

Using ESSER Funds for Construction and Renovation

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Note

- The information in this webinar is based on currently available information.
- We anticipate the U.S. Department of Education will provide additional guidance so the information in this presentation is subject to change.

Agenda

- ESSER spending overview: timelines and general considerations
- Authority to spend ESSER funds on construction and renovation
- Other federal rules that apply to ESSER spending on construction and renovation
- Practical considerations

Acronyms

- **ARP:** American Rescue Plan
- **CARES:** Coronavirus Aid, Relief, and Economic Security Act
- **CRRSA:** Coronavirus Response and Relief Supplemental Appropriations Act
- **ED:** U.S. Department of Education
- **EDGAR:** Education Department General Administrative Regulations
- **ESSER:** Elementary and Secondary School Emergency Relief
- **GEPA:** General Education Provisions Act
- **UGG:** Uniform Grant Guidance

ESSER Spending Timelines

	Obligation Deadline	Liquidation Deadline
CARES ESSER	9/30/2022	1/30/2023 LEAs must submit financial reports to SEA by 12/30/2022
CRRSA ESSER	9/30/2023	1/30/2024 LEAs must submit financial reports to SEA by 12/30/2023
ARP ESSER	9/30/2024	1/30/2025 LEAs must submit financial reports to SEA by 12/30/2024

General ESSER Spending Considerations

- ESSER funded activities should be consistent with ESSER's purpose of preparing for, preventing, and responding to COVID.
- All three ESSER grants can be used for the same activities.
 - Note ARP ESSER 20% set-aside for addressing learning loss.
- None of the ESSER grants include a supplement not supplant rule.
- All three ESSER grants can be used for expenses incurred on or after March 13, 2020.
- Each ESSER grant must be tracked and reported separately.

General ESSER Spending Considerations, II

- All ESSER spending is subject to:
 - Education Department General Administrative Regulations (EDGAR)
 - Uniform Grant Guidance (UGG)
- Both EDGAR and the UGG contain rules that affect spending on construction.

ESSER and Construction/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.
- For example, an LEA might use ESSER funds to undertake construction or renovation to:
 - Help an LEA to clean effectively (like replacing carpet with tile), or
 - Support physical distancing (like reopening an unused wing to create more space).

Examples from ED's COVID-19 Handbook Volume 2

- HVAC updates
- Mold and moisture remediation to improve air quality
- Creating outdoor learning spaces
- Roofing upgrades
- Ceiling repairs
- Plumbing upgrades
- Access to safe drinking water

What Constitutes Construction?

- LEAs can spend ESSER funds on any activity authorized by ESEA.
- ESEA includes the Impact Aid program, which permits construction.
- Impact Aid 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)*

Prior Approval Requirements

- Construction and renovation projects require the SEA's prior written approval because they are capital expenditures. *2 CFR §200.439*
- Capital expenditures are “expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.” *2 CFR § 200.1*
- Capital assets are “tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [generally accepted accounting procedures].” *2 CFR § 200.1*
- Capital assets include land, buildings (facilities), equipment, intellectual property (including software), and certain kinds of leases, as well as improvements and modifications to those assets.

Necessary and Reasonable Requirement

- All costs paid with federal grant funds, including ESSER, must be necessary and reasonable. 2 CFR 200.403(a) & 200.404
- Factors of reasonableness include:
 - Whether the cost is needed to carry out the grant program properly and efficiently,
 - Whether the LEA followed sound business practices,
 - The cost of the good, service, or activity being supported and whether the cost is consistent with market prices,
 - Whether the LEA acted prudently considering its responsibilities to the LEA, its students, the public, and the federal government, and
 - Whether the LEA generally followed its internal practices and policies.

Davis-Bacon Prevailing Wage Requirements

- ESSER is governed by the General Education Provisions Act, which requires:

All laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.

- Resources: <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/whd/programs/dbra/faqs/page46.htm>

EDGAR Construction Rules

- Entities that spend ED funds on construction must follow EDGAR construction rules. *34 CFR §76.660, 34 CFR §§ 75.600-75.617*
- In state administered programs like ESSER the state is responsible for performing the functions ED performs under § 75.602 (preservation of historic sites) and § 75.605 (approval of drawings and specifications)

CONSTRUCTION

§75.600	Use of a grant for construction: Purpose of §§75.601-75.615.
§75.601	Applicant's assessment of environmental impact.
§75.602	Preservation of historic sites must be described in the application.
§75.603	Grantee's title to site.
§75.604	Availability of cost-sharing funds.
§75.605	Beginning the construction.
§75.606	Completing the construction.
§75.607	General considerations in designing facilities and carrying out construction.
§75.608	Areas in the facilities for cultural activities.
§75.609	Comply with safety and health standards.
§75.610	Access by the handicapped.
§75.611	Avoidance of flood hazards.
§75.612	Supervision and inspection by the grantee.
§75.613	Relocation assistance by the grantee.
§75.614	Grantee must have operational funds.
§75.615	Operation and maintenance by the grantee.
§75.616	Energy conservation.
§75.617	Compliance with the Coastal Barrier Resources Act.

Other Applicable Rules

- UGG rules on real property. *2 CFR §200.311*
- UGG rules on financing costs. *2 CFR §200.449*
- Americans with Disabilities Act.

Practical Considerations

- Relationship to response to COVID.
- ESSER timing rules.
- Cost effectiveness.
- Working capital.
- Sustainability and ongoing operations.

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