



FAQS FOR MONTANA LEAS

June 8, 2021

SUMMARY

References:

[U.S. Department of Education's \(US-DOE\) May 26, 2021 FAQ](#)

June 1, 2021 – MT-Mailbox US Department of Education Responses

1. Can ARP-ESSER Funds be used for new construction? YES, provided that pre-approval and all the federal guidelines are met in the project and that the new construction meets the primary purposes of the ESSER funding.
2. Can ARP-ESSER Funds be used for renovations? Yes, provided that the renovations meet the primary purposes of the ESSER funding (i.e., prepare, prevent and respond to COVID-19.)
3. Can funds be used to purchase trailers or modular buildings? Yes, provided that the renovations meet the primary purposes of the ESSER funding (i.e., prepare, prevent and respond to COVID-19.)
Note: The USDOE FAQ cautions districts when purchasing modular to ensure the civil rights of all children are met.
5. What is the process by which pre-approval for new construction or renovations is acquired from the OPI? LEA's should complete the ESSER Pre-approval Form link that can be found in e-grants. The form will allow to communicate your understanding of federal compliance, describe how project(s) respond to, prepare for or prevent COVID-19, and provide an approximate budget for the project. Jeff Kirksey will contact the LEA with notice of approval or the need for further information.
4. What are the allowable uses of ARP-ESSER 3 funds? The permissible uses are found in the [US-DOE May 26, 2021 FAQ](#).
5. Can an LEA just use the 2/3 of ARP-ESSER 3 funds that have been released by the USDOE and not apply for the 1/3 remaining and not complete the Safely Re-opening plan and LEA plan? No, the requirements for ARP ESSER 3 funds require the LEA to provide both of those plans. Failure to do so could result in the return of the funds by the LEA.
6. Are there strings attached to the funds? Yes, including Safe Return to In-Person Plan to be updated every six months, the LEA plan to be updated every six months, including data collection and monitoring of the use of funds. In addition, there is a 20% set aside with specific uses.
7. Can districts innovate on the use of funds? Yes, and it is strongly encouraged that districts use these unprecedented funding allocations to innovate and implement the improvements that have been aspirations for your students.
8. Does meaningful consultation require the LEA to include all of the subgroups listed by the USDOE? Yes, to the fullest extent practicable.
9. Is there an OPI-provided template for the Safe Return to In-Person Plan? No. However, LEAs needing assistance with the plan can email [Jeff Kirksey](#), and technical assistance will be scheduled to assist you.
10. Is there an OPI-provided template for the LEA ARP-ESSER Plan? A template will be made available to LEA by July 1, 2021.
11. Is there a centralized time-line of ESSER II and ARP-ESSER deadlines? Yes, please visit www.opi.mt.gov/COVID-19-Information/ESSER for the latest time-lines and information
12. Why am I not seeing my full funding allocation in egrants for ARP-ESSER Funds? The reason the allocation appears less is because Montana has only received 2/3 of the ESSER funds from the Department of Education to date. According to regulations, OPI can only allocate the funds that we have received. Once the remaining 1/3 is allocated to the State from the Federal Government, we will adjust the allocations and then you will do a budget amendment to spend the rest of the funds.
13. Is a LEA required to adopt CDC guidance into policy in order to get funding? No, the US-DOE guidance indicated following CDC Guidance and adopting it into policy to the extent practicable. This is a local school board decision.

Reminder: As is the case with all activities charged to ESSER, costs must be reasonable and necessary to meet the overall purpose of the program, which is "to prevent, prepare for, and respond to" COVID-19. (See 2 CFR §§ 200.403-200.404.)

Note: Similar to the FAQ document issued by the US-DOE on ESSER and GEER funds, the contents of this document do not have the force and effect of law and are not meant to bind the public in any way. The information is subject to change as the US-DOE releases additional information.

Note: The FAQs reference the most recently released guidance from the U.S. Department of Education released on May 2021. All LEAs are encouraged to use this document as a critical reference for allowable uses of the ESSER-ARP funds.

