



## Spending Your ESSER Fund I, ESSER Fund II & ARP ESSER Fund Dollars

State and local educational agencies are now receiving funds allocated by the series of three Coronavirus-related stimulus bills enacted by the U.S. Congress in 2020 and 2021:

- ☉ [The Coronavirus Aid, Relief, and Economic Security Act \(CARES\)](#),
- ☉ [The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 \(CRRSA\)](#), and
- ☉ [The American Rescue Plan Act of 2021 \(ARP\)](#)

These three pieces of legislation combined allocate approximately \$190 billion to support elementary and secondary educational institutions through the creation of Elementary and Secondary School Emergency Relief (ESSER) Fund I (CARES), ESSER Fund II (CRRSA), and ARP ESSER Fund (ARP), collectively the “**ESSER Funds**”.

The web of underlying legislation, legislation incorporated by reference, and relevant guidance surrounding the utilization of ESSER Funds is complex and often confusing. The purpose of this document is to provide clarity citing source documents regarding two critical considerations facing ESSER Funds recipients:

1. Whether ESSER Funds recipients are authorized to expend ESSER Funds through intergovernmental or “cooperative” agreements, and
2. What guidance applies to both the i) procurement of contracts through which recipients will spend ESSER Funds, whether those contracts are procured by the recipients themselves or by another public agency, and ii) requirements relating to the recipients’ actual expenditure of ESSER Funds.

## The Eligibility of Equalis Group Intergovernmental Agreements

A frequent question is whether ESSER Funds dollars can be spent through intergovernmental agreements, such as the portfolio of publicly procured, competitively solicited [Equalis Group Master Agreements](#).

The short answer is: **Yes**.

### Spending ESSER Funds in Compliance with Federal Requirements

Pursuant to the provisions of ESSER Funds I & II and ARP ESSER, the U.S. Department of Education awards grants to state educational agencies (**SEAs**) for the express purpose of providing local educational agencies (**LEAs**) with emergency relief funds to address the historical and ongoing impacts of COVID-19.

The spending of ESSER Funds dollars i) awarded by the U.S. Department of Education to SEAs, or ii) awarded by SEAs to LEAs must comply with contract procurement requirements contained within both [2 CFR Part 200](#) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (**Uniform Guidance**), and also the [Education Department’s General Administrative Regulations \(EDGAR\)](#).

Under Uniform Guidance and EDGAR, the use of state and local intergovernmental agreements and inter-entity agreements is explicitly encouraged for non-federal entities receiving federal awards, such as state and local governments, in [2-CFR § 200.318\(e\)](#), which states:

*“To foster greater economy and efficiency, and in accordance with efforts to promote cost effective use of shared services across the Federal Government, **the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services** [emphasis added]. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.”*



## Equalis Group Lead Agency Conformity with Federal Procurement & Contracting Requirements

Equalis Group Master Agreements are publicly procured contracts sourced by local governmental agencies and education service centers (**Lead Agencies**) in conformity with the regulatory requirements established for non-federal entities in Uniform Guidance and EDGAR. These Master Agreements are made available to public agencies across the country through intergovernmental agreements as authorized by Uniform Guidance and EDGAR.

Equalis Group Master Agreements are immediately available to existing Equalis Group members. Any public sector entity in the country can [join](#) Equalis Group and begin utilizing any Equalis Group already-procured, competitively solicited Master Agreement by completing the [Equalis Group Master Intergovernmental Cooperative Purchasing Agreement](#) in accordance with Uniform Guidance and EDGAR stipulations.

Equalis Group strongly encourages each agency to conduct its own due diligence when expending federal funds. To assist in this process, Equalis Group has provided in the following pages several citations from federal publications pertaining to the procurement and expenditure-related compliance requirements to which ESSER Fund recipients must adhere. These publications validate the viability of leveraging Equalis Group Master Agreements, as the Equalis Group Lead Agency procurement processes adhere to the contract procurement requirements of Uniform Guidance and EDGAR.

**Note:** Equalis Group Master Agreements are cooperative agreements made available through an intergovernmental agreement established between Equalis Group Lead Agencies and an individual public agency that joins Equalis Group. Equalis Group Master Agreements are NOT state term contracts or state purchasing pools, many of which are not established in compliance with Uniform Guidance requirements.

## Who is Eligible to Receive ESSER Fund Awards?

An LEA is defined in the Code of Federal Regulations ([34 CFR § 300.28](#)) as “a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.” Educational service agencies and Bureau of Indian Affairs-funded schools are LEAs.

An SEA is defined in the Code of Federal Regulations ([34 CFR § 300.41](#)) as “the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.”

