

North Carolina Department of Public Instruction

ESSER Compliance Findings to-date and Remedies

072324

Monitoring Compliance

Reviews to ensure adherence with laws, regulations, or other requirements

Required by laws and regulations

Help protect and safeguard against financial fees & penalties, reputational damage, and legal action

Managing risk of noncompliance with regulatory requirements

The purpose is not to Hassle People



The Result None of Us Want



**Or Even Worse:
The Feds Take our
Money Back!**

Compliance: Who we are:

- Dedicated to ESSER:
 - Albert Woelfle (dedicated to ESSER)
 - Two Subcontracted Accounting/Consulting Firms:
 - Cherry Beckaert
 - Jefferson Wells

Other Monitoring Resources:

- Irwin Benjamin
- Michael Jordan
- Jordan Atkinson
- Jane Seo
- Shirley McFadden

Headlines:

NC votes to shut down charter school accused of misspending taxpayer dollars

BY T. KEUNG HUI
MAY 06, 2024 4:58 PM



<https://www.newsobserver.com/news/local/education/article288342540.html>

Headlines – April 24 Carolina Journal

- State audit finds reporting and oversight errors with millions in federal pandemic funds for NC schools:
 - Inaccurate and/or Incomplete reporting of ESSER data
 - Due to continued technical difficulties (systems)
 - A lack of designated staff with experience
- <https://www.carolinajournal.com/state-audit-finds-reporting-and-oversight-errors-with-millions-in-federal-pandemic-funds-for-nc-schools/>

North Carolina Pandemic Recovery Office (NCPRO)

- Recently Reviewed the DPI GEER Expenditures, Findings Include:
 - Payroll – PSUs were out of compliance with 2 CFR 200.430(i), i.e., lack of approval, no supporting documentation
 - Administrative Expense – A PSU exceeded allowable expense by \$200K – Potential Payback
 - Cash management – PSUs were out of compliance with cash management policy, i.e., exceeded the number of days between request and disbursement
 - Suspension/Debarment Checks – PSUs out of compliance
 - Missing formal written policies/procedures for reconciliations

Headlines

- State education leaders in Oklahoma and West Virginia have come under fire over concerns about improper education spending.
- A superintendent in Kansas resigned over concerns about the district's procurement process for a new school bus paid for with federal COVID relief aid.
- A school employee in Montana stole \$5,000 of her district's federal K-12 aid for personal use; she has since returned it, and is facing criminal charges.
- <https://www.edweek.org/leadership/auditors-are-on-the-hunt-for-esser-fraud-5-things-to-know/2023/07>

Headlines:

- The Detroit Public Schools Community District signed a \$3 million tutoring contract with a vendor led by Superintendent Nikolai Vitti's wife... Rachel Vitti resigned...
- The Youngstown, Ohio, district lost \$5 million in relief funds on an internet service contract ... the project collapsed because the city didn't own all the utility poles... and the unused supplies now sit in a warehouse.
- The San Joaquin County district attorney in California launched a criminal probe ... for spending roughly \$7 million on ultraviolet air purifiers from a company linked to a former mayor with a history of legal trouble.

Headlines:

- Washington man sentenced to prison for misusing COVID-19 relief funds to buy RV
- https://www.khq.com/news/washington-man-sentenced-to-prison-for-misusing-covid-19-relief-funds-to-buy-rv/article_f5ce67f6-0d7f-11ef-854d-0767c361cc30.html

Headlines:

- Education Week, July 30, 2023:
 - Auditors Are on the Hunt for ESSER Fraud.
 - On the whole, however, school districts appear to have spent federal COVID relief dollars prudently, according to a prominent auditor who's helped examine dozens of districts nationwide.
 - That's in stark contrast to other federal programs like loans for small businesses, where as much as 17 percent of funds appear to have been fraudulently spent
- <https://www.edweek.org/leadership/auditors-are-on-the-hunt-for-esser-fraud-5-things-to-know/2023/07>

