

REVISED Certification and Agreement for Funding for the Elementary and Secondary School Emergency Relief Fund II (ESSER II)

BACKGROUND

Purpose

The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA), was signed into law on December 27, 2020 and provides an additional \$54.3 billion for the Elementary and Secondary School Emergency Relief Fund (ESSER II Fund). ESSER II Fund awards to SEAs are in the same proportion as each State received funds under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended, in fiscal year 2020.

The Utah State Board of Education is distributing these funds by application in alignment with the federal distribution formula. This new funding – more than four times the initial award under the CARES Act – is intended to help local education agencies 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.

Although the ESSER II uses of funds are similar to those for ESSER, there are important distinctions between the ESSER II and ESSER programs, including the period of funds availability, equitable services to non-public schools, maintenance of effort, and a report on efforts to measure and address learning loss. You should plan to use all remaining ESSER funds before making use of the ESSER II funds, given the shorter remaining period of availability. Please consult the accompanying fact sheet to learn more about the ESSER II program.

Additionally, due to the release of intent language in Utah’s 2021 general session SB1 1st substitute (<https://le.utah.gov/~2021/bills/static/SB0001.html>), the Utah State Board of Education has modified this application template to reflect the state guidance on ESSER II use cases. We want LEAs to have full transparency for the requirements and possible implications of spending plans in alignment with both the U.S. Department of Education and the Utah State Legislative code.

Federal Allowable Use Cases

A local educational agency (LEA) may use funds it receives under section 313(d) of the CRRSA Act for any activity listed in section 313(d) (described below). Any activity that is an allowable use of Elementary and Secondary Schools Emergency Relief (ESSER) funds by an LEA under section 18003(d) of the CARES Act is also an allowable use of ESSER II funds by an LEA under section 313(d) of the CRRSA Act. Any allowable use of ESSER II funds by an LEA is also an allowable use of ESSER funds by an LEA under section 18003(d) of the CARES Act.

1. Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (“IDEA”), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (“the Perkins Act”), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).
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, 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 IDEA and ensuring other educational services can continue to be provided consistent with all Federal, State, and local requirements.
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 children 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, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
12. 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
 - 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.
 - b. Implementing evidence-based activities to meet the comprehensive needs of students.
 - c. Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.
 - d. Tracking student attendance and improving student engagement in distance education.

13. 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.
14. 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.
15. 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.

Non-allowable Use Cases

The Department generally does not consider the following to be an allowable use of ESSER II funds, under any part of section 313:

- 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the LEAs or
- 2) expenditures related to state or local teacher or faculty unions or associations.
- 3) ESSER II funds generally will not be used for bonuses, merit pay, or similar expenditures

NEW: Utah State Legislative Intent Language

State Legislation:

The current [SB1 1st substitute](#) language related to ESSER II states:

409 (2) (a) Appropriations under the Minimum School Program are contingent upon the
410 expenditure of Federal Coronavirus Relief for Public Education funds in Item 9, State Board of
411 Education - State Administrative Office, to address learning loss related to COVID-19,
412 including by providing:
413 (i) summer school programs;
414 (ii) after school programs;
415 (iii) temporary classroom aids;
416 (iv) temporary counseling;
417 (v) an extended school year;
418 (vi) an extended school day;
419 (vii) Saturday programs and tutoring;
420 (viii) individualized learning plans for students who are at risk of academic failure;
421 (ix) mentors and tutors;
422 (x) at-home visits to provide books and learning materials to students; or
423 (xi) COVID-19 mitigation supplies for individual use, not including facilities upgrades
424 or renovations, that protect students and teachers, including hand sanitizer, sanitizing wipes,
425 personal protective equipment, and masks.
426 (b) If a local education agency expends an expenditure of Federal Coronavirus Relief
427 for Public Education funds for a purpose other than the purposes described in Subsection
428 (2)(a), it is the intent of the Legislature that the State Board of Education reduce the local

429 education agency's allocation under the Minimum School Program by one dollar for every one
430 dollar of Federal Coronavirus Relief for Public Education funds expended for the other
431 purpose.

Potential Pending State Amendments

In discussions with legislative leadership, we are working on amending the current bill language to include these additional items in alignment to learning loss to call them out explicitly as approved use cases.

Ultimately, the current language requires that an LEA must align the ESSER II use case to learning loss to meet

state guidance, so an LEA can currently write for these use cases and state their alignment to learning loss in the justification narrative:

- (xiii) digital learning opportunities;
- (xiv) professional learning needs;
- (xv) mental health services and supports; or

Funding

The Utah State Board of Education intends to award funding to eligible LEAs based on FFY 2020 Title I-A allocations as directed by the U.S. Department of Education. The Utah State Board of Education has also established a base allocation for all LEAs using the state set aside as we did with the original ESSER award.