## Legal Disclaimer

*Please keep in mind that this information is provided as a service to Equalis Group members and supplier partners. It is designed only to give general information. This document is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion. Equalis Group and its members are not attorneys and are not responsible for any legal advice. Equalis Group encourages local educational agencies, political subdivisions, units of local government, state agencies, and other public agencies to have appropriate legal counsel review the applicable federal legislation and associated guidance to determine their eligibility to utilize Equalis Group’s competitively solicited contracts for ESSER I, ESSER II, and ARP ESSER dollars.*



## Contract Procurement & Expenditure Compliance Guidance: Source Text Citations

Several published documents have been made publicly available for review to assist recipients of ESSER Funds under ESSER I, ESSER II, and ARP ESSER in expending these funds in a compliant manner. A review of documentation published by the U.S. Department of Education (**USDOE**) establishes that ESSER Fund award recipients are mandated to procure goods and services in a manner that is expeditious, transparent, and in full compliance with [2-CFR Part 200](#) and [EDGAR](#).

### U.S. Department of Education: Frequently Asked Questions

<b>Source Document:</b>	<a href="#">Frequently Asked Questions: Elementary and Secondary School Emergency Relief Programs</a>
<b>Published By:</b>	U.S. Department of Education
<b>Publication Date:</b>	May 2021

The USDOE released this comprehensive document to provide clarity around ESSER Funds, acceptable uses of those funds, funding mechanics, and compliance requirements to which all ESSER Funds award recipients must adhere. In **Section A-16** on page 18 of this publication, the USDOE explicitly answers an important question about Uniform Guidance and its application to ESSER funds:

#### **A-16. Do the Requirements in the Uniform Guidance apply to ESSER and GEER Funds?**

Yes. The requirements in the [Uniform Guidance](#) apply to expenditures of ESSER and GEER funds. Below are some important Uniform Guidance requirements to keep in mind.

**Cost Principles.** Specific uses of ESSER or GEER funds must comply with the Cost Principles in [Subpart E of 2 CFR Part 200 of the Uniform Guidance](#). This requires, among other things, that every grant expenditure be necessary and reasonable to carry out the performance of the award. (See 2 CFR §§ [200.403-200.404](#).) Consistent with requirements in the Cost Principles, all expenditures must be properly documented. (See [2 CFR § 200.403\(g\)](#).)

**Pre-award Costs.** The Uniform Guidance at [2 CFR § 200.458](#) specifies that pre-award costs, i.e., those costs incurred prior to the effective date of the Federal award or subaward, are only allowable with prior written approval. The Department has authorized (i.e., provided prior written approval) that ESSER and GEER funds may be used for pre-award costs dating back to March 13, 2020, when the national emergency was declared.

**Time Distribution Records.** The Uniform Guidance requirements related to documenting personnel expenses at [2 CFR § 200.430\(j\)](#) apply. Except as described in the paragraph 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.

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 or GEER and activities that are not allowable under the applicable program. However, it is likely there will be very few situations in which an employee of an LEA would perform multiple activities where some are not allowable under ESSER or GEER, 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.

**Cash Management.** ESSER and GEER grantees, in their role as stewards of Federal funds, must comply with the requirements under the [CMIA \[Cash Management Improvement Act\]](#) (implementing regulations at [31 CFR Part 205](#)) and the [Uniform Guidance \(2 CFR Part 200\)](#). In particular, the CMIA requires that a State “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\(b\)](#).)

**Construction.** 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 remodeling or 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 and 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). (See [20 U.S.C. 1232b Labor Standards](#).) (See also [FAQ B-6](#).)

**Prior Approval.** In addition to pre-award costs discussed above, the Uniform Guidance at [2 CFR § 200.407](#) requires prior written approval from either the Department or the State (Governor or SEA, as applicable) for certain costs, such as the purchase of real property; equipment and other capital expenditures; entertainment costs; and travel costs.

### U.S. Department of Education: Certification and Agreement for Funding

<b>Source Document:</b>	<a href="#">Certification and Agreement for Funding under the Education Stabilization Fund Program: Elementary and Secondary School Emergency Relief Fund (ESSER Fund)</a>
<b>Published By:</b>	U.S. Department of Education
<b>Publication Date:</b>	2020

The U.S. Department of Education published the certification and agreement document to which all SEAs are required to attest prior to accessing and providing ESSER awards to LEAs. **Part D: Other Assurances and Certifications Section 5** and **Section 6** on page five (5) requires SEAs to explicitly agree to comply with several statutory requirements, including compliance with specific Uniform Guidance and EDGAR provisions:

5. The SEA will comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) requirements in **Subpart D—Post Federal Award Requirements (2 CFR §§200.300-345)** and **Subpart E—Cost Principles (2 CFR §§200.400-475)** to ensure that LEAs, including charter schools that are LEAs, are using ESSER funds for purposes that are reasonable, necessary, and allocable under the CARES Act.

6. The SEA and other entities will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts [76](#), [77](#), [81](#), [82](#), [84](#), [97](#), [98](#), and [99](#); the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in [2 CFR Part 180](#), as adopted and amended as regulations of the Department in [2 CFR Part 3485](#); and the Uniform Guidance in [2 CFR Part 200](#), as adopted and amended as regulations of the Department in [2 CFR Part 3474](#).