



#157-21

**Commonwealth of Virginia
Virginia Department of Education
Superintendent's Memo #157-21**

DATE: June 11, 2021
TO: Division Superintendents
FROM: James F. Lane, Ed.D., Superintendent of Public Instruction
SUBJECT: U.S. Department of Education Guidance on ESSER and GEER Spending

On May 26, 2021, the U.S. Department of Education (USED) released [guidance for state and local educational agencies on allowable uses of funds under the Elementary and Secondary School Emergency Relief \(ESSER\) and Governor's Emergency Education Relief \(GEER\) programs](#) (PDF). The guidance provides information and considerations on a range of topics and funding uses, including reopening schools safely and promoting the health and safety of students, staff, and the school community; advancing educational equity in COVID-19 response; and additional fiscal considerations. A summary of areas in which the Virginia Department of Education (VDOE) has received frequent questions is below.

Time Distribution Records (A-16)

For employees funded by ESSER and/or GEER, time distribution ("time and effort") records are required only if an individual employee is splitting his or her time between activities that *may be funded* under ESSER or GEER and activities that are *not allowable* under the applicable program. In all other cases, school divisions must maintain the records generally maintained for salaries and wages, consistent with policies and procedures that apply to all employees, whether they are paid with federal or other funds.

Concurrent Reimbursement of ESSER I, II, and III Funds (A-19)

In a [January 2021 letter to state superintendents](#), the USED stated that ESSER I funds should be expended prior to expending ESSER II funds. [Superintendent's Memo #090-21](#) announced the ESSER I and ESSER II reimbursement process that complied with the USED letter. The new guidance states that ESSER I, II and III funds may be spent concurrently. In response to the guidance, the VDOE will no longer require that ESSER I funds be fully reimbursed prior to submitting reimbursement requests for ESSER II funds. School divisions are strongly encouraged to fully expend and request reimbursement for ESSER I funds prior to ESSER II funds.

Buy American Act Provisions (A-20)

The Buy American Act does not apply to the ESSER or GEER programs. However, awards made under ESSER II, ESSER III, and GEER II are subject to the Domestic Preference for Procurement requirement ([see 2 CFR § 200.322 of the Uniform Guidance](#)).

Construction (B-6 and B-7)

The guidance states that construction, including remodeling, alterations, renovations, repairs, and new construction, is authorized under Title VII of the ESEA (Impact Aid) and therefore is an allowable use of GEER and ESSER funds. It should be noted that the USED discourages school divisions from using ESSER and GEER funds for new construction because this use of funds may limit a school division's ability to support other essential needs or initiatives. Further, 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 several additional federal requirements, as detailed in the guidance.

The VDOE is developing an approval request process for construction projects, to include a detailed description of the proposed construction project, the project timeline, a description of how the school division will meet each requirement, and signed verification that all requirements will be met. **A school division that submits and is granted approval for a**

construction project but that subsequently fails to meet any of the federal requirements is financially liable for any project costs that may be subsequently disallowed.

Administrative Costs (E-5)

A school division may charge reasonable and necessary administrative costs to effectively administer ESSER and/or GEER programs. For example, an LEA may use ESSER funds to hire personnel to assist in the planning, implementation, and oversight of ESSER fund activities.

Indirect Costs (E-8)

A school division may charge indirect costs to its ESSER or GEER Fund subgrant. Indirect costs and rates must comply with the Uniform Guidance and the USED's administrative regulations ([see 34 CFR §§ 76.560-76.563 of the Uniform Guidance](#)). Because the ESSER and GEER funds do not have a supplanting prohibition, a school division may use its unrestricted indirect cost rate.

For more information

Later this month, the VDOE will provide an overview of the guidance for school division staff. Information on joining the webinar was provided to school divisions via Superintendent's Email. Questions should be directed to VDOEfederalrelief@doe.virginia.gov.

JFL/LS