# **Elementary and Secondary School Emergency Relief (ESSER) Fund**

# **Governor’s Emergency Education Relief (GEER) Fund**

# **Prior Approval Request for Construction Projects,**

# **Land Acquisition, and Building Acquisition**

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](https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf). Questions B-6 and B-7 of the guidance addressed the use of funds and prior project approval requirements for construction and real property. Construction projects that meet the broad Impact Aid definition of “construction” include remodeling, alterations, renovations, repairs, and new construction (see section 7013 of the Every Student Succeeds Act).

The term ‘‘construction’’ means—

1. the preparation of drawings and specifications for school facilities;
2. erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities;
3. inspecting and supervising the construction of school facilities; and
4. debt service for such activities.

These projects, as well as requests to purchase land or buildings, must receive prior approval from the Virginia Department of Education (VDOE) ([see section 200.439(b) of the Uniform Guidance](https://ecfr.federalregister.gov/on/2021-03-31/title-2/subtitle-A/chapter-II/part-200/subpart-E)). School divisions should use this form to submit requests for construction, land acquisition, and building acquisition to be funded using ESSER or GEER federal funds. This form does not need to be used for minor remodeling as described below. Prior approval for minor remodeling projects is granted through the ESSER or GEER funding application process.

Minor remodeling means minor alterations in a previously completed building, for purposes associated with the coronavirus. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term *does not include* permanent building construction, structural alterations to buildings, building maintenance, or repairs.

In considering whether to request prior approval for a construction, land acquisition, or building acquisition project, school divisions should strongly consider whether less time-consuming and costly strategies or solutions could be used to address school division needs caused or exacerbated by the COVID-19 pandemic to enable the school division to safely reopen and sustain the safe operation of schools. Due to the federal requirements associated with construction activities, the time consuming nature of such activities, and the concern that this use of funding may limit the school division’s ability to support other essential needs or initiatives, the USED discourages the use of ESSER and GEER funds for construction.

To submit a request for prior approval, this form should be completed, signed by the school division superintendent, and emailed to VDOEfederalrelief@doe.virginia.gov. The form should be submitted as soon as possible and early in a project’s timeline, prior to the school division making a contractual obligation. VDOE staff will review the request for completeness, allowability, and compliance with federal requirements to include a determination of whether the request is reasonable and necessary to address the identified need. A school division *should not* obligate funds without receiving VDOE approval and *may not* request reimbursement for project expenses until approval is granted.

School construction projects that are required to be to be submitted to the Virginia Department to Education (VDOE) are defined as:

Any project that impacts the life safety of a school building and requires the hiring of a licensed architect or engineer to develop plans and/or specifications for construction/ renovation. All projects must meet the latest Virginia Construction Code and *Code of Virginia*. *(NOTE: Routine maintenance projects and cosmetic alterations (such as painting, roof membrane replacement, HVAC unit replacement in kind, and electrical lighting upgrades) are not required to be submitted).*

For applicable projects, the school division should submit project notice through the VDOE’s SSWS portal School Building Construction Renovation (SBCR) application. Contact Vijay Ramnarain at Vijay.Ramnarain@doe.virginia.gov if you have questions about this process.

 **Elementary and Secondary School Emergency Relief (ESSER) Fund**

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**Prior Approval Request for Construction Projects,**

**Land Acquisition, and Building Acquisition**

## **SCHOOL DIVISION CONTACT INFORMATION**

Division Name:

Division Number:

Name of Division Contact:

Email of Division Contact:

Phone Number of Division Contact:

## **PROJECT OVERVIEW**

Federal Funding Sources (ESSER I, II, or III, or GEER I or II) and Amounts:

Will funds from other state, local, or federal funds be used for this project? If yes, describe including sources and amounts:

Provide a detailed overview of the proposed project. Include a statement of need or deficiency that necessitates the renovation or construction project (e.g., because it threatens the health and safety of occupants of the facility or prevents the use of the facility). If this request is for land acquisition, include the short and long term intentions for the use of the land. If this is a renovation project, include the original facility construction date and the dates and descriptions of any other major renovations of the facility:

Describe the need for this project and how the project will prevent, prepare for, or respond to the COVID-19 pandemic, including its impact on the social, emotional, mental health, and academic needs of students.