THE PURPOSE OF ARP-ESSER-III FUNDS:

Generally, in determining whether an activity is an allowable use of funds, a State or LEA must determine:

- Is the use of funds intended to **prevent, prepare for, or respond to the COVID-19 pandemic**, including its Impact on the social, emotional, mental health, and academic needs of students?
- Does the use of funds fall under one of the **authorized uses of ESSER funds**?
- Is the **use of funds permissible under** the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance, 2 CFR Part 200)? In particular, is it necessary and reasonable for the performance of the ESSER or GEER award?

CONSTRUCTION

Can an LEA use ESSER funds for new construction? **Yes**, provided the new construction meets the guidelines outlined in the May 2021 U.S. Department of Education FAQ (See pages 24-27)

Construction is authorized under Title VII of the ESEA (Impact Aid) and therefore is an allowable use of GEER and ESSER funds under sections 18002(c)(3) and 18003(d)(1) of the CARES Act, sections 312(c)(3) and 313(d)(1) of the CRRSA Act and section 2001(e)(2) of the ARP Act. The broad Impact Aid definition of “construction” includes new construction as well as remodeling, alterations, renovations, and repairs under which many activities related to COVID-19 would likely fall.¹³

However, the Department discourages LEAs from using ESSER and GEER funds for new construction. This use of funds may limit an LEA’s ability to support other essential needs or initiatives. Remodeling, renovation, and new construction are often time-consuming, which may not be workable under the shorter timelines associated with ESSER and GEER funds. These types of activities are also subject to several additional Federal requirements, as detailed below.

While construction is generally allowable, it is the responsibility of a Governor, SEA, LEA, or other subgrantee to assure that individual costs:

1) comply with the Cost Principles in 2 CFR Part 200, subpart E (e.g., the cost must be “necessary and reasonable” (2 CFR §§ 200.403-200.404));

2) meet the overall purpose of the CARES Act, CRRSA Act, or ARP Act programs, which is “to prevent, prepare for, and respond to” COVID-19; and

3) are consistent with the proper and efficient administration of those programs.

Under these general principles, any construction activities, including renovations or remodeling, that are necessary for an LEA to prevent, prepare for, and respond to COVID-19 could be permissible, though the burden remains on grantees and subgrantees to maintain the appropriate documentation that supports the expenditure.

As noted above, an LEA using ESSER or GEER funds for remodeling, renovation, and new construction must comply with additional federal requirements. For example, these projects require prior written approval by an LEA’s Governor or SEA (or the Department for State projects). (See Title VII of the ESEA and [2 CFR § 200.439\(b\)](#).)¹

¹³ 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

Approved construction projects (i.e., remodeling, renovation, and new construction) must comply with applicable Uniform Guidance requirements, Davis-Bacon prevailing wage requirements¹⁴, and all of the Department's applicable regulations regarding construction at [34 CFR §§ 76.600 and 75.600-75.618](#). Some of the relevant part 75 requirements that must be considered before a new construction project is initiated include:

- 1) Has the grantee completed an environmental impact assessment before initiating the construction and fully considered any potential environmental ramifications before proceeding with the project ([34 CFR § 75.601](#));
 - 2) Has the grantee considered the probable effects of proposed construction on any district, site, building, or structure that is included or eligible for inclusion in the National Register of Historic Places ([34 CFR § 75.602](#))
 - 3) Does the grantee have the title or other interest in the site, including the right of access, that is sufficient to ensure that the grantee will have use and possession of the facility for 50 years or the useful life of the facility, whichever is longer ([34 CFR § 75.603](#));
 - 4) Can the grantee begin the approved construction in a reasonable time period and have the final plans been approved before the construction is advertised or placed on the market for bidding ([34 CFR § 75.605](#));
 - 5) Can a grantee complete the project in a reasonable time and consistent with the approved plans and specifications ([34 CFR § 75.606](#))
 - 6) Is the construction functional, economical, and not elaborate in design or extravagant in the use of materials as compared to other facilities in the State or other applicable geographic area ([34 CFR § 75.607](#));
 - 7) Do the grantee's plans and designs for the facilities comply with applicable Federal, State and local health and safety standards, as well as Federal requirements regarding access by persons with disabilities. ([34 CFR §§75.609 and 75.610](#)); and
 - 8) Does the grantee have sufficient operational funds to operate and maintain the facility once the construction is complete, and will the grantee operate and maintain the facility per all applicable Federal, State, and local requirements ([34 CFR §§ 75.614 and 75.615](#)).
- A Governor or SEA may use other State agencies (such as Public Works or similar offices) to assist with approvals and management of ongoing projects.

