

**159 ARP - Elementary + Secondary Schools Emergency Relief Fund (ESSER III)**

**Fiscal Year:** 21-22

**Milestone:** Final Approval Issued (Printed 2/6/2023)

**District:** Sunnyside School District

**Organization Code:** 39201

**ESD:** Educational Service District 105

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**AMERICAN RESCUE PLAN (ARP)-ELEMENTARY AND SECONDARY SCHOOLS EMERGENCY RELIEF FUND (ESSER III) LEA APPLICATION (80% ALLOCATION)**

**Key Information**

**Program Information**

Elementary and Secondary School Emergency Relief (ESSER III-ARP) funds, were authorized in Section 2001 of the American Rescue Plan (ARP) Act of 2021, enacted March 11, 2021. The funds are provided to state educational agencies (SEAs) and school districts to help safely reopen and sustain the safe operation of schools and address the impact of the coronavirus pandemic on the Nation's students. **Funds to Local Educational Agencies (LEAs) are allocated on the basis of their respective shares of funds received under Title I, Part A of the Elementary and Secondary Education Act of 1965 in fiscal year 2020. Therefore, districts will not receive the same proportionate share of ESSER III-ARP funds as they did for the first round of ESSER funds (ESSER I).**

**ESSER funds are allowable to fund costs incurred on or after March 13, 2020, when COVID 19 was declared a national emergency, and all funds must be obligated by September 30, 2024.** This includes one-year carryover as allowed under the Tydings Amendment (34 CFR 76.709). **These are one-time funds that should not be committed to ongoing financial obligations.**

**Allowable Activities**

**This form package is for the remaining 80 percent of the total ESSER III-ARP allocation. The 20 percent required to address student learning recovery and acceleration (learning loss) is in iGrants form package 153.**

LEAs may use the remaining 80 percent allocation of ARP ESSER funds for activities allowable under section 2001(e) of the ARP. These allowable activities are outlined in the table on page 2.

**NOTE:**

- The following activities are not explicitly listed in the ARP Act but are still an allowable use of ARP ESSER funds:
  - Activities authorized by subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento) (42 U.S.C. 11431 et seq.)
  - Providing principals and other school leaders with the resources necessary to address the needs of their individual schools.
- This activity is only listed in the ARP Act but is an allowable use of ESSER I and ESSER II funds:

- 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.

The US Department of Education (DOE) encourages LEAs to use the funds 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 funds, 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.

Generally, in determining whether an activity is an allowable use of funds, a 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 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 award?

### **LEA Safe Return to In-Person Instruction Plan**

An LEA that receives ARP ESSER funds must, within 30 days of receiving the funds, make publicly available on its website a plan for the safe return to in-person instruction and continuity of services. Before making the plan publicly available, the LEA must seek public comment on the plan. Districts are required to post to their website the June 1 plan due to OSPI to meet the federal requirement outlined below. OSPI was intentional in the development of the plan template to ensure that it met requirements of both state and federal law.

ARP Section 2001 (i): SAFE RETURN TO IN-PERSON INSTRUCTION.— (1) IN GENERAL.—A local educational agency receiving funds under this section shall develop and make publicly available on the local educational agency’s website, not later than 30 days after receiving the allocation of funds described in paragraph (d)(1), a plan for the safe return to in-person instruction and continuity of services. (2) COMMENT PERIOD.—Before making the plan described in paragraph (1) publicly available, the local educational agency shall seek public comment on the plan and take such comments into account in the development of the plan.

