffing



Cannot reduce the number of **FTE staff per-pupil** by an amount that exceeds the total reduction, if any, in FTE staff per-pupil in all schools served by the LEA in such fiscal year.

- Applies to 2022 and 2023 as compared to 2021
- Include all instructional and non-instructional contractors and employees

LEA-Level Requirement: High-Poverty School

“High-poverty school” is a school that is in **the highest quartile of schools** served by such local educational agency based on the percentage of economically disadvantaged students served, as determined by the State.

- Guidance: round up to nearest whole number of schools

State selects any measure(s) of poverty authorized under section 1113(a)(5) of the ESEA for LEAs to use. The SEA may permit an LEA to use the measure(s) of poverty it uses to rank its schools under section 1113(a) of the ESEA.

New Option for LEAs – Grade Span

In guidance ONLY

LEA will identify high-poverty schools on a districtwide basis or by grade span

LEAs should consider several factors to decide which option to use to identify its high-poverty schools, including:

- Total number of high poverty students impacted
- Relative concentration of poverty in schools that would be identified compared to those that would not
- Whether grade spans would capture high schools if they would not otherwise be captured

From the Guidance

What expenditures count?

- Funds **appropriated and allocated** by the State to all LEAs for current expenditures for free public education
- **Does NOT** include dedicated funds for capital outlay and debt service
- **Does NOT** include federal funds, local revenues, or support from private donors.
- Should use **consistent** sources from year to year.

From the Guidance

What enrollment data should LEAs use?

- Use the “most appropriate available enrollment data for the applicable fiscal year”
- Can be:
 - The same enrollment data the LEA relied on to distribute or allocate funds for that year
 - Prior year enrollment data
 - An average of multiple prior years’ enrollment
 - Projected enrollment data for the next fiscal year

From the Guidance

Identification must be done annually

- i.e. twice, once each for 2022 and 2023
- Fiscal year can be applicable federal or state fiscal year → state picks

States should not withhold funding until compliance can be demonstrated

- Compliance is determined after the fact

No explicit deadline (yet)

- But LEA should “consider” making data publicly available

Enforcement?

Guidance doesn't say what role SEAs should take, if any, in enforcing MOEquity

Consequences for failing to comply still TBD

Reporting deadlines for LEA, SEA TBD

- ED "intends to provide further information on the data and information each SEA and its LEAs must annually report"



LEA-Level Requirement: Exceptions

LEA MOEquity exceptions:

- LEAs with fewer than 1000 students
- Single-school LEAs
- LEAs with one school per grade span
- LEAs that "demonstrate[] an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of such agency, as determined by the Secretary of Education."

Updated Guidance: New Exceptions

“Exceptional Circumstances” may include and LEA that “did not and will not implement an aggregate reduction in combined State and local per-pupil funding in FY 2022 (i.e., is not facing overall budget reductions)”

ONLY applies in FY 2022

- Must comply with MOEquity in 2023

Must fill out form in guidance appendix and submit to State

Updated Guidance: New Exceptions

Examples of “uncontrollable circumstances”

- Increased one-time expenditures in the baseline year (school year 2020-2021) due to the pandemic
- A “very small school where the MOEquity calculations do not result in meaningful information about resource availability”
- An uncontrollable circumstance “such as a significant change in the expenses of a school that no longer serves a student whose educational and support needs required services that have a particularly high cost.”

How does an LEA get a waiver?



Appendix B form only applies to LEAs without a reduction in spending



"The Department anticipates very few "exceptional or uncontrollable circumstances" that prevent an LEA from maintaining equity.



ED: "each claim of exemption will require a case-by-case review by the Department."

New Exceptions: Enforcement?

