# Webinar on September 9, 2021, to discuss Updates to ESSER: Eligible Uses of Funds Guidance Regarding Roofs, Asbestos, and Loss of Revenue

## Memo Information

**Memo Number**

**COM-22-041**

**Memo Date**

9/3/2021

**Memo Type**

Informational

**Unit**

Public School Accountability

**Regulatory Authority**

**Response Required**

NO

**Attention**

Federal Programs; Superintendents; Assistant Superintendent; Principals; General Business Managers; Curriculum Coordinators; Bookkeepers; Facilities / Maintenance Director

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## Memo Reference

No references available.

## Memo Text

**WEBINAR**

The Division of Elementary and Secondary Education will provide a webinar on September 9, 2021 at 8:30 - 10:00 a.m. to discuss the following updates regarding ESSER Eligible Use of Funds. Superintendents, School Plant Managers, Federal Program Coordinators, and School Business Officials should plan to participate in the webinar. Please [submit any questions or concerns](https://forms.gle/iZ1no842in6PwjWa9) so they can be addressed during the webinar. The webinar will be recorded and posted on the [CARES Act, CRRSA Act, and American Rescue Plan (ARP) Act](https://dese.ade.arkansas.gov/Offices/public-school-accountability/federal-programs/cares-act) webpage.

The webinar may be accessed by clicking on the following link:<https://zoom.us/j/96380742518?pwd=VjJLSVU0YnJuY1IrdHpWZHh3RHkvUT09>

**UPDATES**

For the past several months, DESE has continued to seek guidance and obtain clarification from the US ED on questions from school districts regarding eligible expenditures with ESSER funds. The [FAQ document](https://docs.google.com/document/d/1zZSaG9HHF6ap7CrGXyclFZWqwVvnC7UPGAqUOu7Z4hk/edit?usp=sharing) has been revised to reflect the following updates.

**Can districts use ESSER funds to repair or replace a roof?**

Recently, DESE received a clarification that allows DESE to update our response to districts regarding eligibility to use ESSER funds for roof repairs or replacements. Response from US ED: “An allowable use of ESSER funds is “Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities…” Therefore, using ESSER funds to install a new roof in order to rid the building of mold could be an allowable use of funds if the costs are reasonable and necessary. “If your goal is to improve air quality (and thus mitigate the impact or potential impact of COVID-19), then repairing or replacing roofs would be allowable, provided you are able to answer affirmatively to all three tests noted in the Overview section on page 9 of the guidance. We also want to make sure you are aware of the related conditions and cautions associated with any construction projects. Please refer to B-6 and B-7 in the guidance for that information. The guidance may be found here: <https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf>

1. In order to meet the “reasonable and necessary” determination required under the American Rescue Plan, districts seeking to replace roofs must submit evidence that the roof(s) designated for replacement are contributing to inferior air quality.  **Air quality analysis performed by a licensed professional not otherwise affiliated with the district’s roofing and/or HVAC project shall be submitted with the prior approval application**. In addition, to meet the “reasonable and necessary” standard, the LEA should explore whether it is more cost effective to patch the areas of the roof that are failing rather than replacing the entire roof. The air quality analysis (inspection and testing) is eligible to be paid with ESSER funds.
2. The district shall update their master plan to include a rating of "replace or poor" for each roof that is being considered under this guidance. The condition assessment will be checked by the Division personnel during the application review process.
3. The district should seek public comment on all construction projects. If the district is using ARP ESSER funds, the ARP Use of Funds plan may need to be updated in Indistar and re-posted on the district website.

If the LEA determines that the entire roof needs to be replaced, please be aware that the Uniform Guidance at 2 CFR § 200.407 requires prior written approval from the SEA. In addition, approved construction projects must comply with applicable Uniform Guidance requirements, as well as the Department’s regulations regarding construction at 34 CFR § 76.600 and 75.600-75.618. As is the case with all remodeling or construction contracts using laborers and mechanics financed by Federal education funds, an LEA that uses ESSER funds for minor remodeling, renovation, repair, or construction contracts over $2,000 must meet all Davis-Bacon prevailing wage requirements and include language in the contracts that all contractors or subcontractors must pay wages that are not less than those established for the locality of the project (prevailing wage rates). For more information about considerations for using ESSER funds for renovation and construction, please see B-6 and B-7 of the FAQs at <https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf>