### **Fiscal Information**

- There is no supplement not supplant requirement for the ESSER III-ARP funds. Therefore, the federal unrestricted indirect rate is used for this grant. Also, the 21-22 federal indirect rate is used for this grant since the form package is in the 21-22 fiscal period. Indirect rates for the upcoming school year are uploaded prior to the annual launch of iGrants launch on May 1st of each year.
- There is no maintenance of effort requirement for the ESSER III-ARP funds for LEAs. **However, there is a new “maintenance of equity” requirement for the ESSER III-ARP funds for LEAs.** The US Department of Education has provided an FAQ on this topic, see at [Resources - Office of Elementary and Secondary Education](#). Also, below is the information from Section 2004 (c) and (d) of the ARP:

- (c) **LOCAL EDUCATIONAL AGENCY MAINTENANCE OF EQUITY FOR HIGHPOVERTY SCHOOLS.—** (1) **IN GENERAL.**—As a condition of receiving funds under section 2001, a local educational agency shall not, in fiscal year 2022 or 2023— (A) reduce per-pupil funding (from combined State and local funding) for any high poverty school served by such local educational agency by an amount that exceeds— (i) the total reduction in local educational agency funding (from combined State and local funding) for all schools served by the local educational agency in such fiscal year (if any); divided by (ii) the number of children enrolled in all schools served by the local educational agency in such fiscal year; or (B) reduce per-pupil, full-time equivalent staff in any high-poverty school by an amount that exceeds— (i) the total reduction in full-time equivalent staff in all schools served by such local educational agency in such fiscal year (if any); divided by (ii) the number of children enrolled in all schools served by the local educational agency in such fiscal year. (2) **EXCEPTION.**—Paragraph (1) shall not apply to a local educational agency in fiscal year 2022 or 2023 that meets at least 1 of the following criteria in such fiscal year: (A) Such local educational agency has a total enrollment of less than 1,000 students. (B) Such local educational agency operates a single school. (C) Such local educational agency serves all students within each grade span with a single school. (D) Such local educational agency demonstrates an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of such agency, as determined by the Secretary of Education.
- d) **DEFINITIONS.**—In this section:
  1. **ELEMENTARY EDUCATION; SECONDARY EDUCATION.**—The terms “elementary education” and “secondary education” have the meaning given such terms under State law.12
  2. **HIGHEST POVERTY LOCAL EDUCATIONAL AGENCY.**—The term “highest poverty local educational agency” means a local educational agency that is among the group of local educational agencies in the State that— (A) in rank order, have the highest percentages of economically disadvantaged students in the State, on the basis of the most recent satisfactory data available from the Department of Commerce (or, for local educational agencies for which no such data are available, such other data as the Secretary of Education determines are satisfactory); and (B) collectively serve not less than 20 percent of the State’s total enrollment of students served by all local educational agencies in the State.
  3. **HIGH-NEED LOCAL EDUCATIONAL AGENCY.**— The term “high-need local educational agency” means a local educational agency that is among the group of local educational agencies in the State that— (A) in rank order, have the highest percentages of economically disadvantaged students in the State, on the basis of the most recent satisfactory data available from the Department of Commerce (or, for local educational agencies for which no such data are available, such other data as the Secretary of Education determines are satisfactory); and (B) collectively serve not less than 50 percent of the State’s total enrollment of students served by all local educational agencies in the State.
  4. **HIGH-POVERTY SCHOOL.**— (A) **IN GENERAL.**—The term “high-poverty school” means, with respect to a school served by a local educational agency, a school that is in the highest quartile of schools served by such local educational agency based on the percentage of economically disadvantaged students served, as determined by the State in accordance with subparagraph (B). (B) **DETERMINATION.**—In making the determination under subparagraph (A), a State shall select a measure of poverty established for the purposes of this paragraph by the Secretary of Education and apply such measure consistently to all schools in the State.
  5. **OVERALL PER-PUPIL REDUCTION IN STATE FUNDS.**—The term “overall per pupil reduction in State funds” means, with respect to a fiscal year— (A) the amount of any reduction in the total amount of State funds provided to all local educational agencies in the State in such fiscal year compared to the total amount of such funds provided to all local educational agencies in the State in the previous fiscal year;

divided by (B) the aggregate number of children enrolled in all schools served by all local educational agencies in the State in the fiscal year for which the determination is being made.

