

# ESSER REQUIREMENTS AND UPDATES

Tiffany Kessler, Esq.

Brandi Tennant, Esq.

The Bruman Group, PLLC

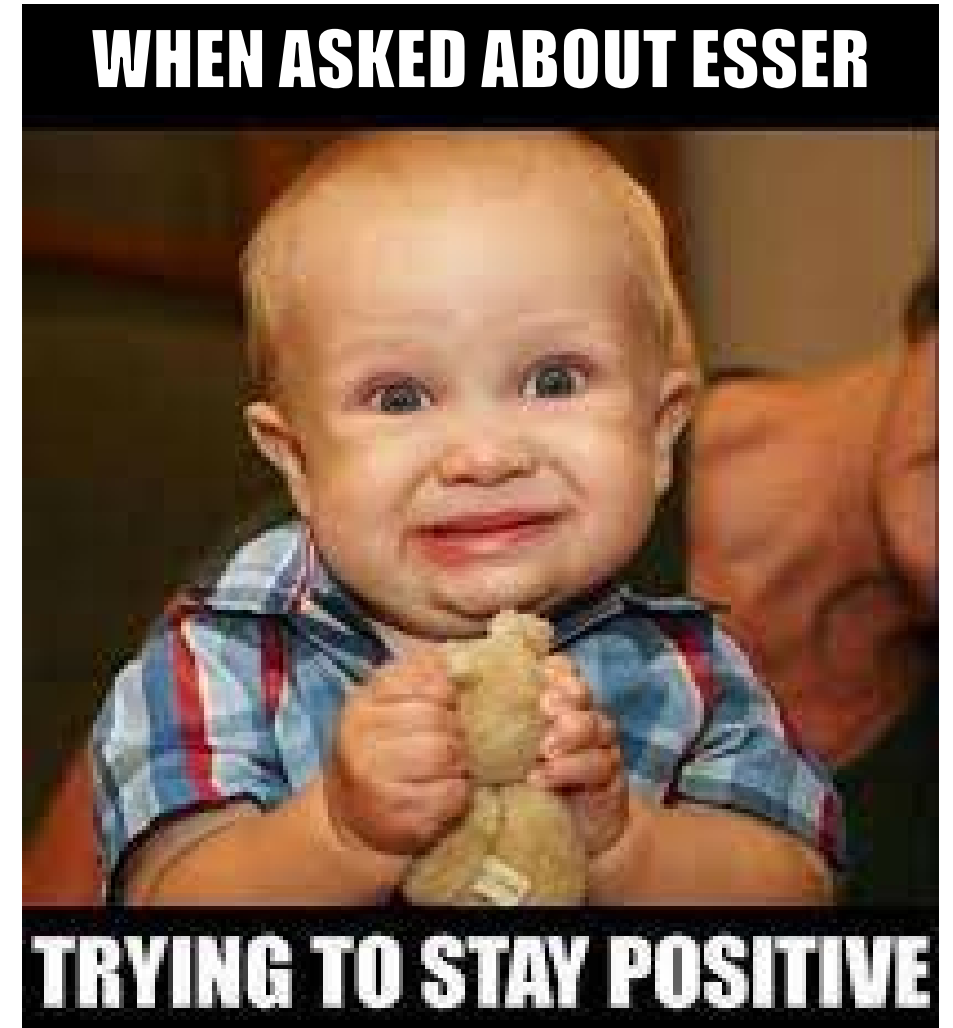
[tkessler@bruman.com](mailto:tkessler@bruman.com)

[btennatn@bruman.com](mailto:btennatn@bruman.com)

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# Topics

- New ESSER Guidance
- Allowable Uses Examples
- ESSER Obligations/Liquidation Timelines
- ESSER Monitoring, Audits and Findings
- The Future Beyond ESSER



# ESSER Headlines!

## **As Districts Spend Relief Funds, Auditors Say 'Business is Booming'**

But the heightened scrutiny is causing districts to be cautious about using the money on urgent needs like learning loss



