

# Federal Grants Update

Sheara Krvaric

Federal Education Group, PLLC

[www.fededgroup.com](http://www.fededgroup.com)

# Introduction

Federal Education Group, PLLC (FEG) is a law and consulting firm that helps states, school districts, and other educational organizations understand federal law so they can use federal money to achieve their goals while maintaining compliance.

FEG's practice areas include all major federal K-12 education programs, including COVID relief programs, ESEA, IDEA, and Perkins, as well as federal grants management requirements, such as the Uniform Grant Guidance.

FEG's co-founders Melissa Junge and Sheara Krvaric previously served as in-house counsel for an SEA and in private practice at an education law firm.

# Agenda

- ESSER implementation updates
  - Timelines
  - Navigating ED guidance on allowable uses of funds
  - ESSER reporting
  - Local maintenance of equity requirement
  - Preparing for audits and oversight
- Other Updates
  - 2022-2023 funding levels
  - Recent ED guidance documents

# ESSER Timelines

# ESSER Timeline Concerns

- Concerns about supply chain and hiring challenges have prompted questions about whether SEAs and LEAs can get additional time to spend ESSER funds.
- To answer that, there are three things to consider:
  - ESSER's obligation deadlines,
  - Federal liquidation deadlines, and
  - Federal cost principles.

# Key Spending Milestones

	Spending Start Date	Spending End Date
CARES ESSER \$13.23 billion	3/13/2020	Deadline to obligate: 9/30/2022 LEA financial reporting: 12/29/2022 SEA liquidation: 1/28/2023
CRRSA ESSER \$54.3 billion	3/13/2020	Deadline to obligate: 9/30/2023 LEA financial reporting: 12/29/2023 SEA liquidation: 1/28/2024
ARP ESSER \$121.975 billion	3/13/2020	Deadline to obligate: 9/30/2024 LEA financial reporting: 12/29/2024 SEA liquidation: 1/28/2025

# Obligation Considerations

- Generally speaking, an obligation occurs when there is a legal commitment to spend funds.
- ED regulations specify when obligations for certain expenses are made (see next slide).
- ED cannot extend the obligation deadline without authority from Congress. For example:
  - ESEA gives ED authority to waive certain provisions, which it has used to extend the obligation deadline for ESEA programs (often called “Tydings waivers”).
  - ESSER does not have similar waiver authority.

# When an Obligation Is Made

## 34 CFR § 76.707

If the obligation is for -	The obligation is made -
(a) Acquisition of real or personal property	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the State or subgrantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in <a href="#">2 CFR part 200, Subpart E</a> - Cost Principles	On the first day of the grant or subgrant performance period.

# Liquidation Considerations

- Federal regulations give:
  - LEAs 90 days to submit final financial information to their SEA. ([2 CFR § 200.344\(a\)](#))
  - SEAs 120 days to liquidate funds, that is, to finish drawing down money from ED in order to pay off valid and timely obligations. ([2 CFR § 200.344\(b\)](#))
- ED has authority to extend the liquidation period, which would give states more time to draw down and pay out ESSER funds but would not allow for new obligations.
  - ED has [existing policies](#) on late liquidation requests, but it is not clear the extent to which they will apply it to ESSER.

# Federal Cost Principles Considerations

- Federal regulations require that for a cost to be allowable it must be incurred during a grant's budget period. ([2 CFR § 200.403\(h\)](#))
- ED's [May 2021 ESSER and GEER FAQs](#) say, “Although funds must be obligated by September 30 . . . grant activities carried out through a valid obligation of funds may continue beyond that date.” (Q&A E-1 – E-3)
- It is unclear what this means in practice and how it relates to the liquidation deadline.

# **ED Guidance on Allowable Uses of ESSER Funds**

# Key Points About Allowable Uses of Funds

- Activities supported with ESSER funds should be consistent with the goal of preventing, preparing for, or responding to COVID-19.
- As described in [guidance](#), ED views that goal broadly:

In response to the pandemic, ESSER and GEER funds offer the opportunity to make educational systems better for students, educators, staff, schools, and their communities post-pandemic. The Department encourages SEAs and LEAs to think holistically about their response to COVID-19 in order to address the impact of lost instructional time from the pandemic on all students and to address pre-existing challenges that, if left unaddressed, will impede recovery from the pandemic.

