

## Questions & Answers: ESSER 1.0, 2.0, and 3.0: Requirements for Equipment/Capital Expenditures<sup>1</sup>

### 1. Do the requirements in the Uniform Guidance apply to ESSER Funds?

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

#### **Cost Principles**

Specific uses of ESSER 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. (2 CFR §§ 200.403-200.404.) Consistent with requirements in the Cost Principles, all expenditures must be properly documented. (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 U.S. Department of Education (ED) has authorized (i.e., provided prior written approval) that ESSER 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 local educational agency (LEA) must maintain 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 ED's 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 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, 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 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

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<sup>1</sup> Information in this document has been adapted from the U.S. Department of Education's [Frequently Asked Questions - Elementary and Secondary School Emergency Relief Programs Governor's Emergency Education Relief Programs](#)

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 ED’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 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.)

### **Competition**

Under [2 CFR § 200.319](#), all procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).

There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply (§ 200.320(c)):

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
- (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.

### **Prior Approval**

Uniform Guidance at [2 CFR § 200.407](#) requires prior written approval from either ED or the State (Governor or SEA, as applicable) for certain costs, such as **the purchase of real property; equipment, and other capital expenditures**.

Additionally, prior written approval from either ED or the State (Governor or SEA, as applicable) may be required **if the LEA uses a noncompetitive procurement process for the acquisition of property or services required under a Federal award**.

## **2. May ESSER funds be used for construction?**

Yes. Construction is authorized under Title VII of the ESEA (Impact Aid) and therefore is an allowable use of 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. 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:

- 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));
- 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
- 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 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, and all of ED’s applicable regulations regarding construction at [34 CFR §§ 76.600 and 75.600-75.618](#). Some of the relevant requirements that must be considered before a new construction project is initiated include:

- 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](#));
- 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](#));
- 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](#));
- 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](#));
- Can a grantee complete the project in a reasonable time period and consistent with the approved plans and specifications ([34 CFR § 75.606](#));
- 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](#));
- 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
- 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](#)).

**3. May ESSER 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 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, 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 above, these projects are also subject to prior written approval by a Governor or SEA 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 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.

**4. 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 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.

## 5. Do the *Buy American Act* provisions apply to ESSER?

The Buy American Act does not apply to the ESSER 1.0 grant. However, awards made under the CRRSA Act and ARP Act (i.e., ESSER 2.0, and ESSER 3.0 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.
  - 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:
  - “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.

## 6. What type of purchases/projects require prior written approval?

LEAs must seek written approval on the following purchases:

- **Construction projects:**
  - Improvements to land or buildings that increase the value or use life
  - Constructing new buildings/structures/facilities
  - Remodeling or renovating existing buildings/structures/facilities
- **Land purchases**
- **Building purchases**
  - Including trailers and modular units
- **Purchases not following a competitive procurement process as outlined in 2 CFR §§ 200.319 and 200.320.** Note that LEAs need only apply for prior written approval if the none of the other options under § 200.320(c) apply.

**Note:** The department is able to grant pre-approval for **capital equipment such as vans, buses, etc.** through the applicable funding application (ESSER 1.0, 2.0, and/or 3.0). Therefore, LEAs are not required to submit a separate pre-approval request for such expenditures if they have been approved through the funding application in ePlan.

**7. Do LEAs need to request approval for the above purchases/projects under ESSER 1.0, 2.0, and 3.0?**

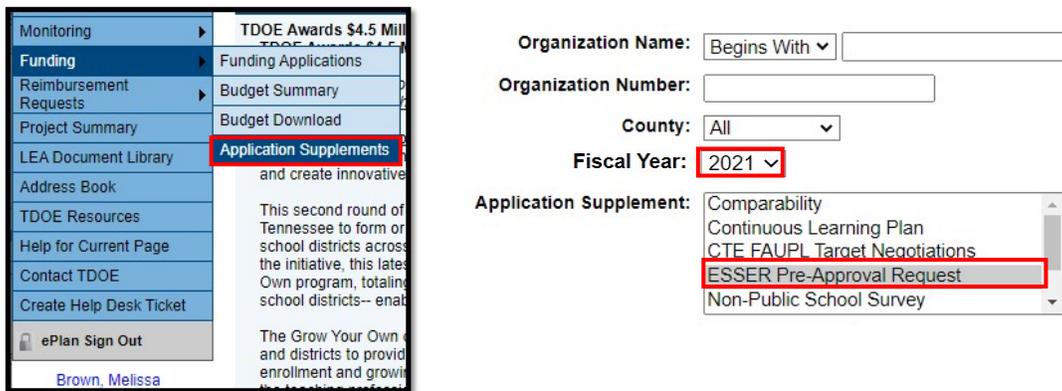
LEAs must complete and submit a pre-approval request for any applicable purchases under ESSER 2.0 and 3.0 by Aug. 27, 2021. Because construction and other capital projects were not an option for ESSER 1.0, any required pre-approval for that grant will occur through the funding application in ePlan.