Updated ESSER Guidance (Dec. 2022):

<https://oese.ed.gov/files/2022/12/ESSER-and-GEER-Use-of-Funds-FAQs-December-7-2022-Update.pdf>

ESSER USE OF FUNDS

# 15 ESSER Allowable Uses



## Specific uses of funds

- Any activity allowed under ESEA, IDEA, AEFLA, Perkins, or McKinney-Vento
- PD and purchasing sanitization and cleaning supplies
- Ed technology
- Mental health services
- Summer learning and supplemental afterschool programs
- Addressing learning loss among students

# 15 ESSER Allowable Uses (cont.)



## Broad uses of funds

- Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.
- 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
- School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards
- Improve the indoor air quality in school facilities
- Other activities that are necessary to maintain the operation of and continuity of services in LEA and continuing to employ existing staff



## ARP ESSER (ESSER 3) – Instructional Needs

- The LEA 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.

# So, can I use my ESSER funds on...



All Allowable Use Questions Must Meet 3 Requirements!

## **1. Be an allowable use of ESSER funds**

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

## **2. Prevent, Prepare and Respond to Coronavirus (ESSER FAQ B-6)**

- For needs arising from or exacerbated by the COVID-19 pandemic, or to emerge stronger post-pandemic (to address pre-existing challenges that, if left unaddressed, will impede recovery from the pandemic)

## **3. Be allowable under EDGAR (including in approved plan, prior approvals, necessary, reasonable, allowable, etc.).**



# Can ESSER funds be used as “matching” funds in other Federal programs? (Updated FAQ E-11.a Dec 2022)

- No.
- Federal funds may not be used to meet a matching requirement unless the Federal statute authorizing those funds specifically provides that they may be applied to matching or cost-sharing requirements of another Federal program. (2 CFR 200.306(b)(5)).
- The CARES, CRRSA, and ARP Acts do not provide specific authority to use ESSER or GEER funds as a match for any other Federal programs.
- However, ESSER or GEER funds may be used for cost-sharing or matching for the AmeriCorps program because the AmeriCorps statute authorizes the use of Federal funds for the match; for more information, see:  
<https://www2.ed.gov/policy/fund/guid/americorps-matching-letter.pdf?src=grants-page>.

# Use of Funds – Mitigate Flood, Tornado and other Natural Disaster-related Damage (Updated FAQ B-10 Dec 2022)

- Yes, in limited circumstances.
  - To the extent there are activities that are necessary to meet students' needs in response to the pandemic, including needs exacerbated by a recent natural disaster, ESSER or GEER funds may be used to cover the costs consistent with the ESSER or GEER allowability considerations (i.e., allowable under the statute and consistent with the Uniform Guidance).
    - Example: To the extent that a natural disaster has caused damage to school infrastructure and buildings that would increase the risk of virus transmission or impact in-person learning, such as flood or fire damage, then ESSER or GEER funds may be used to cover the costs of activities to reduce that risk.
    - It is important for an LEA to maintain documentation and written justification as to how uses of ESSER or GEER funds are related to the COVID-19 response, particularly where costs are closely associated with damage from a natural disaster.
  - Should also look at available FEMA funding and/or insurance recovery

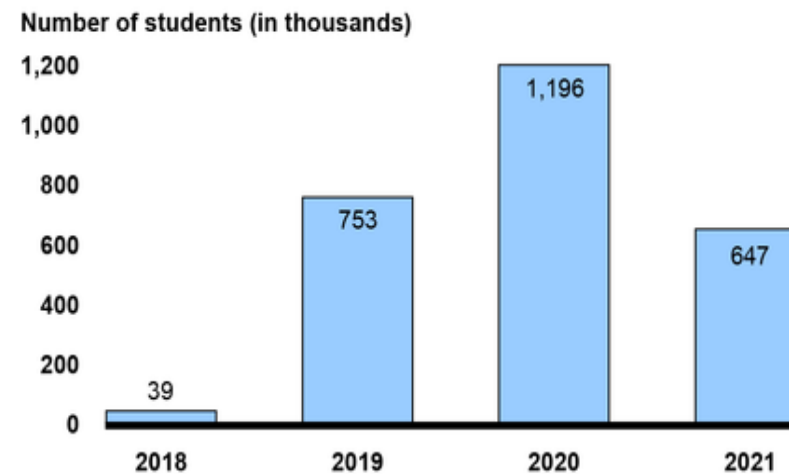
# Use of Funds - Cybersecurity Enhancement

