Frequently Asked Questions

Elementary and Secondary School Emergency Relief Programs
Governor's Emergency Education Relief Programs

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Frequently Asked Questions
Elementary and Secondary School Emergency Relief (ESSER) Programs
Governor's Emergency Education Relief (GEER) Programs

Purpose of the Document

The purpose of this document is to answer Frequently Asked Questions about how funding under the Elementary and Secondary School Emergency Relief (ESSER) Fund, including the American Rescue Plan ESSER (ARP ESSER) program, and the Governor's Emergency Education Relief (GEER) Fund may be used in response to the impact of the coronavirus disease 2019 (COVID-19) pandemic on students in pre-K–12 education.

Under ESSER, established in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136 (March 27, 2020), and further funded under the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021, Pub. L. No. 116-260 (December 27, 2020) and the American Rescue Plan (ARP) Act of 2021, Pub. L. No. 117-2 (March 11, 2021), the U.S. Department of Education (Department) awarded grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs) that receive funds under part A of title I of the Elementary and Secondary Education Act of 1965 (ESEA), including charter schools that are LEAs, with emergency relief funds to address the impact the COVID-19 pandemic has had, and continues to have, on elementary and secondary schools across the Nation.

Under GEER, established in the CARES Act and further funded under the CRRSA Act, the Department awarded grants to Governors for the purpose of providing LEAs, institutions of higher education (IHEs), and other education-related entities with emergency support as a result of the COVID-19 pandemic. GEER funds for an LEA are intended to support its ability to continue to provide educational services to its students and to support the ongoing functionality of the LEA.

Other than statutory and regulatory requirements included in the document, such as those pursuant to the authorizing statute and other applicable laws and regulations, 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. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any rights for or on any person.

This document contains examples of resources that are provided for the user's convenience. The inclusion of these resources is not intended to reflect their importance, nor is it intended to endorse any views expressed, or products or services offered, by these entities. These resources may include materials that contain the views and recommendations of various subject-matter experts as well as hypertext links, contact addresses and websites to information created and maintained by other public and private organizations. The opinions expressed in any of these materials do not necessarily reflect the positions or policies of the Department. The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of any outside information included in the materials that may be provided by these resources.

The Department may provide additional or updated information as necessary on the Department's websites:

- ARP ESSER: https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/

- CARES Act and CRRSA Act ESSER: https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/
- CARES Act and CRRSA Act GEER: https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/

If you have questions that are not answered in this document, please e-mail ESSERF@ed.gov for questions related to ESSER or GEERF@ed.gov for questions related to GEER.

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Introduction

The CARES Act, CRRSA Act, and ARP Act provide vital support to States, LEAs, and schools as they work to reopen schools safely, maximize in-person instructional time, and address the impact of the COVID-19 pandemic on students, educators, and families. These Frequently Asked Questions (FAQs) are intended to clarify allowable uses of funds and describe how these funds may be used to implement actionable strategies to meet the urgent needs of students and educators as LEAs and schools work to return to and safely sustain in-person instruction, address the educational inequities that have been exacerbated by the COVID-19 pandemic, and address students' social, emotional, mental health, and academic needs.

The document is divided into the following sections:

A. Overview of ESSER and GEER funds.
B. Reopening schools safely and promoting the health and safety of students, staff, and the school community.
C. Advancing educational equity in COVID-19 response.
D. Using ESSER and GEER funds to support educators and other school staff.
E. Additional fiscal considerations.

A technical appendix addressing how an SEA must make formula subgrants to LEAs under ARP ESSER and ESSER II is included at the end of this document.

The Department encourages States and LEAs to use the funds described in this document to safely reopen schools, maximize in-person instructional time for all students, and provide opportunities to address the impacts of lost instructional time resulting from the COVID-19 pandemic. When making decisions about how to use ESSER and GEER funds, States and LEAs are encouraged to take into consideration how the funds can be used to address inequities, including focusing supports and services on students from low-income families, students of color, students with disabilities, English learners, students experiencing homelessness, children and youth in foster care, migratory students, children who are incarcerated, and other underserved students who have been disproportionately impacted by the pandemic.

A. Overview of ESSER and GEER 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 or GEER 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?

These Federal emergency resources are available for a wide range of activities to address diverse needs arising from or exacerbated by the COVID-19 pandemic, or to emerge stronger post-pandemic, including responding to students' social, emotional, mental health, and academic needs and continuing to provide educational services as States, LEAs, and schools respond to and recover from the pandemic. Some uses of these funds may be directly focused on health and safety—such as improving ventilation and implementing prevention strategies that are, to the extent practicable, consistent with the Centers for Disease Control and Prevention (CDC) guidance. Other allowable uses may be focused on meeting the social, emotional, mental health, and academic needs of students. That could be through preventing teacher layoffs; providing accelerated learning opportunities; implementing rigorous curricula; funding additional school counselors, school nurses, and school psychologists; increasing the number of full-service community schools; conducting any activities allowed under a number of Federal education programs (see FAQ A-3); and implementing many other allowable uses as illustrated in this document.

Allocating resources in ways that advance equity and ensuring they are adequate for providing the opportunities and supports students need to succeed are particularly important as we recover from the disproportionate impact of the COVID-19 pandemic on communities of color and communities experiencing poverty. Addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—can begin to mitigate the impact of COVID-19 on schools and students and can close long-standing gaps in educational opportunity.

A-1. What funds are covered in these FAQs?

These FAQs address five programs in the Education Stabilization Fund (ESF) to prevent, prepare for, and respond to the COVID-19 emergency:

- "ESSER I": The ESSER Fund established in the CARES Act.
- "ESSER II": The additional funding for ESSER provided in the CRRSA Act.
- "ARP ESSER": The additional funding for ESSER provided in the ARP Act.
- "GEER I": The GEER Fund established in the CARES Act.
- "GEER II": The additional funding for GEER provided in the CRRSA Act.

References to ESSER apply to ESSER I, ESSER II, and ARP ESSER. References to GEER apply to GEER I and GEER II.

Please note that GEER funds may be used for childcare, pre-K-12 education, adult education, and higher education support. However, these FAQs are mainly focused on the use of GEER funds for pre-K-12

education. We also acknowledge that GEER and ESSER SEA Reserve funds may be awarded to entities other than LEAs.[1] However, because the vast majority of funds under the CARES Act, CRRSA Act, and ARP Act are awarded to LEAs and LEAs are the entities responsible for reopening schools safely and addressing educational needs impacted by the COVID-19 pandemic, this guidance focuses primarily on LEA uses of ESSER and GEER funds. It should be noted that GEER and ESSER SEA Reserve funds may be used for all of the allowable activities outlined in this guidance.

ESSER Formula Funds to LEAs

A-2. How does an SEA allocate ESSER formula funds to LEAs?

Each SEA must allocate at least 90 percent of the ESSER funds it receives as subgrants to LEAs in proportion to the amount of funds each LEA received under part, A of title I of the ESEA in the most recent fiscal year (FY)—i.e., FY 2019 (ESSER I) or FY 2020 (ARP ESSER and ESSER II). (For more information on allocating funds to LEAs under ARP ESSER and ESSER II, see the Technical Appendix at the end of this document.)

A-3. How may an LEA use ESSER funds?

An LEA may use ESSER funds for the broad range of activities listed in section 18003(d) of the CARES Act, section 313(d) of the CRRSA Act, and section 2001(e) of the ARP Act. Although the lists of allowable uses of funds are not identical, any of the ESSER funds (ESSER I, ESSER II, or ARP ESSER) may be used to support all of the allowable uses of funds listed in any of the ESSER programs. We have consolidated below the three ESSER programs' lists of allowable uses of funds.

The activities that are listed in section 18003(d) of the CARES Act, section 313(d) of the CRRSA Act, and section 2001(e) of the ARP Act that an LEA may support with ESSER funds are:

1. Any activity authorized by the ESEA, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.).

2. Any activity authorized by the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.).

3. Any activity authorized by the Adult Education and Family Literacy Act (AEFLA) (29 U.S.C. 3271 et seq.).

4. Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins V) (20 U.S.C. 2301 et seq.).

5. Any activity authorized by subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento) (42 U.S.C. 11431 et seq.).[2]

6. Coordinating preparedness and response efforts of LEAs with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to COVID-19.

[1] See FAQ A-13 for a description of eligible entities under the GEER program.
[2] This activity is not explicitly listed in the ARP Act but is still an allowable use of ARP ESSER funds.

7. Providing principals and other school leaders with the resources necessary to address the needs of their individual schools.[3]

8. Activities to address the unique needs of low-income children or students, students with disabilities,[4] English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, including how outreach and service delivery will meet the needs of each population.

9. Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.

10. Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.

11. Purchasing supplies to sanitize and clean the facilities of the LEA, including buildings operated by such LEA.

12. Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the IDEA and ensuring other education services can continue to be provided consistent with all Federal, State, and local requirements.

13. Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

14. Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.[5]

15. Planning and implementing activities related to summer learning and enrichment and supplemental after-school programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children and youth in foster care.

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[3] This activity is not explicitly listed in the ARP Act but is still an allowable use of ARP ESSER funds.

[4] As used in this document, students with disabilities refers to children with disabilities as defined in section 602(3) of the IDEA; 34 CFR § 300.8) and students who meet the definition of disability in section 705(9)(B) of the Rehabilitation Act of 1973; see also 34 CFR § 104.3(j)). Although the CARES, CRRSA, and ARP Acts use the term, "children with disabilities" with respect to the allowable activity of providing activities to address the unique needs of certain groups of students, ESSER funds may be used to support students with disabilities under both the IDEA and section 504 of the Rehabilitation Act of 1973. In some instances, this document refers to children with disabilities where the CARES, CRRSA, or ARP Acts use that term to set forth a requirement. However, even in instances where the CARES, CRRSA, or ARP Acts require funds to be used for children with disabilities, an SEA or LEA may also use its ESSER funds to support students with disabilities under section 504.

[5] The reference to full-service community schools is only in the ARP Act, but ESSER I and ESSER II funds may also be used for that purpose. Please note that, as described later in this document, ESSER funds can be used to hire a broad range of professionals who deliver mental health services and supports, including but not limited to nurses, school counselors, psychologists, and social workers.

16. Addressing the academic impact of lost instructional time[6] among an LEA's students, including low-income students, students with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, including by—

    a. Administering and using high-quality assessments that are valid and reliable to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction.
    b. Implementing evidence-based activities to meet the comprehensive needs of students.
    c. Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.
    d. Tracking student attendance and improving student engagement in distance education.[7]

17. School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

18. 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.

19. Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the CDC for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.[8]

20. Other activities that are necessary to maintain the operation of and continuity of services in the LEA and continuing to employ existing staff of the LEA.[9]

In determining how to prioritize its funds, an LEA should consider how to use those funds to safely reopen schools for full-time instruction for all students, maintain safe in-person operations, advance educational equity, and build capacity. An LEA may provide services directly or enter into an agreement (e.g., a contract or interagency agreement consistent with procurement requirements or otherwise legally authorized) for allowable activities under ESSER. An LEA is not authorized to award subgrants with ESSER funds.

A-4. Does ARP ESSER include any new provisions for LEAs that ESSER I and ESSER II do not?

Yes. The ARP ESSER statute and interim final requirements include several new provisions for LEAs to support school reopening, safe school operations, and support for students:

- **Safe Return to In-Person Instruction and Continuity of Services**. Section 2001(i) of the ARP Act requires an LEA that receives ARP ESSER funds to develop and make publicly available on

[6] For the purposes of this guidance document, the term "academic impact of lost instructional time" is used in place of "learning loss" experienced by students as a result of the COVID-19 pandemic, as referenced in the ARP Act and the CRRSA Act.
[7] This activity, as well as the next two, are not explicitly listed in the CARES Act but are still allowable uses of ESSER I funds.
[8] This activity is only listed in the ARP Act but is an allowable use of ESSER I and ESSER II funds.
[9] As described later in this document, this includes using ESSER funds to avoid layoffs.

the LEA's website, within 30 days after receiving its allocation, a plan for the safe return to in-person instruction and continuity of services. Prior to making the plan publicly available, the LEA must seek public comment on the plan and take such comments into consideration when developing the plan. Under the interim final requirements, an LEA plan for safe return to in-person instruction and continuity of services must describe how the LEA will maintain the health and safety of students, educators, and other staff and the extent to which it has adopted policies, and a description of any such policies, on each of the prevention and mitigation strategies recommended by the CDC.[10] The plan must also describe how an LEA will ensure continuity of services, which must address students' academic needs and students' and staff social, emotional, mental health, and other needs, and which may include student health and food services. In addition, the LEA must regularly, but no less frequently than every six months (taking into consideration the timing of significant changes to CDC guidance on reopening schools), review and, as appropriate, revise its plan for the safe return to in-person instruction and continuity of services, and must seek and take public input into account in determining whether and what revisions are necessary. An LEA that developed a school reopening and continuity of services plan prior to the date of enactment of the ARP Act and that meets the above requirements for public comment will be deemed in compliance but, within no more than six months, the LEA must review and, if necessary, revise the plan to meet the requirements of the interim final requirements.

- **Reservation to Address the Academic Impact of Lost Instructional Time**. Section 2001(e)(1) of the ARP Act requires an LEA to reserve not less than 20 percent of its ARP ESSER allocation to address the academic impact of lost instructional time through the implementation of evidence-based interventions (e.g., providing intensive or high-dosage tutoring or accelerating learning; see FAQ A-10 for a definition of evidence-based), such as summer learning or summer enrichment, extended day, comprehensive after-school programs, or extended school year programs, and ensure that the interventions implemented respond to students' social, emotional, mental health, and academic needs and address the disproportionate impact of COVID-19 on students from low-income families, students of color, children with disabilities, English learners, migratory students, students experiencing homelessness, and children and youth in foster care. While ESSER I and ESSER II funds may also be used for these purposes, an LEA is not required to set aside a specific amount of ESSER I and ESSER II funds to address the academic impact of lost instructional time. Effective strategies to address the impact of lost instructional time are further described in Volume 2 of the Department's COVID-19 Handbook available at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

- **Maintenance of Equity for High-Poverty Schools**. Section 2004(c) of the ARP Act stipulates that an LEA, as a condition of receiving ARP ESSER funds, may not, in FY 2022 or 2023:
    - Reduce the combined State and local per-pupil funding for any high-poverty school served by the LEA by an amount that exceeds the total reduction in LEA funding (from combined State and local funding), if any, for all schools served by the LEA in such

[10] Specifically, the LEA plan must address the extent to which it has adopted policies, and a description of any policies, on each of the CDC's recommendations on: universal and correct wearing of masks; modifying facilities to allow for physical distancing (e.g., use of cohorts/podding); handwashing and respiratory etiquette; cleaning and maintaining healthy facilities, including improving ventilation; contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments; diagnostic and screening testing; efforts to provide vaccinations to school communities; appropriate accommodations for students with disabilities with respect to health and safety policies; and coordination with State and local health officials.

fiscal year divided by the number of children enrolled in all schools served by the LEA in such fiscal year; or

- Reduce the number of full-time-equivalent (FTE) staff per-pupil in any high-poverty school by an amount that exceeds the total reduction in the number of FTEs per-pupil, if any, in all schools served by the LEA in such fiscal year divided by the number of children enrolled in all schools served by the LEA in such fiscal year.

