

## DEPARTMENT OF EDUCATION

### ASSISTANCE LISTING 84.425 EDUCATION STABILIZATION FUND (ESF)

#### ESF INTRODUCTION

**Note:** This program is considered a “higher risk” program for 2021, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020 and provides \$30.75 billion for the Education Stabilization Fund (ESF) to prevent, prepare for, and respond to coronavirus, domestically or internationally. The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA), was signed into law on December 27, 2020, and provided an additional \$81.88 billion for the ESF programs. Finally, the American Rescue Plan Act of 2021 (ARP) was enacted on March 11, 2021 and includes approximately \$165 billion for the ESF.

Although funds from the CARES Act, CRRSAA, and ARP were allocated to the US Department of Education (ED) under a single federal program (ESF), ED awarded or will award ESF funds to grantees under 22 subprograms. An alphabetic character at the end of the 84.425 Assistance Listing number was used to delineate the specific subprogram. Each subprogram has its own funding requirements and compliance requirements.

This ESF Compliance Supplement is broken down into two sections. Section 1 of the ESF Compliance Supplement identifies the objectives and compliance requirements of the subprograms generally focused on elementary and secondary education. Section 2 identifies the objectives and compliance requirements of the subprograms focused on higher education.

The table below identifies the subprogram included in each section of this ESF Compliance Supplement by name and Assistance Listing with alphabetic character identifier. It also identifies the subprograms that are not included in this ESF Compliance Supplement. For those subprograms not addressed in this ESF Compliance Supplement, auditors must refer to Part 7 of the Compliance Supplement, “Guidance for Auditing Programs Not Included In This Compliance Supplement” and, where applicable, Notices Inviting Applications and other award documentation.

| ESF Section      | Assistance Listing No. with Alpha | Subprogram Name  |
|------------------|-----------------------------------|--|
| <b>Section 1</b> |                                   |  |
|                  | 84.425A                           | Education Stabilization Fund–State Educational Agency (Outlying Areas) (ESF-SEA)   |
|                  | 84.425C                           | Governor’s Emergency Education Relief (GEER) Fund  |
|                  | 84.425D                           | Elementary and Secondary School Emergency Relief (ESSER) Fund  |
|                  | 84.425H                           | Education Stabilization Fund – Governors (Outlying Areas) (ESF-Governor)   |
|                  | 84.425R                           | Coronavirus Response and Relief Supplemental Appropriations Act, 2021 – Emergency Assistance for Non-Public Schools (CRRSA EANS) program |

| ESF Section                            | Assistance Listing No. with Alpha | Subprogram Name   |
|--|-----------------------------------|---|
| <b>Section 2</b>                       |                                   |   |
|  | 84.425E                           | Higher Education Emergency Relief Fund (HEERF) Student Aid Portion                                    |
|  | 84.425F                           | HEERF Institutional Portion   |
|  | 84.425J                           | HEERF Historically Black Colleges and Universities (HBCUs)  |
|  | 84.425K                           | HEERF Tribally Controlled Colleges and Universities (TCCUs)   |
|  | 84.425L                           | HEERF Minority Serving Institutions (MSIs)  |
|  | 84.425M                           | HEERF Strengthening Institutions Program (SIP)  |
|  | 84.425N                           | HEERF Fund for the Improvement of Postsecondary Education (FIPSE) Formula Grant                       |
|  | 84.425S                           | HEERF Supplemental Assistance to Institutions of Higher Education (SAIHE) program                     |
| <b>Neither Section 1 nor Section 2</b> |                                   |   |
|  | 84.425B                           | Discretionary Grants: Rethink K-12 Education Models Grants  |
|  | 84.425G                           | Discretionary Grants: Reimagining Workforce Preparation Grants  |
|  | 84.425P                           | Institutional Resilience and Expanded Postsecondary Opportunity                                       |
|  | 84.425U                           | American Rescue Plan – Elementary and Secondary School Emergency Relief (ARP ESSER)                   |
|  | 84.425V                           | American Rescue Plan – Emergency Assistance for Non-Public Schools (ARP EANS)                         |
|  | 84.425W                           | American Rescue Plan – Elementary and Secondary School Emergency Relief – Homeless Children and Youth |
|  | 84.425X                           | American Rescue Plan – State Educational Agency (Outlying Areas)                                      |
|  | 84.425Y                           | American Rescue Plan – American Indian Resilience in Education (AIRE)                                 |

#### IV. Other Information

##### *ARP Revisions*

Although Section 2 has been updated for changes due to ARP, Section 1 has not. ED plans to update Section 1 for compliance requirement changes due to ARP in an addendum to this Compliance Supplement. ED anticipates that the addendum will cover updates to subprograms with the identifiers 84.425 U and 84.425 X.

