



# Federal Updates and Hot Topics

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# Agenda

- Congressional Update
- Recent Hot Topics
  - Procurement
  - Inventory
  - Timeliness of Spending

# Congressional Update

# FY 2025 Appropriations – Where are we?

- Prior to August recess, Labor-HHS-ED bills passed by House and Senate Appropriations Committee
- FY 2025 began October 1, 2024
  - No final funding bills passed by Congress prior to start of FY 2025
- Initial disagreement over passing CR (how long to extend funding, including policy legislation, etc.)
- “Clean” CR ultimately passed by Congress end of September
  - Extends FY 2024 funding levels through Dec. 20
- Election results could impact whether final funding passed this year or another CR into 2025

# FY 2025 Appropriations – Where are we?

- Highlights of House-proposed funding levels for education:
  - 20% cut for Title I-A
  - Zeroed out funding for Title II-A and III-A
  - Flat funding or less than one percent increases for other major education programs
- Highlights of Senate-proposed funding levels for education:
  - Minor increases or flat funding for major education programs
    - Increases range from 0.5%-2.5%
  - Aligns with spending caps in bipartisan debt ceiling/budget deal from 2023

# Title I-A Funding Levels

	FY 2023	FY 2024	Percent Change
ESEA Title I-A	\$18,386,802,000	\$18,406,802,000	0.1%

Note: FY 2024 is the funding distributed to Louisiana on July 1, 2024

# Procurement Issues

# Common Procurement Issues

- Approved Vendor Lists/Interagency Agreements
- State/Tribal Flexibilities
- Vendor Access to PII



# Interagency Agreements

- 2 CFR 200.318(e): When appropriate for the procurement or use of common or shared goods and services, recipients and subrecipients are encouraged to enter into **State and local intergovernmental agreements or inter-entity agreements** for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency.
  - Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) **will meet the competition requirements of this part.**

# Approved Vendor Lists

- 2 CFR 200.319(e): The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and **include enough qualified sources to ensure maximum open competition.** When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. **The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.**

# Questions for Recipients/Subrecipients

- Was there a competitive process to get on a prequalified list?
  - How often is the list open for new vendors?
  - Is there any monitoring of this list? How frequent?
  - Are there enough options to be considered competitive?
  - What do YOUR OWN procedures say about using this list?
- In an interagency agreement, did the soliciting party follow procurement rules in 2 CFR Part 200?
  - Is this documented?
  - Who has access to this documentation?
  - Are all parties to the agreement monitoring for compliance?
  - Do YOUR OWN procedures allow for this?

# State/Tribal Flexibilities

- 2 CFR 200.317: When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327.
- **All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in §§ 200.318 through 200.327.**
- In other words, States and Tribes can follow State law that is less restrictive than federal law...SUBRECIPIENTS CANNOT!

# Vendor Access to PII

- Under 34 CFR 99.31(a)(1)(B), a recipient/subrecipient may disclose personally identifiable information (PII) to a contractor, consultant, volunteer, or other party if you have determined that they have a legitimate educational interest, if the following apply:
  - They perform an institutional service or function for which the agency or institution would otherwise use employees;
  - They are under the direct control of the agency or institution with respect to the use and maintenance of education records; and
  - They are subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

# Vendor Access to PII (cont.)

- 34 CFR 99.31(a)(6) allows disclosure to “organizations conducting studies for, or on behalf of, educational agencies or institutions to:
  - Develop, validate, or administer predictive tests;
  - Administer student aid programs; or
  - Improve instruction.

# Limitation on Redisclosure

- 34 CFR 99.33(a): An educational agency or institution may disclose PII from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.
- The officers, employees, and agents of a party that receives information may use the information, but only for the purposes for which the disclosure was made.