A "high-poverty school" means a school in the highest quartile of schools served by an LEA based on the percentage of economically disadvantaged students served. More information on maintenance of equity will be forthcoming.

- **LEA Plan for Use of ARP ESSER Funds**. Under the interim final requirements, each LEA that receives ARP ESSER funds must develop a plan for its use of ARP ESSER funds and submit it to the SEA within a reasonable timeline determined by the SEA. The plan must contain, at a minimum, the extent to which and how the funds will be used to implement prevention and mitigation strategies that are, to the extent practicable, consistent with CDC guidance; how the LEA will use the funds it reserves under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time; how the LEA will use its remaining ARP ESSER funds; and how the LEA will ensure the interventions it implements will respond to the social, emotional, mental health, and academic needs of all students and particularly those students disproportionately impacted by the COVID-19 pandemic. In developing its plan, an LEA must engage in meaningful consultation with stakeholders including students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions. An LEA must also engage in meaningful consultation with each of the following to the extent present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children and youth in foster care, migratory students, children who are incarcerated, and other underserved students. An LEA should translate relevant materials and obtain the services of interpreters, as needed, to engage its English learners and families with limited English proficiency. An LEA must provide the public the opportunity to provide input on the development of the plan, take such input into account, and post the LEA ARP ESSER plan on its website.

  The interim final requirements, which contain information on the LEA plan, can be accessed at: https://www.federalregister.gov/public-inspection/2021-08359/american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund.

A-5. Is there a deadline by which an SEA must award ESSER funds to LEAs?

Yes. An SEA must award ESSER I and ESSER II funds within one year of receiving the award, pursuant to section 18003(f) of the CARES Act and section 313(g) of the CRRSA Act. Given that these funds are intended to address urgent needs arising from the COVID-19 pandemic, SEAs are urged to award funds to LEAs as expeditiously as possible.

Pursuant to section 2001(d)(2) of the ARP Act, an SEA must award ARP ESSER funds in an expedited and timely manner and, to the extent practicable, not later than 60 days after the SEA receives the award. An SEA that is not able to allocate such funds within 60 days because it is not practicable (e.g., because of pre-existing State board approval requirements) must provide an explanation to the Department within 30 days of receiving each portion of its ARP ESSER funds, including a description of specific actions the SEA is taking to provide ARP ESSER funds to LEAs in an expedited and timely manner and the SEA's expected timeline for doing so.

If an SEA does not award ESSER I, ESSER II, or ARP ESSER funds within one year of receipt, it must return the funds to the Department for reallocation.

A-6. May an SEA or a State legislature limit an LEA's use of ESSER formula funds?

No. Section 18003(d) of the CARES Act, section 313(d) of the CRRSA Act, and section 2001(e)(2) of the ARP Act permit an LEA to use ESSER funds for a broad range of allowable activities. Each section authorizes an LEA to use ESSER funds "for any of the following" activities. Accordingly, neither an SEA nor a State legislature has the authority to limit an LEA's use of ESSER formula funds. An SEA may require LEAs to include information in their applications about how they intend to use the funds, consistent with the SEA's regular practices or State law, as long as it does not limit how the LEAs use their funds.

A-7. May an SEA or a State legislature limit how long an LEA has to access or spend its ESSER formula funds?

No. Under the statute, LEAs are authorized to obligate funds throughout the period of availability of those funds and, consistent with cash management requirements (e.g., the Cash Management Improvement Act (CMIA) and the Uniform Guidance requirements), draw down funds in accordance with their needs.

ESSER Funds Reserved at the SEA Level

A-8. May an SEA reserve any ESSER I and II funds for the SEA's use?

Yes. An SEA may retain up to 10 percent of its ESSER I and ESSER II funds (the "SEA Reserve") to address emergency needs, as determined by the SEA, resulting from the COVID-19 pandemic, which may be addressed through the use of subgrants or contracts. An SEA may reserve ½ of 1 percent or less of its total ESSER I and ESSER II allocations for administrative costs, including both direct and indirect administrative costs. This reservation must come from the SEA Reserve. (See FAQs E-4 through E-9 for more information on administrative funds.) Unlike ARP ESSER funds (see FAQ A-9), however, an SEA is not required to retain any ESSER I or ESSER II funds at the State level.

A-9. May an SEA reserve any ARP ESSER funds for the SEA's use?

Yes. In fact, under section 2001(f) of the ARP Act, an SEA is required to reserve ARP ESSER funds for three State-level reservations for evidence-based activities and interventions (see FAQ A-10) that respond to students' social, emotional, mental health, and academic needs and address the disproportionate impact of COVID-19 on students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children and youth in foster care, and migratory students.[11]

- **The academic impact of lost instructional time.** Not less than 5 percent of the State's grant must be reserved to carry out, directly or through subgrants or contracts, activities to address the

[11] ARP ESSER funds are being made available to SEAs in two portions: the first, totaling two-thirds of an SEA's allocation, was made available on March 24, 2021; the second, constituting the remaining one-third of an SEA's allocation, will be made available after the Department approves a State plan submitted by the SEA. All percentages apply to an SEA's total ARP ESSER allocation, and may be reserved from either or a combination of both portions of its ARP ESSER award.

academic impact of lost instructional time by supporting the implementation of evidence-based interventions.

- **Summer enrichment**. Not less than 1 percent of the State's grant must be reserved to carry out, directly or through subgrants or contracts, the implementation of evidence-based summer enrichment programs.
- **After-school programs**. Not less than 1 percent of the State's grant must be reserved to carry out, directly or through subgrants or contracts, the implementation of evidence-based comprehensive after-school programs.

In addition, not more than ½ of 1 percent of the State's total ARP ESSER award may be reserved for administrative costs. The remainder, if any, of funds not allocated to LEAs or reserved for mandatory set-asides or administrative costs (up to 3 percent, depending on the amount otherwise reserved) may be used for emergency needs as determined by the SEA to address issues responding to COVID-19.

A-10. What does it mean for a program to be evidence-based?

The ARP Act defines the term "evidence-based" as having the meaning in section 8101(21) of the ESEA. Accordingly, "evidence-based" includes several tiers of evidence. Specifically, "evidence-based," when used with respect to a State, LEA, or school activity, means an activity, strategy, or intervention that:

- Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—
    - Strong evidence from at least one well-designed and well-implemented experimental study ("tier 1");
    - Moderate evidence from at least one well-designed and well-implemented quasi-experimental study ("tier 2"); or
    - Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias ("tier 3"); or

- Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes and includes ongoing efforts to examine the effects of such activity, strategy, or intervention ("tier 4").

Given the novel context created by the COVID-19 pandemic, an activity need not have generated such evidence *during the COVID-19 pandemic* to be considered evidence-based. The Department's What Works Clearinghouse (available at https://ies.ed.gov/ncee/wwc/) identifies the tier of evidence that reviewed studies meet, as applicable. As part of the "demonstrates a rationale (tier 4)" level of evidence, grantees may develop and use approaches that are novel, if they are consistent with theoretical and empirical findings from research and the grantee will continue to review the effects of the practice to build the evidence base. Developing a logic model can help to demonstrate a rationale. Logic model resources are available at https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp. An SEA should consider using funds to provide technical assistance to its LEAs on identifying and implementing evidence-based interventions. SEAs can also review the Department's guidance on using evidence, which can be found here: https://www2.ed.gov/policy/elsec/leg/essa/guidanceuseseinvestment.pdf. Finally, SEAs should make use of the federally funded Comprehensive Center network.

A-11. Must an SEA engage in meaingful consultation before determining how to use the ARP ESSER funds it reserves?

Yes. Each SEA is required to submit to the Department a State Plan for ARP ESSER funds (ARP ESSER State Plan) that includes, among other requirements, a description of how it will use the funds it reserves. As required in the interim final requirements, an SEA must engage in meaningful consultation with stakeholders, and provide the public the opportunity to provide input, in the development of the plan. Specifically, in the development of its ARP ESSER State Plan, an SEA must engage in meaningful consultation with stakeholders including, but not limited to, students; families; Tribes (if applicable); civil rights organizations (including disability rights organizations); school and district administrators (including special education administrators); superintendents; charter school leaders (if applicable), teachers, principals, school leaders, other educators, school staff, and their unions; and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students. An SEA should translate relevant materials and obtain the services of interpreters, as needed, to engage its English learners as well as families and other stakeholders with limited English proficiency.

A-12. How may an SEA use its ESSER SEA Reserve funds?

SEA Reserve funds (including funds not allocated to LEAs or set aside for mandatory activities under the ARP Act) may be used to address emergency needs resulting from the COVID-19 pandemic as determined by an SEA. The statute provides broad flexibility to the SEA in the use of its SEA Reserve funds. The SEA Reserve funds may be used by the SEA for any of the LEA ESSER allowable uses of funds and for other activities related to preventing, preparing for, and responding to COVID-19. An SEA might determine, for example, that SEA salaries and other supports are an emergency need in response to the COVID-19 pandemic that could be covered under the SEA Reserve. An SEA might also decide, based on its needs, to reserve less for administration in order to retain more SEA Reserve funds to address emergency needs or, under ARP ESSER, to retain more for the required reservations for addressing the academic impact of lost instructional time, summer enrichment programs, and after-school programs.

An SEA may make subgrants or enter into contracts with a wide range of entities, including LEAs and organizations serving students and families, from its SEA Reserve. An SEA may also use funds to provide technical assistance to LEAs around implementing evidence-based interventions to address the impact of lost instructional time. Support provided to LEAs or other entities under the SEA Reserve may be made on a competitive or formula basis. If an SEA awards funds to LEAs or other entities through subgrants, the SEA must carry out the requirements for a pass-through entity described in 2 CFR § 200.331. If an SEA awards funds through a contract to an LEA or other entity, the SEA must follow the State's procurement process as required by 2 CFR § 200.317.

GEER

A-13. Which entities may receive emergency grants from a Governor through the GEER Fund?

A Governor may provide subgrants to LEAs and IHEs within the State that have been "most significantly impacted by coronavirus" to support their ability to continue providing educational services to their students and to support the "on-going functionality" of these entities. In addition, a Governor may use GEER funds to provide support through a subgrant or a contract to other LEAs, IHEs, and education-related entities that the Governor "deems essential" for carrying out emergency educational services,

providing childcare and early childhood education, providing social and emotional support, and protecting education-related jobs. An "education-related entity" is a governmental, nonprofit, or for-profit entity within the State that provides services that support preschool, elementary, secondary, or higher education. For examples of such entities, see question A-4 in *Frequently Asked Questions about the Governor's Emergency Education Relief Fund (GEER Fund)* available at: https://oese.ed.gov/files/2020/07/FAQs-GEER-Fund.pdf.

A-14. Is a Governor required to award GEER funds to each category of eligible entities (i.e., LEAs, IHEs, and education-related entities)?

No. A Governor has wide discretion in determining the entities in the State that will receive GEER funds. A Governor may choose to fund only LEAs, only IHEs, only education-related entities, or any combination of eligible entities.

A-15. How may an LEA use GEER funds?

Under section 18002(c) of the CARES Act and section 312(c) of the CRRSA Act, a Governor may determine whether to award GEER funds to LEAs, as well as identify specific uses of the funds within the broad parameters in the law. Beyond any such restrictions imposed by a Governor, an LEA that receives GEER funds may use its award to support a broad range of activities to prevent, prepare for, and respond to the COVID-19 pandemic, including those activities allowed under ESSER. (See FAQ A-3.) An LEA may provide services directly or enter into an agreement (e.g., a contract or interagency agreement consistent with procurement requirements or otherwise legally authorized) for allowable activities under GEER. An LEA is not authorized to award subgrants with GEER funds.

Other Provisions

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(i) 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. (For more

information on paying employees in leave status, see the Department Fact Sheet at: https://www2.ed.gov/documents/coronavirus/factsheet-fiscal- questions.pdf.)

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 (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.

A-17. May ESSER and GEER funds be used in combination with ("braided with") other funding?

Yes. ESSER and GEER funds may be used in combination with, but not blended with, funding under ESEA, IDEA, AEFLA, Perkins V, and McKinney-Vento, or any other education funds. Therefore, an SEA or LEA may use ESSER and GEER funds to expand participation in an activity or services it is currently conducting or plans to conduct under these programs.

"Braiding" funds occurs when different funding streams are used together to leverage the support provided for different needs for educators and students while maintaining documentation to support the charging and allocation of costs to multiple separate funding streams or programs. As specified in the Uniform Guidance at 2 CFR § 200.405(d), if a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the programs or activities based on the proportional benefit. Additionally, each funding stream maintains its identity and continues to be subject to the relevant statutory requirements, including eligibility criteria and scope of authorized activities. With the exception of consolidating administrative funds (see FAQ E-7) or consolidating funds in a schoolwide program (see *Supporting School Reform by Leveraging Federal Funds in a Schoolwide Program* (September 2016) at:

https://www2.ed.gov/policy/elsec/leg/essa/essaswpguidance9192016.pdf), ESSER and GEER funds do not lose their individual identity when braided.

A-18. Is there a "supplement not supplant" requirement for ESSER and GEER funds?

No. The ARP Act, the CRRSA Act, and the CARES Act, however, include detailed provisions requiring States to maintain effort for elementary and secondary education and higher education. (See the Maintenance of Effort FAQs.) Maintenance of effort provisions are designed to keep States from substantially reducing their support for K–12 education and higher education. While these Acts do not address maintenance of effort requirements associated with other Federal funds, such as those for IDEA and ESEA, States and LEAs must be mindful that these requirements continue to apply.

In addition, the ARP Act includes maintenance of equity requirements for both States and LEAs, which will be described in greater detail in separate Department guidance. (See FAQ A-4.)

A-19. Do CARES Act funds need to be obligated prior to obligating CRRSA Act and ARP Act funds?

No. All three funding streams are available now to meet the needs of students; however grantees should be mindful that each funding stream has a different period of fund availability. (See FAQs E-1, E-2, and E-3.)

A-20. Do the Buy American Act provisions apply to ESSER and GEER?

The Buy American Act does not apply to the ESSER or GEER grants. However, awards made under the CRRSA Act and ARP Act (i.e., ESSER II, GEER II, and ARP ESSER awards) are subject to 2 CFR § 200.322, a new regulation that applies to Federal grants made after November 12, 2020. It establishes domestic preferences for procurements under Federal grants that are subject to the Uniform Guidance. The text of the regulation follows:

2 CFR § 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

A-21. May ESSER and GEER funds be used to improve cybersecurity?

Yes. If a school, LEA, or State is improving cybersecurity to better meet educational and other needs of students related to preventing, preparing for, or responding to COVID-19, it may use ESSER or GEER funds. For example, if an LEA needs to increase its use of technology, such as for potential temporary shifts to hybrid learning if COVID-19 cases arise, expanded cybersecurity needs to facilitate that activity may also be addressed using ESSER or GEER funds.

A-22. May an SEA or LEA use ESSER and GEER funds to develop or implement an innovative approach to providing instruction to accelerate learning and mitigate the effects of lost instructional time for those students most impacted by the COVID-19 pandemic?

Yes. An SEA or LEA may use ESSER and GEER funds to develop or implement an innovative approach to providing instruction to accelerate learning and mitigate the effects of lost instructional time for students most impacted by the COVID-19 pandemic.