For ARP ESF subprograms not addressed in this ESF Compliance Supplement, the auditor must use the framework provided by Part 7 of this Compliance Supplement. For ESF subprograms addressed in this Compliance Supplement with incremental ARP funding, the auditor must use the framework outlined in Part 1 of this Compliance Supplement to perform reasonable procedures to ensure that the compliance requirements identified as subject to audit (compliance requirements marked “Yes” in Part 2 are current. These reasonable procedures would be inquiry of the auditee’s management about communications from federal agencies modifying requirements and a review of any updated terms and conditions. Documentation of the procedures performed to identify the compliance requirements is important.

Due to the timing of awards under ARP, an auditee may not have expended, or even been awarded, funds under the ARP subprograms during the audit period covered by this Compliance Supplement.

#### *Identifying Subawards on the SEFA and Data Collection Form*

For purposes of SEFA and Data Collection Form reporting, auditees should identify the individual subprogram(s) the funds were expended under, including each separate Assistance Listing with the applicable alpha character. A total for the ESF in its entirety should also be provided. Auditees may need to determine which subprogram funds were expended through review of grant documents and inquiry of the source agency.

#### *Major Program Determination*

Many auditees will have received and expended funds under multiple subprograms. For major program purposes, auditors must evaluate 84.425 in its entirety. All ESF subprogram expenditures, even those expenditures of subprograms not addressed in this ESF Compliance Supplement, must be considered as part of the ESF program for major program determination purposes.

**ESF SECTION 1 – ELEMENTARY AND SECONDARY EDUCATION****ASSISTANCE LISTING 84.425A EDUCATION STABILIZATION FUND – STATE EDUCATIONAL AGENCY (OUTLYING AREAS)****ASSISTANCE LISTING 84.425C GOVERNOR’S EMERGENCY EDUCATION RELIEF FUND****ASSISTANCE LISTING 84.425D ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND****ASSISTANCE LISTING 84.425H EDUCATION STABILIZATION FUND – GOVERNORS (OUTLYING AREAS)****ASSISTANCE LISTING 84.425R CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT, 2021 – EMERGENCY ASSISTANCE FOR NON-PUBLIC SCHOOLS (CRRSA EANS)****I. PROGRAM OBJECTIVES**

For each of these ESF programs awarded under the CARES Act, a recipient submitted a unique application in the form of a Certification and Agreement for Funding applicable to the program (see “Source of Governing Requirements”). The Department made ESSER II, GEER II, ESF-SEA II, and ESF Governor II awards as supplements to the CARES Act awards, and recipients were not required to submit another Certification and Agreement.

The objective of the GEER Fund is to provide local educational agencies (LEAs), institutions of higher education (IHEs), and other education-related entities with emergency assistance as a result of the Coronavirus Disease 2019 (COVID-19).

The objective of the ESSER Fund is to provide state educational agencies (SEAs) and LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that COVID-19 has had, and continues to have, on elementary and secondary schools across the nation.

The objective of the ESF-SEA and ESF-Governor Funds is to allocate funds to the Outlying Areas—American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands—for the purpose of providing SEAs, LEAs, IHEs, and other education-related entities with emergency assistance to address the impact of COVID-19.

The objective of the CRRSA EANS program is to provide governors with a reservation of funds under the CRRSA Act to provide services or assistance to eligible nonpublic schools to address the impact that COVID-19 has had, and continues to have, on non-public school students and teachers in the State.

For purposes of this document, the ESF includes the Governor’s Emergency Education Relief (GEER I and GEER II) Fund, the Elementary and Secondary School Emergency Relief (ESSER I. ESSER II) Fund, the Emergency Assistance to Non-Public Schools (EANS) program, the

Education Stabilization Fund–State Educational Agency (Outlying Areas) (ESF-SEA and ESF II-SEA), and the Education Stabilization Fund–Governors (Outlying Areas) (ESF-Governor and ESF II-Governor).

