



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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December 16, 2021

TO: BOCES District Superintendents  
School District Superintendents  
School District Business Officers  
Charter School Leaders

FROM: Phyllis D. Morris, Chief Financial Officer

RE: Council of Chief State School Officers Document

December 2021

The Council of Chief State School Officers (CCSSO) has received many questions from states about using ESSER funds to pay construction, renovation, and minor remodeling

# I. Preventing, Preparing for, or Responding to COVID

ED has confirmed that many types of construction, renovation, and minor remodeling projects are consistent with the goal of preventing, preparing for, or responding to COVID, and therefore are

Such projects include improving indoor air quality, increasing access to the outdoors, facilitating cleaning and sanitization efforts, and facilitating physical distancing. Specific examples highlighted by ED include:

- x Servicing or upgrading HVAC systems consistent with applicable federal, state, and local standards and industry standards;
- x Repairing windows and/or doors so they can open to let fresh air in
- x Installing or upgrading indoor air quality tools like filter, purification, fan, and control systems;
- x Roof repairs or replacement to improve indoor air quality (for example, to address leaks that lead to mold and diminished air quality)
- x Mold, radon, and asbestos remediation,
- x Creating outdoor spaces for learning and other activities like eating lunch
- x Replacing carpet with easier-to-clean flooring;
- x Renovations to facilitate physical distancing;
- x

school including ventilation.<sup>12</sup> ED also encourages school districts to do what they can to address other infrastructure issues, such as ensuring that preexisting ventilation, roofing, and plumbing needs do not inhibit healthy learning environments.

## II. Authorized Uses of ESSER Funds

### Local Uses of Funds

ED has confirmed that local educational agencies (LEAs) may use ESSER funds for construction, renovation, and minor remodeling.<sup>14</sup> Construction, renovation, and minor remodeling are consistent with several authorized uses of ESSER funds including:

- x Activities authorized by the Elementary and Secondary Education Act includes the Impact Aid program that generally allows LEAs to choose to use ESSER funds for:
- x School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards to support student health needs,<sup>17</sup>
- x Inspection, testing, maintenance, repair, replacement and upgrade projects to improve the indoor air quality in school facilities, including mechanical and mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement;
- x Other activities necessary to maintain LEA operations and continuity of services.<sup>18</sup>

In guidance ED has adopted a broad definition of construction for ESSER which includes

- x The preparation of drawings and specifications for school facilities
- x Erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities
- x Inspecting and supervising the construction of school facilities, and

<sup>12</sup> U.S. Department of Education, [ED COVID-19 Handbook, Volume Roadmap to Reopening Safely and Meeting All Needs](#), August 2021, p. 10 (this will be referred to as ED COVID-19 Handbook, Volume 1 for the rest of this document).

<sup>13</sup> [ED COVID-19 Handbook, Volume 1](#), p. 16.

<sup>14</sup> [ED May 2021 ESSER and GEER Q&As](#), p. 36.

<sup>15</sup> CARES, Sec. 18003(d)(1); CRRSA, Sec. 313(d)(15); ARP, Sec. 2001(e)(2)(A).

<sup>16</sup> U.S. Department of Education, [Impact Aid program website](#).

<sup>17</sup> CRRSA, Sec. 313(d)(13) and ARP, Sec. 2001(e)(2)(P). Please note, although this activity is not specifically listed in CARES, ED has advised that LEAs may use CARES ESSER funds for activities listed in CRRSA or ARP.

<sup>18</sup> U.S. Department of Education, [American Rescue Plan Act of 2021 Elementary and Secondary School Emergency Relief Fund \(ARP ESSER\) Fact Sheet](#), March 2021, p. 5.

<sup>19</sup> CRRSA, Sec. 313(d)(14) and ARP, Sec. 2001(e)(2)(P). As in the footnote above, although this activity is not specifically listed in CARES, LEAs may use CARES ESSER funds for it.