To the extent an innovative approach is evidenced-based, an LEA may use the ARP ESSER funds it reserves to implement the innovative approaches to address the impact of lost instructional time. As described in FAQ A-10, one of the tiers of evidence included in the definition of "evidence-based" refers to an approach that "demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes"; and includes "ongoing efforts to examine the effects of such activity, strategy, or intervention." This could include emerging technology-based or technology-enabled approaches, including educational technology platforms, that meet this definition.

B. Reopening Schools Safely and Promoting the Health and Safety of Students, Staff, and the School Community

B-1. What resources are available to support the safe reopening and sustained operations of schools?

ESSER and GEER funds may be used to develop strategies and implement public health protocols including, to the greatest extent practicable, policies in line with guidance from the CDC for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff. CDC's operational strategy can be found at: https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html. Volume 1 of the Department's COVID-19 Handbook on school reopening can be found at: https://www2.ed.gov/documents/coronavirus/reopening.pdf.[12] Volume 2 of the Department's COVID-19 Handbook on school reopening and meeting all students' needs can be found at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

In addition, the Federal Emergency Management Agency (FEMA) is offering reimbursement for work conducted to safely open and operate Public Assistance-eligible facilities under the COVID-19 emergency and major disaster declarations from January 21, 2021, to September 30, 2021. Eligible work includes: face coverings and personal protective equipment (PPE); cleaning and disinfection; COVID-19 diagnostic testing, screening and temperature scanning; and signage for social distancing. More information about FEMA's Safe Opening and Operation policy can be found here. FEMA has also developed a COVID-19 Education Resource Roadmap, and other topical resource roadmaps, to help school systems address challenges and identify funding solutions for delivering educational services during the COVID-19 pandemic. The resource roadmaps can be accessed at: https://www.fema.gov/media-collection/resource-roadmaps.

B-2. Is COVID-19 testing for students and LEA staff an allowable use of ESSER and GEER funds?

Yes. Because ESSER and GEER funds may be used for public health protocols including, to the greatest extent practicable, policies in line with guidance from the CDC for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff, providing COVID-19 testing is an allowable use of ESSER and GEER funds.

SEAs and LEAs should consult with State and local health officials to ensure the adequacy of any SEA or LEA COVID-19 testing program and that testing procedures comply with all applicable laws and requirements including those related to privacy, including the Family Educational Rights and Privacy Act (FERPA) and Protection of Pupil Rights amendment (PPRA), and the confidentiality of information requirements under Part B and Part C of the IDEA.

Please note that the Department of Health and Human Services separately provided $10 billion under the ARP Act to States as Epidemiology and Laboratory Capacity for Prevention and Control of Emerging

[12]As more information becomes available, both the CDC and the Department will be updating documents. Therefore, SEA, LEA, and school officials are encouraged to periodically visit the CDC website at: https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/index.html and the Department's website at: https://www.ed.gov/coronavirus/documents to check for new and revised resources that can assist in safely reopening schools.

Infectious Diseases (ELC) Reopening Schools awards to support the implementation of COVID-19 testing programs, as recommended by the CDC, in K-12 schools. This funding was deployed quickly through State health departments in order to help LEAs safely reopen schools in the remaining months of school year 2020-2021, during summer activities, and in the subsequent school year. State and local health departments will provide technical assistance to LEAs and schools in establishing COVID-19 testing programs. More information on the program can be found at: https://www.cdc.gov/ncezid/dpei/pdf/guidance-elc-reopening-schools-508.pdf.

B-3. May ESSER and GEER funds be used to provide COVID-19 vaccinations to LEA teachers, staff, and eligible students?

Yes. Because ESSER and GEER funds may be used to implement public health protocols including, to the greatest extent practicable, policies in line with guidance from the CDC for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff, providing COVID-19 vaccinations is an allowable use of ESSER and GEER funds. Allowable vaccination outreach efforts in general could include activities to create awareness and build confidence, facilitate clinics, and provide incentives such as paid time off for staff to get vaccinated. In cases where administrative fees are required to obtain a vaccination, ESSER or GEER funds may be used to offset the cost as long as the cost is reasonable.

B-4. May ESSER and GEER funds be used for personal protective equipment (PPE), cleaning and sanitizing materials, and related supplies necessary to maintain school operations during and after the COVID-19 pandemic?

Yes. Purchasing PPE, cleaning and sanitizing materials, portable air purifiers, and emergency supplies necessary to adequately respond to COVID-19 are allowable uses of ESSER and GEER funds. These costs are consistent with the statutory purposes of the programs "to prevent, prepare for, and respond to" COVID-19, and LEAs are specifically authorized to use funds for such activities.

B-5. How might an LEA use ESSER and GEER funds to engage stakeholders to build confidence in an LEA's plan for safe return to in-person instruction and continuity of services?

Section 2001(i) of the ARP Act requires an LEA that receives ARP ESSER funds to develop, within 30 days of receiving the funds, a plan for the safe return to in-person instruction and continuity of services. Prior to issuing the plan, the LEA must seek public input and take those comments into consideration in developing the plan. (See FAQ A-4.)

An LEA may use ESSER and GEER funds to engage the public on the development of the safe return to in-person instruction plan and for conducting active and sustained engagement with the school community. This includes using funds to cover the costs of conducting ongoing outreach, paying for translating and interpreting services as needed to ensure effective communication with individuals with limited English proficiency, providing reasonable accommodations such as interpreters and written materials in alternate formats for individuals with disabilities upon request, holding public meetings (including virtually), and conducting surveys of families, students, educators, and other staff to better understand their perceptions, needs, and concerns.

As schools and districts work to develop and implement strategies to safely reopen schools, engagement with educators, facility staff, families, and the school community is key. A successful school reopening strategy requires engaging the entire school community (specifically including

underserved students and families and parents of students with disabilities or local special education advisory committees) to promote confidence and demonstrate inclusivity and identify any barriers to participating in in-person or hybrid instruction, in addition to broadly engaging education stakeholders to support actions that will lead to a safe learning environment for all educators, staff, and students.

As the CDC operational strategy notes, "the absence of in-person educational options may disadvantage children from low-resourced communities, which may include large representation of racial and ethnic minority groups, English learners, and students with disabilities. Plans for safe delivery of in-person instruction in K-12 schools must consider efforts to promote fair access to healthy educational environments for students and staff. Thus, essential elements of school reopening plans should take into account the communities and groups that have been disproportionately affected by COVID-19 infections and severe outcomes."

For additional considerations, see the Supporting Ongoing Engagement with Educators, Families, and the School Community section in the
ED COVID-19 Handbook Volume 1: Strategies for Safely Reopening Elementary and Secondary Schools.

As noted in FAQ A-4, an LEA is also required to develop a plan for use of ARP ESSER funds that is distinct from the plan for the safe return to in-person instruction and continuity of services. Under the interim final requirements, an LEA must, in developing its plan for use of ARP ESSER funds, engage in meaningful consultation as described in FAQ A-4 above. An LEA may use its ARP ESSER funds for that required stakeholder engagement for the plan for the use of ARP ESSER funds as well as the stakeholder engagement and consultation for the LEA's plan for the safe return to in-person instruction and continuity of services. An LEA should translate relevant materials and obtain the services of interpreters, as needed, to engage its English learners and families with limited English proficiency (which may be done using ESSER funds).

B-6. May ESSER and GEER funds be used for construction?

Yes. 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 because 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 a number of 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));

[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 section 7013(3), 20 U.S.C. § 7713(3).

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).) Approved construction projects (i.e., remodeling, renovation, and new construction) also must comply with applicable Uniform Guidance requirements, Davis-Bacon prevailing wage requirements[14], 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 title or other interest in the site, including 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 period 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 in accordance with 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

[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 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.)

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/SF424D-V1.1.pdf), including the assurances relating to labor standards; flood hazards; historic preservation; health and safety, energy conservations, and coastal barrier resources.) (See FAQ A-17 for additional Uniform Guidance information.)

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 in the event that the property or equipment is no longer needed. See, e.g., 2 CFR §§ 200.310-200.313.

B-7. May ESSER and GEER funds be used for renovation, including for such projects as making improvements to a school facility to improve indoor air quality (such as heating, ventilation, and air conditioning (HVAC) systems), and projects that would promote social distancing and safe in-person instruction?

Yes. ESSER and GEER funds may be used to make necessary improvements, for example to improve air 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 or GEER, 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.) Therefore, renovation or remodeling activities that are necessary for an LEA to prevent, prepare for, and respond to COVID-19 would be permissible. This might include renovations that would permit an LEA to clean effectively (e.g., replacing old carpet with tile that could be cleaned more easily) or create a learning environment that could better sustain social distancing (e.g., bringing an unused wing of a school into compliance with fire and safety codes in order to reopen it to create more space for students to maintain appropriate social distancing). This might also include, for example, as noted in section 2001(e)(2)(O)-(P) of 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.

As noted in B-6, these projects are also 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 American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) standards. A State, SEA, or LEA might also consider using ESSER or GEER funds to establish a program for assessing and improving HVAC systems. Such a program could also require verification that proper ventilation is occurring, such as through the use of carbon dioxide (CO_2) monitors.

Please note that the Environmental Protection Agency (EPA) has a variety of publications that can assist education leaders in improving the indoor air quality in schools. EPA resources on indoor air quality in schools can be accessed at: https://www.epa.gov/iaq-schools. The EPA has information available at: https://www.epa.gov/coronavirus/air-cleaners-hvac-filters-and-coronavirus-covid-19 on some indoor air filtration devices that use bipolar ionization technology, which has the potential to create ozone. EPA states that ozone generators should not be used in occupied spaces. If choosing to use a device that incorporates bipolar ionization technology, EPA recommends using a device that meets UL 2998 standard certification (Environmental Claim Validation Procedure (ECVP) for Zero Ozone Emissions from Air Cleaners) and notes that there are many air cleaning devices that do not use bipolar ionization. In addition, the CDC provides information on improving ventilation in schools at: https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/ventilation.html and in buildings at: https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html.

B-8. May an LEA use ESSER and GEER funds to purchase trailers or modular units?

Yes. Under 2 CFR § 200.33, "equipment" means "tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000." Generally, a trailer or modular unit meets this definition. Accordingly, an 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. In the case of such large purchases, it may be beneficial for the LEA to do a cost analysis under 2 CFR § 200.318(d) comparing the cost of buying trailers and modular units with the cost of leasing, for example.

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 certain 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.

C. Advancing Educational Equity in COVID-19 Response

Overall Equity Considerations

C-1. What should each State and LEA consider in order to ensure that ESSER and GEER funds are equitably allocated among schools?

SEAs and LEAs should establish practices that ensure all students are provided resources that establish equitable opportunities to learn. Resource equity means that schools serving larger proportions of historically underserved groups of students—including students from low-income families, students of color, English learners, students with disabilities, and students experiencing homelessness—require more funding, depending upon the needs of the students at a particular school. In addition, resource allocation decisions should recognize that certain student populations and school communities have been disproportionately impacted by the pandemic and ensure resource equity, including through allocating funding to provide more intensive social, emotional, mental health, and academic services as needed on return to in-person learning.

Because ESSER funds are distributed to LEAs in proportion to the amount each LEA received under part A of title I of the ESEA in the most recent fiscal year, ESSER is already targeted to LEAs with concentrations of students from low-income families. Although an LEA may use ESSER funds for any school under the supervision of the LEA, ESSER funds may also be targeted on those schools that are eligible for or participate in part A of title I. ESSER funds can be further focused by the LEA to advance educational equity by only serving those schools operating schoolwide programs. (To qualify for a Title I schoolwide program, at least 40 percent of the students enrolled must come from low-income families, unless a school receives a waiver from the SEA under section 1114(a)(1)(B) of the ESEA.)

Under GEER, consistent with section 18002(c)(1) of the CARES Act and section 312(c)(1) of the CRRSA Act, a Governor may provide emergency support to LEAs that the SEA determines have been "most significantly impacted" by the COVID-19 pandemic. The SEA has substantial flexibility in making this determination and might consider, among other things:

- The percentage of families in the LEA with incomes below the poverty line;
- The percentage of students in an LEA that represent underserved populations (e.g., students with disabilities, English learners, students experiencing homelessness, children and youth in foster care, migratory students, children who are incarcerated);
- The projected number of days that the LEA was unable to provide in-person instructional services as a result of the COVID-19 pandemic;
- Unemployment data for the geographic area in which the LEA is located; and
- The extent to which the LEA is located in a geographic area in which a significant number or percentage of individuals have tested positive for or been significantly affected by the COVID-19 pandemic.

When determining how to allocate GEER funds within an LEA, an LEA might also balance similar considerations in order to effectively target GEER funds to advance educational equity.

C-2. How may an LEA use ESSER and GEER funds to support students who have lost instructional time due to the COVID-19 pandemic?

SEAs and LEAs must reserve a portion of their ARP ESSER funds to address the academic impact of lost instructional time. Specifically, section 2001(f)(1) of the ARP Act requires an SEA to reserve not less than 5 percent of the State's grant to carry out, directly or through subgrants or contracts, activities to address the academic impact of lost instructional time by supporting the implementation of evidence-based interventions. Similarly, section 2001(e)(1) of the ARP Act requires each LEA to reserve not less than 20 percent of its ARP ESSER allocation to address the academic impact of lost instructional time. Please note that these reserves are only minimum requirements; spending a larger share of funds for this purpose is allowable and may be necessary to address the needs of students.

The interventions implemented through these reservations must be evidence-based (see FAQ A-10) and may include such activities as summer learning or summer enrichment, extended day, comprehensive after-school programs, tutoring, extended school year programs, and innovative approaches to providing instruction to accelerate learning. Further, SEAs and LEAs must ensure that the interventions implemented respond to students' social, emotional, mental health, and academic needs and address the disproportionate impact of the COVID-19 pandemic on students from low-income families, students of color, children with disabilities, English learners, migratory students, students experiencing homelessness, and children and youth in foster care.

ESSER and GEER funds may also be used to provide a variety of activities and supports to help improve the achievement of students to address the impact of lost instructional time due to the COVID-19 pandemic. For example, funds may be used for costs associated with evidence-based approaches to accelerating learning, high-dose tutoring, leveraging technology to provide embedded assessment and differentiated instruction, diagnostic and curriculum-embedded assessments, and extending the school day or year to provide additional time for student learning, enrichment, and support. These costs may include supplementing the salaries of educators and other qualified personnel to perform additional services. ESSER and GEER funds may also be used to support the costs associated with hiring additional teachers and teacher aides to provide intensive support to students. ESSER and GEER funds may further be used to provide professional development to educators on research-based strategies for meeting students' academic, social, emotional, mental health, and college, career, and future readiness needs, including strategies to accelerate learning without remediation or tracking.

For more information on using ESSER and GEER funds to address the academic impact of lost instructional time for students with disabilities eligible under IDEA, see FAQ C-5.

Effective strategies to address lost instructional time are further described in Volume 2 of the Department's COVID-19 Handbook, which is available at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

C-3. How may an LEA use ESSER and GEER funds to support students' social, emotional, mental health, and academic needs, including by hiring support personnel such as nurses, counselors, and social workers?

An LEA may use ESSER and GEER funds, including the 20 percent of ARP ESSER funds set aside to address the academic impact of lost instructional time, to support students' social, emotional, mental health, and academic needs, including by implementing school-wide strategies that enhance supports and interventions for students as well as targeted assistance for students who need such supports. For example, an LEA might hire additional personnel to prioritize student well-being and health by increasing

student access to teachers, nurses, guidance counselors, social workers, and other support personnel (including teachers' aides and paraprofessionals). An LEA might also address the needs of students arising from the COVID-19 pandemic by using ESSER and GEER funds to implement or expand arts programs, such as music programs, including purchasing instruments; expand sports programming so more students can participate; or initiate clubs, such as a robotic or STEM club.