Note: For purposes of this document, ESSER refers to ESSER I and ESSER II funds, while ESSER I refers only to funds under the CARES Act, ESSER II refers only to funds under the CRRSA Act. Similarly, GEER refers to both GEER I and GEER II funds, while GEER I refers only to funds under the CARES Act and GEER II refers only to funds under the CRRSA Act.

## II. PROGRAM PROCEDURES

Under the GEER Fund (GEER I and II), the Department allocated funds to governors as well as the mayor of the District of Columbia; 60 percent was based on each state’s population of individuals ages 5 through 24 and 40 percent was based on the number of children counted under section 1124(c) (indicators of poverty) of the Elementary and Secondary Education Act of 1965 (ESEA). The governor uses GEER funds to (1) provide emergency support through grants to LEAs that the SEA deems to have been most significantly impacted by COVID-19; (2) provide emergency support through grants to IHEs serving students within the state that the governor determines have been most significantly impacted by COVID-19; and (3) provide support to any other IHE, LEA, or education-related entity within the state that the governor deems essential for carrying out emergency educational services. In order to receive GEER funds under the CARES Act, a governor submitted to the Department a completed “Certification and Agreement.” The CRRSA Act authorized additional funding for the GEER Fund, which the Department distributed as supplemental awards (GEER II). GEER I and GEER II are subject to all of the same requirements (with the exception of equitable services for LEAs under GEER II).

Under the ESSER Fund under the CARES Act (ESSER I), the Department allocated funds to each SEA by a formula based on the state’s fiscal year (FY) 2019 share of funds under Title I, Part A (84.010) of the ESEA. An SEA, in turn, allocated ESSER I funds to LEAs by formula based on FY 2019 Title I, Part A allocations. In order to receive an ESSER I allocation under the CARES Act, an SEA submitted to the Department a completed “Certification and Agreement.” The CRSSA Act provided an additional \$54.3 billion for the ESSER Fund, which the Department distributed as supplemental awards (ESSER II). These ESSER II awards to SEAs are in the same proportion as each state received funds under Title I, Part A of the ESEA for FY 2020. The SEA, in turn, allocated ESSER II funds to LEAs by formula based on FY 2020 Title I, Part A allocations. ESSER I and ESSER II have the same Assistance Listing alpha number and are subject to virtually all of the same requirements for audit testing purposes (with the exception of equitable services for LEAs under ESSER II), as described further below.

ESSER I and ESSER II are subject to virtually all of the same requirements, except for one main difference: an LEA that receives ESSER I funds under the CARES Act (Section 18005) must provide equitable services to students and teachers in the same manner as provided under section 1117 of Title I, Part A of the ESEA. ESSER II is not subject to the equitable services requirement; rather the CRRSA Act included \$2.75 billion for the separate Emergency Assistance for Non-Public Schools (EANS) program.

Under the EANS program, the Department awarded grants by formula to each governor with an approved “Certification and Agreement” to provide services or assistance to eligible nonpublic schools to address the impact that COVID-19 has had, and continues to have, on nonpublic school students and teachers in the State.

Under the ESF-SEA and ESF II-SEA Funds, the Department allocated funds to SEAs in the Outlying Areas based on the same proportion that each Outlying Area received under Title I, Part A in the most recent fiscal year. By statute, the Department used this same formula to make allocations to states under the ESSER Fund. In order to receive ESF-SEA funds, an SEA submitted to the Department a completed “Certification and Agreement.” The ESF II-SEA funds were awarded to each Outlying Area under the same grant terms and conditions that applied to the ESF-SEA funds.

Under the ESF-Governor and ESF II-Governor Funds, the Department allocated funds to governors in the Outlying Areas, with 60 percent of the award based on population ages 5 to 24 and 40 percent of the award based on the relative number of children counted under section 1124(c) (indicators of poverty) of the ESEA. By statute, the Department used this same formula to make allocations to governors under the GEER Fund. In order to receive ESF-Governor funds, governors submitted to the Department a completed “Certification and Agreement.” The ESF II-Governor funds were awarded to each Outlying Area under the same grant terms and conditions that applied to the ESF-Governor funds.