**8. Some of the purchases/projects that require prior written approval have already been approved in ePlan in the LEA's ESSER application(s). Does the LEA still need to submit an ESSER Pre-Approval Request application supplement?**

Yes. The pre-approval process will involve two steps. The first step occurs through the approval of the actual funding application in ePlan. The second step is submission and approval of the *ESSER Pre-Approval Request* in ePlan as described below.

**9. How can an LEA request approval for any of the above mentioned purchases/projects?**

Tennessee LEAs should complete a *ESSER Pre-Approval Request* in ePlan > Funding > Application Supplements > FY21 > ESSER Pre-Approval Request by **Aug. 27, 2021.**



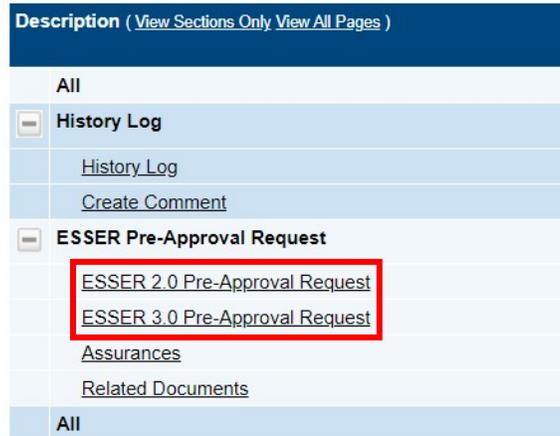
**NOTE:** Due to needed changes to the ePlan menu, the *ESSER Pre-Approval Request* and other application supplements will soon move under the **new Data and Information tab**. This change will be effective sometime in early July. This document will be updated to reflect those changes at that time.

**10. Who within the LEA should submit the ESSER Pre-Approval Request?**

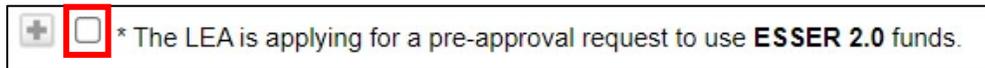
A new ePlan role was created for this process. The *LEA ESSER Pre-Approval Request Director* should complete and submit the ESSER Pre-Approval Request. Users who fulfill the *LEA Elementary and Secondary School Emergency Relief (ESSER) Director* will automatically be placed in the new role, so no ePlan User Access form should be required. If, however, the *LEA Elementary and Secondary School Emergency Relief (ESSER) Director* is not the individual the LEA assigns to complete the pre-approval, an [ePlan User Access](#) form must be submitted. The ESSER Pre-Approval Request must also be approved by the *LEA Authorized Representative* before it is reviewed by the Tennessee Department of Education.

**11. What are the steps to submit a ESSER Pre-Approval Request?**

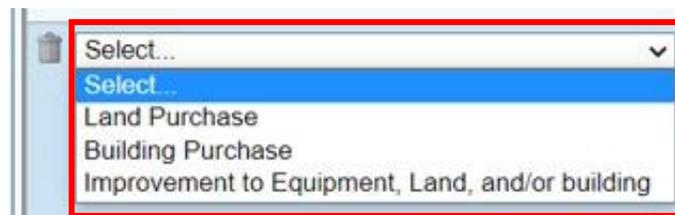
- The LEA ESSER Pre-Approval Request Director must click **Draft Started** at the top of the sections page. (See question 10 for user access information)
- Select the funding application requiring pre-approval. Users may complete requests for both ESSER 2.0 and ESSER 3.0 within the same application supplement.



- Click the checkbox to confirm that the LEA is applying for pre-approval for the ESSER funding application that was selected.