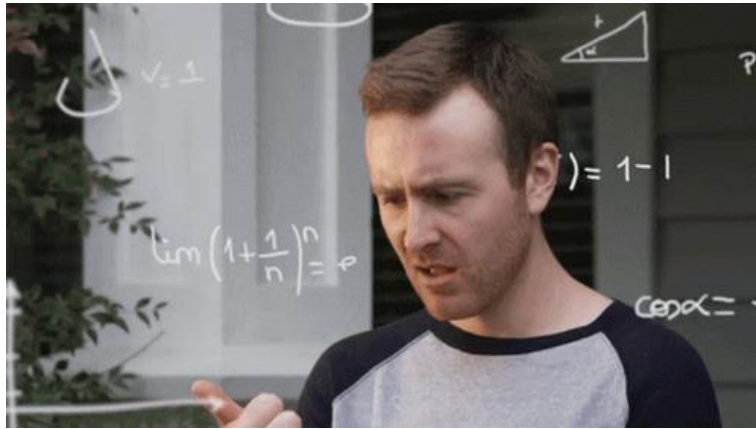
For increased/static funding → submit to SEA

- But SEAs have no instructions on how to accommodate/verify exceptions

For other exceptions → ED? SEA?

- So: keep documentation!
- Note many of them are only single-school exceptions from calculation, so still need to do the math





MOEquity

Frequently Asked Questions

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What is the Comparison Year?

For MOEquity State-level high-need LEAs: 2021 for 2022; 2022 for 2023

For MOEquity LEA-level high-poverty schools: 2021 for 2022; 2022 for 2023

- For BOTH staffing and funding

*these tests are proportional comparisons to previous year

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Do I include federally-funded staff in the staffing calculation?

YES (on an FTE basis)

Guidance: include all paid staff (instructional and non-instructional) and staff hired by contract who perform school-level services

- Would also include those paid by ESSER/GEER/other stimulus dollars

Why?

- Spending test already measures State and local resources contributed to schools
- This test measures allocation of staff overall
- Different because:
 - Teachers paid at different rates based on qualifications, experience
 - If you exclude staff paid with federal funds, you're missing a big part of the picture in Title I schools

What happens if teachers leave mid-year?

Compliance determined when assignments are "final" for the year

If there are "unpredictable changes in student enrollment or personnel assignments later in the school year," the LEA does not have to redetermine staffing equity.

But: "LEAs should make every effort to ensure staffing equity is maintained throughout the school year."

Note: does not prohibit LEAs from making changes after school year has started to determine compliance

What do we do with State/local stimulus dollars?

They can be exempted from MOEquity calculation if they are a one-time allocation:

- "if an LEA can document a one-time disbursement for a specific purpose (e.g., a revenue surplus that was distributed only for one year), then those funds may be excluded from MOEquity calculations"

But: "These data should be consistent with sources of State and local funding that an LEA uses to report for the purposes of per-pupil expenditures in section 1111(h)(1)(C)(x) of the ESEA."

What are the Consequences for Failing to Maintain Effort?

TBD!

ED has a wide range of potential enforcement actions

- Ranging from "slap on the wrist" to withholding/requiring payback of programmatic funds or others through TOPS

Likely: enforcement through SEA including fiscal penalty

- Making identified schools "whole" through additional nonfederal funds for resources/staffing

Resources

Maintenance of Effort Guidance:

https://oese.ed.gov/files/2021/04/MOE-Chart_with-waiver-FAQs_FINAL_4.19.21_12pm.pdf (April 2021)

Maintenance of Equity Guidance:

https://oese.ed.gov/files/2021/08/Maintenance-of-Equity-updated-FAQs_final_08.06.2021.pdf (UPDATED)

<https://oese.ed.gov/files/2021/06/21-0099-MOEQ-FAQs.-FINAL.pdf> (June 2021)

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FEAR OF CORONA IS ON THE DECLINE



RELEASE THE MURDER HORNETS

WHAT'S
NEXT?