Describe the alternatives that have been considered and why have they been rejected in favor of the proposed project:

## **FEDERAL REQUIREMENTS**

Approved construction projects (i.e., remodeling, renovation, and new construction) must comply with applicable Uniform Guidance requirements, Davis-Bacon prevailing wage requirements, and all of USED’s applicable regulations regarding construction at 34 CFR [Section 76.600](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-76/subpart-F/subject-group-ECFR0c65e40eca00876/section-76.600) and Section [75.600-75.618](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E?toc=1). (Note Section 76.601 does not apply to school division projects.) Describe how the school division has considered and will address the requirements below.

Has the school division considered the probable effects of proposed construction on any district, site, building, or structure that is included or eligible for inclusion in the National Register of Historic Places ([34 CFR § 75.602](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.602))? If the proposed project is related to a district, site, building, or structure that is included or eligible for inclusion in the National Register of Historic Places, what is the probable effect of the proposed construction on the building?

Does the school division have title or other interest in the site, including right of access, that is sufficient to ensure that the school division will have use and possession of the facility for 50 years or the useful life of the facility, whichever is longer ([34 CFR § 75.603](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.603))?

Can the school division begin the approved construction in a reasonable time period and will the final plans been approved before the construction is advertised or placed on the market for bidding ([34 CFR § 75.605](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.605))?

Provide a project timeline, including the anticipated completion date, that demonstrates the project will be completed in a reasonable time period and consistent with the approved plans and specifications ([34 CFR § 75.606](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.606)).

Is the construction functional, economical, and not elaborate in design or extravagant in the use of materials as compared to other facilities in the state or other applicable geographic area ([34 CFR § 75.607](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.607))?

Do the school division’s plans and designs for the facilities comply with applicable federal, state and local health and safety standards, as well as federal requirements regarding access by persons with disabilities. ([34 CFR §§75.609](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.609) and [75.610](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.610))?

Does the school division have sufficient operational funds to operate and maintain the facility once the construction is complete and will the school division operate and maintain the facility in accordance with all applicable federal, state, and local requirements ([34 CFR §§ 75.614](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.614) and [75.615](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-75/subpart-E/section-75.615))?

What is the county’s plan to maintain competent architectural/engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications ([34 CFR §75.612)](https://www.ecfr.gov/cgi-bin/text-idx?SID=d8241527b3b2e558fd3283e2a937d6da&pitd=20150202&node=se34.1.75_1612&rgn=div8)?

Real property and equipment acquired or improved under a federal award must be appropriately insured and school divisions must consult with the VDOE on disposition instructions in the event that the property or equipment is no longer needed ([2 CFR §§ 200.310-200.313](https://ecfr.federalregister.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR8feb98c2e3e5ad2?toc=1)). How will the school division ensure that insurance requirements are met?

How will the school division meet Davis-Bacon prevailing wage requirements and all of the applicable regulations regarding construction at [34 CFR §§ 76.600](https://ecfr.federalregister.gov/current/title-34/subtitle-A/part-76/subpart-F/subject-group-ECFR0c65e40eca00876/section-76.600) and [75.600-75.618](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5aad37adb3c20032d6a48b3b85e4b47c&mc=true&n=sp34.1.75.e&r=SUBPART&ty=HTML#_top)?

If the school division uses funds for HVAC systems, the Department’s regulation at [34 CFR § 75.616(c)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c4af8cc9e28c8404995e4134050651a&mc=true&node=se34.1.75_1616&rgn=div8) requires the use of American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) standards. If applicable, how will the school division ensure that these requirements are met?

### **DIVISION SUPERINTENDENT ASSURANCE AND SIGNATURE**

By signing this document, the division superintendent assures that the division will follow all applicable federal, state, and local health, safety, and environmental standards and policies including, but not limited to, Code of Virginia § 22.1-140, Uniform Grant Guidance (2 CFR Part 200), Davis-Bacon Prevailing Wage requirements, and U.S. Department of Education construction regulations (34 CFR §76.600 and §75.600-75.618). The division understands that if it is granted approval for a construction project that subsequently fails to meet any of the federal requirements is financially liable for any project costs that may be subsequently disallowed.

Superintendent Name:

Superintendent Signature:

Date:

## **ARCHITECT/ENGINEER PROJECT STATEMENT AND SIGNATURE**

In accordance with the Code of Virginia, § 22.1-140, referring to a Professional Architect and Professional Engineer statement, I hereby certify that, in my professional opinion and belief, the plans and specifications for the following project(s) are in compliance with the regulations of the Virginia Board of Education and the requirements of the Virginia Uniform Statewide Building Code.