6. STATE.—The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

- An LEA that receives ESSER III-ARP funds under this grant is not required to provide equitable services to non-public schools. Non-public schools may be eligible to receive Emergency Assistance to Non-Public Schools (EANS).
- ESSER III-ARP funds are subject to subrecipient monitoring and audit requirements under the Single Audit Act.
- For employees that are only charged to ESSER grants and working on ESSER allowable activities, time and effort is not required. However, time and effort is required if employees charged to ESSER are also charged to other federal programs. This exception only applies to ESSER II and III grants.
- ESSER III-ARP funds must be tracked separately from ESSER I and ESSER II funds. Accounting guidance will be provided in the School District Accounting Manual.
- Lost revenue will not be allowed to be claimed for ESSER III-ARP funds.
- 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)).
- DOE has authorized (i.e., provided prior written approval) that ESSER funds may be used for pre-award costs (2CFR 200.458) dating back to March 13, 2020, when the national emergency was declared.
- The Uniform Guidance at 2 CFR 200.407 requires LEAs to obtain prior written approval from OSPI for certain costs, such as the purchase of real property; equipment and other capital expenditures. Please see page 3 for more information, including the form to request prior approval for these types of expenditures.
- **REMINDER:** As a condition of payment of funds, LEAs must report expenditures both in the EDS claims system and in the OSPI ESSER III Expenditure Smartsheet tool on the OSPI website: [Novel Coronavirus \(COVID-19\) Guidance & Resources](#).

These are monthly requirements that must occur prior to each grant payment. Contact [Eileen Frimberger](#) if you have questions on this topic.

## Assurances

**INSTRUCTIONS:** Please check each box after review of the assurance.

- ☒ With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program.
- ☒ The LEA will comply with all applicable reporting requirements at such time and in such manner and containing such information as the Secretary may reasonably require, including on matters such as:

overall plans and policies related to State support for return to in-person instruction and maximizing in-person instruction time, including how funds will support a return to and maximize in-person instruction time, and advance equity and inclusivity in participation in in-person instruction; data on each school's mode of instruction (remote, hybrid, in-person) and conditions; uses of funds to meet students' social, emotional, and academic needs, including through summer enrichment programming and other evidence-based interventions, and how they advance equity for underserved students; uses of funds to sustain and support access to early childhood education programs; impacts and outcomes (disaggregated by student subgroup) through use of ARP ESSER funding (e.g., quantitative and qualitative results of ARP ESSER funding, including on personnel, student learning, and budgeting at the school and district level); student data (disaggregated by student subgroup) related to how the COVID-19 pandemic has affected instruction and learning; and additional reporting requirements as may be necessary to ensure accountability and transparency of ARP ESSER funds.

- ☒ The LEA may be required to participate in Subrecipient Monitoring to ensure that funds are used for allowable purposes in accordance with cash management principles.
- ☒ Records pertaining to the ARP ESSER award under 2 C.F.R. § 200.334 and 34 C.F.R. § 76.730, including financial records related to use of grant funds, will be retained separately from other grant funds, including funds that an SEA or LEA receives under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act). The SEA will ensure that it and every subrecipient of ARP ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
- ☒ The LEA will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
- ☒ Any LEA receiving funding under this program will have on file with the SEA a set of assurances that meets the requirements of Section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e). These assurances are included in the General Assurances agreed to in the iGrants Required Pages.
- ☒ To the extent applicable, an LEA will include a description of how the LEA will comply with the requirements of Section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.
- ☒ LEAs, including Charter schools that are LEAs, must assure that they are using ARP ESSER funds for purposes that are reasonable, necessary, and allocable under the ARP.
- ☒ LEAs will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

☒ **Checking this box indicates the LEA has read, understands and agrees with these assurances.**