✓ Yes. Must demonstrate the tie to COVID – protecting digital infrastructure helps prepare schools and districts for potential future closures. (ED FAQs A-21)

- New study from U.S. Government Accountability Office:  
<https://www.gao.gov/products/gao-23-105480>

- “The COVID-19 pandemic forced schools across the nation to increase their reliance on IT to deliver educational instruction to students. This amplified the vulnerability of K-12 schools to potentially serious cyberattacks.”

Number of U.S. Students Affected by Ransomware Attacks on K-12 Schools and School Districts, 2018-2021



Source: GAO analysis of Comparitech study on K-12 school ransomware attacks. | GAO-23-105480

# Use of Funds – Utilities or Gasoline (Updated FAQ B-11 Dec 2022)



- Yes.
- Generally, ESSER or GEER funds may be used to support activities that are necessary to maintain the operation and continuity of services in the LEA as schools and students recover from the pandemic.
- For example, there may be instances where the use of funds to support this type of cost would be acceptable, such as in a case where an LEA has incurred additional expenses for utilities due to efforts related to improving indoor air quality.

# Use of Funds - Enhancing Grants Systems and Conducting Internal Risk Assessments



- Yes.
  - Review and update grants policies and procedures
  - Develop and implement internal risk assessment tailored to your entity
  - Utilize risk mitigation strategies (such as regular employee training)
- ✓ Must still document the link to COVID

# Use of Funds – Paying Student Fees (Updated FAQ B-12 Dec 2022)



- Yes, under certain circumstances.
  - Because ESSER or GEER funds may be used to support activities addressing the unique needs of students from low-income backgrounds, students with disabilities, English learners, students of color, students experiencing homelessness, and children and youth in foster care, and help students recover from the pandemic
- An LEA may use ESSER or GEER funds to pay fees, including outstanding balances, to help ensure equitable access to programs that meet students' social, emotional, mental health, and academic needs.
- Alternatively, an LEA could use ESSER or GEER funds to support such activities for all students, such that no fee is charged.

# Use of Funds – Paying Students (Updated FAQ C-11 Dec 2022)



- No.
- An LEA may not provide direct monetary rewards to students or families for required school attendance.
  - Generally mandatory activities can not be compelled by any type of incentives.
- However, ESSER or GEER funds may be used to develop and pay for recognition programs that encourage student attendance (e.g., rewarding strong or improved attendance through eligibility to participate in special events for a class) (see FAQ C-23.a).
  - Incentives may be offered for optional activities or programs.

# Use of Funds – Meals for Students (Updated FAQ C-16 Dec 2022)



- Yes, under certain circumstances.
- Typically, provided through U.S. Department of Agriculture (USDA) or other Federal programs.
- However, if such funding is not available, or additional funds are necessary, an LEA may use ESSER or GEER funds to provide meals if the need arises from or relates to recovery from the pandemic.
  - For example, ESSER or GEER funds could be used to increase food service staff capacity; cover additional labor costs associated with serving meals to students during the pandemic; or support COVID-19 pandemic-related expenses, such as school meal service equipment/supplies, meal packaging, and transportation services.