LEAs should also work to ensure that schools are implementing instructional practices that are culturally responsive and that incorporate trauma-informed pedagogy in response to the COVID-19 pandemic. For example, LEAs with high concentrations of English learners may hire additional bilingual staff to address the social, emotional, mental health, and academic needs of English learners. ESSER and GEER funds may be used to support implemention of curriculum, including related professional development.

As noted in FAQs A-4 and A-9, in implementing evidence-based strategies to address the academic impact of lost instructional time through the ARP ESSER required reservation of funds, SEAs and LEAs must respond to students' social, emotional, mental health, and academic needs and address the disproportionate impact of the COVID-19 pandemic on students from low-income families, students of color, English learners, children with disabilities, migratory students, students experiencing homelessness, and children and youth in foster care.

Effective strategies to support student social, emotional, mental health, and academic development are further described in Volume 2 of the Department's COVID-19 Handbook available at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

Focusing on Student Groups Most Impacted by the Pandemic

Please note that the following FAQs provide examples of allowable uses of ESSER and GEER funds for specific groups of students. To the extent that these groups are also served by other Federal education programs, uses of funds under those programs, which are governed by specific programmatic requirements, may be more restrictive. The examples provided below with respect to one student group may also be implemented with respect to other student groups if the LEA determines it is necessary and reasonable to do so.

C-4. How may an LEA use ESSER and GEER funds to support English learners (also referred to as multilingual learners)?

In order to address the needs of English learners, an LEA may use ESSER and GEER funds to address the impact of lost instructional time and services, support culturally responsive instruction, and support family engagement activities.

To address the impact of lost instructional time, an LEA may use ESSER and GEER funds for a variety of activities, including:

- Extended-day and/or extended-year activities designed to recover lost instructional time as a result of the pandemic, including costs associated with transportation services to support English learners' access to these services.
- Providing language accommodations for English learners to increase their access to content, and/or their participation in programs and services.
- Activities that respond to the social and emotional learning needs of English learners, including professional development for teachers to support English learners—e.g., how to provide a welcoming, nurturing, and supportive learning environment whatever the learning mode; and strategies that increase student collaboration and enhance classroom community.

- Hire additional bilingual staff (including certified bilingual education teachers) to address the social, emotional, mental health, and academic needs of English learners.

To address and promote culturally responsive practices that leverage the assets of English learners and provide the essential scaffolds and supports, an LEA may use ESSER and GEER funds to provide professional development for staff (including administrators, teachers, guidance counselors, and other student services staff) that is focused on meeting the unique needs of English learners. For example, an LEA may use ESSER and GEER funds to provide professional learning:

- For content teachers on implementation of strategies to provide meaningful access to the content, to promote English language development, and to offer language accommodations during instruction in a variety of modes;
- For all teachers on formative assessment strategies to monitor the progress of English learners in content and language instruction;
- For guidance counselors and student service staff on asset-based scheduling practices that support meaningful access to core content classes;
- For administrators and teachers on vertical articulation and collaboration practices to support the successful transition of English learners in critical stages such as grades K-1, 5-6, and 8-9;
- Technology specifically focused on helping English learners access remote instruction or other tools that will help them better access the curriculum and provide enrichment; and
- PPE that helps facilitate language instruction (i.e., transparent masks).

To address and promote family engagement and dual capacity building for staff and families of English learners, an LEA may use ESSER and GEER funds to provide:

- Outreach to families of English learners during the COVID-19 pandemic that includes them as partners in education. For example, an LEA might provide support to help parents navigate online platforms, track student progress, and seek help/resources when needed. This may also include using ESSER and GEER funds for translation and interpretation services. The Department's Fact Sheet: Providing Services to English Learners During the COVID-19 Outbreak is a helpful tool that outlines States' responsibilities to English learners and their parents.
- Translation services to assist with communication around the COVID-19 pandemic, for example related to effective prevention and mitigation strategies, test screening, remote learning, and opportunities to address lost instructional time.

C-5. How may an LEA use ESSER and GEER funds to support the needs of children with disabilities under the IDEA?

As described in FAQs A-3 and A-15, ESSER and GEER funds may be used for any activity authorized by the IDEA.[15] LEAs should consider what services are needed to meet the needs of children with

[15] IDEA, 20 U.S.C. § 1400 et seq., consists of three parts: IDEA Part B includes requirements for formula grants to assist States in making available a free appropriate public education in the least restrictive environment to eligible children with disabilities in mandatory age ranges. Entitlement to a free appropriate public education (FAPE) begins at a child's third birthday and could last until the 22nd birthday, depending on State law or practice. IDEA Part B consists of the Grants to States Program authorized by IDEA section 611(f) for children with disabilities aged three through 21 and the Preschool Grants Program authorized by IDEA section 619(g) for children with disabilities aged three through five. IDEA Part C consists of the Grants for Infants and Families Program authorized by IDEA section 643(c) for making formula grants to assist States in providing early intervention services to infants and toddlers from birth through age two and their families (and at the State's option beyond age three until the school year following the child's third, fourth, or fifth birthday). IDEA Part D sections 650 through 682 includes provisions for making

disabilities, including children with disabilities who are English learners. In an Office of Special Education Programs (OSEP) question and answer document issued on September 28, 2020, OSEP reiterated the Department's long-standing position that under Part B of the IDEA, no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE)[16] is provided to all children with disabilities. Regardless of whether an SEA has provided explicit guidance on using ESSER or GEER funds, SEAs and LEAs may use these funds to provide additional instruction and services to children with disabilities, often referred to as compensatory services,[17] to address lost instructional time. A child's IEP Team would be required to make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost. See OSEP's questions and answers document issued on March 12, 2020. Similarly, States may use ESSER and GEER funds to make available early intervention services to those who were not provided such services consistent with a child's individualized family services plan (IFSP) as a result of disruptions in services due to the COVID-19 pandemic.[18]

In addition to the services outlined throughout this document, ESSER and GEER funds may be used for the following purposes consistent with the IDEA for children with disabilities. Please note that this is not an exhaustive list.

Services to support struggling learners under section 613(f) of IDEA Part B:

- Providing comprehensive coordinated early intervening services (CEIS) for children not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment, including:
    - Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
    - Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

Services to support children with disabilities age 3-21 under section 611 of IDEA Part B:

- Providing support and direct services for children with disabilities, including technical assistance, personnel preparation, and professional development and training;
- Implementing child find policies and procedures, including ensuring identification, location, and evaluation of children who may need special education and related services including underserved groups, such as children experiencing homelessness, migratory children, and highly mobile children;

discretionary grants to support State personnel development, technical assistance and dissemination, technology, and parent-training and information centers.

[16] FAPE is defined in 34 CFR § 300.17 as special education and related services that: (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of IDEA Part B; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with an IEP that meets the requirements of 34 CFR §§ 300.320 through 300.324. See also 20 U.S.C. § 1401(9).

[17] Some States refer to these services as "recovery services" due to the COVID-19 pandemic, although IDEA does not use this term.

[18] State lead agencies other than SEAs may also use ESSER and GEER funds through an interagency agreement or other written method with the SEA or Governor's office.

- Eliminating evaluation backlogs;[19]
- Addressing the loss of instructional time and loss of skills for children with disabilities, and determining on an individual basis, in accordance with applicable requirements, by the IEP Team whether compensatory services may be needed for a child with a disability who was unable to receive FAPE as a result of school closures or other disruptions in services due to the COVID-19 pandemic;
- Providing extended-school-year services as determined on an individual basis by a child's IEP Team to be necessary to provide FAPE to the student;
- Monitoring, enforcement, complaint investigations, and the mediation process, including providing for the costs of mediators and support personnel;
- Providing positive behavioral interventions and supports and mental health services for children with disabilities;
- Improving the use of technology in the classroom and/or in a remote setting for children with disabilities to enhance learning;
- Supporting the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;
- Implementing transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities;
- Assisting LEAs in meeting personnel shortages including by hiring additional personnel to provide special education and related services and reducing caseloads in key areas;
- Supporting capacity-building activities and improving the delivery of services by LEAs to improve results for children with disabilities;
- Developing programming for children with disabilities who have been expelled from school, children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools; and
- Increasing the number of high-need children with disabilities funded under a State's high-cost fund.

<u>Services to support preschoolers with disabilities aged 3 through 5 under section 619 of IDEA Part B</u>:

In addition to the activities listed above, as appropriate, ESSER and GEER funds may be used in:

- Implementing child find policies and procedures, including ensuring identification, location, and evaluation of children who may need special education and related services including underserved groups, such as children experiencing homelessness, addressing evaluation backlogs resulting from school closures, including eligibility determinations for children transitioning from the State's IDEA Part C program;
- Assisting LEAs in personnel shortages by hiring additional early childhood special education and related services providers;
- Assisting LEAs in meeting personnel training needs for preschool staff;
- Costs related to safely providing FAPE across a variety of preschool settings;
- Providing developmentally appropriate positive behavioral interventions and supports and mental health services for preschoolers with disabilities; and

[19] Activities may include contracting with additional evaluators to address backlogs, or the implementation of valid assessment or evaluation tools and instruments that can be administered reliably using a virtual platform, if necessary.

- Implementing transition activities, including coordination with the Part C program on the transition of children exiting Part C, and planning of services with schools for preschoolers entering kindergarten.

Services under IDEA Part C:

- Providing early intervention services to infants and toddlers with disabilities and their families;
- Supporting IDEA Part C personnel including service coordinators through technical assistance, personnel preparation, use of alternative delivery methods, and professional development and training;
- Implementing the State's child find system with a specific emphasis on addressing related issues of equity for historically underserved populations through outreach and coordination with child find partners, referral sources, and other Federal programs for infants and toddlers and expanding referral sources through training and education.
- To make available early intervention services to those infants and toddlers with disabilities and their families that were not provided such services consistent with a child's IFSP as a result of public agency closures and/or other disruptions in services as a result of the COVID-19 pandemic.
- Addressing any 45-day timeline backlogs including the child and family assessment and evaluation of the child to determine eligibility;
- Improving the use of technology to deliver IDEA Part C services and improve use of tele-intervention by early intervention service (EIS) providers;
- Providing developmentally appropriate positive behavioral interventions and supports and mental health services for infants and toddlers with disabilities and their families;
- Implementing early childhood transition, including coordinating with the Part B preschool program and the SEA;
- Assisting EIS providers and programs in meeting personnel training needs and provider shortages through hiring addition EIS and related service providers;
- Monitoring and enforcing IDEA requirements, and conducting dispute resolution (including complaint investigations and conducting mediations); and
- Conducting outreach to parents and families of infants and toddlers with disabilities.

Services under IDEA Part D:

States may choose to contract with existing IDEA Part D grantees to provide additional services, consistent with the scope of work funded under the specific grant program, to support children with disabilities. Examples include, but are not limited to, providing additional funding for:

- State-specific services provided by the State's Parent Training and Information Center or Community Parent Resource Center;
- State-specific professional development services provided by the State's State Personnel Development Grant, if applicable;
- State-specific services provided by Part D technical assistance center grantees such as the Center on Positive Behavioral Interventions and Supports, the National Center on Intensive Intervention, the National Deaf Center, etc.;
- Personnel preparation programs focused on increasing the number of qualified special education teachers, related services providers, and faculty; and
- Additional State-specific services provided by Part D technology centers to enhance access to instruction.

C-6. How may an LEA use ESSER and GEER funds to support students with disabilities who are not IDEA-eligible but who receive services in accordance with a Section 504 plan?

Under section 504 of the Rehabilitation Act of 1973 (Section 504), a recipient that operates a public elementary or secondary education program must provide FAPE to all qualified students with disabilities in the recipient's jurisdiction, regardless of the severity of the student's disability. See 34 CFR §§ 104.33-104.36. An appropriate education under Section 504 includes the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met and are based on adherence to requirements governing least restrictive setting, evaluation and placement, and procedural safeguards. Specialized instruction and services necessary to ensure FAPE under Section 504 must be provided at no cost to parents. ESSER and GEER funds may be used for the provision of required educational and related aids and services determined necessary to ensure the provision of FAPE to students with disabilities who are not eligible under IDEA but receive services in accordance with a Section 504 plan. In addition, ESSER and GEER funds may be used to provide additional instruction and services to students with Section 504 plans who are not IDEA-eligible, often referred to as compensatory services, to make up for any skills that might have been lost if it is individually determined in accordance with respective applicable standards that the student was unable to receive FAPE as a result of the closure of school buildings or other disruption in services as a result of the COVID-19 pandemic.

C-7. How may ESSER and GEER funds be used to support students experiencing homelessness?

ESSER and GEER funds may be used for services and interventions specifically tailored to meet the needs of students experiencing homelessness[20] including, for example:

- Outreach and service delivery;
- Mental health services and positive behavioral interventions and supports; and
- Planning and implementing summer learning and after-school programs addressing the needs of students experiencing homelessness.

An LEA may use ESSER and GEER funds to ensure that all students experiencing homelessness are identified and fully participate in school on the same basis as their peers through, for example, outreach, training, and community collaborations. For example, an LEA may use ESSER and GEER funds for the following purposes:

- To increase the FTE hours of the homeless liaison designated under McKinney-Vento;
- To assign building-level contacts (particularly in highly impacted schools);
- To increase specialized support staffing, such as counselors, social workers, and others who are specifically trained in outreach and services for students experiencing homelessness; and
- To provide transportation services to ensure access to after-school or summer learning and enrichment programs.

[20] ESSER I, ESSER II, GEER I, and GEER II funds are specifically authorized to be used for activities authorized under McKinney-Vento. Although ARP ESSER funds are not specifically authorized for that purpose, they may be used for any activity allowable under the Impact Aid program under Title VII of the ESEA, which includes allowable activities under McKinney-Vento.

An LEA should coordinate the use of ESSER and GEER funds with other education funds used to support homeless students such as McKinney-Vento and part A of title I of the ESEA to ensure a comprehensive approach to meeting those students' needs.

Please note that ESSER and GEER funds should be used to address the specific needs of students experiencing homelessness, just as they are intended to meet the needs of other underserved groups of students and other groups of students most impacted by the COVID-19 pandemic. The ARP Act also includes an additional $800 million to support the needs of students experiencing homelessness, and these resources should be additive to the supports and services provided under ESSER and GEER.

C-8. How may an LEA use ESSER and GEER funds to serve children and youth in foster care?

The COVID-19 pandemic has caused unique challenges for students in foster care and their caregivers. For example, the pandemic has caused increased disruptions in students' living placements and, as a result, school placements; students often have inconsistent access to schoolwork and classes, as foster and kinship caregivers often have limited access to and knowledge about the technology needed for virtual instruction; and schools face challenges in providing the supplemental education services required by students in foster care.

