



# An Overview of ESSER Funding

GCSSA

April 23, 2021

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# Catherine Swartz



Catherine Swartz is a public finance attorney who serves as bond counsel, underwriter's counsel and trustee's counsel in general obligation and revenue bond financings. Her clients include Ohio cities, counties, school districts and villages. She provides counsel to political subdivisions on issues related to tax levies, continuing disclosure filings, real estate, special assessments, public records, investment policies, sales and use tax, and ethics. She works with school district clients on matters such as school finance, public records law and board policy issues.

# Beverly Meyer



Beverly Meyer is a partner in Bricker & Eckler's Education Law Group. She represents K-12 school districts and colleges and universities, focusing her practice on labor and employment issues and advising clients in matters such as collective bargaining and labor relations, employee discipline, harassment investigations, wage and hour claims, and leave and benefits issues. Beverly regularly litigates in federal and state courts and before administrative agencies. She is an enthusiastic lecturer on matters affecting her areas of practice and has developed and presented employment-related trainings and programs for clients and professional groups on local, state and national levels. Beverly is a current member and past chair of the Ohio Council of School Board Attorneys Executive Committee. She was selected by her peers for inclusion in The Best Lawyers in America©2021 for Education Law and named to the 2021 Ohio Super Lawyers List in Schools and Education Law.

# Disclaimers

## We are lawyers, but ...

- We are not giving you legal advice
- Consult with your district's legal counsel regarding how best to address a specific situation

# ESSER Fund – CARES Act

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- Elementary and Secondary School Emergency Relief Fund (ESSER) was authorized by Coronavirus Aid, Relief, and Economic Security (CARES) Act – March 27, 2020
  - \$13.2 billion
    - Ohio's share - \$489.2 million
    - \$440.3 million to school districts
  - Funds used for preventing, preparing for and responding to COVID-19.

# ESSER II (CRRSA)

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- Authorized by Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act – Dec. 27, 2020
  - \$54.3 billion
    - Ohio's share – \$2.0 billion

# ESSER III (ARP)

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- American Rescue Plan Act – March 11, 2021
  - \$122.7 billion
    - \$3 billion for special education
  - Ohio's share - \$4.5 billion

One Hundred Seventeenth Congress  
of the  
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Sunday,  
the third day of January, two thousand and twenty-one*

An Act

To provide for reconciliation pursuant to title II of S. Con. Res. 5.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “American Rescue Plan Act  
of 2021”.

## ESSER III

- Some funds released to states in late March
- Remaining funds will be released after states submit plans

# ESSER III Allocations and Regulation



- Estimated allocations are available at <https://ccip.ode.state.oh.us/documentlibrary/ViewDocument.aspx?DocumentKey=86970>
- Interim Final Rule issued April 22, 2021 establishes regulatory requirements for ESSER III  
<https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/>



## CCIP Note #470

**Re:** ARP ESSER Local Education Agency Allocations, ARP ESSER Application Template and ESSER Reimbursement Update

**Date:** April 16, 2021

**To:** Superintendents, Treasurers, Authorized Representatives, Fiscal Representatives and Consolidated Funding Application Contacts of ESSER Recipients

## American Rescue Plan Elementary and Secondary School Emergency Relief Fund (ARP ESSER)

On March 11, 2021, the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund was enacted as part of the American Rescue Plan (ARP) Act, Public Law 117-2. ARP ESSER provides a total of nearly \$122 billion to States 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.

## Interim and Final ARP ESSER Local Education Agency (LEA) Allocations

Ohio's award is based on the proportion of funds received under Part A of Title I of the Elementary and Secondary Education Act (ESEA) of 1965 in Federal Fiscal Year 2020. Ohio's total ARP ESSER award \$4,472,067,097. Ohio has already received 2/3 of the award (\$2,981,378,065) and will receive the remaining 1/3 balance (\$1,490,689,032) upon completion of a State Education Agency (SEA) ARP Plan.

Each eligible subrecipient LEA will receive an interim allocation in the *first week of May*. Each eligible subrecipient LEA will receive a second allocation of funds when USED awards the balance of Ohio's total ARP award. Local Education Agencies can find the interim ARP ESSER LEA allocation amount and the final ARP ESSER allocation amounts [HERE](#). ARP ESSER allocations are determined from the proportion of funds that LEAs received under Part A of Title I of the ESEA of 1965 in the most recent fiscal year, in accordance with guidance from the USED.