**Authorized Representative Name:**

Heidi A. Hellner-Gomez

<b>Authorized Representative Title:</b>	Assistant Superintendent
<b>Date:</b> (MM/DD/YY)	12/01/2021

## Allowable ESSER III Activities for LEAs

<b>80% of ESSER III Allocation for LEAs*:</b> (*20% allocation is in the ESSER III iGrants form package 153)		<b>\$14,371,774</b>
The LEA will use ESSER III funds for which of the following allowable activities? (Check all that apply) Include the <b>estimated</b> dollar amount for each category selected.		<b>Estimated Dollar Amount</b>
<input type="checkbox"/>	Activities authorized by the Every Student Succeeds Act (ESSA) <i>Describe Use of Funds:</i>	
<input type="checkbox"/>	Activities authorized by the Individuals with Disabilities Act (IDEA) <i>Describe Use of Funds:</i>	
<input type="checkbox"/>	Activities authorized by the Adult Education and Family Literacy Act <i>Describe Use of Funds:</i>	
<input type="checkbox"/>	Activities authorized by the Carl D. Perkins Career and Technology Education Act of 2006 <i>Describe Use of Funds:</i>	
<input type="checkbox"/>	Activities authorized by subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act** <i>Describe Use of Funds:</i>	
<input type="checkbox"/>	Coordination of preparedness and response efforts of local educational agencies 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 coronavirus. <i>Describe Use of Funds:</i>	
<input checked="" type="checkbox"/>	Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.** <i>Describe Use of Funds:</i> Principals and building leaders will be able to request funds for ongoing response to unforeseen student and teacher needs related to learning and support during the pandemic or due to direct impact of the pandemic.	<b>\$350,000</b>

<input type="checkbox"/>	<p>Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.</p> <p><i>Describe Use of Funds:</i></p>	
<input type="checkbox"/>	<p>Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.</p> <p><i>Describe Use of Funds:</i></p>	
<input type="checkbox"/>	<p>Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.</p> <p><i>Describe Use of Funds:</i></p>	
<input type="checkbox"/>	<p>Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.</p> <p><i>Describe Use of Funds:</i></p>	
<input type="checkbox"/>	<p>Planning for and coordinating during long-term closures, including how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.</p> <p><i>Describe Use of Funds:</i></p>	
<input checked="" type="checkbox"/>	<p>Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency 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.</p> <p><i>Describe Use of Funds:</i> Funds will be used to increase connectivity for students in the community including the most remote areas. Funds will be used for replacement parts and replacement devices for individual student and teacher use.</p>	\$4,683,972
<input type="checkbox"/>	<p>Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.****</p> <p><i>Describe Use of Funds:</i></p>	
<input type="checkbox"/>	<p>Planning and implementing activities related to summer learning and supplemental afterschool 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 in foster care.</p> <p><i>Describe Use of Funds:</i></p>	



<input type="checkbox"/>	<p>Addressing the academic impact of lost instructional time 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:</p> <ul style="list-style-type: none"> <li>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.</li> <li>b. Implementing evidence-based activities to meet the comprehensive needs of students.</li> <li>c. Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.</li> <li>d. Tracking student attendance and improving student engagement in distance education.</li> </ul> <p><i>Describe Use of Funds:</i></p>	
<input checked="" type="checkbox"/>	<p>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.</p> <p><i>Describe Use of Funds:</i> One school with limited space will have additional square footage constructed to provide appropriate learning area to reduce the risk of virus transmission and support student health needs.</p>	\$3,400,000
<input checked="" type="checkbox"/>	<p>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.</p> <p><i>Describe Use of Funds:</i> Funds will be used to replace the HVAC systems in two schools whose systems are outdated and underperforming.</p>	\$4,205,000
<input type="checkbox"/>	<p>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.***</p> <p><i>Describe Use of Funds:</i></p>	
<input type="checkbox"/>	<p>Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency (for example, child care and nutrition services).</p> <p><i>Describe Use of Funds:</i></p>	
<input checked="" type="checkbox"/>	Indirect Costs.	\$1,732,802
<b>TOTAL</b>		<b>\$14,371,774</b>

