



FY23 ESSER Programmatic Monitoring Guide

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INTRODUCTION

The purpose of this guide is to help school districts and charter schools understand requirements for the FY23 ESSER Programmatic Monitoring process and to provide templates and resources for assembling supporting evidence to comply with federal regulations and program requirements.

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PURPOSE AND AUTHORITY

As a pass-through entity, the New Hampshire Department of Education (NHED) awards federal grant funds to eligible subrecipients, including local educational agencies (LEAs)—school districts and charter schools. These federal grant funds include the emergency assistance provided through the Coronavirus Aid, Relief, and Economic Security Act (ESSER I funds), the Coronavirus Response and Relief Supplemental Appropriations Act (ESSER II funds), and the American Rescue Plan Act (ARP ESSER funds) to help K-12 educational entities prevent, prepare for, and respond to the impacts of COVID-19.

Title II of the Code of Federal Regulations, Part 200.332 states that a pass-through entity must “evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring ...” In addition, NHED must “monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.”

Programmatic monitoring is the review process used in determining a LEA’s compliance with the programmatic requirements of federal programs, adherence to applicable laws and regulations, and progress toward expected results and outcomes. Programmatic monitoring includes review and assessment of documentation and data maintained by LEAs, information obtained during remote or on-site review, and information obtained in interviews with LEA staff. Although NHED completes fiscal and programmatic monitoring through independent processes, the NHED staff that complete these monitoring processes share their findings to ensure awareness of related fiscal and programmatic compliance issues.

The FY23 ESSER programmatic monitoring process seeks to ensure that LEAs are using ESSER funds for allowable activities and expenditures as intended: to prevent, prepare for, and respond to COVID-19. The programmatic monitoring process also allows the state to identify effective delivery models and technical assistance needs and to share best practices among LEAs. In addition, this process, in conjunction with other state review processes, aims to ensure that all children in New Hampshire have a fair, equal, and significant opportunity to obtain a high-quality education.

FY23 ESSER PROGRAMMATIC RISK ASSESSMENT & CRITERIA FOR MONITORING

The purpose of the FY23 ESSER programmatic risk assessment is to evaluate the potential for waste, fraud, and abuse of federal funds should proper federal grant management protocols not be in place in a district or charter school. NHED identified the following risk criteria of particular relevance to the use of ESSER funds and used these variables to measure risk based on available data for FY23 ESSER programmatic monitoring.

- Total amount of ESSER I, ESSER II, and ESSER III Allocations
- Whether or not the LEA was selected for ESSER monitoring in FY22
- Number of construction projects (districts only)
- Equitable services status (districts only)
- Whether or not the LEA has used any ARP ESSER funds
- Whether or not the LEA experienced turnover in a key administrative staff position
- Reopening Plan status
- Use of Funds Plan status

After a thorough review of the risk assessment scores, NHED selected the following LEAs for FY23 ESSER programmatic monitoring: the 12 highest risk districts among all districts, the 4 highest risk districts among those with fewer than 300 students, and the 4 highest risk charter schools. Please note that a high risk level does not indicate that the subrecipient has failed to comply with applicable rules. Similarly, a low risk level does not indicate that a subrecipient is compliant with applicable rules. High risk simply means that there is a higher potential for waste, fraud and abuse should proper federal grant management protocols not be in place. Those LEAs selected for FY23 ESSER programmatic monitoring undergo the monitoring review process detailed below.

FY23 ESSER PROGRAMMATIC MONITORING REVIEW PROCESS

The following are key steps in the FY23 ESSER programmatic monitoring process:

1. NHED sends a letter to the Superintendent/charter school leader and key administrative staff in each high-risk LEA notifying the LEA of selection for FY23 ESSER programmatic monitoring.
2. NHED works with LEA staff to establish a review date, time, and on-site or remote review status.
3. NHED provides comprehensive monitoring procedures, training slides, and documentation checklist to LEAs.
4. NHED completes initial onsite or remote monitoring review.
5. Within 14 days of the initial review, NHED staff sends the LEA a draft report and requests supporting documentation as needed to complete the final report. Requested documentation must be submitted within 14 days of receiving the draft report to be included for consideration in the final report.
6. Within 14 days receiving the requested supporting documentation, NHED sends final FY23 ESSER Programmatic Monitoring LEA Report to LEA including a summary and analysis of the LEA's compliance status with regard to monitoring requirements; a description of any findings; and evidence of correction needed. If corrective action is needed, a Corrective Action Plan is provided for the LEA to complete and return. If no corrective action is needed, the report will include a Final Determination of Compliance.