Architect or Engineer of Record Name:

Architect or Engineer of Record Signature:

Date:

## **APPENDIX A**

## **CODE OF VIRGINIA**

**§ 22.1-140. Plans for buildings to be approved by division superintendent.**

No public school building or addition or alteration thereto, for either permanent or temporary use, shall be advertised for bid, contracted for, erected, or otherwise acquired until the plans and specifications therefor (i) have been approved in writing by the division superintendent; (ii) are accompanied by a statement by an architect or professional engineer licensed by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects that such plans and specifications are, in his professional opinion and belief, in compliance with the regulations of the Board of Education and the Uniform Statewide Building Code; and (iii) have been reviewed by an individual or entity with professional expertise in building security and crime prevention through building design. The division superintendent's approval, architect's or engineer's statement, all reviewers' comments, and a copy of the final plans and specifications shall be submitted to the Superintendent of Public Instruction.

## **APPENDIX B**

## [**UNIFORM GRANT GUIDANCE**](https://ecfr.federalregister.gov/current/title-34/subtitle-A)

## **SELECTED SECTIONS**

**Construction**

**Cross Reference:**

**See** [**2 CFR part 200.317-200.326**](https://ecfr.federalregister.gov/on/2021-06-15/title-2/section-200.317-200) **for procurement requirements.**

**§ 75.600 Use of a grant for construction: Purpose of §§ 75.601-75.615.**

**Sections 75.601-75.615 apply to:**

**(a) An applicant that requests funds for construction; and**

**(b) A grantee whose grant includes funds for construction.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.602 Preservation of historic sites must be described in the application.**

**(a) An applicant shall describe in its application the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is:**

**(1) Included in the National Register of Historic Places; or**

**(2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places.**

**See** [**36 CFR part 60**](https://ecfr.federalregister.gov/on/2021-06-15/title-36/part-60) **for these criteria.**

**Cross Reference:**

**(b) In deciding whether to make a grant, the Secretary considers:**

**(1) The information provided by the applicant under paragraph (a) of this section; and**

**(2) Any comments by the Advisory Council on Historic Preservation.**

**Cross Reference:**

**See** [**36 CFR part 800**](https://ecfr.federalregister.gov/on/2021-06-15/title-36/part-800)**, which provides for comments from the Council.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.603 Grantee's title to site.**

**A grantee must have or obtain a full title or other interest in the site, including right of access, that is sufficient to insure the grantee's undisturbed use and possession of the facilities for 50 years or the useful life of the facilities, whichever is longer.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.604 Availability of cost-sharing funds.**

**A grantee shall ensure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.605 Beginning the construction.**

**(a) A grantee shall begin work on construction within a reasonable time after the grant for the construction is made.**

**(b) Before construction is advertised or placed on the market for bidding, the grantee shall get approval by the Secretary of the final working drawings and specifications.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.606 Completing the construction.**

**(a) A grantee shall complete its construction within a reasonable time.**

**(b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.607 General considerations in designing facilities and carrying out construction.**

**(a) A grantee shall insure that the construction is:**

**(1) Functional;**

**(2) Economical; and**

**(3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.**

**(b) The grantee shall, in developing plans for the facilities, consider excellence of architecture and design and inclusion of works of art. The grantee may not spend more than one percent of the cost of the project on inclusion of works of art.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.608 Areas in the facilities for cultural activities.**

**A grantee may make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

***[***[***57 FR 30339***](https://www.federalregister.gov/citation/57-FR-30339)***, July 8, 1992]***

**§ 75.609 Comply with safety and health standards.**

**In planning for and designing facilities, a grantee shall observe:**

**(a) The standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576) (See** [**36 CFR part 1910**](https://ecfr.federalregister.gov/on/2021-06-15/title-36/part-1910)**); and**

**(b) State and local codes, to the extent that they are more stringent.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.610 Access by the handicapped.**

**A grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities. These regulations are:**

**(a) For residential facilities -** [**24 CFR part 40**](https://ecfr.federalregister.gov/on/2021-06-15/title-24/part-40)**; and**

**(b) For non-residential facilities - 41 CFR subpart 101-19.6.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.611 Avoidance of flood hazards.**

**In planning the construction, a grantee shall, in accordance with the provisions of Executive Order 11988 of February 10, 1978 (**[**43 FR 6030**](https://www.federalregister.gov/citation/43-FR-6030)**) and rules and regulations that may be issued by the Secretary to carry out those provisions:**

