The Kentucky Department of Education (KDE) has received multiple inquiries from districts regarding the permissibility of staff bonus/stipend payments using ESSER and GEER Funds. These questions raise several issues; most importantly, whether bonus/stipend payments are permissible under the federal grants and under Kentucky law.

**Use of Funds - GEER and ESSER**

The U.S. Department of Education’s [Use of Funds FAQ](https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf) states:

Generally, in determining whether an activity is an allowable use of funds, a State or LEA must determine:

• Is the use of funds intended to prevent, prepare for, or respond to the COVID-19 pandemic, including its impact on the social, emotional, mental health, and academic needs of students?

• Does the use of funds fall under one of the authorized uses of ESSER or GEER funds?

• Is the use of funds permissible under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance, 2 CFR Part 200)? In particular, is it necessary and reasonable for the performance of the ESSER or GEER award?

The U.S. Department of Education’s [Use of Funds FAQ](https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf) includes the following statement on additional compensation:

D-6. May an LEA use ESSER and GEER funds to provide “premium pay” or other additional compensation for teachers, principals, and other school personnel, including school nutrition staff and custodians?

Yes. Premium pay must be reasonable and necessary and consistent with 2 CFR § 200.430(f), and given pursuant to an established plan (which could be established in response to the COVID-19 pandemic), consistent with applicable collective bargaining agreements and other relevant policies and requirements.

2 CFR § 200.430(f) states:

*Incentive compensation*. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

The U.S. Department of Education’s [ESSER Fund Certification and Agreement](https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf) states, “funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.”

**Kentucky Law – Extra Services, Supplements and Supervision**

The Kentucky Constitution, [Section 3](https://apps.legislature.ky.gov/Law/Constitution/Constitution/ViewConstitution?rsn=5), requires that if public funds are expended, consideration (something of value) must be received and the public service received cannot be a past service. Section 3 of the Kentucky Constitution states in relevant part: “. . . no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services . . . .” [Section 184](https://apps.legislature.ky.gov/Law/Constitution/Constitution/ViewConstitution?rsn=214) and [Section 186](https://apps.legislature.ky.gov/Law/Constitution/Constitution/ViewConstitution?rsn=216) of the Kentucky Constitution prohibit expending school funds for activities other than educational purposes.

In addition, [KRS 160.291](https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=3701) provides in pertinent part:

(3)…Payment for extra duties or services must be paid pursuant to a payment plan adopted by the board of education prior to the beginning of the school year...

(4) All payments made for salaries, extra duties, and fringe benefits by the Board of Education under the authority of this section are deemed to be for services rendered and for the benefit of the common schools . . . .

**Conclusion**

Districts are prohibited by the Kentucky Constitution, Section 3, from giving employees a bonus for past services the employees were required to perform pursuant to their contracts. That is, simply working or teaching throughout the COVID-19 pandemic was an activity school staff were already legally obligated to do pursuant to their employment contracts.

Districts could however amend the salary schedule to provide additional compensation without additional corresponding duties. ESSER or GEER funds may be used if the increase in salary is “to prevent, prepare for, or respond to the COVID-19 pandemic” and is “necessary and reasonable.” However, districts can’t likely justify a “thank you” payment beyond the salary schedule to school staff who are already under contract to work next year and who assume no additional duties beyond those already in their contracts because this likely would not meet the criteria for premium pay and would not be permissible under the Kentucky Constitution.

Premium pay must be to prevent, prepare for, and respond to the COVID-19 pandemic meaning that the staff member must have some duties related to this. Second, premium pay must be reasonable and necessary. If a district can show that: (1) staff has been assigned additional duties beyond those in their typical year employment contract; or (2) the district otherwise will not be able to staff positions and provide educational services to students without premium pay, it seems such a payment would be “necessary and reasonable.” Third, premium pay must be given pursuant to an established plan to imply an agreement to make the payment.

Districts already have policies in place (03.121) regarding extra service payments. Districts annually establish a schedule of compensation for extra services, special duty supplements, and supervision. If a local school district establishes a schedule of compensation for extra services, special duties, and/or supervision and those services/duties are “to prevent, prepare for, and respond to the COVID-19 pandemic” they appear to be allowable pursuant to the Kentucky Constitution, ESSER, GEER, and district policies. Extra services, special duties, and/or supervision should be clear duties that are beyond those required of the district staff member as part of his/her employment contract. **So long as districts clearly identify additional duties staff are performing that are beyond those required in their employment contracts, and those additional duties are to prevent, prepare for, and respond to the COVID-19 pandemic, extra service or stipend payments using ESSER, and GEER funds are permissible.**

In addition, if a district otherwise will not be able to staff positions and provide educational services to students without premium pay, it could use ESSER or GEER funds to offer a signing bonus to new staff or amend the salary schedule for all staff without additional corresponding duties to increase the pay in the hopes of attracting applicants.

Districts should be aware of the requirements regarding personnel expenses documentation contained in 2 CFR § 200.430(i) as discussed at A-16 on page 18 of the U.S. Department of Education’s [Use of Funds FAQ](https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf) document. Finally, districts should be aware of the requirements in KRS Chapter 161 and district policies if it chooses to decrease staff salaries or reduce its workforce in following years when ESSER/GEER funds are no longer available.

**Please note: KDE cannot speak for KTRS and it is possible that additional compensation may have a pension spiking impact for staff who plan to retire in the coming years. Districts should contact KTRS to discuss any additional compensation considered.**