



ESSER Accountability and Closeout

LASAFAP 2024

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Timely Spending

Obligation/ Liquidation Rules

Obligate

- ▶ Funds must be obligated within the period of performance (34 CFR 76.707)

Liquidate

- ▶ Valid obligations must be performed, accounting completed and draw downs finalized within the liquidation period.
 - ▶ SEAs must liquidate within 120 days of obligation date
 - ▶ LEAs have 90 days to liquidate

ESSER/GEER/EANS Liquidation Timeline

Program	Obligation Deadline	(Automatic) 90-day liquidation deadline (LEAs)	(Automatic) 120-day liquidation deadline (SEAs)
ESSER I	Sep. 30, 2022	Dec 31, 2022	Jan. 30, 2023
ESSER II	Sep. 30, 2023	Dec 31, 2023	Jan. 29, 2024
ARP ESSER	Sep. 30, 2024	Dec 31, 2024	Jan. 28, 2025
GEER I	Sep. 30, 2022	Dec 31, 2022	Jan. 30, 2023
GEER II	Sep. 30, 2023	Dec 31, 2023	Jan. 29, 2024
CRRSA EANS	Sep. 30, 2023	Dec 31, 2023	Jan. 29, 2024
ARP EANS	Sep. 30, 2024	Dec 31, 2024	Jan. 28, 2025

Can Services Go Beyond The Liquidation Period?

- ▶ Generally, no. Now...maybe?
- ▶ A cost is allocable to a Federal award or cost objective if the goods or services involved are chargeable or assignable in accordance with relative benefits received. 200.405
 - Incurred specifically for the award;
 - Benefits both award and other work and can be distributed in proportions that may be approximated using reasonable methods; and
 - Necessary to the overall operation of the entity and assignable to the award in accordance with this Part.
- ▶ Can only charge in proportion to the value received by the program

ESSER Guidance (Dec. 2022)

- ▶ E-2: Although funds must be obligated by September 30, 2023, grant activities carried out through a valid obligation of funds may continue beyond that date.
- ▶ E-3: Generally, it is not good stewardship or prudent business practice to prepay for services that will extend many years into the future.
 - ▶ However, under limited circumstances where a grantee or subgrantee timely obligates ESSER or GEER funds, ESSER- or GEER-funded activities may continue for a reasonable time beyond the liquidation period (including an approved late liquidation period).

How long can services go on?

- ▶ E-3: Factors impacting how long ESSER- or GEER-funded activities may extend past the liquidation period include:
 - ▶ Whether the funds were properly obligated and liquidated in a timely manner;
 - ▶ Whether the activities would be allowed to extend beyond the liquidation period under applicable State and local procurement rules;
 - ▶ This may limit an extension through State fiscal year?
 - ▶ Whether the extended activities constitute a reasonable and necessary use of Federal funds; and
 - ▶ Whether prudent business practices (2 CFR § 200.404(b) & (d)) and internal controls (which generally limit prepayment) would support the continued activities for the length of time proposed.
- ▶ Because ESSER and GEER are State-administered programs, the SEA or Governor determines whether activities extending past the liquidation period are allowable under the circumstances.

How long can services go on? (cont.)

Example:

- An SEA may determine that it is reasonable and necessary under 2 CFR §§ 200.403-200.404 for an LEA to enter into a multi-year software licensing contract with a vendor during the period of availability of ARP ESSER funds and to pay for the entirety of the software license within the liquidation period. However, under the contract, the vendor would continue to provide the services (i.e., software and technical support) for some time after the funds had been liquidated.
 - *But for how long????*

But For How Long?

- Under no circumstances may services extend beyond the date on which funds revert to the U.S. Department of Treasury (31 USC § 1552), which occurs four years after the obligation deadlines referenced in FAQs E-1, E-2, and E-3.
- Known as “Treasury Sweep”



ARP Standard Liquidation Ends January 28, 2025

But For
How
Long?
(cont.)

Services end after the 2025 School Year?
June 2025?



Services end after 2025 Summer Programs
August 2025?



Already entered a 5 year agreement in Sept 2022
Services end September 2027



Enter into 5-year agreement in September 2023
Services end September 2028



**MAX: End of Treasury Sweep
September 30, 2028**



How do we document the justification of the extension of services?