**(a) Evaluate flood hazards in connection with the construction; and**

**(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.612 Supervision and inspection by the grantee.**

**A grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.613 Relocation assistance by the grantee.**

**A grantee is subject to the regulations on relocation assistance and real property acquisition in** [**34 CFR part 15**](https://ecfr.federalregister.gov/on/2021-06-15/title-34/part-15)**.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.614 Grantee must have operational funds.**

**A grantee shall insure that, when construction is completed, sufficient funds will be available for effective operation and maintenance of the facilities.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.615 Operation and maintenance by the grantee.**

**A grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**§ 75.616 Energy conservation.**

**(a) To the extent feasible, a grantee shall design and construct facilities to maximize the efficient use of energy.**

**(b) The following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) are incorporated by reference in this section:**

**(1) ASHRAE-90 A-1980 (Sections 1-9).**

**(2) ASHRAE-90 B-1975 (Sections 10-11).**

**(3) ASHRAE-90 C-1977 (Section 12).**

**Incorporation by reference of these provisions has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under** [**5 U.S.C. 552**](https://www.govinfo.gov/link/uscode/5/552) **(a) and** [**1 CFR part 51**](https://ecfr.federalregister.gov/on/2021-06-15/title-1/part-51)**. The incorporated document is on file at the Department of Education, Grants and Contracts Service, rm. 3636 ROB-3, 400 Maryland Avenue, SW., Washington, DC 20202-4700 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:** [***http://www.archives.gov/federal\_register/code\_of\_federal\_regulations/ibr\_locations.html***](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html)***.* These standards may be obtained from the publication sales department at the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329.**

**(c) A grantee shall comply with ASHRAE standards listed in paragraph (b) of this section in designing and constructing facilities built with project funds.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474,** [**42 U.S.C. 8373**](https://www.govinfo.gov/link/uscode/42/8373)**(b), and E.O. 12185)**

***[***[***57 FR 30339***](https://www.federalregister.gov/citation/57-FR-30339)***, July 8, 1992, as amended at*** [***69 FR 18803***](https://www.federalregister.gov/citation/69-FR-18803)***, Apr. 9, 2004]***

**§ 75.617 Compliance with the Coastal Barrier Resources Act.**

**A recipient may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by 31 U.S.C. chapter 55 (sections 3501-3510).**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474,** [**31 U.S.C. 3504**](https://www.govinfo.gov/link/uscode/31/3504)**, 3505)**

***[***[***57 FR 30339***](https://www.federalregister.gov/citation/57-FR-30339)***, July 8, 1992]***

**Equipment and Supplies**

**Cross Reference:**

**See** [**2 CFR 200.311**](https://ecfr.federalregister.gov/on/2021-06-15/title-2/section-200.311)**, Real property; 200.313, Equipment; 200.314, Supplies; and 200.59, Intangible property; and 200.315, Intangible property.**

**§ 75.618 Charges for use of equipment or supplies.**

**A grantee may not charge students or school personnel for the ordinary use of equipment or supplies purchased with grant funds.**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3 and 3474)**

**Construction**

**§ 76.600 Where to find construction regulations.**

**(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, shall comply with the rules on construction that apply to applicants and grantees under** [**34 CFR 75.600-75**](https://ecfr.federalregister.gov/on/2021-06-15/title-34/section-75.600-75)**.617.**

**(b) The State shall perform the functions that the Secretary performs under §§ 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title.**

**(c) The State shall provide to the Secretary the information required under** [**34 CFR 75.602(a)**](https://ecfr.federalregister.gov/on/2021-06-15/title-34/section-75.602#p-75.602(a)) **(Preservation of historic sites).**

**(Authority:** [**20 U.S.C. 1221**](https://www.govinfo.gov/link/uscode/20/1221)**e-3, 3474, and 6511(a))**

***[***[***45 FR 22517***](https://www.federalregister.gov/citation/45-FR-22517)***, Apr. 3, 1980. Redesignated at*** [***45 FR 77368***](https://www.federalregister.gov/citation/45-FR-77368)***, Nov. 21, 1980, as amended at*** [***45 FR 86298***](https://www.federalregister.gov/citation/45-FR-86298)***, Dec. 30, 1980;*** [***57 FR 30341***](https://www.federalregister.gov/citation/57-FR-30341)***, July 8, 1992]***