# Key Points About Allowable Uses of Funds (cont.)

- As with all expenses paid with federal funds, ESSER-funded activities must be reasonable and comply with other federal cost principles.
- Depending on an LEA's needs and circumstances, allowable ESSER activities might include:
  - Sustaining operations, including paying existing staff, addressing staffing shortages and transportation issues.
  - Mental health services and supports to students (including those who experienced trauma before the pandemic).
  - Programs to re-engage students (including addressing factors that contributed to student disengagement before the pandemic).
  - Continuing to address issues of digital equity and access.
  - Implementing rigorous curricula across P-12 schools.

# Key Points About Allowable Uses of Funds (cont.)

- Depending on an LEA's needs and circumstances, allowable ESSER activities might include (cont.):
  - Sustaining and expanding existing summer learning and enrichment programming or early childhood education programs.
  - Creating or improving existing data systems to identify and respond to student needs in light of the pandemic.
  - Supporting the needs of children with disabilities by eliminating evaluation backlogs, providing services, personnel preparation, and professional development and training.
  - Maintaining healthy facilities, which could include addressing pre-existing or new ventilation, roofing, and plumbing needs, or other needs that may inhibit healthy learning environments during full-time in-person learning. This might include roof repairs or replacement; reducing lead exposure in water; or mold, radon, and asbestos remediation, as well as facility updates (such as upgrading science labs) to address the impact of lost instructional time.

# Where to Find ESSER Use of Funds Guidance

- Much of ED's ESSER guidance is posted in the following places:
  - <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/>
  - <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/resources/>
  - <https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/>
  - <https://www.ed.gov/coronavirus>
- But guidance is also posted on other parts of ED websites (like [this ventilation guidance](#)), which can make ESSER guidance difficult to find.

# Key Pieces of ESSER Use of Funds Guidance

- ESSER and GEER FAQs
  - Clarification on construction issues
  - Clarification on connecting activities to the pandemic
- Guidance on vaccination and testing
- Guidance on incentives for vaccination
- Guidance on incentives for testing
- Guidance on transportation
- Guidance on promoting public safety
- Guidance on full-service community schools and related strategies
- Guidance on addressing lost instructional time
- Guidance on preaward costs
- Guidance on ventilation

# ESSER Reporting

# Annual Report

- States that receive ESSER funds must annually report how they and their subgrantees spent funds. (See next slides for dates.)
- ED's reporting website for ESSER is here <https://covid-relief-data.ed.gov/grantee-help/esser>.
- ED plans to make reported ESSER data public.
  - Currently, ED is only reporting on totals spent by states and districts <https://covid-relief-data.ed.gov/>, future data collections will be more detailed.

Reporting Year	Period Covered	State Reporting Window
CARES Year 1	March 13, 2020 – September 30, 2020	February 1, 2021 Corrections can be made March 21 - April 1, 2022
CARES Year 2 CRRSA Year 1 ARP Year 1	October 1, 2020 – end of SFY 2021 SFY 2020-2021 SFY 2020-2021	May 16 – June 17, 2022
CARES Year 3 CRRSA Year 2 ARP Year 2	SFY 2021-2022	TBD
CARES Year 4 CRRSA Year 3 ARP Year 3	SFY 2022-2023	TBD
Final CARES (if applicable) CRRSA Year 4 ARP Year 4	SFY 2023-2024	TBD
Final CRRSA (if applicable) ARP Year 5	SFY 2024-2025	TBD

# Categorizing ESSER Expenditures

- The CARES Year 2/CRRSA & ARP Year 1 reporting form is now [available](#).
- In this report and next, LEA spending will be reported in four broad categories:
  - Addressing Physical Health and Safety
  - Meeting Students' Academic, Social, Emotional, and Other Needs
  - Mental Health Supports for Students and Staff
  - Operational Continuity and Other Uses
- Starting with the report filed in 2024 (covering SFY 2022-2023 spending), ED anticipates collecting reporting in more granular categories. (See Appendix on p. 44 of [the form](#).)

