

U.S. Department of Education CARES Act Rule Equitable Services for the CARES Act/ESSER Fund Grant

On June 25, 2020, the U.S. Department of Education (ED) officially released their [Interim Final Rule](#) (IFR) regarding guidance on the equitable services provisions of the Elementary and Secondary School Emergency Relief (ESSER) Fund as authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The IFR, which becomes effective immediately, outlines how local education agencies (LEAs) must calculate the emergency funds available for providing equitable services to students and teachers in eligible non-public/private schools. In the IFR, ED provides LEAs two choices to consider when implementing equitable services. Each LEA must select one of the two choices so that they are appropriately carrying out equitable services under the ESSER Fund.

Choice 1: LEA serves all students (public and non-public)

As directed in the original [Equitable Services Q&A guidance](#) and reaffirmed in the newly published IFR, this option provides equitable services to the total number of students enrolled in non-public/private schools. LEAs are directed to base the proportionate share on all students enrolled in public and non-public/private schools.

Under this choice, ESSER fund services will be available for all students—public and non-public—without regard to poverty, low achievement, or residence in a participating Title I public school attendance area. As provided in the original guidance, in order for an LEA to provide equitable services to all students in its public and non-public/private schools, it must:

1. Calculate the proportionate share for equitable services based on the total student enrollment data of non-public schools.

Choice 2: LEA serves only Title I students (public and non-public)

As newly directed in the IFR, this choice gives LEAs the option to choose to limit services only to students who are Title I eligible in both public and non-public schools. If an LEA chooses to limit the use of this funding to serve only low-income students, they must do so equitably for students in both public and non-public schools. An LEA that chooses to use CARES Act funding only for students who are Title I eligible has two options:

1. Calculate the funds for equitable services based on the total number of low-income students in Title I and participating private schools; or
2. Calculate the funds using the LEA's Title I, Part A share from the 2019–20 school year.

Note: If an LEA uses one of the low-income student options, the LEA must not violate the Title I supplement-not-supplant requirement in ESEA § 1118(b)(2). That is, LEAs cannot divert state or local funds from its Title I schools because they receive CARES Act funds. **If you plan to implement Choice 2, please contact Danny.Bounds@tn.gov and Deborah.Thompson@tn.gov as changes to the LEA's ESSER Fund application must be made.**

Public Comments

In summary, the two choices provided in the IFR allow ESSER Fund dollars to be distributed **either** to all students (public and non-public) in the LEA **or** to only Title I eligible students (public and non-public) in the



LEA. The IFR has been unofficially published [here](#) on ED's website.

Once the rule is officially published in the Federal Register, it will be effective immediately and open for public comment for 30 days. If a school or LEA would like an opportunity to issue a comment to the rule issued by ED, the school or LEA may submit their comments through the [Federal eRulemaking Portal](#) or via postal mail, commercial delivery, or hand delivery by following the instructions below.

To issue public comment using the Federal eRulemaking Portal:

Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site at www.regulations.gov/help.

To issue public comment using Postal Mail, Commercial Delivery, or Hand Delivery:

To mail or deliver your comments about this interim final rule, address them to:

Amy Huber

U.S. Department of Education,
400 Maryland Avenue,
SW, room 3W219,
Washington, DC 20202.