<sup>19</sup> CARES, Sec. 18003(d)(12); CRRSA, Sec. 313(d)(15); ARP, Sec. 2001(e)(2)(R).

x Debt service for such activities<sup>20</sup>.

Although this definition references remodeling, FD has clarified that construction does not cover ^ u ] v } CE CE u }<sup>21</sup> which FD regulations define as follows:

Minor remodeling means

### III. Uniform Grant Guidance Considerations

The Uniform Grant Guidance (UGG) specifies that recipients of federal funds must comply with all requirements of the federal award.<sup>26</sup> For ESSER, this means complying with the General Education Provisions Act (GEPA) and the Education Department General Administrative Regulations (EDGAR) as well as the UGG. This section highlights certain GEPA, EDGAR, and UGG rules that affect construction and renovation projects

These rules are primarily intended for projects ED funds directly (that is, when ED provides construction funding directly to an entity), but they apply to state-administered programs like ESSER as well.

### Specifically

- x [May 2021 ESSER and GEER FAQs](#) describe height considerations • } v ' Z [ • construction rules that SEAs and LEAs should take into account before initiating a construction project<sup>84</sup>
- x In June 2021 U.S. EPA issued guidance on height considerations for projects receiving federal funding<sup>85</sup>

## UGG Cost Principles



LEAs obtain prior approval to spend their ESSER funds on capital expenditures from their SEAs.<sup>48</sup> Each SEA is responsible for setting up its own prior approval process. ED has clarified SEAs have many options.<sup>49</sup> ED has also clarified that prior approval can be granted at any point in the project timeline up to the point ESSER funds are spent. For example, an SEA pays ESSER funds to its LEAs on a reimbursement basis, prior approval can come at any point before reimbursement.<sup>50</sup>

SEAs obtain prior approval to spend their ESSER funds on capital expenditures from ED.<sup>51</sup>

## UGG Procurement Requirements

procurement standards.

LEAs must follow the procurement standards in [2 CFR §§ 200.318 through 200.327](#).

SEAs must follow their own state procurement standards. In addition, SEAs must comply with UGG requirements on contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, domestic preferences,<sup>54</sup> and recovered materials.<sup>55</sup> SEAs must also ensure ESSER contracts contain federally required terms and conditions.<sup>56</sup>

When procuring items with ESSER funds, SEAs and LEAs must, to the greatest extent practicable, give preference to goods, products, or materials produced in the United States.<sup>57</sup>

## UGG Property Management Considerations

Any property acquired or improved with ESSER funds must be appropriately insured. In practical terms, this means the federal government retains an interest in property that is acquired or improved with ESSER funds that is accounted for until the LEA or SEA disposes of the property.

<sup>48</sup> [2 CFR § 200.439\(b\)](#)

<sup>49</sup> [ED June 2021 School Construction Webinars](#), slides 27.

<sup>50</sup> [ED June 2021 School Construction Webinar](#), slides 7.

<sup>51</sup> [2 CFR § 200.439\(b\)](#)

<sup>52</sup> [2 CFR § 200.317](#). Please note ED recognizes the pandemic may affect procurement processes. Please see [C of ED | May 2021 ESSER and GEER for more information](#).

<sup>53</sup> [2 CFR §§ 200.317](#) and [200.321](#)

<sup>54</sup> [2 CFR §§ 200.317](#) and [200.322](#)

<sup>55</sup> [2 CFR §§ 200.317](#) and [200.323](#)

<sup>56</sup> [2 CFR §§ 200.317](#) and [200.327](#).

<sup>57</sup> [2 CFR § 200.322](#). See also [ED May 2021 ESSER and GEER A-20s](#)

<sup>58</sup> [2 CFR § 200.310](#)

<sup>59</sup> [2 CFR § 200.311](#) (real property) and [2 CFR § 200.313](#) (equipment). Items of equipment are also subject to the