# Anticipated Reporting Challenges

- Some data is optional for this year's report and next's, but starting with the 2024 report (covering SFY 2022-2023) ED plans to:
  - Collect student participation data in certain kinds of activities.
  - Define certain kinds of activities narrowly (for example, high-dosage tutoring would only be reported if delivered daily during the school day).
- These plans could change, so keep an eye out and weigh in when forms are posted for public comment.

# Maintenance of Equity

# What is MOEquity?

- Maintenance of Equity (MOEquity) is a new fiscal rule under ARP ESSER. There are:
  - **State-level** MOEquity requirements that limit states from cutting state funds to certain school districts in 2021-2022 and 2022-2023, and
  - **Local-level** MOEquity requirements that limit districts from cutting (1) combined state/local funds and (2) staff to certain schools in 2021-2022 and 2022-2023.

# Which LEAs Must Meet Local MOEquity Requirements?

- All LEAs that receive ARP ESSER funds, except LEAs:
  1. With a total enrollment of less than 1,000 students,
  2. That operate only one school,
  3. That have only one school per grade span,
  4. That can certify they will not have an aggregate reduction in combined state and local per-pupil funding in 2021-2022 and/or 2022-2023, or
  5. That receive an exception from the U.S. Department of Education (ED) due to exceptional or uncontrollable circumstances.

# How Do LEAs Claim an Exception?

- Resource: [https://oese.ed.gov/files/2022/02/LEA-Local-Maintenance-of-Equity-Exception-Process\\_2.10.22.pdf](https://oese.ed.gov/files/2022/02/LEA-Local-Maintenance-of-Equity-Exception-Process_2.10.22.pdf)
- Automatic Exceptions: LEAs with a total enrollment of less than 1,000 students, that operate only one school, or that have only one school per grade span are **automatically excepted** from MOEquity requirements.
  - Such LEAs do not need to submit any documents to claim the exception,
  - But they should be prepared to verify the exception if requested.

# How Do LEAs Claim an Exception (cont.)?

- No Funding Cuts at Local Level: LEAs that did not have an aggregate reduction in combined state and local per-pupil funding in a covered year should **submit a certification to LDOE**.
- A sample certification form can be found in Appendix B of ED's MOEquity FAQs [https://oese.ed.gov/files/2021/12/Maintenance-of-Equity-updated-FAQs\\_12.29.21\\_Final.pdf](https://oese.ed.gov/files/2021/12/Maintenance-of-Equity-updated-FAQs_12.29.21_Final.pdf).

# How Do LEAs Claim an Exception (cont.)?

- Exceptional or Uncontrollable Circumstances: LEAs that cannot meet local MOEquity requirements because of an exceptional or uncontrollable circumstance should **email ED** at [louisiana.oese@ed.gov](mailto:louisiana.oese@ed.gov) and cc: LDOE.
- The email should provide detailed information on the exceptional or uncontrollable circumstance and how it prevents the LEA from maintaining equity. (See examples on next slide.)

# Examples of Exceptional or Uncontrollable Circumstances

- Examples of exceptions approved by ED:
  - School closures and consolidation in a covered year. (See [here.](#))
  - Staffing changes due to an unexpected enrollment change. (See [here.](#))
  - Flooding in a school that led to unanticipated change in spending. (See [here.](#))
  - Impact of wildfires. (See [here.](#))
- Other examples from ED guidance:
  - Increased one-time expenditures in the baseline year due to the pandemic.
  - A very small school where MOEquity calculations do not result in meaningful information about resource availability.
  - A significant change in spending because a school no longer serves a student who required high-cost services.