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ED's ESSER Comprehensive Monitoring Protocols

■ <https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/esser-comprehensive-monitoring-protocols/>

- Budgeting and subawards
 - Review approved budgets
 - Were employees/contactors compensated to the greatest extent possible?
 - How ensure funds were for allowable activities?
- Award Process
 - How application was developed, who was involved, reviewed it, approved it, etc.
- Subrecipient Monitoring
 - Description of subrecipient monitoring process, how program and fiscal requirements are reviewed, is timely feedback provided?
- Equitable Services (N/A)

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Documenting COVID Allowability and Flexibilities



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OMB Memoranda (Examples)



M-20-11 (issued 3/9/20): Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) (Expired 7/26/20)

M-20-17 (issued 3/19/20): Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations (Expired 6/19/21)

M-20-20: (issued 4/9/20): Repurposing Existing Federal Financial Assistance Programs and Awards to Support the Emergency Response to the Novel Coronavirus (COVID-19)

M-20-26 (issued 6/18/20): Extension of Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations (Expired 9/30/21)

M-21-20 (issued 3/19/21): Promoting Public Trust in the Federal Government through Effective Implementation of the American Rescue Plan Act and Stewardship of the Taxpayer Resources

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ED Flexibilities (Examples)

ED Fact Sheet: OMB UGG Adopted Flexibilities

- <https://www2.ed.gov/documents/coronavirus/factsheet-fiscal-questions.pdf>

ED Fact Sheet: Repurposing Federal Equipment and Supplies to Combat COVID-19

<https://www2.ed.gov/documents/coronavirus/covid19-repurposing-equipment-supplies.pdf>

ED Fact Sheet: Regarding Contracted Services Not Performed Due to COVID-19

<https://www2.ed.gov/documents/coronavirus/factsheet-covid19-contracts.pdf>

ED Flex State Waivers

- Example: ED Flex Waivers <https://oese.ed.gov/offices/office-state-grantee-relations-evidence-based-practices/ed-flex/awards/>

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NEW GEPA Waivers (Sec. 421(b))

July 2, 2021

- Applies to carryover of FY 2019 funding.
- Funds that would have expired September 30, 2021 are now available through September 30, 2022

Template: <https://oese.ed.gov/files/2021/07/20-21-Fiscal-Waiver-Template.pdf>

Letter: <https://oese.ed.gov/files/2021/07/2021-invite-covid-fiscal-waiver.pdf>

- Title I, Part A
- Title I, Part B
- Title I, Part C
- Title I, Part D
- Title II, Part A
- Title III, Part A
- Title IV, Part A
- Title IV, Part B 21st CCLC
- Title V, Part B
- McKinney-Vento

ED Fact Sheet OMB UGG Adopted Flexibilities



May a grantee or subgrantee continue to pay the compensation of an employee paid with grant funds from ED during the period the employee is unable to work because his or her organization is closed due to novel Coronavirus Disease 2019 (COVID-19)?

Yes, may continue to charge the compensation

- Consistent with the organization's policies and procedures re: emergencies
- May amend or create a policy in order to put emergency contingencies in place for Federal and non-Federal similarly situated employees.
- Maintain appropriate records and cost documentation.

ED Fact Sheet OMB UGG Adopted Flexibilities (cont.)

What updates to P&P are needed?

Were employees paid during closure?

- Which ones?
- How paid?
- How long?
- What were job expectations during closure?

Were cancellation fees charged to federal awards?

- What documentation was required?
- Were employees reimbursed out of pocket costs?, etc.

ED Fact Sheet: Repurposing Federal Equipment



Pre-COVID

Equipment must be used in the program for which it was originally acquired. Shared use allowed, so long as it does not interfere. 2 CFR 200.313.

Both equipment and supplies must be reasonable, necessary and allocable to the federal awards

COVID FAQs

"For temporary use, grantees and subgrantees may repurpose federally purchased equipment and supplies that are not currently in use to carry out a Department grant program to meet the general education needs of teachers, related service providers, and other educational personnel during the national emergency caused by COVID-19."

ED Fact Sheet on Repurposing Federal Equipment (cont.)

NFEs must mark the items as being repurposed, and include the following documentation:

- (1) Description and itemization of items
- (2) Source/amount of federal funds involved
- (3) Where the equipment/supplies are assigned for use during the emergency
- (4) Date the equipment or non-consumed supplies are returned for federal purposes

What if items are lost, stolen?