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7. Within 30 days of receiving the final FY23 ESSER Programmatic Monitoring LEA Report, the LEA must submit a Corrective Action Plan for each finding. This Corrective Action Plan provides NHED with a description as to how the LEA plans to correct any findings of non-compliance.
8. Within 90 days of receiving the final FY23 ESSER Programmatic Monitoring LEA Report, the LEA must submit a fully implemented Corrective Action Plan for each finding along with the required evidence of correction.
9. Upon review of the fully implemented Corrective Action Plan(s) and evidence of correction, NHED sends a Final Determination of Compliance, requests additional information, or sends a Final Determination of Non-compliance as needed.

ENFORCEMENT ACTIONS

NHED may impose an enforcement action as part of a corrective action or for noncompliance with a previous corrective action in accordance with Title II of the Code of Federal Regulations, Part 200.339. Enforcement actions may include the following:

- Temporarily withhold cash payments pending correction of the deficiency or more severe enforcement action;
- Disallow all or part of the cost of the activity or action not in compliance;
- Wholly or partly suspend or terminate the federal award;
- Initiate suspension or debarment proceedings;
- Withhold further federal awards for the grant; or
- Take other remedies that may be legally available.

Similarly, NHED may impose specific conditions on a non-compliant LEA's federal grant in accordance with Title II of the Code of Federal Regulations, Part 200.208. Specific conditions that NHED may impose include the following:

- Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- Requiring additional, more detailed financial reports;
- Requiring additional project monitoring;
- Requiring the LEA to obtain technical or management assistance; or
- Establishing additional prior approvals.

It is always NHED's preference to work cooperatively with a LEA in resolving issues of non-compliance. NHED provides technical assistance and other supports to LEAs in their efforts to address corrective actions as resources allow. However, each LEA is solely responsible for its compliance with applicable federal grant regulations.

DEMONSTRATING COMPLIANCE WITH ESSER REQUIREMENTS

NHED monitors the use of ESSER funds on an ongoing basis. The evidence checklist below lists the evidence that the LEA must provide to NHED during the FY23 monitoring visit to demonstrate compliance with ESSER requirements. Listed in each section:

- The ESSER requirement and referenced legal citation.
- Evidence to be submitted by the LEA is listed with bullets. Please redact any personally identifiable student information prior to providing documentation to NHED.
- Evidence listed under the heading "Already submitted to NHED" is listed for informational purposes only.

I. Requirement of Allowable Activities 2.C.F.R.200.403-475 *Grantee and Subrecipients may only use program funds for allowable costs as defined in 2 C.F.R. Part 200 which are reasonable and necessary for the accomplishment of program objectives, which are to prevent, prepare for and respond to coronavirus.*

Documentation provided must demonstrate the methods, criteria, and justification used to determine that the LEA's ESSER-funded activities are allowable, reasonable, and necessary.

Allowability Evidence 1:

- Documentation of stakeholder involvement in determining allowable, reasonable, and necessary activities.

Examples: Meeting agendas, minutes showing stakeholders' input, survey results, technical assistance provided to stakeholders.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Allowability Evidence 2:

- Documentation demonstrating how the LEA researched expenditures and determined these expenditures to be evidence-based efforts to prevent, prepare for, or respond to COVID-19.

Examples: Meeting minutes, written communications showing consideration of expenditures, quotes for products and services, research on evidence-based activities.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Already provided to NHED:

Written policies and procedures that detail the LEA's approach to meeting this requirement.

Procedures for program planning, budget development, and program evaluation.

II. Requirement to Address Learning Loss *Applies to ARP ESSER funds only. *Public Law 117-2 Sec. 2001*

Documentation provided must demonstrate the methods, criteria, and justification used to determine that at least 20% of ARP ESSER funds address learning loss with evidence-based expenditures.

Learning Loss Evidence 1:

- Documentation of stakeholder involvement in determining evidence-based activities to address learning loss.

Examples: Meeting agendas, minutes showing stakeholders' input, surveys, technical assistance provided to stakeholders.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Learning Loss Evidence 2:

- Documentation demonstrating the LEA's efforts to address specifically the needs of students disproportionately affected by COVID-19/school closures, including children from low-income families, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children/youth in foster care.

Examples: Meeting agendas, minutes showing stakeholders' input, surveys, technical assistance provided to stakeholders.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Learning Loss Evidence 3:

- Hiring records (contracts/agreements) for staff hired to address learning loss needs.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Learning Loss Evidence 4:

- Participation records for programs addressing learning loss (e.g., tutoring, after school, summer programs).

Examples: Attendance data

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Learning Loss Evidence 5:

- Data analysis of learning loss needs, progress, and evaluation results from ESSER-funded activities.

Examples: Assessment data showing needs, charts showing progress, outcomes data showing results, program evaluations, written analysis.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Already provided to NHED:

Procedures for program planning, budget development, and program evaluation.

III. Requirement to Provide Equitable Services *Applies to CARES ESSER funds only. *Public Law 116-136 Sec. 18005*
LEA must provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965.

Documentation provided must demonstrate procedures to ensure provision of equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools.

Equitable Services Evidence 1:

- Documentation of communications and agreements between the LEA and non-public schools detailing the terms of ESSER I equitable services provision and methods used to identify needs.