# Overview of Local MOEquity Requirements

- If not excepted from MOEquity, then in FYs 2022 (SY 2021-2022) and 2023 (SY 2022-2023) LEAs may not reduce:
  - **Per-pupil state and local funding** (“fiscal equity”) to high-poverty schools more than the total reduction in per-pupil funding to all schools, and
  - **Per-pupil FTEs** (“staffing equity”) to high-poverty schools more than the total reduction in per-pupil FTEs in all schools.
- LEAs must satisfy both tests.
- High poverty schools are an LEA’s poorest 25% of schools.

# Preparing for Audits and Oversight

# It's Single Audit Season

- Entities that spend \$750,000 or more in federal funds in a fiscal year must have their federal programs audited by an independent auditor.
- In state-administered programs like Title I, IDEA and ESSER:
  - LEAs must arrange for the audit and respond to findings, and
  - SEAs must review their LEAs' audits and make management decisions.

# Important Things to Know About Single Audits for ESSER (and Generally)

- There are decades of **well documented audit quality concerns**, so much so that ED itself [cautioned about poor audit quality](#).
- This year's compliance supplement – a guide the federal government develops for auditors – is particularly messy for ESSER and other COVID relief programs:
  - Main compliance supplement [https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-2021-Compliance-Supplement\\_Final\\_V2.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-2021-Compliance-Supplement_Final_V2.pdf)
  - Compliance supplement addendum <https://www.cfo.gov/2021-addendum-1and2>

# Some Takeaways from the Compliance Supplement Addendum

- The addendum clarifies two key points:
  - LEAs may use ESSER funds “to support a very wide range of activities, including activities indirectly linked to the impact of COVID-19.”
  - For ESSER, LEAs only need time distribution records if an employee works on a combination of allowable and unallowable activities, which ED expects will be uncommon. (Other records still required, but typically are satisfied through existing payroll systems. See [this analysis](#) for more information.)
- The addendum could still potentially confuse auditors on issues like construction.

# Responding to Audit Findings

- LEAs that receive findings must develop corrective action plans.
- The requirement to develop a corrective action plan does not mean an auditee has to accept a finding:

At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in [§ 200.516](#), a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. **If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.** ([2 CFR § 200.511\(c\)](#))

# 2022-2023 Funding Levels

# FY 2022 (SY 2022-2023) Appropriations

- On March 15, President Biden signed FY 22 Consolidated Appropriations Act, which covers the federal fiscal year that runs October 1, 2021 – September 30, 2022 (and effects July 1, 2022, grant awards).
- Increases for key K-12 programs:
  - Title I \$17.5B (+\$1B)
  - IDEA, Part B \$13.7B (+\$418M)
  - Perkins \$1.38B (+\$45M)

# Title I Allocation Process

- ED is in the process of informing states of their preliminary 2022-2023 Title I allocations.
- These preliminary allocations do not reflect what LEAs can expect to receive because states must adjust them to account for things like LEAs not included on ED's list (like charter schools), boundary changes, and state reservations.
- ED anticipates releasing final allocation amounts in June.

# Recent ED Guidance Documents

# Recent Guidance Highlights

## Title I

- [Frequently Asked Questions: Impact of COVID-19 on 2021-2022 Accountability Systems Required under the Elementary and Secondary Education Act of 1965 \(ESEA\)](#)
- [Within-District Allocations under Title I, Part A of the Elementary and Secondary Education Act of 1965](#)

## IDEA

- [March 24, 2022 Letter to Educators and Parents Regarding New CDC Recommendations and Their Impact on Children with Disabilities](#)
- [Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools \(rev. Feb 2022\)](#)

# Finding ED Guidance

- Main guidance page: <https://www2.ed.gov/policy/gen/guid/types-of-guidance-documents.html>
- OESE: <https://oese.ed.gov/guidance/>
- OSEP: <https://sites.ed.gov/idea/policy-letters-policy-support-documents/>

# Disclaimer

This presentation is intended solely to provide general information and does not constitute legal advice. Attendance at the presentation or later review of these printed materials does not create an attorney-client relationship with Federal Education Group, PLLC. You should not take any action based upon any information in this presentation without first consulting legal counsel familiar with your particular circumstances.