If there is an HVAC replacement to improve air quality under the guidelines of ESSER that causes damage to a roof then the roof repair is eligible (see page 17 [ADE ESSER FAQ](https://docs.google.com/document/d/1zZSaG9HHF6ap7CrGXyclFZWqwVvnC7UPGAqUOu7Z4hk/edit))

**Can ESSER funds be used for asbestos abatement?**

Recently, DESE received a clarification that allows DESE to update our response to districts regarding eligibility to use ESSER funds for asbestos abatement. Response from US ED:

Thank you for the additional information on the question about using ESSER funds for asbestos abatement in order to improve indoor air quality. We agree that it sounds like abating asbestos is part of the LEA’s plan for mitigating COVID-19 and therefore would be an allowable use of ESSER funds.

DESE guidance:

1. A district may request prior approval for a construction project that includes asbestos abatement if the district submits an AHERA Asbestos Management Plan that indicates:
2. *Damaged:* Less than 25% damage in localized areas and less than 10% damage overall; OR
3. *Significantly Damaged:* Greater than 25% damage in localized areas and/or greater than 10% damage overall; OR

2. A district may request prior approval for a construction project and include an explanation of the necessary asbestos abatement needed to complete the construction project and continue to be in compliance for the next inspection regarding the AHERA Asbestos Management Plan. For example, if the district is installing new HVAC and asbestos abatement is required for the HVAC project to meet project requirements then ESSER funds could be utilized.

**Can ESSER funds be used for loss of revenue due to COVID-19?**

**COVID-19**: Due to Covid-19 Arkansas districts experienced a loss of revenue because parents enrolled their students in homeschool, charters, or moved. As the data below supports, districts experienced unexpected and unplanned loss of revenue due to this rapid movement of students.

|  |  |  |
| --- | --- | --- |
| **2019-2020**  **3-Quarter Average ADM** | **2020-2021**  **3-Quarter Average ADM** | **Loss of enrollment (State)** |
| 475,304 | 468,645 | 6,659 |

Data Source: ADE Data Center - ADM & Avg ADM - Regular and Magnet

**Necessary and Reasonable**: To maintain continuity of services and bridge budgetary shortfalls, districts may need to utilize local ESSER funds to offset the loss of revenue to strengthen operations. DESE will identify the amount of ESSER funds that districts can use to cover budgetary shortfalls. The same formula used to determine declining enrollment was used to determine a matching amount for loss of revenue. These identified amounts will be unrestricted to allow the financial resources needed to make necessary adjustments for sustainability. Districts may utilize up to the calculated amount with ESSER program code 166 for district expenses noted by operations function codes only. The [ESSA Funding Codes](https://docs.google.com/spreadsheets/d/1bTdyL35ox3arIxhhTdZXRNezTgH1UuZLIaJC1hCUt-Y/edit?usp=sharing) document has been updated to reflect the new program code. The maximum amount of expenditures that districts can code as “Loss of Revenue” can be found here: [**https://drive.google.com/file/d/1Fkgax43giDtPSgmU3WNLGya6n\_WaWjFM/view?usp=sharing.**](https://drive.google.com/file/d/1Fkgax43giDtPSgmU3WNLGya6n_WaWjFM/view?usp=sharing.) Open enrollment charter schools that can code as “Loss of Revenue” can be found here <https://drive.google.com/file/d/1oCPFnjY8omyKUyFDXQeKbWLrK-2hJcUn/view?usp=sharing.>

**Please note: Transfer of federal funds is not allowed. Districts must expend for reimbursement of ESSER funds.**

For more details regarding the Use of ESSER funds, please see [**COM-21-146**](https://adecm.ade.arkansas.gov/ViewApprovedMemo.aspx?Id=4813) or the [CARES Act, CRRSA Act, and American Rescue Plan (ARP) Act](https://dese.ade.arkansas.gov/Offices/public-school-accountability/federal-programs/cares-act) webpage on the DESE website.

Districts may attach this Commissioner’s Memo to expenditures as additional documentation.

## Attachments

No attachments available