Factors to document:

- ▶ Timely obligations
- ▶ Timely liquidations during approved periods.
- ▶ That the activities would be allowed to extend beyond the liquidation period under applicable State and local rules.
- ▶ That the activities constitute a reasonable and necessary use of Federal funds; and
- ▶ That prudent business practices would support the continued activities for the length of time proposed.

Also helpful:

- ▶ Contractor has history of timely performance
- ▶ Discounted costs
- ▶ Relates to identified needs
- ▶ **Data demonstrating success**



BUT ED OIG
Doesn't Agree!
(and what if single
auditors don't
agree either?)

ED Doubles Down (Guidance June 26, 2023)

May ESSER, GEER, or EANS-funded activities continue after the obligation and liquidation period?

- ▶ “States have expressed concerns about possible audit findings”
- ▶ The LEA should document factors such as (at the time you enter into the contract):
 - ▶ the per-month cost of the multi-year contract is less than the cost of a shorter-term contract;
 - ▶ the software license will be needed throughout the period of the contract;
 - ▶ the LEA is allowed to enter into the contract extending beyond the obligation and liquidation period under State and local procurement rules; and
 - ▶ prudent business practices and internal controls support entering into the contract.

Guidance June 26, 2023 (cont.)

- ▶ It is possible that the Department would sustain an audit finding that services continuing beyond the obligation and liquidation period are unallowable if,
 - ▶ the duration that the services extended was lengthy or unreasonable;
 - ▶ the cost is not reasonable or necessary;
 - ▶ State law, internal controls, or prudent business practices would not support the continuation of the services; or
 - ▶ the contemporaneous documentation from the time does not support the decision to use ESSER, GEER, or EANS funds for services that extend beyond the obligation and liquidation period
- ▶ The Department will continue to ensure auditors are aware of this guidance. For example, the Department has included a reference to this issue in the fiscal year 2023 compliance supplement. The Department is available to speak to State or other auditors with questions.

Extending the Liquidation Period



Liquidation extension

- ▶ Obligation extension? → No. (ED FAQ E-3.c, Dec. 2022)
- ▶ Liquidation extension? Possible - up to 14 months
 - ▶ Late Liquidation FAQs 12/23/22:
<https://oese.ed.gov/files/2022/12/General-and-Technical-FAQs-for-CARES-Liquidation-Extension-Requests.pdf>
 - ▶ Late Liquidation letter 9/29/22:
<https://oese.ed.gov/files/2022/09/CARES-ESSER-and-GEER-Liquidation-Extension-Request-Letter-9.29.22.pdf>
 - ▶ States must submit a required [template spreadsheet](#)

Late Liquidation Requests (From USED)

Program	Obligation deadline	(Automatic) 120-day liquidation deadline	(Up to) 14-month liquidation extension
ESSER I	Sep. 30, 2022	Jan. 30, 2023	Apr. 1, 2024
ESSER II	Sep. 30, 2023	Jan. 29, 2024	Mar. 31, 2025
ARP ESSER	Sep. 30, 2024	Jan. 28, 2025	Mar. 31, 2026
GEER I	Sep. 30, 2022	Jan. 30, 2023	Apr. 1, 2024
GEER II	Sep. 30, 2023	Jan. 29, 2024	Mar. 31, 2025
CRRSA EANS	Sep. 30, 2023	Jan. 29, 2024	Mar. 31, 2025
ARP EANS	Sep. 30, 2024	Jan. 28, 2025	Mar. 31, 2026

ARP Late Liquidation Ends March 31, 2026

But For How Long?
(cont.)

Services end after the 2025 School Year?
June 2025?



Services end after 2025 Summer Programs
August 2025?



Already entered a 5 year agreement in Sept 2022
Services end September 2027



Enter into 5-year agreement in September 2023
Services end September 2028



MAX: End of Treasury Sweep
September 30, 2028



Late Liquidation: State Template

- ▶ State may submit requests on behalf of itself and/or its LEAs
 - ▶ No firm deadline for applying
 - ▶ Verify grantees are “low-risk” (as defined by the State)
 - ▶ Ensure funds were obligated in a timely way
 - ▶ Maintain supporting documentation
 - ▶ Need a reason for applying beyond just “ran out of time”
- ▶ Beyond 14 months requires extensive ED review with “significant documentation” that will only be considered in “limited circumstances.”



