



May 5, 2021

ESSER Funding Fact Sheet

Summary

In response to a growing number of questions and concerns surrounding the awarding, use and reporting of the Elementary and Secondary School Emergency Relief (ESSER) Funds the Lake Superior State University Charter Schools Office is providing a brief fact sheet using available information & data as of April 15, 2021.

Obligation dates

ESSER Funds may be used for pre-award costs dating back to March 13, 2020, when the national emergency was declared. The State of Michigan can obligate funds through specific dates for each round of ESSER Funds:

ESSER I – September 30, 2021
ESSER II – September 30, 2022
ESSER III – September 30, 2023

Allowable Expenditures

ESSER I & ESSER II:

Once schools receive ESSER Funds, there is “a broad, permissive list of allowable activities in Section 18003(d)” that the funds may be used for. So long as the funds are used for a permissible purpose, “MDE does not have the authority to limit the uses of ESSER formula funds” further. The CARES Act provides that a “local educational agency [school] that receives funds under this title may use the funds for any of the following:”

- (1) Any activity authorized by the ESEA of 1965 . . .
- (2) 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.
- (3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.
- (4) 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. (5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies. (6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases. (7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency. (8) Planning for and coordinating during long-term closures . . . (9) 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. (10) Providing mental health services and supports. (11) 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. (12) Other activities that are necessary to maintain the operation of and continuity of services in local educational H. R. 748—287 agencies and continuing to employ existing staff of the local educational agency.

The permissible uses of ESSER II funds are the “same as” those under the CARES Act.

ESSER III Funds:

With a few distinctions, a similar list of permissible uses exists for ESSER III Funds issued under Section 2001(e) of the American Rescue Plan. Distinctions of note for ESSER III Funds include:

- The list of permissible uses of ESSER III Funds uses the term “shall”, which indicates that this list is the exhaustive list of permitted uses for funds received under the American Rescue Plan.
- Of the total amount allocated to a school from the State’s ESSER III award, the school must reserve at least 20% of the funds to address learning loss through the implementation of evidence-based interventions, and ensure that those interventions respond to students’ social, emotional, and academic needs and address the disproportionate impact of COVID-19 on underrepresented student subgroups.
- In addition, unlike the CARES Act, the American Rescue Plan contains a provision that states that an LEA receiving funds under Section 2001 must develop and make publicly available on its website (within 30 days of receiving funds) a plan for the safe return to in-person instruction and continuity of services; the plan must be made available for public comment as it is developed. Section 2001(i) of the American Rescue Plan.
- Finally, the American Rescue Plan also places restrictions on LEAs that receive ESSER III Funds in high-poverty schools.

List of allowable expenses for ESSER III: (A) Any activity authorized by the Elementary and Secondary Education Act of 1965. (B) Any activity authorized by the Individuals with Disabilities Education Act. (C) Any activity authorized by the Adult Education and Family Literacy Act. (D) Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006. (E) 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. (F) 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. (G) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies. (H) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases. (I) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency. (J) 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 Individuals with Disabilities Education Act and ensuring other educational services can continue to be provided consistent with all Federal, State, and local requirements. (K) 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 children with disabilities, which may include assistive technology or adaptive equipment. (L) Providing mental health services and supports, including through the implementation of evidence-based full-service community schools. (M) 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, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care. (N) Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—(i) 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; (ii) implementing evidence-based activities to meet the comprehensive needs of students; (iii) providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and (iv) tracking student attendance and improving student engagement in distance education. (O) 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) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and nonmechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning,

fans, control systems, and window and door repair and replacement. (Q) Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff. (R) 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.

Reporting & Audit Requirements for ESSER Funds

If a school expends \$750,000 or more in combined Federal funds, the school is subject to the provisions in the Single Audit Act. The OMB could require that ESSER Funds be audited specifically as part of the Single Audit, however, OMB has not issued guidance to date.

MDE explained that they are “required to submit quarterly reports to the U.S. Department of Education,” and that “subgrantees [schools] will be required to submit to MDE the information necessary for the state to submit its quarterly reports.” ESSER I and II Funds require the MDE to meet the reporting requirements of section 15011 of the CARES Act, which are satisfied through the Federal Funding Accountability and Transparency Act (“FFATA”), and to submit reports to the Secretary within six months that contain a detailed accounting of the use of funds. FFATA reporting requirements also apply to funds received under the American Rescue Plan.

From an accounting standpoint, ESSER I, ESSER II, and ESSER III Funds must also be tracked separately from other funds received. Subsequent guidance under the CARES Act provided that Schools “must comply with all requirements corresponding to the receipt of funds under [the CARES Act] including, but not limited to, any certifications, assurances, and accountability and transparency provisions.

Penalties for Noncompliance

If, through an audit or otherwise, it is determined that a LEA has misused funds, several consequences could flow to the LEA. Of course, a public school academy’s failure to comply with applicable law is grounds for revocation of the charter. See MCL 380.507(4)(b). In addition, MDE has explained that “[i]f, during the implementation of any funded project, [it] establishes that inaccurate or false information was provided in the application, the grant may be rescinded.” And it has further explained that “[i]f it is determined that an eligible subrecipient receiving funds under this act expends any funds under this act for a purpose that is not consistent with the requirements of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, or Uniform Guidance 2 CFR 200, the state budget director is authorized to withhold payment of state funds, in part or in whole, payable from any state appropriation.” Along similar lines, the Congressional Research Services has explained, “[i]f recipients fail to comply with federal grant conditions that they have voluntarily accepted and agreed to follow, they could be subject to a range of consequences. Such consequences include administrative

actions to terminate and recover the grant funds, or suspension from eligibility for future grant awards.”

LSSU CSO Recommendations & Resources:

- Be aware of the possibility of Single Audit and how it could impact your school.
- Ensure your accounting staff/department is appropriately tracking and recording these Federal Funds in accordance with GAAP and the requirements of the Federal Government.
- Communicate with your auditor and legal counsel to ensure you are complying with the requirements of these Federal Funds.
- Consult your auditors if you have any questions regarding allowable expenditures, reporting requirements or Single Audit. They are the experts on the subject and will be determining if the funds were used in accordance with the regulations.
- Consult your legal counsel if you have questions.
- Obtain a second opinion if you are still unsure.
- MAPSA – communication/webinars and website resources
- MDE