### **Source of Governing Requirements**

These programs are authorized by the CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020) and the CRSSA Act, Pub. L. No. 116-260 (December 27, 2020), The regulations in 34 CFR Part 76 (State-Administered Programs), 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), and 31 CFR Part 205 (Cash Management Improvement Act) apply to these programs.

Additionally, the certification and agreements each SEA or governor completed and signed prior to receiving a grant award also form the basis of the governing requirements for this program:

1. Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER I Fund)  
<https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>
2. Certification and Agreement for Funding under the Education Stabilization Fund Program Governor’s Emergency Education Relief Fund (GEER I Fund)  
<https://oese.ed.gov/files/2020/04/GEER-Certification-and-Agreement.pdf>
3. Certification and Agreement for Funding under the CRSSA Act Emergency Assistance for Non-Public Schools program (CRRSA EANS)  
[https://oese.ed.gov/files/2021/01/Final\\_EANS\\_CertificationandAgreement\\_FY21\\_1.11.21.pdf](https://oese.ed.gov/files/2021/01/Final_EANS_CertificationandAgreement_FY21_1.11.21.pdf)

4. Certification and Agreement for Funding under the Education Stabilization Fund-State Educational Agency Fund (ESF-SEA) <https://oese.ed.gov/files/2020/05/SEA-ESF-OA-Certification-and-Agreement.pdf>
5. Certification and Agreement for Funding under the Education Stabilization Fund-Governors Fund (ESF-Governor Fund) <https://oese.ed.gov/files/2020/05/Governors-ESF-OA-Certification-and-Agreement.pdf>

### Availability of Other Program Information

A number of documents posted on the Department’s website provide clarity regarding the GEER Fund, ESSER Fund, EANS program, ESF-SEA Fund, and ESF-Governor Fund requirements in this Compliance Supplement. They include:

1. Frequently Asked Questions about the Governor’s Emergency Education Relief Fund (GEER Fund) <https://oese.ed.gov/files/2020/05/FAQs-GEER-Fund.pdf>  
  
Website: <https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/>
2. Fact Sheet for GEER II [https://oese.ed.gov/files/2021/01/FINAL\\_-\\_GEER\\_FactSheet\\_1.8.21.pdf](https://oese.ed.gov/files/2021/01/FINAL_-_GEER_FactSheet_1.8.21.pdf)
3. Frequently Asked Questions about the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) <https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>  
  
Website: <https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/>
4. Fact Sheet for ESSER II [https://oese.ed.gov/files/2021/01/Final\\_ESSERII\\_Factsheet\\_1.5.21.pdf](https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf)
5. Frequently Asked Questions for the Emergency Assistance for Non-Public Schools program (EANS) [https://oese.ed.gov/files/2021/01/Final\\_EANS\\_FAQs\\_1.14.21.pdf](https://oese.ed.gov/files/2021/01/Final_EANS_FAQs_1.14.21.pdf)  
  
Website: <https://oese.ed.gov/offices/education-stabilization-fund/emergency-assistance-non-public-schools/>
6. Frequently Asked Questions – Education Stabilization Fund-State Educational Agency (ESF-SEA) <https://oese.ed.gov/files/2020/09/ESF-SEA-Final-FAQs.pdf>
7. Frequently Asked Questions – Education Stabilization Fund-Governors (ESF-Governor) <https://oese.ed.gov/files/2020/09/ESF-Governor-Final-FAQs.pdf>

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.**

| A                               | B                               | C               | E           | F                                  | G                                     | H                     | I                                  | J              | L         | M                       | N                            |
|---------------------------------|---------------------------------|-----------------|-------------|------------------------------------|---------------------------------------|-----------------------|------------------------------------|----------------|-----------|-------------------------|------------------------------|
| Activities Allowed or Unallowed | Allowable Costs/Cost Principles | Cash Management | Eligibility | Equipment/Real Property Management | Matching, Level of Effort, Earmarking | Period Of Performance | Procurement Suspension & Debarment | Program Income | Reporting | Subrecipient Monitoring | Special Tests and Provisions |
| Y                               | Y                               | Y               | N           | Y                                  | N                                     | N                     | N                                  | N              | Y         | Y                       | Y                            |

#### A. Activities Allowed or Unallowed

See Part 3, Section A, “Activities Allowed or Unallowed” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

Governors and SEAs must demonstrate that costs incurred by governors, SEAs, and subrecipients are allowable under the relevant statutory provisions and Certification and Agreement, and consistent with the purpose of the ESF, which is “to prevent, prepare for, and respond to COVID-19.” The Outlying Areas must ensure that expenditures under ESF-SEA and ESF-Governor are consistent with the allowable uses of funds set forth in the signed Certification and Agreement.