One-Time Funding

LEAs should note that the ESSER II is one-time funding that must be utilized by September 30, 2022 and plan expenses accordingly.

(Please note, due to the federal Tydings Amendment, awardees have an additional 12-months to submit final reimbursement paperwork, which is the 09/30/23 date referenced in the fact sheet. We are encouraging all of our LEAs to make plans to spend by the end of the award period 09/30/22.)

Equitable Services:

An LEA that receives ESSER II funds under this grant is not required to provide equitable services to non-public school students and teachers with the ESSER II funding. The Utah State Board of Education will be administering the new Emergency Assistance for Non-Public Schools ([Utah EANS Website](#)) program, which allows non-public schools to see support directly from USBE.

Maintenance of Records:

Records pertaining to this award under 2 C.F.R. 200.334 and 34 C.F.R. 76.730, including financial records related to use of grant funds, must be retained separately from the LEAs original ESSER I funds awarded in 2020.

NEW Application Deadline: Wednesday, March 31, 2021 at 5:00 PM

Resources

The Utah State Board of Education recommends the following resources to support LEAs in their creation of a K-12 Coronavirus Relief spend plan:

1. [Utah Reopening School Plan and Guidance](#): The Utah State Board of Education (USBE) worked with a panel of experts—educators, administrators, public health experts, physicians, epidemiologists, teacher representatives—to articulate minimum elements and requirements that Local Education Agencies (LEAs) must address as they plan to reopen schools for in-person instruction in the fall of 2020. The agency recommends that each LEA consider their plan in relation to developing a spend plan for these resources.
2. [Utah Three Phases of Recovery for K-12 School](#): The USBE website has collected resources to support the “reimagining” of education including formative assessment and essential standards.
3. [Digital Teaching and Learning](#): This site provides guidance to Local Education Agencies (LEAs) regarding the feasibility, legality, and resources to provide online learning.
4. [Just in Time Supports](#): This Google drive presents resources from USBE’s Teaching and Learning Department in alignment with subject specific resources related to learning loss.
5. [Supporting Mental Health and Social Emotional Needs](#): This site provides resources related to school personnel providing support for both social emotional learning (SEL) and mental health to K-12 students related to impacts of COVID-19.
6. [COVID-19 School Manual](#): Schools are not only a place of learning for students, but workplaces for teachers and employees. This manual provides public health recommendations to help make informed decisions to protect students, teachers, and employees.
7. [Centers for Disease Control and Prevention](#): Schools and childcare program resources related to COVID-19.

Points of Contact:

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LEA Application

Please complete the fields below on pages 5-9 that are highlighted for response and upload to the Utah Grants Management System along with the budget request:

Legal Name: (e.g., Alpine School District)
Contact Information for LEA Representative
Name:
Position & Office:
Address:
Telephone:
Email address:

PROPOSED USE OF FUNDS

Please provide a detailed explanation of how the LEA intends to use the ESSER II funds in alignment with the allowable use cases described by the U.S. Department of Education and the new Utah state legislative intent language. We encourage LEAs to prioritize evidence-based practices and call those out in their narrative.

Intended Use of Funds:

Please provide a narrative response that details your LEA ESSER II plan in alignment with the allowable use cases. We recommend you call out the federal use case language and category number in your response, as well as including your budget narrative from the Utah Grants Management System.

NEW: Alignment to Learning Loss:

Please provide a narrative response for how your LEA ESSER II plan aligns with addressing student “learning loss” as referenced in Utah’s 2021 general session SB1 1st substitute (<https://le.utah.gov/~2021/bills/static/SB0001.html>). The LEA may also state the following if their submitted use case does not align with “learning loss” – *We will be using our ESSER II funds in alignment with federal guidance for activities that are not related to learning loss. We understand that this will reduce our state minimum school program (MSP) allocation dollar for dollar based as directed by the Utah state legislature.*

GEPA Section 427 (20 U.S.C. 1228a) Compliance

Please describe how the LEA will comply with the requirements of GEPA Section 427 (20 U.S.C. 1228a). Comprehensive GEPA requirements are listed on page 9-10 of this document. Your 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 access to, or participation in, the program.