ESSER and GEER funds may be used broadly to address the needs of students in foster care during the COVID-19 pandemic. As a result, LEAs have considerable flexibility in using ESSER and GEER funds to address the unique needs of students in foster care. While specific uses of funds depend on the local context and the unique needs of students and caregivers, ESSER and GEER funds might be used to support the following activities:

- Transporting students in foster care to their respective schools of origin where LEAs are offering in-person learning, hybrid learning, or supplemental instruction/coaching opportunities;
- Purchasing technology (including laptops, Wi-Fi hotspots, or tablets) that enable students in foster care to consistently access instruction;
- Providing academic supports—including tutoring or supplemental instructional opportunities—to meet the unique learning needs of students in foster care;
- Helping students and/or caregivers meet their basic needs, including access to meals and hygienic supplies (such as masks or hand sanitizer); and
- Meeting rising mental health and behavioral needs (for example, contracting with community mental health providers to support students virtually and/or on-site at school).

LEAs should coordinate with State and local child welfare agencies to identify and streamline, where possible, the supports provided to students in foster care and their caregivers. As always, intentional coordination between educational agencies and child welfare agencies remains essential to supporting students in foster care and their caregivers during the COVID-19 pandemic.

C-9. How may an LEA use ESSER and GEER funds to support migratory students?

ESSER and GEER funds may be used to address needs of migratory children by providing support such as:

- Supplemental instruction to address the academic impact of lost instructional time, provided through before- and after-school programs, weekend programs, or summer programs;
- Facilities for students to access a reliable internet connection needed for remote learning;
- Fees that might be required to access drop-in centers operated by community organizations;
- Transportation of migratory children to school or drop-in centers and other facilities where students may access necessary technology and/or instructional support;
- Staff to assist migratory students in their homes during school hours with schoolwork and provide technology support as needed;
- Staff to go to housing sites to provide high school equivalency instruction for migratory out-of-school youth;
- Provision of childcare and/or early childhood education programs for younger migratory children who would otherwise be cared for by older, school-age siblings during school hours due to their parent/guardian(s)'s employment as an essential worker;
- Providing information and assistance, including interpreters and translated information, to parents and families on how they can effectively support their migratory children, including in a distance-learning environment;
- Mental health services and other forms of social, emotional, and behavioral support for migratory children;
- Outreach and information for migratory families to help them access COVID-19 testing and vaccines, including provision of transportation, interpreters, and translated information as needed; and
- Outreach activities to help ensure migratory children are enrolled in school, attend regularly, and are engaged in online learning.

C-10. How may ESSER and GEER funds support students who are in correctional facilities, including those who are served under the Title I, Part D programs for students who are neglected, delinquent, or at risk?

The COVID-19 pandemic has presented unique challenges in providing educational services in secure correctional facilities. ESSER and GEER funds may be used in a variety of ways to support these students, just as they may be used in regular school settings. For example, ESSER and GEER funds could be used to support distance learning through technology and broadband improvements, and professional development for educators on the effective use of technology. Funds could also support technology to allow youth to meet virtually with family and meet with personnel to address students' academic, social, emotional, behavioral, and mental health needs due to the COVID-19 pandemic; to improve on-site library resources; and provide instructional supports that address lost instructional time, such as high-quality tutoring or leveraging technology for formative and diagnostic assessment and differentiated instruction. Funds could be used for materials and services that support postsecondary education access and career development and job placement, which might also have been impacted due to the COVID-19 pandemic. ESSER and GEER funds could also be used for materials and services that support adult and career and technical education in correctional facilities. This includes integrated education and training programs, career pathway initiatives, pre-apprenticeships, apprenticeships, postsecondary education

access and career development and job placement, which all might have been impacted due to the COVID-19 pandemic.

Interventions and Strategies for Consideration

C-11. How may an LEA use ESSER and GEER funds to address chronic absenteeism?

ESSER and GEER funds may be used to implement data-driven strategies to address chronic absenteeism, which has increased as a result of the COVID-19 pandemic. These include outreach to students and families, accelerating learning for students with significant amounts of lost instructional time during the COVID-19 pandemic, and other intensive social, emotional, mental health, and academic supports. Effective strategies to address chronic absenteeism and reengage students are further described in Volume 2 of the Department's COVID-19 Handbook available at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

In addition, to guide LEA decision-making around which strategies to implement, ESSER and GEER funds may be used to develop data quality systems that will assist LEAs with such activities as:

- Establishing a common definition of what constitutes a day of attendance across all modes of instruction, including in-person, remote, virtual synchronous, and asynchronous;
- Tracking daily attendance and determining whether absences occur during in-person, synchronous, or asynchronous settings;
- Monitoring and publishing disaggregated data on the number of students who are absent 10 percent or more of the time;
- Conducting research and analyzing data to determine which attendance metrics are associated with lower academic performance in distance or hybrid learning.
- Creating early warning systems based on key student indicators, including chronic absenteeism, credit accumulation, course grades, and discipline rates, to identify students who are at risk of dropping out of school.

C-12. How may an SEA or LEA use ESSER and GEER funds to improve its data systems and its transparency when reporting to the public?

It is important that parents, educators, and the public have accurate and meaningful information about how students are learning during and after the pandemic and what learning opportunities are available. In addition to their primary purposes of ensuring that schools can reopen safely and addressing students' social, emotional, mental health, and academic development, ESSER and GEER funds may be used for data collection and the creation of State- or LEA-level data dashboards that provide public reporting when the reporting is related to the COVID-19 pandemic (e.g., establishing new collections or dashboards that specifically address lost instructional time)—disaggregated to the greatest extent possible by race/ethnicity, economic status, English learner status, disability status, homelessness status, and other factors—on critical measures including:

- School instructional offerings by modality (e.g., open full-time in-person for all students, remote option available for all students);
- Student enrollment rates by school and by instructional modality (open for full-time in-person instruction, open for hybrid instruction, and fully remote learning);
- Student attendance rates by school and by instructional modality;
- Chronic absenteeism rates by school and by instructional modality;

- Rate of student participation logging into remote learning for students in fully remote or hybrid learning environments by school;
- The average number of hours of live instruction by grade span (for students in fully remote or hybrid learning environments) by school by month;
- A measure of students and educators who have adequate technology (devices and high-speed internet access) for remote instruction;
- A measure of the distribution of school meals by school;
- Reporting on impacts of the COVID-19 pandemic on States' collection of data for the State Performance Plans and Annual Performance Reports as required by section 616 of the IDEA;
- Other opportunity-to-learn indicators such as discipline rates, access to advanced coursework, teacher turnover and quality data (e.g., experience, certification, access to professional learning); access to guidance counselors, social workers, psychologists, and nurses; and
- Student learning across multiple measures, including assessments.

SEAs and LEAs may also use administrative funds for this purpose.

C-13. How may an LEA use ESSER and GEER funds to support full-service community schools?

An LEA may use ESSER and GEER funds to provide services and supports to students and families through evidence-based, full-service community schools. The ARP Act defines a full-service community school as it is defined in section 4622 of the ESEA: a public elementary school or secondary school that (A) participates in a community-based effort to coordinate and integrate educational, developmental, family, health, and other comprehensive services through community-based organziations and public and private partnerships; and (B) provides access to such services in school to students, families, and the community, such as access during the school year (including before-and after-school hours and weekends), as well as during the summer. Evidence-based community school approaches include integrated student supports, active family and community engagement, expanded learning time opportunities, and collaborative leadership and practices. Using ESSER or GEER funds to support full-service community schools can help support students' social, emotional, mental health, and academic development and other basic needs. Additionally, LEAs may utilize funds in the development or expansion of in-school student support centers that provide mentoring, counseling, and social and emotional learning supports to students in individual or group sessions.

C-14. How may an LEA use ESSER and GEER funds to support mental health services for students and educators facing COVID-19 pandemic-related trauma?

An LEA may use ESSER and GEER funds to provide mental health services and supports for students and their families, teachers, and LEA staff who are experiencing COVID-19 pandemic-related trauma, including students who were experiencing trauma prior to the pandemic that may have been exacerbated by the pandemic. Funds may also be used to provide professional development and training that increase awareness of mental health literacy for teachers and staff. Many schools already implementing multi-tiered supports may integrate mental health strategies and interventions into these existing systems. LEAs may also use the funds to hire additional school psychologists and counselors to provide the services or to contract for such services for students, educators, and other district staff. ESSER and GEER funds may also be used to provide student and educator access to online counseling services and other mental health supports. Funds may be used to provide resources and information to students and families to provide a

greater understanding of mental health and address any stigma associated with mental health that may be a barrier to accessing services even when available.

ESSER and GEER funds may also be used to evaluate students who may have a disability under IDEA and Section 504, including those who have mental health-related needs as a result of their disability. These funds also may be used to provide services and supports that are individually determined as necessary to provide FAPE to an eligible student, commonly referred to as related services,[21] under IDEA or Section 504, as applicable. Please also refer to section I in volume 2 of the Department's COVID-19 Handbook.

More information on providing safe and supportive learning enviroments, including addresing student and educator mental health, is available at the National Center on Safe and Supportive Supportive Learning Environments website, available at: https://safesupportivelearning.ed.gov/. More information on improving school climate and school safety through the implementation of positive behavioral interventions and supports is available at the Center on Positive Behavioral Interventions and Supports, available at: https://www.pbis.org/.

C-15. How may an LEA use ESSER and GEER funds to support evidence-based literacy programs?

As noted in FAQs A-4 and A-9, SEAs and LEAS must implement evidence-based strategies to address the academic impact of lost instructional time through the required ARP ESSER reservation of funds. Many parents and educators are especially concerned about the loss of in-person instructional time on students' early literacy skills. ESSER and GEER funds may be used to support comprehensive State and local literacy programs that are needed due to the COVID-19 pandemic (e.g., to address loss of literacy skills as a result of the pandemic). It is important that LEAs invest in evidence-based practices to support learners, including in early literacy, whether they are learning remotely or in person. SEAs and LEAs may also use ESSER and GEER funds for multi-tiered systems of support for English learners and to provide specially designed instruction for students with disabilities for literacy development and language acquisition. Funds may also be used for parent training and family literacy services in the use of early learning strategies that bring in the child's environment and experiences to promote literacy skills. Effective strategies to support student learning are further described in Volume 2 of the Department's COVID-19 Handbook available at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

C-16. May an LEA use ESSER and GEER funds to provide meals for students?

Typically, an LEA has other means of providing for food services, such as through the U.S. Department of Agriculture (USDA) or other Federal programs. As a result, the Department encourages LEAs to use those Federal funds with the specific purpose of providing food services to students prior to using ESSER or GEER funds for this purpose. However, if additional funds are necessary or such funding is not available, an LEA may use ESSER and GEER funds to provide meals. For example, ESSER or GEER funds could be used to increase the staff capacity and cover additional labor costs associated with serving meals to students during the pandemic, or for supporting COVID-19 pandemic-related expenses, such as school meal service equipment/supplies, meal packaging, and transportation services.

Please note that the USDA has provided nationwide flexibilities and waivers including allowing meals to

[21] See the definition of "related services" in the IDEA at 20 U.S.C. 1401(26) and 34 CFR § 300.34; see also Appendix A to 34 CFR Part 104, Para. 23. Possible related services include psychological services, school health and school nurse services, social work services in schools, counseling services, parent counseling and training, and medical services provided by a licensed physician for diagnostic and evaluation purposes only.

be served in a drive-thru or walk-up setting, offered as "grab and go" meals. Multiple meals (i.e., breakfast, lunch, snack, and dinner) can be provided as well as multiple days' worth of meals at a time, regardless of whether they are tied to an educational or enrichment activity, and meals can be provided to parents or guardians without the presence of a child. Further, on April 20, 2021, USDA announced the nationwide extension of several waivers that allow all children to continue to receive meals during the summer and that allow for safe meal distribution sites that serve all children for free regardless of income. Many flexibilities have been extended through school year 2021-2022 (see: https://www.fns.usda.gov/disaster/pandemic/cn-2021-22-waivers-and-flexibilities). In addition, USDA is expanding the Pandemic Electronic Benefit Transfer (P-EBT) program to support low-income families with children and replace the value of school meals missed when schools are closed. On January 22, 2021, USDA announced that it would increase the P-EBT benefit by approximately 15 percent. Additionally, the ARP Act expands P-EBT to any school year in which there is a public health emergency designation as well as during summer months.

C-17. How may an LEA use ESSER and GEER funds to specifically support high school seniors?

ESSER and GEER funds may be used to assist high school seniors with post-high school planning, including the additional costs to schools of providing these supports to students in a fully in-person, hybrid, or remote environment. For example, ESSER and GEER funds may be used to pay college application fees for low-income students or to support the salaries of additional guidance counselors to assist students with exploring options for careers and postsecondary study, navigating the college application process, completing the Free Application for Federal Student Aid (FAFSA), and conducting parental and student information sessions. Funds may also be used for stipends or incentives for educators taking on additional responsibilities to provide post-high school planning for high school seniors, consistent with 2 CFR § 200.430(f) (i.e., incentive pay is given pursuant to an established plan, which could be established in response to the COVID-19 pandemic). Funds may also be used to support summer bridge programs to help students make the successful transition to postsecondary education, training, pre-apprenticeship, registered apprenticeship, or other career pathway programs. Finally, ESSER and GEER funds may be used for transition services for high school seniors with an IEP to facilitate their transition from school to post-school activities.

C-18. May an LEA use ESSER and GEER funds to support students who graduated high school in the class of 2020 (and students who will graduate in 2021) who have not yet successfully transitioned to college or careers?

Yes. Consistent with Perkins V, an LEA may use ESSER and GEER funds to support former students who graduated high school in the class of 2020 or who will graduate in 2021 (i.e., during the pandemic) but have not yet successfully transitioned to college or careers. For example, an LEA may provide college or career counseling, assistance with college applications or entry into job training programs, job training, post-secondary counseling and related services, including for associate and baccalaureate degree programs, and financial literacy.

C-19. May an LEA use ESSER and GEER funds to support distance learning, including the purchase of educational technology for student use?

Yes. An LEA may use ESSER and GEER funds for activities that support distance education and promote long-term improvements in technology infrastructure and operations and their effective use. These activities might include providing online learning to all students, including students with disabilities, English learners, students experiencing homelessness, and students in foster care; and training educators

in the effective implementation of online learning. To support the continuity of learning, an LEA may use ESSER and GEER funds to purchase educational technology for student and educator use, including:

- Mobile technology devices such as tablets and laptops;
- Providing off-campus access to reliable, high-speed internet for students and teachers through the purchase of internet-connected devices/equipment, mobile hotspots, wireless service plans, or installation of Community Wi-Fi Hotspots, especially in underserved communities;
- Teleconferencing applications or programs;
- Software/online/virtual programs, screen capture/recording software, online/virtual cultural curriculum/programs, online/virtual tutoring curriculum/programs, learning management systems;
- Technology accessories, such as headphones, speakers, laptop cameras; and
- Assistive technology devices,[22] such as dedicated communication devices and applications for text-to-speech, graphic organizers, or word prediction.

Supporting distance learning requires the effective use of technology by educators. Funding may also be used to provide professional development, including through professional learning communities, to support educators in effectively using technology to provide meaningful learning opportunities for students that are aligned with grade-level expectations. Funds may also be used to support other school personnel such as speech therapists, guidance counselors, and social workers, to effectively provide student services virtually as needed.

C-20. May an LEA use ESSER and GEER funds for a pre-kindergarten or other early childhood education program?