#### *GEER Funds*

Under section 18002(c) of the CARES Act, and Section 312 of the CRRSA Act, GEER I and GEER II funds may be used to:

1. Provide emergency support through grants to LEAs that the SEA deems have been most significantly impacted by coronavirus to support the ability of such LEAs to continue to provide educational services to their students and to support the on-going functionality of the LEA;
2. Provide emergency support through grants to IHEs serving students within the state that the governor determines have been most significantly impacted by coronavirus to support the ability of such institutions to continue to provide educational services and support the on-going functionality of the institution; and
3. Provide support to any other institution of higher education, LEA, or education-related entity within the state that the governor deems essential for carrying out emergency educational services to students for authorized activities described in section 18003(d)(1) of the CARES Act or the HEA, the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.

#### *EANS Funds*

The CRRSA Act, Pub. L. No. 116-260 (December 27, 2020) authorizes the CRRSA EANS program as part of the CRRSA Act's GEER II fund. A nonpublic school may apply to receive services and assistance from the SEA to address educational disruptions resulting from COVID-19 for:

1. Supplies to sanitize, disinfect, and clean school facilities;
2. Personal protective equipment (PPE);
3. Improving ventilation systems, including windows or portable air purification systems;
4. Training and professional development for staff on sanitization, the use of PPE, and minimizing the spread of infectious diseases;
5. Physical barriers to facilitate social distancing;
6. Other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control for reopening and operation of school facilities to effectively maintain health and safety of students, educators, and other staff;
7. Expanding capacity to administer coronavirus testing to effectively monitor and suppress the virus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff;
8. Educational technology to assist students, educators, and other staff with remote or hybrid learning;

9. Redeveloping instructional plans for remote or hybrid learning or to address learning loss;
10. Leasing sites or spaces to ensure safe social distancing;
11. Reasonable transportation costs;
12. Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss.
13. Reimbursement for the expenses of any services or assistance described above that a nonpublic school incurred on or after March 13, 2020, except for the following:
  - Improvements to ventilation systems (including windows), except for portable air purification systems, which may be reimbursed.
  - Any expenses reimbursed through a loan guaranteed under the Paycheck Protection Program (15 USC 636(a)) prior to December 27, 2020.
  - Staff training and professional development on sanitization, the use of PPE, and minimizing the spread of COVID-19.
  - Developing instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss.
  - Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss.

An SEA may provide these services or assistance directly to a nonpublic school or through a contract with an individual, association, agency, or organization.

Control of funds for services or assistance provided to a nonpublic school under the CRRSA EANS program and title to materials, equipment, and property purchased with CRRSA EANS funds, must be in a public agency, and a public agency must administer such funds, services, assistance, materials, equipment, and property. In addition, all services or assistance provided under the CRRSA EANS program must be secular, neutral, and non-ideological.

### *ESSER Funds*

As described in the Earmarking section, each state must allocate not less than 90 percent of ESSER grant funds as subgrants to LEAs (including charter schools that are LEAs).

All ESF Funds, including ESSER I and ESSER II funds, must be used for activities to prevent, prepare for, and respond to coronavirus.

Section 18003(d) of the CARES Act provides a list of allowable LEA ESSER I activities. The CRRSA Act includes “additional” LEA allowable uses of funds under ESSER II, in particular addressing learning loss; preparing schools for reopening; and testing, repairing, and upgrading projects to improve air quality in school buildings (Section 313(d) of the CRRSA Act); however, all of these uses are already permitted under the CARES Act.