Davis Bacon Act

When does DBA apply?

- ▶ All federally-funded contracts over \$2,000 for minor remodeling, renovation, repair, and/or construction of public buildings or public works
 - ▶ Funded in whole or in part by federal dollars
- ▶ Once DBA applies to the prime contract, it applies to all subcontractors even if individual subcontracts are under threshold
- ▶ Administered by Department of Labor's Wage and Hour Division
 - ▶ But subject to interpretation and additional administrative requirements by cognizant agency

What is the “prevailing wage?”

- ▶ The wage the DOL has determined is appropriate for the local area, based on publicly available tables
 - ▶ Varies by zip code
- ▶ “Wage” is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination.
- ▶ Prevailing wages, including fringe benefits, must be:
 - ▶ Paid on all hours worked on the site of the work
 - ▶ Based on duties job performed (e.g. can pay electrician as mechanic if that’s the work they do)
 - ▶ Apprentices/trainees may be paid less *if they are in an apprenticeship program registered with the DOL*

What must contractors do?

- ▶ Contractors and subcontractors must:
 - ▶ Pay covered workers weekly
 - ▶ If contractor pays biweekly?? DOL “To be in compliance, have to change payment practices at least in this scope.”
 - ▶ Submit weekly certified payroll records to the contracting agency.
 - ▶ Post the applicable Davis-Bacon wage determination with the [Davis-Bacon poster \(WH-1321\)](#) on the job site in a prominent and accessible place where they can be easily seen by the workers.

FEDERAL CONTRACTOR
Labor Laws

Department of Labor, Wage & Hour Division
Davis-Bacon Act

POSTER COMPLIANCE DATE: 04/2009

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

PREVAILING WAGES You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to five years. A contractor who favors certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

[Redacted box for Contracting Officer information]

or contact the U.S. Department of Labor's Wage and Hour Division.

DEPARTMENT OF LABOR WAGE AND HOUR DIVISION UNITED STATES DEPARTMENT OF LABOR 2-603-481-5242 TTY: 1-877-889-5627 www.dol.gov/whd

REV. 10/2017

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4/2009

What must the SEA/LEA do?

- ▶ The contracting agency (SEA/LEA) must:
 - ▶ Ensure contract includes Davis-Bacon provisions where applicable and determine prevailing wage schedule applicable
 - ▶ Must include language in the contracts that all contractors or subcontractors must pay wages that are not less than those established for the locality of the project (prevailing wage rates).
 - ▶ Ensure payroll records are received and align with prevailing wage
 - ▶ Confirm poster is visible on work site
 - ▶ Confirm those making less than prevailing wage are in qualified apprenticeship programs

What is required for subrecipient monitoring?

- ▶ SEA should have sufficient guidance at the beginning to help LEAs understand their requirements.
- ▶ Davis-Bacon does not explicitly have to be part of monitoring - sampling is ok, but must be adequate.
 - ▶ Site visits? - Not required
 - ▶ “Reasonable spot checks” of payrolls and how they’re storing and accessing them for a period at least 3 years after the end of the project.
- ▶ ED is supposed collect payrolls. ED delegated to State, State MAY delegate to LEAs:
 - ▶ (1) LEAs must actually reviewing payrolls, and
 - ▶ (2) LEA must do some spot checking to make sure everything is correct and signed properly, for some “face of record” violations.
- ▶ DOL does implementation and generalized enforcement, but ED has oversight responsibilities on a day-to-day basis. ED and DOL will do spot monitoring of contractors.

What is required for subrecipient monitoring?

- ▶ What should the SEA do if it identifies non-compliance?
 - ▶ Contracts must be modified retroactively to include wage determinations and provide additional money to contractor to flow through to employees.
 - ▶ DOL will help with this. If they provide a justification of how they calculated the back wages, “we do try to be reasonable about that.”
- ▶ What steps should grantee take if prevailing wages were paid but out of compliance with other requirements (i.e. missing contract clause, certifications, etc.)
 - ▶ Incorporate requirements retroactively to beginning of the contract
 - ▶ DOL “will try to be reasonable”.
- ▶ Remedies for a contractor not meeting obligations
 - ▶ Work with them to figure out how to correct practices.
 - ▶ Payment can be withheld from prime or sub contractor.
 - ▶ If egregious, contractor can be debarred.



