



# ESSER Funding Flexibility & Acceptable Use

An excerpt from

**DMGroup's *School Restart Research Brief Series***



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# ESSER Funding Flexibility & Acceptable Use

## Overview

There is widespread confusion across the country, so it is important to clarify that CARES Act funds do not have a “supplement not supplant” provision. **These dollars can be used for *virtually any reasonable educational expense*.** This includes hiring back positions that may have been eliminated, hiring new staff, restoring furlough days, and paying staff to extend the school year. The following pages note explicit language around acceptable uses and context on the CARES Act funds.

Although ESSER funds were allocated through Title I, **THIS IS NOT TITLE I MONEY. None of the restrictions for Title I apply to ESSER funds.**

District Management Group (DMGroup) worked with legal experts from Federal Education Group (FEG) to understand allowable uses of ESSER funds. Below is a list of allowable and unallowable expenses for ESSER funds, as noted by the Department of Education (ED).

ESSER funds can be used for:

- **Activities necessary to maintain LEA operations and services and employ existing LEA staff, (including virtually all expenses, e.g. maintaining your current staffing, restoring furlough days, hiring new staff)**
- **Any activity authorized by ESEA, IDEA, AEFLA, Perkins, or McKinney Vento,**
- **Coordination of preparedness and response efforts to COVID-19,**
- **Providing principals and other school leaders with resources to address individual school needs,**
- **Activities to address the unique needs of low-income children, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including outreach and service delivery,**
- **Procedures and systems to improve LEA preparedness and response efforts,**
- **Training and professional development for LEA staff on sanitation and minimizing the spread of infectious disease,**
- **Purchasing supplies to sanitize and clean LEA facilities,**
- **Planning for and coordinating during long-term closures, including how to provide meals, technology for online learning, guidance for carrying out IDEA requirements, and providing educational services consistent with applicable requirements,**
- **Purchasing educational technology (including hardware, software and connectivity) for the LEA’s students,**
- **Providing mental health services and supports, and**
- **Planning and implementing summer learning and supplemental afterschool programs.**



The following pages provide background and context for the CARES Act funds.



Throughout the spring and summer of 2020, school districts (LEAs) across America are receiving new funding through the CARES Act in the form of Elementary and Secondary Schools Emergency Relief Fund (ESSER Fund). State education agencies (SEAs) are awarding subgrants to school districts to help “rethink the way students access education.” SEAs are required to allocate at least 90% of the ESSER funds directly to LEAs through a formula based on FY 2019 Title I, Part A allocations.

Guidance around acceptable uses of ESSER funding includes virtually any educational expense. The only expenses LEAs may not spend ESSER funds on are noted below. All acceptable uses are noted on the prior page of this document.

ED has said LEAs may not spend ESSER funds on:

- Bonuses, merit pay, or similar expenditures, unless related to disruptions or closures related to COVID-19,
- Subsidizing or offsetting executive salaries and benefits of individuals who are not LEA employees, or
- Expenditures related to state or local teacher or faculty unions or associations.

*Unlike other state-administered programs, ED has said SEAs cannot limit district use of allowable ESSER funds.<sup>1</sup> In addition, ESSER funds can be spent on costs incurred between March 13, 2020 and September 30, 2022.*

Districts raised specific questions on if ESSER funds can be used to re-hire positions eliminated due to budget constraints in Spring 2020. *One of the allowable uses of ESSER funds is to maintain district operations and employ existing staff.<sup>2</sup> In their Q&A session, ED has stated explicitly that **there is no “supplement not supplant” requirement in the CARES Act, so districts can use ESSER funds to pay for things they used to support with state/local funds.** There is, however, a Maintenance of Effort (MOE) requirement to keep states from substantially reducing their support for K-12 education.<sup>3</sup>*

It is unclear how the federal “Time and Effort” rules will apply to employees paid with CARES Act funds. Time and Effort refers to the process of documenting the time an employee spent on federal grant activities. The requirement comes from a set of federal regulations known as the Uniform Grant Guidance, which ED has said applies to the CARES Act. It remains unclear how Time and Effort will apply to ESSER funds, which are designed to support district operations in contrast to a specific federal program.

During the Great Recession in 2009-2010, Congress authorized a similar program called the State Fiscal Stabilization Fund (SFSF). For that program, ED determined that the Time and Effort rule did not apply given the program’s broad nature. ED has not yet made that distinction for ESSER funds, but it is possible that they will make a similar determination.

If you have further questions on ESSER funds, please contact the DMGroup team.

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<sup>1</sup> ED Q&A 14. <https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>

<sup>2</sup> Section 18003(d)(12) of the CARES Act.

<sup>3</sup> Confirmed by ED in Q&A 20. <https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>



The above is an excerpt from “ESSER Funding Flexibility & Acceptable Use” in the Managing Resources: School Restart Research Brief, prepared by District Management Group.

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