LEAs may use ESSER I and II funds to support:

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 USC 6301 et seq.), the Individuals with Disabilities Education Act (20 USC 1400 et seq.) (“IDEA”), the Adult Education and Family Literacy Act (20 USC 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.) (“the Perkins Act”), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.).
2. Coordination of preparedness and response efforts of LEAs 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 LEAs.
6. Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.
7. Purchasing supplies to sanitize and clean the facilities of an LEA, including buildings operated by such agency.
8. Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the IDEA (20 USC 1401 et seq.), and how to ensure that 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 LEA 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. 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 LEAs and continuing to employ existing staff of the LEA.

**Note:** ESSER I and ESSER II are subject to virtually all of the same requirements, except for one main difference: an LEA that receives ESSER I funds under the CARES Act

(Section 18005) must provide equitable services to students and teachers in the same manner as provided under section 1117 of Title I, Part A of the ESEA. ESSER II is not subject to the equitable services requirement; rather the CRRSA Act includes the separate EANS program to address the needs of nonpublic students and teachers. For more information about the major similarities and differences between ESSER I and ESSER II, see the Fact Sheet for ESSER II, available at [https://oese.ed.gov/files/2021/01/Final\\_ESSERII\\_Factsheet\\_1.5.21.pdf](https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf).

## **B. Allowable Costs/Cost Principles**

See Part 3, Section B, “Allowable Costs/Cost Principles” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

1. For ESSER I, ESSER II, ESF-SEA, ESF II-SEA Funds, auditors should refer to the Cost Principles for States, Local Governments, and Indian Tribes.
2. For GEER I, GEER II (including EANS), ESF-Governor, ESF II-Governor Funds has broad discretion for awarding funds under these subprograms to states, local governments and Indian tribes, educational institutions, or nonprofits. In order to determine which requirements apply, auditors should examine how each respective governor allocated the funds to subrecipients to determine which cost principles apply for each subrecipient.
3. For all ESF funds, auditors should note that SEAs, LEAs, IHEs, and other subrecipients must maintain time distribution records for all employees including when an individual employee is splitting their time between activities that are allowable and unallowable under all ESF programs. The requirements in the Uniform Guidance apply to all ESF expenditures including the requirements related to documenting personnel expenses in 2 CFR section 200.430(i). This would mean, for example, that an LEA maintains the records it generally maintains for salaries and wages, including for employees in leave status as permitted under CARES Act Section 18003(d)(12).

CARES Act Section 18003(d)(12) and CRRSA Act Section 315 authorize grantees to continue to pay employees and Section 18002(c)(3) of the CARES Act allows LEAs, SEAs, IHEs, and other subrecipients to use funds to protect education-related jobs; the authority includes paying staff who are on leave because schools are closed due to COVID-19. Accordingly, ESSER and GEER funds may be used for that purpose even in the absence of a policy that specifically addresses these circumstances.

## **C. Cash Management**

See Part 3, Section C, “Cash Management” for any ED program in which the entity being audited is a subrecipient (i.e., federal funds are received through a pass-through grant from a grantee).

See Part 3, Section C, “Cash Management” and this section when the entity being audited is a governor and his or her designated state agency or an SEA (this includes the Outlying Areas).

US Department of the Treasury (Treasury) regulations at 31 CFR Part 205 implement the Cash Management Improvement Act of 1990 (CMIA), as amended (Pub. L. No. 101-453; 31 USC 6501 et seq.). Subpart A of those regulations requires state recipients to enter into Treasury-state agreements that prescribe specific methods of drawing down federal funds (funding techniques) for federal programs listed in the Catalog of Federal Domestic Assistance that meet the funding threshold for a major federal assistance program under the CMIA. Treasury-state agreements also specify the terms and conditions under which an interest liability would be incurred. Programs not covered by a Treasury-state agreement are subject to procedures prescribed by Treasury in Subpart B of 31 CFR Part 205, which at 31 CFR section 205.33(a) include the requirement for a state to minimize the time between the drawdown of federal funds and their disbursement for federal program purposes, described in greater detail below.

A state must minimize the time between the drawdown of federal funds from the federal government and their disbursement for federal program purposes. A federal program agency must limit a funds transfer to a state to the minimum amounts needed by the state and must time the disbursement to be in accord with the actual, immediate cash requirements of the state in carrying out a federal assistance program or project. The timing and amount of funds transfers must be as close as is administratively feasible to a state’s actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs.