Yes. Because an early childhood education program is an allowable use of funds under the ESEA and IDEA, it is allowable under ESSER and GEER. An "early childhood education program" is (1) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding; (2) a State licensed or regulated child care program; or (3) a program that serves children from birth through age six that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and is either: a State prekindergarten program; a program authorized under section 619 or Part C of the IDEA (see FAQ C-5); or a program operated by an LEA. (See section 8101(16) of the ESEA.) In addition, ESSER funds may be used for other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA. As a result, ESSER funds could be used to prevent layoffs or service cuts to existing LEA early childhood education programs.

C-21. May ESSER and GEER funds be used to serve adults, including English learners, who are eligible to be served under the Adult Education and Family Literacy Act?

Yes. An LEA may use ESSER and GEER funds for any activity authorized by the Adult Education and Family Literacy Act (AEFLA), which is Title II of the Workforce Innovation and Opportunity Act. These activities could include:

[22] IDEA defines "assistive technology device" as any item, piece of equipment, or product system, whether acquired commercial off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device. 34 CFR § 300.5.

- Conducting outreach activities to re-enroll eligible adults who may have discontinued their attendance due to the COVID-19 pandemic;
- Providing career counseling for eligible adults who suffered job loss as a result of the COVID-19 pandemic;
- Purchasing technology (including laptops, Wi-Fi hotspots, or tablets) that enable adult learners to access virtual instruction;
- Professional development for adult education instructors in the effective implementation of online learning;
- Providing instruction to improve digital literacy of adult learners, including English learners, to improve digital access and inclusion;
- Assessing the skills and educational progress of adult learners using virtual assessment tools; and
- Accessing PPE and cleaning and disinfecting classrooms used during the regular school day so that they may be used for adult education and literacy activities in the evening.

C-22. May ESSER and GEER funds be used for career and technical education?

Yes. An LEA may use ESSER and GEER funds for any activity authorized by Perkins V. These activities could include, for example:

- Updating the comprehensive local needs assessment required by section 134(c) of Perkins V to reflect changes in the labor market caused by the COVID-19 pandemic;
- Providing ridesharing services to transport students to shared-time area career and technical education centers or work-based learning opportunities;
- Adjusting curriculum to account for the academic impact of lost instructional time or to cover technical skills that could not be addressed during remote instruction;
- Providing professional development on the delivery of remote classroom instruction and virtual or remote work-based learning opportunities;
- Purchasing remote test-proctoring services so that students can participate remotely in assessments for industry-recognized credentials;
- Implementing simulated work-based learning or school-based enterprises to replace work-based learning opportunities that are no longer available in the community due to the COVID-19 pandemic;
- Providing support to low-income students for college application fees; and
- Supporting students who graduated high school in the class of 2020 and students who will graduate in the class of 2021 (i.e., during the pandemic) but have not yet successfully transitioned to college or careers by providing, for example, college or career counseling, assistance with college applications, entry into job training programs, and financial literacy.

C-23. May ESSER and GEER funds be used to re-engage students who have not been able to participate in in-person and/or remote instruction during the COVID-19 pandemic?

Yes. LEAs should identify opportunities to re-engage students whose schools have not been successful in engaging them during the COVID-19 pandemic. LEAs may use indicators such as chronic absenteeism (during in-person and/or remote instruction) to identify students in need of targeted support and services, as well as more generally identifying which students have lost the greatest number of in-person instructional days since the beginning of the COVID-19 pandemic. ESSER and GEER funds may be used to provide academic, social, emotional, behavioral, and, in particular, mental health supports to address the impacts of isolation during this period. In addition, ESSER and GEER funds may be used to conduct child find activities to identify, locate, and evaluate students who are suspected of having disabilities and need special education and related services under the IDEA. ESSER and GEER funds may also support

broader activities that re-engage disconnected youth and reduce community violence in places where the COVID-19 pandemic has exacerbated inequities, leading to increases in the number of disconnected youth and violence. This may include summer learning and enrichment programming targeted towards the needs of high school students most likely to be impacted by community violence.

C-24. May ESSER and GEER funds be used to implement community violence intervention strategies?

Yes. Community violence intervention (CVI) strategies address students' social, emotional, mental health, and academic development and are especially important in the context of the disproportionate impact of the COVID-19 pandemic on previously underserved groups of students.

Purposeful strategies to re-engage disconnected youth through youth violence reduction programs, mentorship, and strengthening youth skills through workforce engagement and training also have the potential to reduce community violence. Effective strategies are further described in Volume 2 of the Department's COVID-19 Handbook available at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

Additional information on CVI strategies and investments is included in the Administration's Fact Sheet available at: https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/.

Summer Learning and Enrichment

C-25. What kinds of summer programs may ESSER and GEER funds support?

ESSER and GEER funds may provide broad support for summer learning and enrichment programs. Given that this summer affords students a critical opportunity, LEAs should consider a variety of options for procuring summer services with ESSER and GEER funds, including programs run by non-profit or community organizations as well as those run by the LEA. Effective summer programming can address students' social, emotional, mental health, and academic needs through a combination of activities that include strong partnerships with community-based organizations and other summer providers, including summer camps. These partnerships can help to sustain these programs and can also support programs in rural and remote communities. States and LEAs should maximize enrollment in summer programs, with a particular focus on underserved students and students most impacted by the COVID-19 pandemic, including providing transportation and meal services. Programs should target students of all ages, including high school students, and can include work-based or service-learning opportunities or summer bridge programs to support successful educational transitions.

Moreover, an SEA must reserve at least 1 percent of its total ARP ESSER allocation for evidence-based summer enrichment programs, and LEAs must reserve at least 20 percent of their ARP ESSER funds to address the academic impact of lost instructional time through the implementation of evidence-based interventions, which may include summer programs, particularly to address the disproportionate impact of the COVID-19 pandemic on underserved student subgroups.

Evidence-based summer learning and enrichment programs are further described in Volume 2 of the Department's COVID-19 Handbook available at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

C-26. May ESSER and GEER funds be used for summer job or service-learning programs for high school students?

Yes. As part of State and LEA efforts to mitigate lost instructional time due to the COVID-19 pandemic, ESSER and GEER funds may be used to support summer learning and enrichment programs that provide training, work-based learning, and jobs to high school students. Funds may be used both to support the training that high school students receive and to supplement the pay provided to students by employers that participate in the summer jobs program. Funds may also be used to support service learning or other volunteer opportunities for high school students.

C-27. Do Federal procurement requirements permit noncompetitive procurements, if necessary, to enable an SEA or LEA to use ARP ESSER funds to operate a summer enrichment program in 2021?

Yes. Under the Uniform Guidance in 2 CFR § 200.317, an SEA, "[w]hen procuring property and services under a Federal award, must follow the same policies and procedures it uses for procurements from its non-Federal funds." Thus, an SEA is authorized under the Uniform Guidance to use any authority provided for in its State procurement policies and procedures that allows for noncompetitive procurements. For example, if an SEA has flexibility under its State procurement procedures to allow a sole source contract, particularly during an emergency such as the COVID-19 pandemic, the SEA may procure contracts with ARP ESSER funds in accordance with that flexibility.

Under the Uniform Guidance, all other non-Federal entities, including LEAs, must follow the procurement provisions in 2 CFR §§ 200.318 through 200.327. Under 2 CFR § 200.320(c), an LEA may, to the extent doing so is consistent with its policies and procedures, use noncompetitive procurement if any of the following conditions are met:

1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold ($50,000);
2. The item is available only from a single source;
3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
4. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
5. After solicitation of a number of sources, competition is determined inadequate.

Consistent with 2 CFR § 200.320(c)(3), an LEA may determine that its response to the COVID-19 pandemic qualifies as a public exigency or emergency that does not permit the delay that would result from competitive bidding. Under these circumstances, and to the degree doing so is consistent with its own policies and procedures, an LEA could use noncompetitive procurement. The LEA should consult with its SEA before using this authority. Also, under 2 CFR § 200.320(c)(4), an SEA, to the extent doing so is consistent with its State procurement policies and procedures, may authorize an LEA to use noncompetitive procurement in response to a written request. In the alternative, the Department may grant similar flexibility.

D. Using ESSER and GEER Funds to Support Educators and Other School Staff

D-1. May an LEA use ESSER and GEER funds to stabilize and support the educator workforce?

Yes. An LEA may use ESSER and GEER funds to stabilize and support the educator workforce and to support the conditions that will allow schools to return to in-person instruction. This may include using funds to pay teacher salaries and avoid layoffs. Funds may also be used to address educator shortages exacerbated by the pandemic by hiring new teachers, including expanding student access to a well-prepared and diverse educator workforce. Examples of strategies that could be employed to stabilize and support the educator workforce include:

- Supporting partnerships with educator preparation programs to expand opportunities for extensive clinical experience to teaching candidates, including leveraging candidates to provide additional support to students and address the impact of lost instructional time as students return to in-person instruction;
- Providing ongoing support to recruit, hire, and retain a diverse school staff, including through high-quality induction and mentoring programs;
- Offering supplemental financial support for educators who commit to working in a high-need field or school for a minimum number of years (e.g., four years);
- Providing teachers professional learning opportunities on strategies for the effective use of technology for remote, hybrid, and accelerating learning; or
- Creating and/or supporting educational assistance programs that pay off student loans on behalf of staff as a component of recruitment and retention effiorts in response to the pandemic.

In using these funds, an LEA should consider ways that will build short- and long-term capacity and be sustained after the funding is no longer available.

Evidence-based approaches to stabilizing the educator workforce are further described in Volume 2 of the Department's COVID-19 Handbook available at: https://www2.ed.gov/documents/coronavirus/reopening-2.pdf.

D-2. May an LEA use ESSER and GEER funds to hire additional health support staff?

Yes. Funds may be used to hire new counselors, nurses, social workers, and other health support staff to help students and staff with their emotional and physical well-being and help students and staff deal with the impact of the COVID-19 pandemic. An LEA should consider how to use the funds in ways that will build its short- and long-term capacity and be sustained after the funding is no longer available.

D-3. Must an entity that receives ESSER or GEER funds under the CARES Act or CRRSA Act continue to pay employees and contractors, to the greatest extent practicable, during the period of any disruptions or closures related to COVID-19?

Yes. SEAs, LEAs, and any other entity that receives ESSER I, ESSER II, or GEER funds must assure that they will continue to pay employees and contractors during COVID-19 pandemic-related disruptions or closures to the greatest extent practicable. There is no similar requirement in the ARP Act; however, ARP ESSER funds may be used to continue to pay employees and contractors. In addition, ESSER and GEER funds may be used to hire new staff and to avoid staff layoffs. See FAQ A-16 for information on

requirements related to documentation for personnel expenses in the Uniform Guidance (2 CFR § 200.430(i)).

D-4. May an LEA use ESSER and GEER funds to pay overtime to its salaried custodians and other staff in order to prepare for a safe reopening of schools and sustain safe school operations?

Yes. Paying custodians or other staff overtime to safely reopen schools and to keep the schools safely open is allowable under ESSER and GEER.

D-5. May an LEA use ESSER and GEER funds to provide childcare services or instructional supervision to the children of teachers and other staff in order to enable them to return to their teaching or other school responsibilities?

Yes. An LEA may use ESSER and GEER funds for the costs associated with providing childcare and instructional supervision to children of teachers and staff, so long as certain conditions are met. For example, an LEA might contract with a daycare provider to make spaces available for teachers with young children whose regular daycare services are unavailable due to the COVID-19 pandemic so that those teachers can continue to provide educational services to students. An LEA might also provide a retention incentive to teachers with young children that could offset the cost for childcare in order to retain those teachers, which is an allowable use of funds under part A of title II of the ESEA, if teacher retention is a challenge due to the COVID-19 pandemic.

D-6. May an LEA use ESSER and GEER funds to provide "premium pay" or other additional compensation for teachers, principals, and other school personnel, including school nutrition staff and custodians?

Yes. Premium pay must be reasonable and necessary and consistent with 2 CFR § 200.430(f), and given pursuant to an established plan (which could be established in response to the COVID-19 pandemic), consistent with applicable collective bargaining agreements and other relevant policies and requirements.

D-7. May an LEA that has experienced significant, unbudgeted increases in unemployment costs use ESSER and GEER funds to pay for those costs?

Yes. An LEA may use ESSER or GEER funds to pay for unemployment costs if necessary. However, an LEA may want to consider alternate sources of funding for the unemployment expenses, and use ESSER and GEER funds for more traditional education uses to prevent, prepare for, or respond to the COVID-19 pandemic. Additionally, as with all grant activities, the use of funds must meet all applicable Uniform Guidance requirements, and be reasonable and necessary to meet the purpose of the programs.

E. Additional Fiscal Considerations

Timelines for Obligating Funds

E-1. What is the timeline for a Governor, SEA, or LEA to obligate funds under ESSER I and GEER I?

A Governor, SEA, or LEA, as applicable, has until September 30, 2022, to obligate the ESSER I and GEER I funds it receives. This includes the 12-month Tydings Amendment period. (Note that the timeline for obligating funds is distinct from the timeline for a State to award funds within one year of receipt or return them to the Department for reallocation (sections 18002(d) and 18003(f) of the CARES Act).) For additional information on awarding and obligating funds, please see Question 10 in the ESSER FAQs available at: https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf and Question A-19 in the GEER FAQs available at: https://oese.ed.gov/files/2020/10/FAQs-GEER-Fund.pdf. Although funds must be obligated by September 30, 2022, grant activities carried out through a valid obligation of funds may continue beyond that date. Under 2 CFR § 200.344(a), ESSER funds must be liquidated within 120 calendar days after the end of the performance period.

E-2. What is the timeline for a Governor, SEA, or LEA to obligate funds under ESSER II and GEER II?

A Governor, SEA, or LEA, as applicable, has until September 30, 2023, to obligate the ESSER II and GEER II funds it receives. This includes the 12-month Tydings Amendment period. (Note that the timeline for obligating funds is distinct from the timeline for a State to award funds within one year of receipt or return them to the Department for reallocation (sections 312(f) and 313(g) of the CRRSA Act).) For additional information on awarding and obligating funds, please see Question 10 in the ESSER FAQs available at: https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf and Question A-19 in the GEER FAQs available at: https://oese.ed.gov/files/2020/10/FAQs-GEER-Fund.pdf. Although funds must be obligated by September 30, 2023, grant activities carried out through a valid obligation of funds may continue beyond that date. Under 2 CFR § 200.344(a), ESSER funds must be liquidated within 120 calendar days after the end of the performance period.

E-3. What is the timeline for an SEA or LEA to obligate funds under ARP ESSER?

An SEA or LEA has until September 30, 2024, to obligate the ARP ESSER funds it receives. This includes the 12-month Tydings Amendment period. Although funds must be obligated by September 30, 2024, grant activities carried out through a valid obligation of funds may continue beyond that date. Under 2 CFR § 200.344(a), ESSER funds must be liquidated within 120 calendar days after the end of the performance period (September 30, 2024).

Note that the timeline for obligating funds is distinct from the timeline for an SEA to make allocations to LEAs. Section 2001(d)(2) of the ARP Act requires an SEA to make allocations to LEAs in an expedited and timely manner and not later than 60 days after receipt of its award, to the extent practicable.

Additionally, the ARP Act requires that an SEA award its ARP ESSER funds within one year of receipt or return them to the Department for reallocation (section 2001(g) of the ARP Act). With respect to funds that an SEA must allocate to LEAs, an SEA will have met the requirement to award the funds within one year by meeting the requirement in section 2001(d)(2) of the ARP Act to make allocations to LEAs, in an expedited and timely manner and, to the extent practicable, not later than 60 days after receipt of its

award. For funds that an SEA reserves, the SEA must, within one year of receiving the funds, award the funds through grants or contracts or by retaining funds to provide direct services. For additional information on awarding and obligating funds, please see Question 10 in the ESSER FAQs available at: https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf.