Federal Law – Jail Opportunities (pg1)

- There are a series of sections prohibiting misuse or theft of public funds. *See* 18 U.S.C. §§ 643, 644, 648, 649, 650, 651, 652, and 653. The coverage of these sections is summarized below:
 - 18 U.S.C. § 643 provides that any officer, employee or agent of the United States who receives money which he is not authorized to retain as salary and fails to account for it as provided by law is guilty of embezzlement.
 - 18 U.S.C. § 644 prohibits persons who are not authorized depositaries of public money from knowingly receiving any such money or using, transferring, converting, appropriating or applying such money for any purpose not prescribed by law.
 - 18 U.S.C. § 648 forbids custodians of public funds from loaning, using, or converting those funds, or depositing or exchanging them, except as authorized by law.
 - 18 U.S.C. § 649 provides that any person who possesses or controls money belonging to the United States and fails to deposit it when required to do so is guilty of embezzlement.

Federal Law – Jail Opportunities (pg2)

- 18 U.S.C. § 650 applies to the Treasurer of the United States or any public depository and provides that if these officials fail to keep safely all money deposited with them, they have violated the law.
- 18 U.S.C. § 651 relates to the disbursement of public funds and prohibits disbursing officers from falsely certifying full payment of government obligations.
- 18 U.S.C. § 652 also relates to the disbursement of government funds. This section prohibits disbursing officers from disbursing a sum less than that required by law.
- 18 U.S.C. § 653 prohibits any other misuse of government funds by disbursing officers including: (1) converting, loaning or depositing these moneys except as authorized by law; and (2) withdrawing, transferring or applying these funds without authority
- Finally, 18 U.S.C. § 654 forbids government employees from wrongfully converting the property of others which they receive in the course of their employment.

Why We Monitor

- We Want to keep the money!
- How Much did we spend:
 - NC Funding: \$6.3 Billion (\$6,284,050,545)
 - Construction: \$ 509,216,661.00
 - Employee Bonuses: \$ 876,159,180.48
 - Computers \$ 564,514,159.18
 - Assets: \$ 163,358,364.22
 - Learning Loss: Approach Under Evaluation
 - (Based on 20% of ESSER III / ARP)

Why We Monitor:

- Federal Law:
 - Uniform Guidance §200.329:
 - Monitoring by the non-Federal entity. **The non-Federal entity is responsible for oversight** of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure **compliance with applicable Federal requirements** and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also [§ 200.332](#).
- Schools need to keep the money
- Schools need to stay out of the headlines

Areas We Cover / Monitor

- Fiscal Spending – Different from Programmatic Monitoring
 - Fiscal is focused on Dollars and Rules
 - Programmatic is focused on results – Such as score improvement
- Focus on Federal Expenditures – Fiscal Compliance and Reviews

ESSER Monitoring – Initial Focus Area's

- Bonuses
 - Construction
 - Davis-Bacon Compliance
 - Inventory
-
- Next: Learning Loss (20% Set Aside ESSER III).

Findings – Bonuses

- Inadequate Documentation
- Inadequate Formal Approvals
- Inadequate Basis for the Bonus
 - For instance, if based on retention – begin and end dates

Findings - Construction

- Construction spending has been particularly tricky for districts to manage.
- Lack of Awareness – Ownership Requirement
 - Gets more complicated with related party Foundations
- Davis-Bacon Wage Requirements
 - See next slide
- Federal vs. State Law – if Federal Money – must use the most restrictive
- Required Annual Reporting - NEW – Property Survey
- Requirement for a Filing of Federal Interest

Findings – Construction – Davis Bacon

- Lack of Awareness
- Lack of Experience with Davis-Bacon
- Smaller Contractors have no experience with Davis-Bacon

Findings - Inventory

- Lack of Documented procedures
- Failure to follow documented procedures
- Inability to locate assets
- Failure of reasonable controls for 'Vulnerable' assets (eg I pads)
- Lack of required practices for Assets not being used for the intended purpose:
 - For instance, learning software never installed
 - For instance, temperature monitors no longer being used
- Federal Law Requires proper maintenance plan and actions.