## **F. Equipment/Real Property Management**

See Part 3, Section F, “Equipment/Real Property Management” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

Consistent with 2 CFR section 200.311 (real property), section 200.313 (equipment), and section 200.439 (equipment and other capital expenditures) ESF funds may be used to purchase equipment. Capital expenditures for general and special purpose equipment purchases are subject to prior approval by ED or the pass-through entity. In addition, with prior approval by the ED or the pass-through entity, recipients and subrecipients may use ESF funds to purchase real property and perform construction for improvements to land, buildings, or equipment that meet the overall purpose of the ESF program, which is “to prevent, prepare for, and respond to” the COVID-19 pandemic.

If governors, SEAs, and or subrecipients propose to use ESF funds for construction they must also comply with applicable requirements in 34 CFR section 76.600 and 34 CFR sections 75.600–617. Approved construction projects must comply with all other applicable Uniform Guidance requirements, as well as the ED’s regulations regarding construction, as applicable, at 34 CFR section 76.600. As is the case with all construction contracts using laborers and mechanics financed by federal education funds, recipients

and subrecipients that use ESF funds for construction contracts over \$2,000 must meet Davis-Bacon prevailing wage requirements. For information about the prevailing wages in the applicable region, see the Department of Labor (DOL) regional office:

<https://www.dol.gov/agencies/whd/government-contracts/construction/regions>.

Any purchases with ESF funds in this category are subject to applicable inventory control, log maintenance, and disposition requirements consistent with Part 3, Section F, “Equipment/Real Property Management” of the August 2020 Compliance Supplement.

Auditors should determine whether governors, SEAs, and/or subrecipients received prior approval for capital expenditures for equipment acquisition or improvements to land, buildings, or equipment.

1. For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the governor or SEA must receive prior approval from ED.
2. For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the governor or SEA pass-through agency must provide prior approval to subrecipients.
3. For construction, the pass-through entity must have considered applicable ED construction requirements as part of the pass-through entity’s prior approval process for construction. For example, if an LEA proposed renovating a school building to increase the filters or ventilation to its HVAC system, did the pass-through entity appropriately ensure compliance with applicable construction regulations (such as 34 CFR 75.609 (Safety and Health standards) and 75.616 (Energy Conservation)).

## **L. Reporting**

### **1. Financial Reporting**

Not Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

- a. *Federal Funding Accountability and Transparency Act (FFATA) – SEA/Governor*

Under the requirements of the FFATA (Pub. L. No. 109-282) (Transparency Act) that are codified in 2 CFR Part 170, recipients (i.e., direct recipients) of grants or cooperative agreements who make first-tier subawards of \$30,000 or more are required to register in the Federal

Funding Accountability and Transparency Act Subaward Reporting System (FSRS) and report subaward data through FSRS. Information input to FSRS is available at USASpending.gov as the publicly available website for viewing this information (<https://www.usaspending.gov/search>).

Auditors should review the compliance of the direct recipient with the reporting requirements of 2 CFR Part 170 and the accuracy of the amount reported by the recipient in FSRS against data in the direct recipient's accounting system.

Auditors should review to the extent feasible the compliance of the subawardee with the reporting requirements of 2 CFR Part 170 and the accuracy of the amount reported by the subawardee in FSRS against data in the subawardee's accounting system.

b. *ESSER II and GEER II Reporting – SEA/Governor*

Under the CRRSA Act, each governor that receives GEER II funds must meet the CARES Act reporting requirements that apply to GEER funds.

*Under the CRRSA Act, each SEA that receives ESSER II funds must meet the CARES Act reporting requirements that apply to ESSER funds and submit a report to the Secretary within six months of award that contains a detailed accounting of the use of ESSER II funds, that includes how the state is using funds to measure and address learning loss among students disproportionately affected by the coronavirus and school closures, including: low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care. This requirement is addressed through the SEA's submission of the ARP ESSER State Plan template.*

*Under the CRRSA Act, each governor and SEA that receives ESF II-Governor and ESF II-SEA funds must meet the same grant terms and conditions as those under the CARES Act.*

Depending on the time the audit is conducted, auditors should examine the ESSER II and/or GEER II report and reconcile that reported data with underlying documentation and the public quarterly reporting amounts to ensure accuracy.

c. *Annual Reporting – SEA/Governor*

Direct recipients of ESSER I and ESSER II grants must submit an annual report with data for the following categories:

- Overall ESSER I and ESSER II Fund Grant for SEA;
- SEA Reserve (up to 10 percent of total allocation);
- Mandatory Subgrants to LEAs, Section 18003(c) of the CARES Act and Section 313(c) of the CRRSA Act (at least 90 percent of the ESSER Fund grant);
- Student Participation and Engagement; and
- Full-Time Equivalent (FTE) Positions.

