

Coronavirus Aid, Relief, and Economic Security (CARES) Act

Elementary and Secondary School Emergency Relief (ESSER I) Fund

Governor’s Emergency Education Relief (GEER I) Fund

Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act

Elementary and Secondary School Emergency Relief (ESSER II) Fund

Governor’s Emergency Education Relief (GEER II) Fund

I. Supplement, Not Supplant Provision

“Supplement, not supplant” is an integral provision of most federal statutes that authorize education grant programs. There is no single supplement, not supplant provision. Rather, the wording of the provision varies depending on the various statutes. The below summary discusses supplement, not supplant in general and as it applies to the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the Every Student Succeeds Act of 2015 (ESSA).

While the definition may change from statute to statute, the supplement, not supplant provisions essentially require that grantees use state or local funds for all services required by state law or local policy and prohibit those funds from being diverted for other purposes when federal funds are available. Federal funds must supplement—add to, enhance, expand, increase, extend—the programs and services offered with state and local funds. Federal funds are not permitted to be used to supplant—take the place of, replace—the state and local funds used to offer those programs and services.

The purpose of a supplement, not supplant provision is to help ensure that federal grant funds are expended to benefit the intended population defined in the authorizing statute, rather than being diverted to cover expenses that the local education agency (LEA or school district) would have paid out of other funds in the event the federal funds were not available. In this way, the federal government can ensure that the level of state and local support for a program remains at least constant and is not replaced by federal funds.

To be in compliance with each program’s version of the supplement, not supplant requirements, the state and LEAs must be cognizant of how the provision is applied in each specific program.

That said, neither the CARES Act (ESSER I and GEER I Funds) or CRRSA Act (ESSER II or GEER II Funds) have a supplement, not supplant provision. The U.S. Department of Education did issue a FAQ on ESSER I Funds (<https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>) which stated, “The ESSER fund does not contain a supplanting prohibition. As a result, ESSER funds take the place of State or local funds for allowable activities.” Please note that this FAQ is specifically for ESSER I Funds, but since neither Act contains the supplement, not supplant provision it is implied that all CARES and CRRSA funds take the place of State or local funds for the allowable activities.

II. Non-Replacement Funds

- A. CARES and CRRSA are considered non-replacement funds, in that the funding received under both Acts may not be used for government revenue replacement.

While CARES and CRRSA funds allow greater flexibility than other grants, they are federal grants that must be tracked in Special Revenue Funds and are subject to Education Department General Administrative Regulations Act (EDGAR) and the Uniform Grant Guidance (UGG) (2 CFR 200). The Governor's Emergency Education Relief Fund is CFDA 84.425C. The Elementary and Secondary School Emergency Relief Fund is CFDA 84.425D.

Finally, despite the fact that CARES and CRRSA do not contain a supplement, not supplant provision, these programs do contain a Maintenance of Effort (MOE) requirement, which is designed to keep states from substantially reducing their support for K-12 education.

III. Maintenance of Effort (MOE) Requirement

- A. Under the CARES Act, a state that receives Governor's Emergency Education Relief (GEER I) Funds (Section 18002) and Elementary and Secondary School Emergency Relief (ESSER I) Funds (Section 18003) must maintain support for elementary and secondary education and state support for higher education in each of the fiscal years (FY) 2020 and 2021 at least at the level of such support that is the average of the support for elementary and secondary education and higher education provided in the three fiscal years preceding the date of enactment of the CARES Act (FYs 2017, 2018, 2019) (Section 18008 of the CARES Act). This is a state-level MOE only and not applicable at the district-level.

MAINTENANCE OF EFFORT

SEC. 18008. (a) A State's application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need-based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State's support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act.

(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.

As noted in #16 of the *CARES Act Programs Maintenance of Effort FAQ* from the U.S. Department of Education (<https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf>), if a state does not meet CARES' MOE requirements or receive a waiver from the Secretary of Education, the U.S. Department of Education generally would be entitled to recover the full amount of a State's GEER I and ESSER I awards. There may be circumstances that justify other appropriate enforcement, which may include placing additional grant conditions on a state's CARES Act programs under 2 CFR § 200.207, designating an entity as a high-risk under 2 CFR § 3474.10, and withholding of CARES Act funds under Section 455 of the General Education Provisions Act. The total CARES funds at risk for Alaska if the MOE requirement is not met are approximately \$44.9 million (\$38.4 million in ESSER I Funds and \$6.5 million in GEER I Funds).