- Must replace equipment and **non-consumable** supplies with nonfederal funds

ED Fact Sheet on Repurposing Federal Equipment (cont.)

What updates to P&P are needed?

Were equipment or supplies repurposed?

- How was it documented?
- How was required documentation maintained?
- What office is responsible for returned items?
- How are lost, stolen, damaged items tracked and accounted for and replaced?

ED Fact Sheet on Contracted Services Not Performed



Can grant funds be used to cover the cost of approved contracted services that were not performed by a contractor because of the COVID-19 pandemic?

Yes, in some limited circumstances, grant funds may be used to cover the costs of contracted services that were cancelled or otherwise not performed due to the COVID-19 pandemic if the contractor was ready and able to perform such services at the time.

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ED Fact Sheet on Contracted Services Not Performed (cont.)

1. Check on alternative arrangements first:
 - Alternative ways to provide those services to carry out the intent and purpose of contracts.
 - May require modification of the contract.
2. Steps if services cannot be provided in an alternative manner:
 - a) Recover refundable and nonrefundable costs paid in advance;
 - b) Invoke emergency or "act of God" or "force majeure"
 - c) If no compromise can be negotiated, may charge the costs of cancelling the contract.

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ED Fact Sheet on Contracted Services Not Performed

What updates to P&P are needed?

Were contracts changed due to school closures?

- Who reviewed the agreements? How were changes made to contracts?
- Were approvals required for changes or modifications?

Were contracts cancelled?

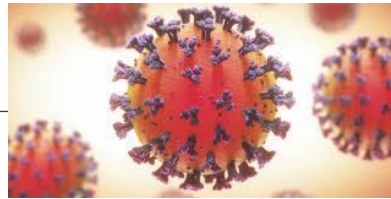
- Were advance payments recovered? How was that attempted/documentated?
- How were "Act of God" "Force Majeure" clauses invoked?
- Were approvals required for changes, modifications and/or cancellations?
- What funds were charged for cancellation fees?

What emergency policies and procedures do we need?

Every workplace should have an emergency puppy just in case you're having a bad day.



What qualifies as an Emergency?



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Emergency Policies and Procedures

- What is the process of address emergency situations?
- How are decisions made and communicated to staff and stakeholders?
 - Are there planned changes to:
 - Compensation / benefits / time and effort procedures
 - Travel reimbursements / cancellations
 - Allowability procedures
 - Inventory management procedures, etc.

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This CDE website was created to help educators teach middle school aged children the basics of emergency preparedness and response using a fun, fictitious scenario.

- [Backpack emergency cards](#)
- [Emergency Kit Supplies](#)

<https://www.cdc.gov/cpr/zombie/educate.htm>



Single Audit Review 200.501

2021 Compliance Supplement: https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-2021-Compliance-Supplement_Final_V2.pdf

OMB Compliance Supplement Compliance Requirements

- | | |
|--|---|
| 1. Activities Allowed or Unallowed | 7. Period of Performance |
| 2. Allowable Costs/Costs Principles | 8. Procurement and Suspension & Debarment |
| 3. Cash Management | 9. Program Income |
| 4. Eligibility | 10. Reporting |
| 5. Equipment & Real Property Management | 11. Subrecipient Monitoring |
| 6. Matching, Level of Effort, Earmarking | 12. Special Tests & Provisions |



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ESSER Allowable Costs/ Cost Principles

Defers to general cross-cutting allowability requirements.

For ESSER I, ESSER II, ESF-SEA, ESF II-SEA Funds, auditors should refer to the Cost Principles for States, Local Governments, and Indian Tribes.

- SEAs, LEAs, IHEs and other subrecipients must maintain time distribution records for all employees including when an individual employee is splitting their time between activities that are allowable and unallowable under all ESF programs.

CARES and CRRSA authorize grantees to continue to pay employees and use funds to protect education-related jobs; including paying staff who are on leave because schools are closed due to COVID-19.

- Accordingly, ESSER and GEER funds may be used for that purpose even in the absence of a policy that specifically addresses these circumstances.

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ESSER Allowable Costs/ Cost Principles (cont.)