Direct recipients of GEER grants must submit an annual report with data for the following categories:

- Types of entities within the state that were awarded GEER funds;
- Funding conditions or requirements on GEER awards for LEAs and IHEs to ensure that the funds were spent on specific purposes or activities;
- Amounts expended and the purposes for which the funds were expended by an LEA;
- For each IHE awarded GEER funds from the State, the amount expended and additional information if GEER funds were used by the IHE to provide financial aid to students at the IHE;
- The amount awarded and expended by each education-related entity, including:
  - Which populations of students were or will be served by the entity?
  - Did the funding awarded to the entity support distance-learning and remote education or provide financial support to students?
- FTE positions for LEAs, IHEs, or Educational Entities; and
- The number of K-12 schools (public and nonpublic) that received GEER funds or received services paid for with GEER funds.

Depending on the time the audit is conducted, auditors should examine the annual report and reconcile that reported data with underlying documentation and the public quarterly reporting amounts to ensure accuracy.

#### 4. **Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

#### M. **Subrecipient Monitoring**

See Part 3, Section M, “Subrecipient Monitoring” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

#### N. **Special Tests and Provisions**

##### 1. **Participation of Private School Children**

See Part 4, 84.000 ED Cross-Cutting Section for requirements applicable to the participation of private schools under GEER I and ESSER I.

##### 2. **Prioritizing Services or Assistance to Non-Public Schools under the EANS Program**

**Compliance Requirements** Under section 312(d)(3)(C) of the CRRSA Act, an SEA receiving funds under the EANS program must prioritize services or assistance to nonpublic schools that enroll low-income students and are most impacted by COVID-19. An SEA generally has flexibility with regard to how it considers these criteria. An SEA might, for example, target nonpublic schools that enroll significant numbers of low-income students or meet a minimum threshold of low-income students. Factors that an SEA might consider in determining nonpublic schools that are most impacted by COVID-19 include but are not limited to: (1) rate of community infection; (2) number of COVID-19-related deaths per capita; (3) loss of tuition revenue due to decrease in enrollment; and (4) lack of capacity to provide remote learning due to insufficient technological support, and (5) data documenting the extent of learning loss or the social, emotional, or mental health impact attributable to the disruption of instruction caused by COVID-19. For more information, see questions C-14 and C-15 in Frequently Asked Questions for the Emergency Assistance to Non-Public Schools (EANS) Program as authorized by the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act) (<https://oese.ed.gov/files/2021/03/Final-EANS-FAQ-2.0-3.19.21.pdf>).

**Audit Objectives** Determine whether SEAs have established and implemented criteria for prioritizing services or assistance to nonpublic schools that enroll low-income students and are most impacted by COVID-19.

##### **Suggested Audit Procedures**

- a. Ascertain that the SEA established criteria to prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by COVID-19.

- b. Verify that the SEA implemented the relevant criteria to prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by COVID-19.

#### IV. OTHER INFORMATION

1. Under the EANS program, for eligible nonpublic schools For purposes of the CRRSA EANS program, an eligible nonpublic school is an elementary or secondary school that—
  - Is nonprofit;
  - Is accredited, licensed, or otherwise operates in accordance with state law;
  - Was in existence prior to March 13, 2020, the date COVID-19 was declared a national emergency; and
  - Did not, and will not, apply for and receive a loan under the Small Business Administration’s Paycheck Protection Program (PPP) (15 USC. 636(a)(37)) that is made on or after December 27, 2020. This limitation applies for as long as the nonpublic school is a participant in the CRRSA EANS program.
2. The ARP ESSER State Plan template is available at [https://oese.ed.gov/files/2021/04/ARP-ESSER-State-Plan-Template-04-20-2021\\_130PM.pdf](https://oese.ed.gov/files/2021/04/ARP-ESSER-State-Plan-Template-04-20-2021_130PM.pdf) (see page 2 above).