ESSER/GEER Disposition of Equipment/ Supplies

Equipment v. Supplies Defined

Equipment

- ▶ Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000. (2 CFR 200.1)

Supplies

- ▶ All tangible personal property that is not equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. (2 CFR 200.1)
 - ▶ Computing Devices

General Disposition Rule

- ▶ Equipment and supplies purchased with ESSER or GEER funds
 - ▶ may be used by States or LEAs for the authorized purpose during the period of performance
- OR
- ▶ until the equipment and supplies are no longer needed for the purposes of the ESSER or GEER program.
- ▶ If the equipment or supplies are no longer needed for purposes of the ESSER or GEER program, a State or LEA may:
 - ▶ continue to use the equipment and supplies to the extent they are needed for allowable purposes under another Federal education program in which the State or LEA participates,
- OR
- ▶ use the equipment or supplies for a Federal program of another Federal awarding agency

Disposition of Equipment by SEA



- ▶ For States: If the item is not needed for authorized purposes under ESSER or GEER or for any of the State's other Federal programs, then a State must dispose of the equipment in accordance with State laws and procedures.
 - ▶ Includes EANS property.
 - ▶ See ED Guidance (August 2022):
<https://oese.ed.gov/files/2022/08/EAN-S-Disposition-Clarification-8-2-22.pdf>

Disposition of Equipment by LEA

- ▶ LEAs: If the item is not needed for authorized purposes under ESSER or GEER or for any of the LEA's other Federal programs, then:
 - ▶ Fair market value of **\$5,000 or less**, may be retained, sold, or otherwise disposed of without additional responsibility to the Department.
 - ▶ Fair market value **in excess of \$5,000**, the LEA may retain or sell the equipment, but ED is entitled to its proportionate share.
 - ▶ The amount is calculated by multiplying the current fair market value or proceeds from the sale by the Department's share or proportion of the cost of the original purchase. (2 CFR 200.313(e)).
 - ▶ May keep up to \$500 for administrative costs.

Disposition of Supplies SEA/LEA

- ▶ If there is a residual inventory of supplies that are not needed exceeding \$5,000 in total aggregate value, the State or LEA may retain or sell the supplies but, in either case, must compensate the Department for its share per 2 CFR 200.313(e)(2).
 - ▶ A State or LEA may calculate the total aggregate value when disposition occurs - e.g., at the end of each year for which supplies are disposed
- ▶ A State or LEA must make a good faith effort to sell unneeded supplies and document its efforts (2 CFR 200.314(a)) .
 - ▶ States EANS Guidance: if cannot find a buyer and cannot use the supplies itself, the State or LEA has no further obligation to the Department.

What about CARES Act Equitable Services property?

- ▶ Equipment and supplies may be used for the authorized purposes of a CARES Act program during the period of performance (i.e., through September 30, 2022) or until the equipment and supplies are no longer needed for the purposes of the program (34 CFR 76.661(b); 2 CFR 200.313 and 200.314(a)).
 - ▶ If an LEA determines, in consultation, that non-public school students and teachers continue to need such equipment and supplies for the purposes of the CARES Act program beyond the period of performance, the LEA may, but is not required to, continue to permit non-public school students and teachers to use the equipment and supplies.
- ▶ **If an LEA permits use to continue beyond the period of performance, the LEA must continue to maintain title to, and keep administrative control over, the equipment and supplies.**

What about CARES Act Equitable Services property? (cont.)

- ▶ If no longer needed for the CARES Act program, then the CARES Act equipment and supplies:
 - ▶ Can be used for another federally-funded program at the private school (i.e. another equitable services or applicable program);
 - ▶ Can be transferred to the LEA or other public entity for purposes of another federally funded program; or
 - ▶ Can be otherwise disposed of based on fair market value.