- Read the **Overview** and **Instructions** at the top of the page carefully.
- Complete the **Local Education Agency (LEA) Information** section. This includes the LEA mailing address and the LEA ESSER point of contact’s name, title, phone number and email.
- Complete the **Expenditure Details** section.
  - Select the **Expenditure Type** utilizing the drop-down menu provided. Selections include *Land Purchase, Building Purchase, and Improvement to Equipment, Land, and/or Building.*



- Provide a brief narrative to **describe the anticipated benefits** of the purchase/project. Include information such as how many students will be impacted, main objectives of the project, etc.
- Provide information outlining the **purchase/project timeline**. At a minimum, include the purchase/project start and end dates.
- Indicate the **amount of the expenditure** being paid from the applicable funding source.
- If the LEA is seeking **pre-approval to conduct a non-competitive bid process** as outlined under 2 CFR § 200.320(c), please provide a justification.

- Use the drop-down menu to select the most appropriate **Expenditure Priority**. Choices include *Whole Child, Academics, Educators, or Supporting Work*.
- Use the drop-down menu to select the most appropriate **ESSER Focus Area**.
  - ESSER 2.0 choices include *Addressing Learning Loss, School Facility Repairs, and Addressing Learning Acceleration*.
  - ESSER 3.0 choice include *Addressing Learning Loss, Social/Emotional/Mental Health/Academic Interventions, Addressing Disproportionate Impact of COVID-19 on Underrepresented Subgroups, Reopen Safely & Remain Open, Emerging Strong Post-Pandemic, and Health and Safety*.
- Click on **Add Row** at the bottom of the page to enter additional purchase/projects. 
- Click the trash can icon as needed to delete entries. 
- Once all applicable purchase/projects have been entered on the applicable ESSER Pre-Approval Request page, click **Save And Go To** save your work and navigate to another page of the application supplement. 
- Complete the process for both ESSER 2.0 and 3.0 as needed.
- Before submitting, LEAs must also complete the **Assurances** page. Check the box at the top of the page to affirm that the request meets all requirements in accordance with 2 CFR § 200, subpart E, and meets the overall purpose of the CARES Act, CRRSA Act, and/or ARP Act programs. Assurances include:
  1. The appropriate LEA staff, at the time of the original submission of this application supplement, viewed the Funding Construction Costs with ESSER training provided by the state.
  2. The contents of the pre-approval request align with the Cost Principles in 2 CFR § 200, subpart E (i.e., the cost must be "necessary and reasonable" (2 CFR § 200.403-200.404)).
  3. The project meets the overall purpose of the CARES Act, CRRSA Act, and/or ARP Act programs, which is "to prevent, prepare for, and respond to" COVID-19.
  4. The project is consistent with the proper and efficient administration of the CARES Act, CRRSA Act, and/or ARP Act programs.
  5. LEAs must recognize that state approval of an application does not relieve the LEA of its responsibility to comply with all applicable program and fiscal requirements.
  6. LEAs must keep appropriate and required records, and provide such information to the State, as may be reasonably required for fiscal audit, data reporting, and program evaluation/monitoring.
- Once the pre-approval is complete, click LEA Elementary and Secondary School Emergency Relief (ESSER) Director Completed at the top of the Sections page. The pre-approval request must now be approved by the LEA Authorized Representative before it can be reviewed by the department.

**12. How will an LEA know if their requests have been approved or denied?**

Approval notices, denial notices, and requests for revisions will be emailed to applicable points of contacts through ePlan and will also be archived on the *History Log* page of the application supplement. If revisions are requested, please be prepared to make those changes in a timely manner.

Description ( <a href="#">View Sections Only</a> <a href="#">View All Pages</a> )	
	All
<input type="checkbox"/>	History Log
	<a href="#">History Log</a>
	<a href="#">Create Comment</a>
<input type="checkbox"/>	ESSER Pre-Approval Request
	<a href="#">ESSER 2.0 Pre-Approval Request</a>
	<a href="#">ESSER 3.0 Pre-Approval Request</a>
	<a href="#">Assurances</a>
	<a href="#">Related Documents</a>
	All

**13. Who can LEAs contact with questions?**

Please contact [Debby.Thompson@tn.gov](mailto:Debby.Thompson@tn.gov) or [Brinn.Obermiller@tn.gov](mailto:Brinn.Obermiller@tn.gov) with questions regarding the pre-approval process.