**\*\*** These activities are not explicitly listed in the ARP Act but are still an allowable use of ARP ESSER funds.

**\*\*\*** This activity is only listed in the ARP Act but is an allowable use of ESSER I and ESSER II funds.

**\*\*\*\***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 organizations 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. The reference to full-service community schools in relation to the allowable activity of "providing mental health services and supports" is only listed in the ARP Act but this is included as an allowable use of ESSER I and ESSER II funds.

**REMINDER:** As a condition of payment of funds, LEAs must report expenditures both in the EDS claims system and in the OSPI ESSER III Expenditure Smartsheet tool on the OSPI website: [Novel Coronavirus \(COVID-19\) Guidance & Resources](#). These are monthly requirements that must occur prior to each grant payment. Contact [Eileen Frimberger](#) if you have questions on this requirement.

## **Request to OSPI for LEAs to Purchase Capital Expenditures with ESSER Funds**

As noted in the federal code of regulations (CFR) 200.439, "capital expenditures for general and special purpose equipment purchases are subject to prior approval by the pass-through entity (OSPI). In addition, with prior approval by pass-through entity (OSPI), subrecipients may use ESSER funds to purchase real property and perform construction for improvements to land, buildings, or equipment that meet the overall purpose of the program, which is "to prevent, prepare for, and respond to" the COVID-19 pandemic."

LEAs requesting to use ESSER funds for capital expenditures should follow the instructions below.

### **Instructions to Submit the Request Form to OSPI**

**Step 1:** Review and complete the request form in the link below (section titled "To Be Filled Out By the LEA").

**Step 2:** Once the request form is complete, upload the request form using the box below.

**Step 3:** Submit the grant application for review to OSPI.

**Step 4:** OSPI will review the request form and notify you if the request has been approved or denied.

The request form can be found here:

[\*\*OSPI Request Form for Local Educational Agencies \(LEAs\) to Purchase Capital Expenditures Made with ESSER Grant Funds.\*\*](#)

### **UPLOAD SUPPORTING DOCUMENTATION HERE.**

**NOTE:** File names may **NOT** include symbols, including #.

<b>Uploaded Files</b>	<b>Uploaded By</b>	<b>Uploaded At</b>
ESSERIIICapitalOutlayRequest-Approved by OSPI.pdf	Amy Harris	12/14/2021 9:05 PM

### **Considerations When Using Federal Funds for Capital Expenditures**

- Please see additional information in the request form located in the link above. This includes the definition of the types of expenditures requiring prior approval from OSPI and the federal requirements for the intended use of certain capital assets and the tracking, monitoring and disposition of those assets.

- LEAs using federal funds, all or in part, to purchase goods or services must follow the more restrictive of the federal or state bid requirements or the LEAs internal procurement policy.
- For purchases greater than \$25k, paid for all or in part with federal funds, vendors must be checked, prior to purchases being made or work being performed, to ensure they have not been suspended or debarred suspension and debarment and documentation evidencing this must be retained (2 CFR 180). This documentation can be completed by checking the vendor on SAM.gov and printing the search results, included suspension and debarment language in a contract signed by the vendor or receiving a signed certification from the vendor that they are not suspended or debarred.
- 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.<sup>13</sup> However, DOE discourages LEAs from using ESSER 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 an LEA 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));
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<sup>14</sup>, 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).

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.)

Finally, if ESSER funds are used for construction, LEAs 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 OSPI on disposition instructions in the event that the property or equipment is no longer needed. See, e.g., 2 CFR §§ 200.310-200.313.

- The Buy American Act does not apply to the ESSER grants. However, awards made under the CRRSA Act and ARP Act (i.e., ESSER 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. (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.