Determine whether the organization complied with the provisions of 2 CFR Part 200) as follows: Direct charges to federal awards were for allowable costs.

- Costs did not consist of improper payments, including (1) payments that should not have been made or that were made in incorrect amounts (including overpayments and underpayments); (2) payments that do not account for credit for applicable discounts; (3) duplicate payments; (4) payments that were made to an ineligible party or for an ineligible good or service; and (5) payments for goods or services not received (except for such payments where authorized by law).
- Costs were necessary and reasonable for the performance of the federal award and allocable under the principles of 2 CFR Part 200, Subpart E.
- Costs were adequately documented.

ESSER Cash Management

Defers to general cross-cutting cash management requirements.

Non-federal entities that are paid on a reimbursement basis, supporting documentation shows that the costs for which reimbursement was requested were paid prior to the date of the reimbursement request.

- select a sample of transfers of funds from the US Treasury or pass-through entity and trace to supporting documentation and ascertain if the entity paid for the costs for which reimbursement was requested prior to the date of the reimbursement request (2 CFR section 200.305(b)(3)).

ESSER Equipment/Real Property Management

For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the governor or SEA pass-through agency must provide prior approval to subrecipients.

For construction, the pass-through entity must have considered applicable ED construction requirements as part of the pass-through entity's prior approval process for construction.

- Approved construction projects must comply with all other applicable Uniform Guidance requirements, as well as the ED's regulations regarding construction, as applicable, at 34 CFR section 76.600.
- For construction contracts over \$2,000 must meet Davis-Bacon prevailing wage requirements

ESSER Equipment/Real Property Management (cont.)

Defers to cross-cutting section on requirements.

Non-federal entities other than states must follow 2 CFR sections 200.313(c) through (e)

- Determine whether the non-federal entity maintains proper records for equipment and adequately safeguards and maintains equipment.
- Identify equipment acquired and trace selected purchases to the property records. Verify that the property records contain the required information.
- Verify that the required physical inventory of equipment was performed. Test whether any differences between the physical inventory and equipment records were resolved.
- Determine whether disposition is in accordance with federal requirements and that the federal awarding agency was properly compensated for its portion of any property, as required.

ESSER Reporting

Recipients who make first-tier subawards of \$30,000 or more are required to register in the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS) and report subaward data through FSRS.

- Auditors should review the compliance of the direct recipient with the reporting requirements of 2 CFR Part 170 and the accuracy of the amount reported by the recipient.

ESSER Subrecipient Monitoring

Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

Determine whether the PTE identified the subaward and applicable requirements at the time of the subaward (or subsequent subaward modification) in the terms and conditions of the subaward and other award documents sufficient for the PTE to comply with federal statutes, regulations, and the terms and conditions of the federal award.

Determine whether the PTE monitored subrecipient activities to provide reasonable assurance that the subrecipient administered the subaward in compliance with the terms and conditions of the subaward

ESSER Special Tests and Provisions

Equitable services – follow equitable services under Title I,A

- Determine whether (1) the LEA, SEA, or other agency receiving ESEA funds has conducted timely consultation with private school officials to determine the kind of educational services to provide to eligible private school children, (2) the planned services were provided, and (3) the required amount was used for private school children.
- Review meeting minutes, expenditures, allocation amounts, third party contracts (as applicable),

EANS

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ED OIG Oversight

STOP CARES ACT FRAUD

**Theft of CARES Act funding
for schools robs our students.**

Be on the lookout for signs of fraud, waste, and abuse:

- Financial conflicts of interest
- Suspicious or unverifiable vendors
- Missing school property or records
- Defective or low-quality products and services
- Irregularities in contract awards or procedures
- Nonexistent students

If you think something is amiss, it may well be. Report your suspicions to the Office of Inspector General and we'll evaluate for fraud, waste, and abuse!



We can provide confidentiality.

**IF YOU SUSPECT ANY WRONGDOING,
REPORT IT AT [OIGHotline.ed.gov](https://oighotline.ed.gov)
or call 1-800-MIS-USED**

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