Learning Loss – The Requirement

- A School that receives ARP ESSER III funds must reserve at least 20 percent of the funds to measure and **address the academic impact of lost instructional time on all students**, through the implementation of evidence-based interventions, such as interventions implemented through summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs. The school must also ensure that such interventions respond to students' academic, social, emotional, and mental health needs and address the impact of the COVID-19 pandemic on groups of students disproportionately impacted by the pandemic.
- Fiscal Monitoring – Under Development

Learning Loss – Findings (so far)

- Monies Spent on Learning Loss not separately accounted for
- Learning Loss Definition open to some interpretation
- United States Department of Education releases continuing clarification – on-going

Observations:

- Audit of W.Va. ESSER spending reveals myriad problems with following rules, procedures:
 - Using Temp ESSER Money for Permanent Employees
 - Failure to Follow Proper Purchasing Process
 - Not enough Controls – allowing ‘mistakes’
 - Lack of Attention To Detail
 - Repaid \$172,000 for outdoor classrooms due to improper purchasing
 - More than \$2,000,000 subject to Repayment due to improper procedures

- <https://wchstv.com/news/local/citc-audit-of-wvdoe-esser-spending-reveals-myriad-problems-with-following-rules-and-procedures>

North Carolina Key Observations:

- Inadequate Documentation
- Lack of Formal Approvals
 - Informal Instructions not memorialized with an approved written document.
- Inability to Locate Approvals

North Carolina Key Observations:

- Federal Monies Introduce Many New Requirements:
 - For Instance – Must Own the facilities
 - For Instance -Maintain Records of Assets, including ‘Vulnerable Assets’
 - Vulnerable = Chromebooks, PC’s, Tables, IPADS, etc.
 - Assets not used for the intended purpose have special requirements
 - Contact Federal Programs
 - May Still be in use, but not used in grant authorized purpose – **PROBLEM**
 - **Recording a Federal Interest with Property Records**

Remedies

- Payback Monies
- Ensure staff are properly trained and available
- Prioritize developing and implementing detailed review procedures
- Monitor the procedures to ensure corrective action takes place.
- Implement an internal data quality review prior to report submission
- Creating a cross-divisional team to gather, compile, and report required data
- Implement/Demonstrate Mitigating Controls
- Discuss Mitigating Controls with DPI

Additional Topics

- Be Aware – ESSER Extension
 - At this point there is no indication that extensions in funding will be approved!
- Be Prepared for more Survey's!
 - **Accuracy** is **Key** for the closeout of ESSER Funds!
- If Unclear as to what is required – Please call!

Monitoring Program Topics:

(Non-ESSER – Our Daily Work)

- Single Audit Review and follow up – Compliance Supplements
- Financial Statement Review and Analysis
- Contract Review
- Improper Payments
- Annual Survey's
 - Please be timely
 - If not ask for an extension
 - Please be accurate
- Desk and Full Reviews of Expenditures
- Charter School Closure 'Wind-Up'
- Additional Topics

Resources:

“It’s on the web”

Some Specific Links:

- All About Covid (DPI):
 - <https://www.dpi.nc.gov/districts-schools/district-operations/financial-and-business-services/covid-funds>
- Allotment Policy Manual:
 - <https://www.dpi.nc.gov/documents/fbs/allotments/state-allotment-policy-manual-fy-202506-2024pdf/download?attachment>
- Construction:
 - <https://www.dpi.nc.gov/documents/fbs/finance/federal/federal-requirements-constructionpdf/download?attachment>
- FAQ:
 - <https://www.dpi.nc.gov/ncdpi-fiscal-faq-esser-and-geer-040324pdf-0/download?attachment>

Thank you for Attending

- Please direct questions to:

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Or to:

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- **It is about educating our Youth with Fiduciary Prudence**



**Reserved for
QR Code**