# State Appropriation Measures

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- State Controlling Board Actions
  - April 19, 2021 approval of \$50.8 million (from FY 2020 to FY 2021)
- HB 170/SB 111 – \$857.05 million in funding for schools (pending)
  - \$683.1 million – K-12 emergency relief
  - \$19.05 million – Governor’s Emergency Relief Fund
  - \$154.9 million – Emergency assistances for non-public schools

# Period of Funds Availability

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- ESSER – March 13, 2020 through September 30, 2022
- ESSER II – March 13, 2020 through September 30, 2023
- ESSER III - March 13, 2020 through September 30, 2024
- Time frames include Tydings Amendment period

# Expenditure Logistics

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- Most guidance indicates that ESSER I Funds must be used before ESSER II, which may require an ESSER I application revision
- ODE indicated on April 17, 2021 that districts are encouraged to use ESSER I funds first but not required



## Federal Funding Accountability and Transparency Act (2006)

- Requires separate accountability for recipients/subrecipients of federal awards over \$25,000
- Separate funds, subfunds or special cost centers

# Proper Accounting

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- Auditor of State Bulletin 2021-004 (April 7, 2021)
  - Document rationale for each expenditure of ESSER funds
  - Track and document each expenditure
  - Separate accounts for ESSER I, ESSER II and ESSER III
- One time funds not long-term source of revenue



## Auditing

- State Auditor may audit spending by each school district of grants from HB 170/SB 111



**Spending your district's ESSER monies**

# ESSER I, II, and III/ARP

[https://oese.ed.gov/files/2021/03/FINAL\\_ARP-ESSER-FACT-SHEET.pdf](https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf)



Topic	ESSER Fund (CARES Act)	ESSER II Fund (CRRSA Act)	ARP ESSER (ARP Act)
SEA Deadline for Awarding Funds	An SEA must award the funds within one year of receiving them, which will be April through June 2021, depending on an SEA's award date.	An SEA must award the funds within one year of receiving them, which will be January 2022.	<p>With respect to making local educational agency (LEA) subgrants (90% of the total ARP ESSER allocation), the SEA must allocate ARP ESSER funds in an expedited and timely manner and, to the extent practicable, not later than 60 days after the SEA receives those funds.</p> <p>An SEA must award ARP ESSER funds not allocated to LEAs within one year of the date the SEA receives those funds.</p>

# Recent “asks” school districts are currently receiving:

Vaccine Incentives

Attendance Incentives

“COVID-leave” after December 31, 2020

Hazard Pay

Salary Increases

ESSER funds do not automatically apply to such uses, and state and federal laws restrict what a district can do in these scenarios.





## Acceptable Uses of ESSER I and II monies:

ESSER I and ESSER II is intended to help states and school districts safely reopen schools, measure and effectively address significant learning loss, and take other actions to mitigate the impact of COVID-19 on the students and families who depend on our K-12 schools.

# Acceptable uses...

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- a) Activities authorized under ESEA, IDEA, Perkins, McKinney-Vento subtitle B, Adult Education and Family Literacy Acts.
- b) Coordinate preparedness and response efforts of LEA with state, local, Tribal, and territorial public health departments and other relevant agencies to prevent, prepare for, and respond to COVID-19.
- c) Activities to address unique needs of low-income students, students with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, foster youth.

# Acceptable uses...

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- d) Develop and implement procedures and systems to improve the preparedness and response efforts of LEA.
- e) Training and PD for staff of LEA on sanitation and minimizing spread of infectious diseases.
- f) Purchase supplies to clean and sanitize facilities of the LEA.

# Acceptable uses...

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- g) Planning for and coordinating during long-term closures (meals, technology, IDEA, and other educational services provided consistent with Federal, state, local requirements).
- h) Purchase educational technology (including hardware, software, and connectivity) for students served by LEA, including low-income and IDEA.
- i) Provide mental health services and supports.
- j) Plan and implement summer learning and supplemental afterschool activities.

# Acceptable uses...

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- k) Addressing learning loss by: administering and using high-quality assessments to assess students' academic progress and meet students' academic needs, including through differentiating instruction; implementing evidence-based activities to meet the comprehensive needs of students; providing information and assistance to parent and families on how they can effectively support students, including in a distance learning environment; and/or tracking student attendance and improving student engagement in distance education.

# Acceptable uses...

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- l) 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.
  - m) 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.
- <https://www.bricker.com/industries-practices/education/insights-resources/publications/esser-hvac-what-school-districts-need-to-know>

# Acceptable uses...

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- n) Provide principals and other school leaders with resources necessary to address needs of their individual schools.
- o) Other activities necessary to maintain the operations and continuity of services in the LEA and continuing to employ existing staff of the LEA.

# What are the “additional” uses of ESSER II funds?

- Additional ESSER allowable uses were added under the CRRSA Act. These include allowable activities k., l., and m. above: addressing learning loss; preparing schools for reopening; and testing, repairing, and upgrading projects to improve air quality in school buildings.
- It is important to note that the USED clarified that these allowable uses were also allowable under ESSER I.