# Use of Funds – Waive Student Meal Balances (Updated FAQ C-16.a Dec 2022)



- Yes.
- To the extent a low-income family's ability to pay for school meals has been impacted by the COVID-19 pandemic, an LEA may use ESSER or GEER funds to cover the student's school lunch balance.
  - As noted in FAQ C-16, the Department encourages the LEA to first utilize funding and flexibilities provided by USDA in addressing the costs associated with providing school meals.
  - This does not mean that money may be placed in the non-profit school food service account for school meals to refill the account generally.

# Use of Funds – Video Surveillance Equipment (Updated FAQ B-14 Dec 2022)



- Yes; however, there may be privacy considerations, civil rights implications, etc. that may not make it a viable option.
  - LEA officials are regularly asked to balance the interests of safety and privacy for students, consistent with applicable law.
  - Consideration needs to be given to the places in which individuals would enjoy a reasonable expectation of privacy to avoid violating such expectations.
  - An LEA must ensure nondiscrimination in decisions to obtain and use such equipment, including where to place such devices to ensure such surveillance does not treat students unnecessarily differently on the basis of race, color, national origin, sex, disability or age or have an unjustified discriminatory impact on these bases; and must ensure the videos and related information are not used in a discriminatory manner.
  - If an LEA chooses to use a video system, it should have a clearly established policy on the use of video systems on school property.

# Use of Funds – Multi-Year Subscriptions/Licenses

- Maybe?
- Generally, it is not good stewardship of Federal funds or prudent business practice to prepay for services that will extend many years into the future.
- However, under limited circumstances where a grantee or subgrantee timely obligates ESSER or GEER funds, ESSER- or GEER-funded activities may continue for a reasonable time beyond the liquidation period (including an approved late liquidation period).



If the idea of  
DIYing makes you  
feel like this...  
its probably  
construction!



CONSTRUCTION

# Using ESSER/GEER Funds for Construction



- Allowable, with caution.
  - MANY restrictions and additional regulatory requirements
  - Timeliness as a concern
  - (Updated FAQ B-9 Dec 2022)
- Guiding principles of allowability:
  - Must be necessary/reasonable
  - Must be allocable to ESSER/GEER, meaning
    - Intended to “prevent, prepare for, and respond to” COVID-19

# UGG Requirements for Construction



- Uniform Grants Guidance Requirements
  - Prior written approval (2 CFR 200.439) by SEA, Governor, or USED (depending on grantee)
  - Procurement requirements
  - Davis-Bacon prevailing wage requirements
  - Timely implementation
  - Domestic Preference (2 CFR 200.322)
- Other federal and state requirements including ADA accessibility, flood mitigation, protected ecosystems, etc.
- Detailed Contract Requirements: Appendix II to Part 200 (2 CFR 200.327)

# EDGAR Construction Requirements



34 CFR 76.600/ 75.600: EDGAR regulations regarding federal title/interest, historic registration, reasonable time for completion and sufficient operating funds, etc.

- **National Historic Preservation Act**

- If it would affect historic properties, review by Advisory Council for Historic Preservation must take place (Updated FAQ B-6.d Dec 2022)
  - Applies to projects funded in whole or in part by federal funds

- **Environmental impact assessment** required under 34 CFR 75.601?

- Not applicable (Updated FAQ B-6.c Dec 2022)

- **Title and Use**

- A district must have and be able to demonstrate title or other interest to the site where the construction is taking place, including right of access, that is sufficient to ensure the grantee's undisturbed use and possession of the site for 50 years or the useful life of the facilities, whichever is longer (34 CFR § 75.603).

# 50 years? Can we just do a really long lease instead?



- Not if pay for the lease with ESSER funds!
  - Updated ESSER/GEER guidance says that grantees may fund activities that continue beyond liquidation period in certain circumstances.
  - No longer than 4 years after obligation deadline





DAVIS-BACON

It applies to more than  
construction!