ESSER Monitoring

ESSER/EANS Monitoring Resources

ESSER Monitoring Protocols

[ESSER Grantee Self-Assessment Protocol](#)

[ESSER Subrecipient Self-Assessment Protocol](#)

[SEA Self-assessment Protocol - Fiscal](#)

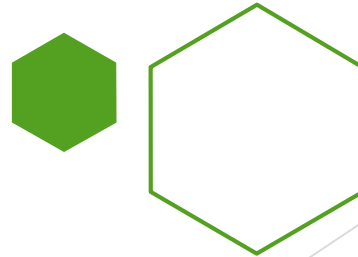
[LEA Self-assessment Protocol - Fiscal](#)

EANS Monitoring Protocols

[EANS Grantee Self-Assessment Protocol](#)

[SEA Self-assessment Protocol - Fiscal](#)

[LEA Self-assessment Protocol - Fiscal](#)



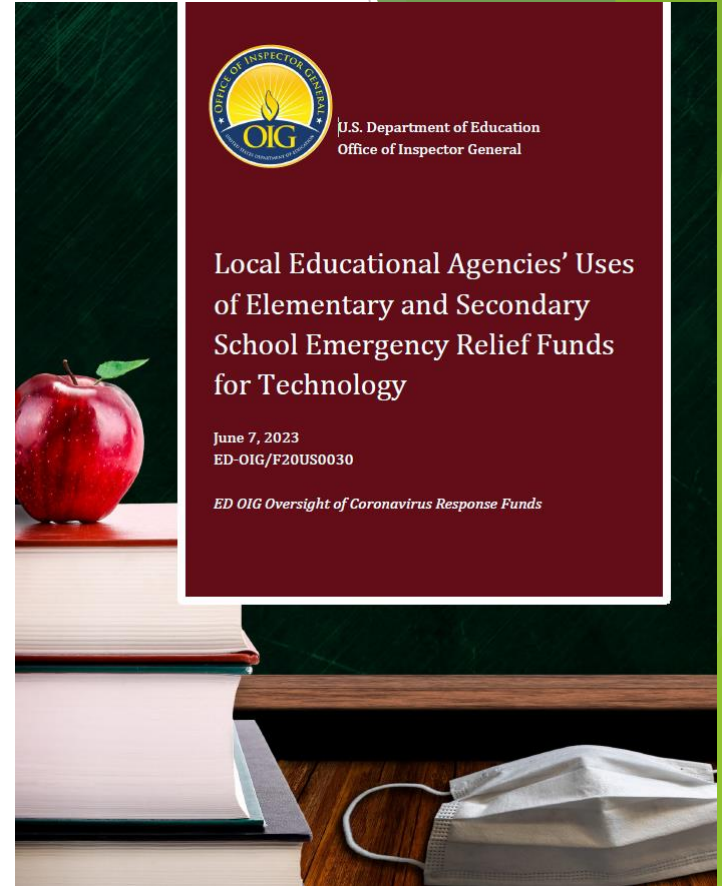
ESSER Top Monitoring Findings (so far)

<https://oese.ed.gov/offices/american-rescue-plan/performance-and-reporting/>

- ▶ Lack of internal risk assessment
- ▶ Missing required policies and procedures
- ▶ Cash management
- ▶ Lack of subrecipient monitoring process
- ▶ Not complying with procurement requirements (or following state versus federal requirements)

ED OIG Actions

- ▶ **Local Educational Agencies' Uses of Elementary and Secondary School Emergency Relief Funds for Technology (June 7, 2023)**
 - ▶ **Informational – no recommendations**
- ▶ The OIG surveyed a nationwide sample of LEAs about their experiences with using ESSER funds to purchase educational technology to continue student instruction during the coronavirus.
- ▶ We determined (1) the types of educational technology that LEAs purchased with their ESSER funds, (2) the challenges that LEAs experienced when using ESSER funds for educational technology, and (3) the impact the educational technology had on student learning.



2023 Compliance Supplement

- ▶ Released in May 2023
- ▶ 2061 pages
- ▶ Entire File: <https://www.whitehouse.gov/wp-content/uploads/2023/05/2023-Compliance-Supplement-%E2%80%93-2-CFR-Part-200-Appendix-XI.pdf>
- ▶ Page with links to different sections:
- ▶ <https://www.whitehouse.gov/omb/office-federal-financial-management/>
- ▶ ED Section: <https://www.whitehouse.gov/wp-content/uploads/2023/05/Part-4-Department-of-Education.pdf>

Questions?



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