Administrative Funds and Indirect Costs

E-4. May a Governor or SEA reserve ESSER or GEER funds for administrative costs?

Yes. An SEA may reserve ½ of 1 percent or less of its total ESSER allocation for administrative costs, including both direct and indirect administrative costs. This reservation must come from the portion of funds not required to be allocated to LEAs under the formula and is not subject to the requirement that funds be "awarded" within one year of receipt. Funds for administrative costs under ESSER I remain available to the SEA for obligation through September 30, 2022, while funds for administrative costs under ESSER II remain available to the SEA for obligation through September 30, 2023, and funds for administrative costs under ARP ESSER remain available to the SEA for obligation through September 30, 2024.

A Governor may charge as an expense to the GEER fund an amount that is reasonable and necessary to effectively administer the program consistent with cost principles in the Uniform Guidance. Administrative costs include costs (direct and indirect) involved in the proper and efficient performance and administration of the GEER fund. However, to maximize the funds available for services to students and the public, the Department encourages each Governor and subgrantee to minimize the amount of administrative costs charged to the program. Funds for administrative costs under GEER I remain available to the Governor for obligation through September 30, 2022, while administrative costs under GEER II remain available to the Governor for obligation through September 30, 2023.

E-5. May an LEA use ESSER or GEER funds to defray the costs of administering the program?

Yes. An LEA may charge as an expense to the ESSER or GEER fund an amount that is reasonable and necessary to effectively administer the program consistent with the cost principles in the Uniform Guidance. Administrative costs include costs (direct and indirect) involved in the proper and efficient performance and administration of ESSER or GEER funds. For example, an LEA may use ESSER funds to hire personnel to assist in the planning, implementation, and oversight of ESSER fund activities.

E-6. May a Governor or SEA determine what constitutes a reasonable and necessary amount of funds necessary for an LEA to effectively administer the program?

Yes. As part of its oversight of the GEER and ESSER funds, a Governor or SEA may determine the amount of ESSER or GEER funds an LEA may use for administration. For example, an SEA or Governor may establish a maximum percentage of funds that an LEA may use to administer the program, absent a demonstration by the LEA that it needs additional funds for administration.

E-7. May an SEA or LEA consolidate ESSER and GEER administrative funds?

Yes. Sections 8201(a) and 8203(a) of the ESEA permit SEAs and LEAs, respectively, to consolidate administrative funds under certain ESEA programs. The Secretary may designate additional programs from which administrative funds may be consolidated.

Under that authority, the Department designated ESSER I, ESSER II, ARP ESSER, GEER I, and GEER II funds and the Emergency Assistance to Non-Public Schools (EANS) program as programs under which an SEA or LEA, as applicable, may consolidate administrative funds.

An SEA may consolidate administrative funds under two or more of the ESSER I, ESSER II, and ARP ESSER funds, the EANS program, and the GEER I and GEER II funds without also consolidating other ESEA program administrative funds, as long as the SEA can demonstrate that the majority of its resources are derived from non-Federal sources.

Specifically, an SEA may consolidate the ½ of 1 percent of its ESSER I, ESSER II and ARP ESSER funds able to be reserved for State administration, the amount of EANS funds available for State administration, and, if the SEA is administering a portion of the GEER I or GEER II funds on behalf of the Governor, a reasonable and necessary amount of those funds. If the SEA consolidates administrative funds under these programs, it is not required to keep separate records for how it uses those administrative funds.

Consolidated administrative funds may be used to administer the programs included in the consolidation as well as for administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation.

An LEA may consolidate administrative funds under the ESSER I, ESSER II, ARP ESSER, GEER I, and GEER II funds with the approval of the SEA to administer the programs included in the consolidation and, as is the case with the consolidated State administrative funds, for administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation.

E-8. May an LEA charge indirect costs to its ESSER or GEER Fund subgrant?

Yes. Indirect costs and rates must comply with the Uniform Guidance and the Department's administrative regulations. (See 34 CFR §§ 76.560-76.563 on indirect costs.) Because the ESSER and GEER funds do not have a supplanting prohibition, an LEA may use its unrestricted indirect cost rate.

E-9. How might ESSER or GEER funds affect an SEA's or LEA's indirect cost recoveries?

To obtain indirect cost recoveries, an SEA or LEA is allowed to apply its currently negotiated indirect cost rate to obligations incurred under ESSER or GEER. The negotiated indirect cost rate for the current fiscal year is based on actual cost information from a prior fiscal year. Therefore, applying the currently negotiated indirect cost rate to the increased funding under ESSER or GEER (which was not considered in the indirect cost rate calculation) could result in an over-recovery of indirect costs in the current period. Such an over-recovery will be adjusted in a future fiscal year, thereby reducing indirect cost recoveries during that future period. To avoid a future compounding effect of fewer program dollars and reduced indirect costs, the Department recommends that an SEA or LEA closely monitor the potential impact of ESSER and GEER funds on its indirect cost recoveries and consider making appropriate adjustments during the current period (i.e., by potentially recovering less funding for indirect costs in the current period). Those adjustments will reduce the dollar impact in future years and allow for stability in future budgets.

Revenue Loss

E-10. May an SEA or LEA use ESSER and GEER funds to supplement or restore its "rainy day" fund rather than use the funds for specific purposes?

No. An SEA's or LEA's transfer of ESSER or GEER funds to its "rainy day" fund would not constitute an "obligation" of the funds. The SEA or LEA must obligate ESSER I and GEER I funds for specific allowable activities by September 30, 2022. Similarly, the SEA or LEA must obligate ESSER II and GEER II funds for specific allowable activities by September 30, 2023, and must obligate ARP ESSER funds for specific allowable activities by September 30, 2024.

E-11. May ESSER and GEER funds be used to make up State revenue losses?

Any use of ESSER or GEER funds must be "to prevent, prepare for, and respond to" the COVID-19 pandemic. This means that ESSER and GEER funds may be used to bridge budget shortfalls if the deficit is related to the COVID-19 pandemic and the ESSER and GEER funds are needed for education-related expenses.

However, the CARES Act, CRRSA Act, and ARP Act include detailed provisions requiring States to maintain effort for elementary and secondary education and higher education, which are designed to keep States from substantially reducing their support for K–12 education and higher education (see the Department's FAQs on maintenance of effort). In addition, the ARP Act includes important maintenance of equity requirements for both States and LEAs. The Department will issue guidance soon on the maintenance of equity requirements.

Additionally, SEAs and LEAs should be mindful that existing maintenance of effort requirements for other Federal programs, such as Title VIII of the ESEA and IDEA, continue to apply. (See E-12 and E-14.) As with other Federal funds, ESSER and GEER funds are excluded from these maintenance of effort calculations.

Fiscal Considerations for Other Programs

E-12. How does the use of ESSER and GEER funds to make up for State and/or local revenue losses impact IDEA's LEA Maintenance of Effort (MOE) requirement?

IDEA contains an LEA MOE requirement in addition to the State MOE requirements in the CARES Act, CRRSA Act, and ARP Act, and the State and LEA maintenance of equity requirements in the ARP Act. Under section 613(a)(2)(A)(iii) of IDEA and 34 CFR § 300.203, an LEA must both: (1) budget, for the education of children with disabilities, at least the same amount as the LEA spent for that purpose from the same source (either local funds or a combination of State and local funds, on an aggregate or per capita basis) in the most recent fiscal year for which information is available; and (2) expend, for the education of children with disabilities, at least the same amount as the LEA spent for that purpose from the same source (either local funds or a combination of State and local funds, on an aggregate or per capita basis) for the preceding fiscal year. Under IDEA, these budget and expenditure requirements for LEA MOE are termed "eligibility" and "compliance" standards, respectively. While IDEA does not provide for MOE waivers, there are exceptions and an adjustment to the LEA MOE requirements that may allow an LEA to reduce its MOE budget and expenditures below the level of expenditures for the education of children with disabilities made by the LEA for the appropriate comparison year (the most

recent fiscal year for which information is available (for the eligibility standard) and the preceding fiscal year (for the compliance standard)). (See 34 CFR §§ 300.204 and 300.205.)

For the purposes of the IDEA, CARES Act, CRRSA Act, and ARP Act funds are considered Federal funds and may not replace State and local funds in LEA MOE calculations. As a result, if an LEA uses CARES Act, CRRSA Act, or ARP Act funds to replace State or local funding for the education of children with disabilities, this may result in a failure of the LEA to meet the budget and/or expenditure requirements for LEA MOE under IDEA. If an LEA fails to meet the MOE budget requirement, the LEA is not eligible for an IDEA Part B subgrant. If the LEA fails to meet the MOE expenditure requirement, then the SEA is liable in a recovery action to return non-Federal funds to the Department in an amount equal to the amount of the LEA's MOE shortfall or the amount of the LEA's IDEA Part B subgrant in that fiscal year, whichever is lower. SEAs may, but are not required to, seek reimbursement from the LEA that failed to meet MOE.

OSEP funds a technical assistance center to assist States with the LEA MOE reporting and underlying requirements, the Center for IDEA Fiscal Reporting (https://cifr.wested.org/resources/lea-moe/).

E-13. How does the use of ESSER and GEER funds to make up for State revenue losses impact the IDEA's Maintenance of State Financial Support (MFS) requirement?

IDEA contains a separate State MFS requirement in addition to the maintenance of effort requirements in the CARES Act, CRRSA Act, and ARP Act. Under IDEA section 612(a)(18)(A), "a State must not reduce the amount of State financial support for special education and related services for students with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year." (34 CFR § 300.163(a).) For the purposes of IDEA, CARES Act, CRRSA Act, and ARP Act funds are considered Federal funds and may not replace State funds in MFS calculations. Replacing State appropriations for special education and related services with CARES Act, CRRSA Act, and ARP Act funds could result in a reduction of the State's amount of State financial support made available for special education and related services below the level for the preceding fiscal year. This would likely trigger an MFS shortfall under IDEA and potentially result in a reduction of IDEA Part B funds in a future grant equal to the amount of the shortfall. (34 CFR § 300.163(b).)

Part B of the IDEA allows the Secretary to waive the MFS requirement for one year at a time under 34 CFR § 300.163(c)(1) if granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

OSEP funds a technical assistance center to assist States with the MFS reporting and underlying requirements, the Center for IDEA Fiscal Reporting, https://cifr.wested.org/resources/mfs/.

E-14. How does the use of ESSER and GEER funds to make up for State and/or local revenue losses impact the LEA MOE requirement in section 8521 of the ESEA?

Section 8521 of the ESEA contains an LEA MOE requirement applicable to covered ESEA programs in addition to the State MOE requirements in the CARES Act, CRRSA Act, and ARP Act, and the State and LEA maintenance of equity requirements in the ARP Act. Under section 8521 and 34 CFR § 299.5, an LEA's expenditures for the provision of free public education in the preceding fiscal year may not be less than 90 percent of its expenditures in the second preceding fiscal year, determined either by the LEA's

combined fiscal effort per student or its aggregate expenditures of State and local funds. CARES Act, CRRSA Act, and ARP Act funds are Federal funds and may not replace State and local funds in LEA MOE calculations. As a result, if an LEA uses CARES Act, CRRSA Act, and ARP Act funds to replace State or local funding to provide free public education, the LEA may fail to meet MOE under section 8521. Absent a waiver of the MOE requirement, an SEA must reduce an LEA's allocation for each covered program by the amount the LEA failed to meet MOE.

The Department may waive the MOE requirement in section 8521 of the ESEA if it determines a waiver would be equitable due to exceptional or uncontrollable circumstances or a precipitous decline in the financial resources of an LEA. If an LEA experienced a precipitous decline in State and local resources caused by the COVID-19 pandemic, that could warrant the Department's granting an MOE waiver. With respect to exceptional or uncontrollable circumstances, the statute includes the example of a natural disaster or a change in the organizational structure of the LEA. In addition to these two examples, there may be other instances of exceptional or uncontrollable circumstances that might warrant when a waiver would be granted, such as a significant reduction in expenditures of State and local funds due to temporary closures or changes in onsite operations caused by the COVID-19 pandemic.

Technical Appendix

MAKING ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FORMULA SUBGRANTS TO LEAS UNDER THE AMERICAN RESCUE PLAN ACT AND CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT, 2021

This technical appendix has been prepared for the benefit of State administrators who are tasked with making formula subgrants to LEAs under the American Rescue Plan (ARP) Act's Elementary and Secondary School Emergency Relief (ARP ESSER) and under the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021's Elementary and Secondary School Emergency Relief component (ESSER II).[23]

ARP ESSER and ESSER II Requirements

A State educational agency (SEA) must allocate at least 90 percent of its total ESSER II grant and ARP ESSER grant by formula to LEAs. The SEA must determine each LEA's ESSER II allocation and ARP ESSER allocation in proportion to the amount of funds the LEA received under part A of title I of the Elementary and Secondary Education Act of 1965 (ESEA) in the most recent fiscal year (section 313(c) of the CRRSA Act and section 2001(d)(1) of the ARP Act, respectively).

Title I, Part A Subgrants to LEAs

For the purpose of allocating ARP ESSER and ESSER II funds to LEAs, the following points regarding Title I, Part A subgrants apply:

- Federal fiscal year (FY) 2020 Title I, Part A subgrants that were awarded by each SEA to LEAs for the 2020-2021 school year are the most recent Title I, Part A funds on which an SEA bases ESSER II and ARP ESSER subgrants. Therefore, with the exception of Step 6 below relating to new or significantly expanded charter school LEAs in school year 2021-2022, an SEA has the data needed to calculate ESSER II and ARP ESSER LEA allocations because the SEA has already determined the fiscal year (FY) 2020 Title I, Part A LEA subgrant amounts.

- FY 2020 Title I, Part A subgrants are those that each SEA determined under Title I, Part A, Subpart 2: that is, the aggregate of basic grants, concentration grants, targeted grants, and education finance incentive grants for which each LEA was eligible after the SEA adjusted, in accordance with the

[23] Guidance for the CARES Act allocations ("ESSER I") was included in the Technical Appendix in the ESSER FAQs.

regulations in 34 CFR §§ 200.70-200.75[24] and 200.100,[25] the LEA allocations on the Census list calculated by the Department.[26]

- The following <u>are not part of</u> FY 2020 Title I, Part A LEA subgrant amounts an SEA uses to calculate ESSER LEA allocations:
    - FY 2017, FY 2018, or FY 2019 carryover funds.
    - Funds reallocated to an LEA by the SEA under ESEA section 1126(c).
    - Funds an LEA received under ESEA section 1003 for school improvement.
    - Funds an LEA received under ESEA section 1003A for direct student services.
    - Funds an LEA received to carry out Title I, Part D, Subpart 2 (i.e., funds generated by children in local institutions for delinquent children).
    - Reductions to an LEA's FY 2020 Title I, Part A subgrant due to a failure to meet the ESEA's maintenance of effort requirements in the preceding fiscal year and at least once in the five immediately preceding fiscal years.
    - Any adjustments from FY 2019 that an SEA made to FY 2020 Title I, Part A subgrant amounts.
    - FY 2020 Title I, Part A funds that an LEA declined.