# When does it apply?



- All federally-funded contracts over \$2,000
  - Funded in whole or in part by federal dollars
  - Once DBA applies to the prime contract, it applies to all subcontractors even if individual subcontracts are under threshold
- Must include language in the 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).
- Includes minor remodeling, renovation, repair, and/or construction of public buildings or public works
- Administered by Department of Labor's Wage and Hour Division
  - But subject to interpretation and additional administrative requirements by cognizant agency

# What is the “prevailing wage?”



- The wage the DOL has determined is appropriate for the local area, based on publicly available tables
- “Wage” is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination.
- Prevailing wages, including fringe benefits, must be:
  - Paid on all hours worked on the site of the work
  - Based on duties job performed (e.g. can pay electrician as mechanic if that’s the work they do)
- Apprentices/trainees may be paid less *if they are in an apprenticeship program registered with the Department of Labor*

# Who bears responsibility for Davis-Bacon?



- Contractors and subcontractors must:
  - Pay covered workers weekly
  - Submit weekly certified payroll records to the contracting agency.
  - Post the applicable Davis-Bacon wage determination with the [Davis-Bacon poster \(WH-1321\)](#) on the job site in a prominent and accessible place where they can be easily seen by the workers.
- Contracting agencies must:
  - Ensure contract includes Davis-Bacon provisions where applicable and determine prevailing wage schedule applicable
  - Ensure payroll records are received and align with prevailing wage
  - Confirm poster is visible on work site
  - Confirm those making less than prevailing wage are in qualified apprenticeship programs



DISPOSITION

# Equipment and Supplies



- Equipment
  - Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000. (2 CFR 200.1)
- Supplies
  - All tangible personal property that is not equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. (2 CFR 200.1)
    - Computing Devices

# General Disposition Rule



- Equipment and supplies purchased with ESSER or GEER funds
  - may be used by States or LEAs for the authorized purpose during the period of performance  
OR
  - until the equipment and supplies are no longer needed for the purposes of the ESSER or GEER program.
- If the equipment or supplies are no longer needed for purposes of the ESSER or GEER program, a State or LEA may:
  - continue to use the equipment and supplies to the extent they are needed for allowable purposes under another Federal education program in which the State or LEA participates,  
OR
  - use the equipment or supplies for a Federal program of another Federal awarding agency

# Disposition if Equipment by LEA



- LEAs that used ESSER or GEER funds to purchase equipment and find that the item is not needed for authorized purposes under ESSER or GEER or for any of the LEA's other Federal programs,
  - and where the equipment has a current per unit fair market value of \$5,000 or less, may be retained, sold, or otherwise disposed of without additional responsibility to the Department.
- If an item of equipment has a current per unit fair market value in excess of \$5,000, the LEA may retain or sell the equipment.
  - In this case, USED is entitled to an amount calculated by multiplying the current fair market value or proceeds from the sale by the Department's share or proportion of the cost of the original purchase. (2 CFR 200.313(e)).
    - Plus keep up to \$500 for administrative costs.



# Disposition of Supplies

- If there is a residual inventory of supplies that are not needed exceeding \$5,000 in total aggregate value, the State or LEA may retain or sell the supplies but, in either case, must compensate the Department for its share per 2 CFR 200.313(e)(2).
  - A State or LEA may calculate the total aggregate value when disposition occurs - e.g., at the end of each year for which supplies are disposed
- A State or LEA must make a good faith effort to sell unneeded supplies purchased with ESSER or GEER funds in accordance with 2 CFR 200.314(a) and document its efforts. If a State or LEA cannot find a buyer and cannot use the supplies itself, the State or LEA has no further obligation to the Department.