Examples: meeting minutes, written communications discussing needs, survey results.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Equitable Services Evidence 2:

- Documentation demonstrating that agreed-upon ESSER I equitable services were provided.

Examples: Receipts for purchases, copies of third-party contracts with service providers.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Equitable Services Evidence 3:

- Documentation demonstrating that the LEA made multiple attempts to contact non-responsive non-public schools.

Examples: written communication efforts (at least three attempts)

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Already provided to NHED:

Equitable Services Assurances for ESSER I funds to include Affirmation of Consultation with Private School Officials.

Written policies and procedures that detail the LEA's approach to meeting this requirement.

Procedures for program planning, budget development, and program evaluation.

Documentation verifying the number of private school students eligible for equitable services.

IV. Requirement for Continued Payment to Employees *Public Law 116-136 Sec. 18006; Public Law 116-260 Sec. 315*

LEA must continue to pay employees during the period of any disruptions or closures related to COVID-19.

Continued Payment Required Evidence 1:

- An attestation letter signed by the Superintendent/charter school leader stating that the LEA has continued to pay its employees as required during the period of any disruptions or closures related to COVID-19 or, if necessary, an explanation regarding disruptions in payment.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

V. Requirement for Maintenance of Equity *Applies to ARP ESSER Funds only. *Public Law 117-2 Sec. 2004*

The LEA must demonstrate that it does not disproportionately reduce state and local per-pupil funding in high-poverty schools.

NHED monitors each LEA's compliance with the Maintenance of Equity requirement through a parallel process, which tracks spending across schools in each district. NHED will review the district's final FY23 financial data when it is available in fall 2023 to determine whether or not the district has maintained compliance with the FY23 Maintenance of Equity requirement.

For NHED Use:

Complied with FY22 MOEQ requirements *Submitted a waiver request to USED* *Not Applicable*

VI. Construction Requirements 2 C.F.R.200, 34 C.F.R. 75.600-617, Davis-Bacon Act

Documentation provided must demonstrate that the LEA meets all requirements for each ESSER-funded construction project.

Construction Evidence 1:

- Conceptual and final approvals obtained through the NHED ESSER construction review process.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Construction Evidence 2:

- Documentation demonstrating that the LEA has submitted the Assurances for Construction Programs (SF-424D) per the federal requirement.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Construction Evidence 3:

- A copy of each contract in excess of \$2,000.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Construction Evidence 4:

- Demonstration of compliance with Davis-Bacon requirements to include the following:
 - A photo of the Davis-Bacon poster posted at the construction site.
 - A photo of the applicable prevailing wage decision (wage rates) posted at the construction site.
 - Salary and payment reports for completed work to demonstrate payment of prevailing wages.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Construction Evidence 5:

- Title to the building(s) undergoing ESSER-funded construction to include a copy of the deed or a tax document demonstrating that the LEA owns the building.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Construction Evidence 6:

- Performance Bond for 100% of the contract price and Payment Bond for 100% of the contract price for each construction contract exceeding the Simplified Acquisition Threshold of \$250,000.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Construction Evidence 7:

- Architecture plans and building permits for projects as required.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Construction Evidence 8:

- Written procedures for procurement, equipment/inventory management, and record retention.

For NHED Use: Submitted *Not Submitted* *Not Applicable*

Already provided to NHED:

Historic surveys

Copies of consultations with government agencies

For NHED Use Only: Ongoing Monitoring of LEA ESSER Fund Use

- LEA's *Plan for the Safe Return to In-Person Instruction and Continuity of Services* (Reopening Plan) is posted publicly on the LEA's website.
- LEA submitted the FY22 *Plan for the LEA's Use of ARP ESSER Funds* (Use of Funds Plan) for NHED review.
- LEA provided Equitable Services Assurances for ESSER I funds to include Affirmation of Consultation with Private School Officials. Check here if not applicable.
- LEA followed NHED's two-step process for seeking Conceptual Project Approval and Final Approval for construction. Check here if no construction projects/not applicable.
- LEA submitted a Real Property Report for each construction project. Check here if not applicable
- LEA submits grant activities to the Grants Management System (GMS) and demonstrates that activities are allowable, reasonable, and necessary. NHED reviews these activities for substantial and final approval and communicates with the LEA to resolve any issues prior to reimbursing LEA to support LEA's compliance with ESSER requirements.
- NHED provides technical assistance to LEA on an ongoing basis through emails, phone calls, documents, and trainings in order to support the LEA's compliance with ESSER requirements.
- NHED Bureau of Federal Compliance monitors the LEA's compliance with ESSER fiscal requirements.

**In addition to the items listed on this checklist, NHED will select a number of activities for further programmatic monitoring in order to ensure that the LEA has implemented these activities in accordance with the activity description in the Grants Management System (GMS). NHED will request evidence of compliance specific to the selected activities.*