Description of GEPA Compliance:

ASSURANCES

Programmatic, Fiscal, and Reporting Assurances

The superintendent or charter school director assures the following:

- The LEA will only use the ESSER II grant Coronavirus Relief Fund to cover costs that—
 - Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19)
- Funds will be used to support allowable use cases under section 313(d) of the CRRSA Act for any activity listed in section 313(d). Any activity that is an allowable use of Elementary and Secondary Schools Emergency Relief (ESSER) funds by an LEA under section 18003(d) of the CARES Act is also an allowable use of ESSER II funds by an LEA under section 313(d) of the CRRSA Act.
- **NEW: The LEA has noted that the Utah State Legislature has passed intent language in the Public Education Base Budget Amendments (<https://le.utah.gov/~2021/bills/static/SB0001.html>) that provides additional guidance related to the use of ESSER II funds by Utah LEAs.**
- **NEW: If an LEA incurs an expenditure of ESSER II funds for a purpose other than the purposes described in the Public Education Base Budget Amendments (<https://le.utah.gov/~2021/bills/static/SB0001.html>) the Utah State Board of Education will reduce the LEA's allocation under the Minimum School Program by one dollar for every one dollar of ESSER II funds expended for the other purpose.**
- The LEA, and any other entity that receives ESSER II funds will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of any disruptions or closures related to COVID-19 in compliance with section 315 of Division M of the CRRSA Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity. ESSER II funds generally will not be used for bonuses, merit pay, or similar expenditures.
- The LEA will comply with all reporting requirements at such time and in such manner and contain such information as the federal government, state lawmakers, and USBE may reasonably require in the future.
 - Records pertaining to this award under 2 C.F.R. 200.334 and 34 C.F.R. 76.730, including financial records related to use of grant funds, must be retained separately from the LEAs ESSER I funds (awarded in 2020).
- The LEA will cooperate with any examination of records with respect to ESSER II grant by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the governor; (ii) the Department of Education and/or its Inspector General; or (iii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
- An LEA that receives ESSER II funds under this grant is not required to provide equitable services to non-public school students and teachers with the ESSER II funding.
- When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, U.S. Department of Education grantees shall clearly state:

- the percentage of the total costs of the program or project which will be financed with Federal money;
 - the dollar amount of Federal funds for the project or program; and
 - the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.
 - Recipients must comply with these conditions under Division B, Title V, Section 505 of Public Law 115-245, Consolidated Appropriations Act, 2019.
- Federal grant recipients, sub recipients and their grant personnel are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email when driving. Recipients must comply with these conditions under Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009.
 - Grantees and subgrantees that receive grant funds under programs of the Department are responsible for maintaining internal controls regarding the management of Federal program funds under the Uniform Guidance in 2 CFR 200.302 and 200.303. In addition, grantees are responsible for ensuring that subgrantees are aware of the cash management and requirements in 2 CFR part 200, subpart D.

General Education Provisions Act (GEPA) Requirements for LEAs

Section 442 (20 U.S.C. 1232e) Assurances

The superintendent or charter school director assures the following:

- that the LEA will administer ESSER II funds in accordance with all applicable statutes, regulations, program plans, and applications;
- that the control of funds provided to the LEA, and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;
- that the LEA will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, ESSER II funds paid to that agency;
- that the LEA will make reports to the governor and to the U.S. Secretary of Education as may reasonably be necessary to enable the governor and the Secretary to perform their duties and that the local educational agency will maintain such records, including the records required under section 443, and provide access to those records, as the governor or the Secretary deem necessary to perform their duties;
- that the LEA will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of ESSER II fund expenditures;
- that any application, evaluation, periodic program plan or report relating to ESSER II will be made readily available to parents and other members of the general public;
- that in the case of any project involving construction—
 - the project is not inconsistent with overall State plans for the construction of school facilities, and
 - in developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under

section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by individuals with disabilities;

- that the LEA has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; and
- that none of the funds expended under ESSER II will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

Assurance on Lobbying (34 CFR part 82)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

To the best of my knowledge and belief, all of the information and data in this certification and agreement are true and correct. I acknowledge and agree that the failure to comply with all Assurances and Certifications in this Agreement, all relevant provisions and requirements of the Coronavirus Aid, Relief, and Economic Security Act or CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729, <i>et seq.</i> ; 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 18 USC § 1001, as appropriate.	
Superintendent or Charter School Director (Typed Name):	Telephone:
Signature of Superintendent or Charter School Director*:	Date:

**Digital signatures are preferred and require a timestamp for authentication. If a digital signature is not possible, USBE will accept a handwritten signature uploaded as a PDF.*