LIQUIDATION

# ESSER Funding Breakdown

Timeframe	CARES – ESSER 1 \$13.2 Billion	CRRSA – ESSER 2 \$54.3 Billion	ARP – ESSER 3 \$122 Billion
Enacted	March 2020	December 2020	March 2021
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
Liquidation	No later than January	No later than January	No later than January

# Extensions to the CARES Act obligation/liquidation period?

- **Obligation extension?** No. (ED FAQ E-3.c Dec 2022)
- **Liquidation extension?** Possible – up to 14 months
  - Late Liquidation FAQs 12/23/22: <https://oese.ed.gov/files/2022/12/General-and-Technical-FAQs-for-CARES-Liquidation-Extension-Requests.pdf>
  - Late Liquidation letter 9/29/22: <https://oese.ed.gov/files/2022/09/CARES-ESSER-and-GEER-Liquidation-Extension-Request-Letter-9.29.22.pdf>
  - States must submit a required [template spreadsheet](#)
    - Generally, follows existing EDGAR process
    - State will ask for extension on behalf of itself or LEAs

# CARES Act Programs Late Liquidation Requests (From USED)

<b>Program</b>	<b>Obligation deadline</b>	<b>(Automatic) 120-day liquidation deadline</b>	<b>(Up to) 14-month liquidation extension</b>
ESSER I	Sep. 30, 2022	Jan. 30, 2023	Apr. 1, 2024
ESSER II	Sep. 30, 2023	Jan. 29, 2024	Mar. 31, 2025
ARP ESSER	Sep. 30, 2024	Jan. 28, 2025	Mar. 31, 2026
GEER I	Sep. 30, 2022	Jan. 30, 2023	Apr. 1, 2024
GEER II	Sep. 30, 2023	Jan. 29, 2024	Mar. 31, 2025
CRRSA EANS	Sep. 30, 2023	Jan. 29, 2024	Mar. 31, 2025
ARP EANS	Sep. 30, 2024	Jan. 28, 2025	Mar. 31, 2026

# Extensions to the CRRSA/ARP Act obligation/liquidation period?

- **Obligation extension?** Unlikely
- **Liquidation Period?** Yes, but.. process is unknown.
- Is the late liquidation process going to be more flexible for CRRSA/ARP?
  - Probably not
    - ED thinks this is what the statute/existing regs allows
    - They are not aligning with Treasury interpretation of liquidation period

# Commitments Beyond Liquidation Period

- Generally, it is not good stewardship of Federal funds or prudent business practice to prepay for services that will extend many years into the future.
- However, under limited circumstances where a grantee or subgrantee timely obligates ESSER or GEER funds, ESSER- or GEER-funded activities may continue for a reasonable time beyond the liquidation period (including an approved late liquidation period). (ED FAQ E-3.d Dec 2022)

# Commitments Beyond Liquidation Period (cont.)

- ED says they should only be offered in limited situations, considering:
  - Whether the funds were properly obligated and liquidated in a timely manner;
  - Whether the activities would be allowed to extend beyond the liquidation period under applicable State and local procurement rules
  - Whether the extended activities constitute a reasonable and necessary use of Federal funds; and
  - Whether prudent business practices...would support the continued activities for the length of time proposed.
- No longer than 4 years after obligation deadline
- The SEA, LEA, or subgrantee would be responsible for returning to the Federal government the cost of any services that were paid with Federal funds but not received.



# Commitments Beyond Liquidation Period (cont.)

- ARP ESSER Funds – current liquidation period Jan 28, 2025
  - Possible liquidation extension until March 31, 2026
- Factors to document:
  - Timely obligations and liquidations during approved periods.
  - That the activities would be allowed to extend beyond the liquidation period under State/ local rules.
  - That the activities constitute a reasonable and necessary use of funds; and
  - That prudent business practices would support the continued activities for the length of time proposed.



# TRANSITION AND NEXT STEPS

# ESSER and Transition

- ESSER ends September 30, 2024 (Possible liquidation extension until March 2026)
- Began to create a plan!
- Look at data around progress and performance since prior to, during and post-pandemic to determine potential future needs
- Begin to think about how current projects can transition to future needs!
  - Review what programs, activities, projects have long-term use
  - Determine what programs will be sustainable after funding
  - Review what programs can be transitioned to ESEA, IDEA, Perkins, etc.

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