<https://ccip.ode.state.oh.us/documentlibrary/ViewDocument.aspx?DocumentKey=86411>

# And what about ESSER III/ARP?

[https://oese.ed.gov/files/2021/03/FINAL\\_ARP-ESSER-FACT-SHEET.pdf](https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf)



Topic	ESSER Fund (CARES Act)	ESSER II Fund (CRRSA Act)	ARP ESSER (ARP Act)
LEA Uses of Funds and Reservations	<p>The CARES Act includes allowable uses of funds related to preventing, preparing for, and responding to COVID-19.</p> <p>ESSER funds may be used for the same allowable purposes as ESSER II and ARP ESSER, including hiring new staff and avoiding layoffs.</p> <p>No required reservations of funds.</p>	<p>ESSER II funds may be used for the same allowable purposes as ESSER and ARP ESSER, including hiring new staff and avoiding layoffs.</p> <p>Note that the “additional” LEA allowable uses of funds under the CRRSA Act (addressing learning loss, preparing schools for reopening, and testing, repairing, and upgrading projects to improve air quality in school buildings) already are permitted under the CARES Act.</p> <p>No required reservations of funds.</p>	<p>An LEA must reserve <u>not less than 20 percent</u> of its total ARP ESSER allocation to address learning loss through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students’ academic, social, and emotional needs and address the disproportionate impact of COVID-19 on underrepresented student subgroups.</p> <p>The remaining ARP ESSER funds may be used for the same allowable purposes as ESSER and ESSER II, including hiring new staff and avoiding layoffs.</p>

# And what about ESSER III (cont'd)?

Topic	ESSER Fund (CARES Act)	ESSER II Fund (CRRSA Act)	ARP ESSER (ARP Act)
LEA Uses of Funds and Reservations			<p><b>Note that section 2001(e) specifically authorizes an LEA to use ARP ESSER funds to develop strategies and implement 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. An LEA may also use its ESSER and ESSER II funds for this purpose, although it is not expressly listed in the CARES or CRRSA Act.</b></p> <p><b>ARP requires a posted plan following “meaningful consultation” with stakeholders</b></p>

# Using ESSER funds for bonuses, merit pay, and other incentives

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- Address recruitment or retention challenges in light of the pandemic,
- Provide additional compensation to teachers and other staff that work in-person,
- Provide additional compensation to teachers and other staff that have assumed new duties because of COVID,
- Incentivize effective teachers to move to schools with vulnerable students that have been disproportionately impacted by the pandemic, or
- Provide additional pay to substitute teachers where there is a shortage.
- **Other pay strategies could also be permissible if the LEA can connect the strategy to issues resulting from COVID-19.**

<https://ccip.ode.state.oh.us/DocumentLibrary/ViewDocument.aspx?DocumentKey=86411>

# Use of Funds Questions

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- Will the proposed use of funds “prevent, prepare for, and respond to coronavirus”?
- Is it an allowable use of funds under CARES/CRRSA?
- Is it reasonable and necessary?
- Does it promote equity?
- Does it support returning students to the classroom?

<https://ccip.ode.state.oh.us/DocumentLibrary/ViewDocument.aspx?DocumentKey=86411>

# Beware of the requirements of OMB Uniform Guidance and USDOE General Regulations

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Do I need to follow the Uniform Grant Guidance (UGG) and Education Department General Administrative Regulations (EDGAR) for ESSER?

- ESSER is governed by the Uniform Grant Guidance (UGG) and the Education Department General Administrative Regulations (EDGAR). Among other requirements, all expenses paid with ESSER funds **must be necessary and reasonable under the circumstances**. What might be necessary and reasonable in one circumstance might not be in another.

<https://ccip.ode.state.oh.us/documentlibrary/ViewDocument.aspx?DocumentKey=86411>

# ESSER I, II, and III/ARP

[https://oese.ed.gov/files/2021/03/FINAL\\_ARP-ESSER-FACT-SHEET.pdf](https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf)



Topic	ESSER Fund (CARES Act)	ESSER II Fund (CRRSA Act)	ARP ESSER (ARP Act)
Equitable Services	An LEA that receives ESSER funds under the CARES Act (section 18005) <b>must provide equitable services to non-public school students and teachers</b> in the same manner as provided under section 1117 of Title I, Part A of the ESEA.	The CRRSA Act (section 312(d)) includes a separate program of Emergency Assistance for Non-Public Schools under which eligible non-public schools may apply to an SEA to receive services or assistance. Consequently, <b>LEAs do not provide equitable services under ESSER II.</b>	<p>The ARP (section 2002) includes a separate program of Emergency Assistance for Non-Public Schools (EANS). Consequently, <b>LEAs do not provide equitable services under ARP ESSER.</b></p> <p>Under EANS, an SEA provides services or assistance to non-public schools that enroll a significant percentage of children from low-income families and are most impacted by COVID-19. EANS funds may not be used to provide reimbursements for costs incurred by non-public schools.</p>

# Questions?

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