However, ultimately as the grantee, a Governor or SEA is responsible for ensuring that its LEA grantees are meeting all applicable requirements that are detailed in [34 CFR §§ 75.600-75.618](#), as well as in OMB Standard Forms 24B and D (Assurances for Non-Construction and Construction Programs <https://apply07.grants.gov/apply/forms/sample/SF424DV1.1.pdf>), including the assurances relating to labor standards; flood hazards; historic preservation; health and safety, energy conservations, and coastal barrier resources.)

Finally, if ESSER and GEER funds are used for construction, grantees and subgrantees should also be aware that real property and equipment acquired or improved under a Federal award must be appropriately insured, and grantees must consult with the Department on disposition instructions if the property or equipment is no longer needed. See, e.g., [2 CFR §§ 200.310-200.313](#).

SCHOOL FACILITY REPAIRS AND IMPROVEMENTS

ESSER funds may be used to make necessary improvements, for example, to improve air

¹⁴ As is the case with all construction contracts using laborers and mechanics financed by Federal education funds, an LEA that uses ESSER or GEER funds for minor remodeling, renovation, repair, or construction contracts over \$2,000 must meet all [Davis-Bacon](#) prevailing wage requirements.

quality and support social distancing so that teachers and students may safely return to and continue in-person instruction. As is the case with all activities charged to ESSER, costs must be reasonable and necessary to meet the program's overall purpose, which is "to prevent, prepare for, and respond to" COVID-19. (See [2 CFR §§ 200.403-200.404](#).) Therefore, renovation or remodeling activities necessary for an LEA to prevent, prepare for, and respond to COVID-19 would be permissible.

Examples from the ARP Act:

- School facility repairs and improvements to enable schools to reduce the risk of virus transmission and exposure to environmental health hazards, and to support student health needs.
- Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification, and other air cleaning, fans, control systems, and window and door repair and replacement.

These projects are subject to prior written approval by a Governor or SEA (or the Department for State projects) and applicable Uniform Guidance requirements, Davis-Bacon prevailing wage requirements, and all of the Department's applicable regulations regarding construction at [34 CFR §§ 76.600 and 75.600-75.618](#).

In implementing any allowable ESSER or GEER activity, a grantee or subgrantee must follow all applicable Federal, State, and local standards and policies (e.g., building codes or specifications for HVAC systems, which may be consistent with standards identified by the EPA, CDC, or World Health Organization).

If an LEA uses funds for HVAC systems, the Department's regulation at [34 CFR § 75.616\(c\)](#) requires the use of the American Society of Heating, Refrigeration and Air

Conditioning Engineers (ASHRAE) standards.

WHAT ABOUT DEFERRED MAINTENANCE NEEDS?

Can the funds be used to address **deferred maintenance** of the LEA? **No**, An LEA may use ESSER funds for any allowable expenditure **incurred on or after March 13, 2020**, when the President declared the national emergency due to COVID-19. (U.S. DOE MT Mailbox response 6.1.2021)

CAN AN LEA PUT A NEW ROOF ON A BUILDING?

The ESSER I, ESSER II and ARP-ESSER Funds' purpose is to: prepare, prevent and respond to COVID-19. If putting on a new roof has a justification that meets the purpose, then it may be allowable. (US-DOE MT Mailbox response 6.1.2021)

PURCHASE OF MODULAR BUILDINGS

A LEA may use ESSER and GEER funds to purchase trailers or modular units if such purchases are necessary to create additional safe learning spaces due to the COVID-19 pandemic (e.g., for more effective social distancing consistent with CDC guidance) (see section 2001(e)(2)(Q) of the ARP Act). In addition, the use of grant funds to purchase equipment is subject to [2 CFR § 200.439\(b\)](#), which requires the LEA to obtain prior written approval from the Governor or SEA. As with all costs, they must be reasonable and necessary.

Note: When selecting which students will receive services in trailers or modular units, an LEA should ensure that decisions are made consistent with applicable civil rights requirements and that specific subgroups are not disproportionately educated in trailers or modular units, especially if being educated in the trailers or modular units limits access to other students, activities, or services within the school or in any way contributes to tracking or within-school segregation.