# Contracts Regarding Disclosure of PII (34 CFR 99.35(a)(3))

- The written agreement must specify:
  - The PII from education records to be disclosed;
  - That the purpose for which the PII from education records is disclosed;  
and
  - A description of the activity with sufficient specificity to make clear that the work falls within the exception of § 99.31(a), including a description of how the PII will be used;



# Contracts re: PII (cont.)

- Written agreement must:
  - Require the authorized representative to destroy PII from education records when the information is no longer needed for the purpose specified;
  - Specify the time-period in which the information must be destroyed; and
  - Establish policies and procedures, consistent with all Federal and State confidentiality and privacy provisions, to protect PII from education records from further disclosure (except back to the disclosing entity) and unauthorized use, including limiting use of PII from education records to only authorized representatives with legitimate interests.

# Inventory

# Common Issues

- Land/Buildings
- What to do When Programs/Funding Ends
- Stolen/Damaged Items

# Land/Buildings (2 CFR 200.311)

- General Rules
  - Title vests in recipient/subrecipient upon acquisition
  - Must be used for the originally authorized purpose **as long as it is needed** for that purpose.
    - Must not dispose of or encumber its title or other interests except as provided by the Federal agency.
  - Three Options for Disposition
    - Retain title after compensating federal agency
    - Sell property and compensate federal agency
    - Transfer title to federal agency or a designated/approved third party

# Reporting on Real Property

- 2 CFR 200.330: Recipient or subrecipient must submit reports on the status of real property in which the Federal Government retains an interest.
  - Such reports must be submitted at least annually.
  - In instances where the Federal Government's interest in the real property extends for 15 years or more, the Federal agency or pass-through entity may require the recipient or subrecipient to report at various multi-year frequencies.
  - Reports submitted at multi-year frequencies may not exceed a five-year reporting period. The Federal agency must only require OMB-approved government-wide data elements on recipient real property reports.

# EDGAR Requirement on Title

- 34 CFR 75.610: A grantee must have or obtain a full title or other interest in the site (such as a long-term lease), including right of access, that is sufficient to ensure the grantee's undisturbed use and possession of the facilities for at least 25 years after completion of the project or for the useful life of the construction, whichever is longer.

# Land/Buildings (34 CFR 75.600-75.619)

- 75.606(b): Recipient/Subrecipient must:
  - Not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without written permission and instructions from the Secretary;
  - In accordance with agency directives, record the Federal interest in the title of the real property in the official real property records for the jurisdiction in which the facility is located and include a covenant in the title of the real property to ensure nondiscrimination; and
  - Report at least annually on the status of real property in which the Federal Government retains an interest consistent with 2 CFR 200.330.

# Equipment/Supplies When Funding Ends

- If fair market value is over \$5,000:
  - If no longer needed, dispose of in accordance with 2 CFR 200.313(e) and 200.314.
  - If needed by other federal programs within your agency/parish, then transfer to that program and **UPDATE INVENTORY RECORDS!**
    - Priority goes to programs funded by the same Federal Agency
- If FMV is \$5,000 or less...**NO FEDERAL INTEREST**



# Stolen or Damaged Items

- 200.313(d)(3):
  - A control system must be in place to ensure safeguards for preventing property loss, damage, or theft.
    - If this becomes a chronic problem, you MUST update your controls (more frequent physical inventory, upgraded security, etc...)
    - If items were passed out to students, was there a recovery plan/process
  - Any loss, damage, or theft of equipment must be investigated.
    - Must be documented (police reports, insurance claims, etc...)
    - If items provided to students were not returned, how did you attempt to retrieve?
  - Starting on July 1, 2025: The recipient or subrecipient must notify the Federal agency or pass-through entity of any loss, damage, or theft of equipment that will have an impact on the program.
    - Should update inventory procedures to include this step

# Timeliness

# Current Hot Topic

Allocability and ESSER Closeout

# 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 (2 CFR 200.344)

# 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”



But  
For  
How  
Long?  
(cont.)

## ARP Standard Liquidation Ends January 28, 2025

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.

# 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

But For  
How  
Long?  
(cont.)

## ARP Late Liquidation Ends March 31, 2026

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	?
<b>MAX: End of Treasury Sweep September 30, 2028</b>	✗

# 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.”

# Questions?



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