Steps to Calculate ARP ESSER Subgrants and ESSER II Subgrants to LEAs

Note to users: as the same requirements apply to determining ESSER II and ARP ESSER subgrants, for clarity and space limitations the tables presented in the steps below refer to "ARP ESSER." (The same information applies to ESSER II.)

These steps describe the procedures an SEA follows to calculate the ESSER II LEA allocations and ARP ESSER LEA allocations. An SEA can complete Steps 1 through 5 in order to make ESSER II subgrants and ARP ESSER subgrants to existing eligible LEAs; the SEA completes Step 6 once it has determined whether any new charter school LEAs have opened for school year 2021-2022 or any existing charter school LEAs have significantly expanded for school year 2021-2022 (e.g., during the fall of 2021). (See ESEA section 4306). An example follows each step, with a combined example for Steps 2 and 3.

<u>Step 1</u>: The SEA determines the total amount of ESSER II and ARP ESSER funds it has available to allocate to LEAs through the respective ESSER II and ARP ESSER formulas by:

- Determining the amount of:
    - ESSER II funds it will retain for the SEA Reserve under section 313(e) of the CRRSA Act (a maximum of 10 percent of its total grant, including funds for State administration).

[24] The regulations in 34 CFR §§ 200.70-200.75 address adjusting for LEAs that are not on the Census list (such as charter school LEAs), applying the hold harmless after adjusting for LEAs that are not on the Census list, alternative allocations for LEAs under 20,000 total population, and special procedures for calculating concentration grants in small States, available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=ea8f771199b0aa9a1f068857ea552084&mc=true&node=sg34.1.200_169.sg5&rgn=div7.

[25] The regulations in 34 CFR § 200.100 address an SEA's reservation of funds for school improvement under ESEA section 1003, including application of the special rule in section 1003(h); funds for State administration under ESEA section 1004; and funds for direct student services under ESEA section 1003A, available at https://www.ecfr.gov/cgi-bin/text-idx?SID=ea8f771199b0aa9a1f068857ea552084&mc=true&node=se34.1.200_1100&rgn=div8.

[26] Additional information on the SEA adjustment process to determine LEA Title I, Part A subgrants is provided on pages 2-10 in the Department's nonregulatory guidance on ESSA fiscal changes, available at: https://oese.ed.gov/files/2020/02/essaguidance160477-1.pdf.

    - ARP ESSER funds it will retain for the SEA Reserve under section 2001(f) of the ARP Act (a maximum of 10 percent of its total grant, including funds for State administration and the required SEA reservations).
- Subtracting the:
    - ESSER II SEA Reserve amount from the SEA's total ESSER II allocation to determine the total amount available for LEA subgrants.
    - ARP ESSER SEA Reserve amount from the SEA's total ARP ESSER allocation to determine the total amount available for ARP ESSER LEA subgrants.
- If a State has charter school LEAs, subtracting from the total amount of:
    - ESSER II funds available for LEA subgrants a reasonable amount to retain for new charter school LEAs or charter school LEAs that will significantly expand in school year 2021-2022 consistent with ESEA section 4306.
    - ARP ESSER funds available for LEA subgrants a reasonable amount to retain for new charter school LEAs or charter school LEAs that will significantly expand in school year 2021-2022 consistent with ESEA section 4306.

(Temporarily retaining funds from the total amount of ESSER II and ARP ESSER funds available for LEA subgrants for new charter school LEAs or charter school LEAs that will significantly expand in school year 2021-2022 will reduce the likelihood that an SEA will have to reduce the ESSER II and ARP ESSER subgrants of other LEAs once the SEA has the data to calculate the ESSER II and ARP ESSER subgrants of such charter school LEAs. See Step 6b.)

Example of Step 1

Row	**Category**	**Amount**
Row 1	SEA's ARP ESSER Allocation	$80,000,000
Row 2	ARP SEA Reserve *(10 percent of Row 1)*	$8,000,000
Row 3	Amount of ARP ESSER funds for LEA subgrants *(Row 1 minus Row 2)*	$72,000,000
Row 4	Funds retained for new/significantly expanded charter school LEA subgrants	$1,000,000
Row 5	**Total amount available to allocate to LEAs** *(Row 3 minus Row 4)*	**$71,000,000**

Step 2: The SEA identifies each LEA's FY 2020 Title I, Part A subgrant amount (as described above under "Title I, Part A Subgrants to LEAs").

Step 3: The SEA adds the FY 2020 Title I, Part A LEA subgrants to determine the total amount of FY 2020 Title I, Part A subgrants.

Example of Step 2 and Step 3

Step	LEA operating in school year 2020-2021	FY 2020 Title I, Part A subgrant amount
2	LEA 1	$10,904,500
2	LEA 2	$13,694,277
2	LEA 3 (charter LEA)	$257,479
2	LEA 4 (charter LEA)	$332,050
2	LEA 5	$5,771,821
2	LEA 6	$0
2	LEA 7	$3,765,959
2	LEA 8	$26,852,135
2	LEA 9	$2,449,979
2	LEA 10	$25,971,800
3	**Total**	**$90,000,000**

Step 4: The SEA divides each LEA's Title I, Part A subgrant amount (Step 2) by the total amount of FY 2020 Title I, Part A subgrants (Step 3) to determine the proportion of the ESSER II and ARP ESSER formula funds that each LEA receives.

Example of Step 4

LEA operating in school year 2020-2021	LEA's FY 2020 Title I, Part A subgrant amount *(From Step 2)*	Total amount of FY 2020 Title I, Part A LEA subgrants *(From Step 3)*	Proportion of the ARP ESSER formula funds that the LEA receives *(Step 2 divided by Step 3)*
LEA 1	$10,904,500	$90,000,000	0.1212
LEA 2	$13,694,277	$90,000,000	0.1522
LEA 3 (charter LEA)	$257,479	$90,000,000	0.0029
LEA 4 (charter LEA)	$332,050	$90,000,000	0.0037
LEA 5	$5,771,821	$90,000,000	0.0641
LEA 6	$0	$90,000,000	0.0000
LEA 7	$3,765,959	$90,000,000	0.0418
LEA 8	$26,852,135	$90,000,000	0.2984
LEA 9	$2,449,979	$90,000,000	0.0272
LEA 10	$25,971,800	$90,000,000	0.2886

Step 5: The SEA multiplies the proportion identified in Step 4 by the portion of its ESSER II and ARP ESSER funds that it will immediately distribute by formula as determined in Step 1 to calculate each LEA's ESSER II subgrant and ARP ESSER subgrant.

Example of Step 5

LEA operating in school year 2020-2021	**Proportion of the ARP ESSER formula funds that the LEA receives** *(From Step 4)*	**Total amount of ARP ESSER funds available to allocate to LEAs** *(from Step 1)*	**ARP ESSER LEA subgrant** *(Amount determined in Step 1 multiplied by Step 4)*
LEA 1	0.1212	$71,000,000	$8,602,439
LEA 2	0.1522	$71,000,000	$10,803,263
LEA 3 (charter LEA)	0.0029	$71,000,000	$203,122
LEA 4 (charter LEA)	0.0037	$71,000,000	$261,951
LEA 5	0.0641	$71,000,000	$4,553,325
LEA 6	0.0000	$71,000,000	$0
LEA 7	0.0418	$71,000,000	$2,970,923
LEA 8	0.2984	$71,000,000	$21,183,351
LEA 9	0.0272	$71,000,000	$1,932,761
LEA 10	0.2886	$71,000,000	$20,488,865
Total			**$71,000,000**

Step 6: The SEA recalculates the ESSER II LEA allocations and ARP ESSER LEA allocations after it determines whether there are any new charter school LEAs or any existing charter school LEAs that significantly expanded for school year 2021-2022 in accordance with the definition of "significant expansion of enrollment" in 34 CFR § 76.787.[27]

Step 6a (applies only if for school year 2021-2022 there are no new charter school LEAs or charter school LEAs that significantly expanded in a State): The SEA allocates the amount it retained under Step 1 for potential new charter school LEAs to the LEAs to which it made ESSER II subgrant allocations and ARP ESSER subgrant allocations in proportion to those amounts.

[27] An SEA will implement Step 6 after the SEA determines whether there are any new charter school LEAs or charter school LEAs that significantly expanded for school year 2021-2022 based on receiving written notification from a charter school LEA at least 120 days prior to the date the school is scheduled to open or significantly expand. (See 34 CFR§ 76.788). Thus, this step likely will not occur until fall 2021.

Example of Step 6a

Column 1	*Column 2*	*Column 3*	*Column 4*	*Column 5*	*Column 6*
LEA operating in school year 2020-2021	**Proportion of ARP ESSER formula funds that the LEA receives** *(From Step 4)*	**Initial ARP ESSER LEA subgrant** *(From Step 5)*	**Amount SEA retained for new or significantly expanded charter LEAs** *(from Step 1)*	**ARP ESSER LEA allocation of retained amount** *(Column 4 multiplied by Column 2)*	**Revised ARP ESSER LEA subgrant** *(Column 3 plus Column 5)*
LEA 1	0.1212	$8,602,439	$1,000,000	$121,161	$8,723,600
LEA 2	0.1522	$10,803,263	$1,000,000	$152,159	$10,955,422
LEA 3 (charter LEA)	0.0029	$203,122	$1,000,000	$2,861	$205,983
LEA 4 (charter LEA)	0.0037	$261,951	$1,000,000	$3,689	$265,640
LEA 5	0.0641	$4,553,325	$1,000,000	$64,131	$4,617,456
LEA 6	0.0000	$0	$1,000,000	$0	$0
LEA 7	0.0418	$2,970,923	$1,000,000	$41,844	$3,012,767
LEA 8	0.2984	$21,183,351	$1,000,000	$298,357	$21,481,708
LEA 9	0.0272	$1,932,761	$1,000,000	$27,222	$1,959,983
LEA 10	0.2886	$20,488,865	$1,000,000	$288,576	$20,777,441
Total		**$71,000,000**		**$1,000,000**	**$72,000,000**

Step 6b (applies only if for school year 2021-2022 there are new charter school LEAs or charter school LEAs that significantly expanded in a State): The SEA recalculates its ESSER II LEA allocations and ARP ESSER LEA allocations based on the total amount available for LEA subgrants in order to determine the ESSER II subgrant amounts and ARP ESSER subgrant amounts for a new charter school LEA or a significantly expanded charter school LEA and makes any necessary adjustments to the ESSER II LEA subgrants and ARP ESSER LEA subgrants that the SEA already awarded based on the calculations described in Steps 1 through 5.

As background, for a newly opened charter school LEA or a charter school LEA that significantly expands for school year 2021-2022, an SEA does not have an actual FY 2020 Title I, Part A subgrant amount for the LEA that reflects either status. ESEA section 4306(a), however, requires, with respect to any funds that the Department allocates to States on a formula basis (including ESSER II and ARP ESSER), a State to:

> [T]ake such measures as are necessary to ensure that every charter school receives the Federal funding for which the charter school is eligible not later than [five] months after the charter school first opens, notwithstanding the fact that the identity and characteristics of the students enrolling in that charter school are not fully and completely determined until that charter school actually opens. The measures similarly shall ensure that every charter school expanding its enrollment in any subsequent year of operation receives the Federal funding for which the charter school is eligible not later than [five] months after such expansion.

In order to comply with ESEA section 4306(a), an SEA must determine an ESSER II LEA subgrant allocation and ARP ESSER LEA subgrant allocation for a new or significantly expanded charter school in

school year 2021-2022 by deriving what the charter school LEA's FY 2020 Title I, Part A allocation would have been based on the characteristics of the charter school LEA's students in school year 2021-2022. As detailed in the next paragraph, an SEA already derives this amount for calculating FY 2021 Title I, Part A allocations to comply with ESEA section 4306(c).

Independent of the CRSSA Act and ARP Act, as part of calculating a new or significantly expanded charter school LEA's FY 2021 Title I, Part A allocation, ESEA section 4306(c) requires an SEA, for purposes of implementing the Title I, Part A hold-harmless protections in ESEA sections 1122(c) and 1125A(f)(3) for a newly opened or significantly expanded charter school LEA, to derive a hold-harmless base under each Title I, Part A formula for FY 2020 that reflects the new or significantly expanded enrollment of the charter school LEA.[28] Therefore, in order to calculate the ESSER II allocation and ARP ESSER allocation of a new or significantly expanded charter school LEA, an SEA will consider such an LEA's FY 2020 Title I, Part A allocation as the sum of its hold harmless base under each Title I, Part A formula that the SEA calculates for FY 2021 Title I, Part A allocations in accordance with ESEA section 4306(c). An example of calculating the ESSER II allocation and ARP ESSER allocation for a new or significantly expanded charter school LEA and adjusting the ESSER II subgrants and ARP ESSER subgrants an SEA already made (as shown in Steps 1-5) follows on the next page.

[28] For more information on ESEA section 4306(c) see pages 4-7 in the Department's nonregulatory guidance on ESSA fiscal changes, available at: https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf.

Example of Step 6b

Column 1	*Column 2*	*Column 3*	*Column 4*	*Column 5*	*Column 6*	*Column 7*
LEA	**Initial ARP ESSER LEA subgrant** *(From Step 5)*	**FY 2020 Title I, Part A subgrant amount or ESEA Section 4306(c) FY 2020 derived Title I, Part A hold harmless base***	**LEA proportion of Column 3 total** (*Column 3 LEA amount divided by Column 3 total)*	**Total amount for LEA subgrants** *(from Step 1)*	**Revised ARP ESSER LEA subgrant** *(Column 5 multiplied by Column 4)*	**Difference between revised ARP ESSER LEA subgrant and initial subgrant** *(Column 6 minus Column 2)*
LEA 1	$8,602,439	$10,904,500	0.1209	$72,000,000	$8,704,257	$101,818
LEA 2	$10,803,263	$13,694,277	0.1518	$72,000,000	$10,931,130	$127,867
LEA 3 ***(significantly expanded charter LEA in school year 2020-2021)***	$203,122	***$357,479****	0.0040	$72,000,000	$285,349	$82,227
LEA 4 (charter LEA)	$261,951	$332,050	0.0037	$72,000,000	$265,051	$3,100
LEA 5	$4,553,325	$5,771,821	0.0640	$72,000,000	$4,607,219	$53,894
LEA 6	$0	$0	0.0000	$72,000,000	$0	$0
LEA 7	$2,970,923	$3,765,959	0.0418	$72,000,000	$3,006,087	$35,164
LEA 8	$21,183,351	$26,852,135	0.2977	$72,000,000	$21,434,077	$250,726
LEA 9	$1,932,761	$2,449,979	0.0272	$72,000,000	$1,955,637	$22,876
LEA 10	$20,488,865	$25,971,800	0.2879	$72,000,000	$20,731,370	$242,505
LEA 11 ***(new charter LEA in school year 2020-2021)***	$0	***$100,000****	0.0011	$72,000,000	$79,823	$79,823
Total	**$71,000,000**	**$90,200,000****			**$72,000,000**	**$1,000,000**

*Figure is the derived FY 2020 Title I, Part A hold harmless base that the SEA calculates in accordance with ESEA section 4306(c) for a charter school LEA that opens or significantly expands for school year 2021-2022.

**Figure does not equal the actual total of FY 2020 Title I, Part A subgrants from Step 2 due to the SEA's deriving hold harmless bases for the new and significantly expanded charter school LEAs, as required by ESEA section 4306(c).