



# Federal Grants: EDGAR/UGG Compliance & ESSER Hot Topics

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# Agenda

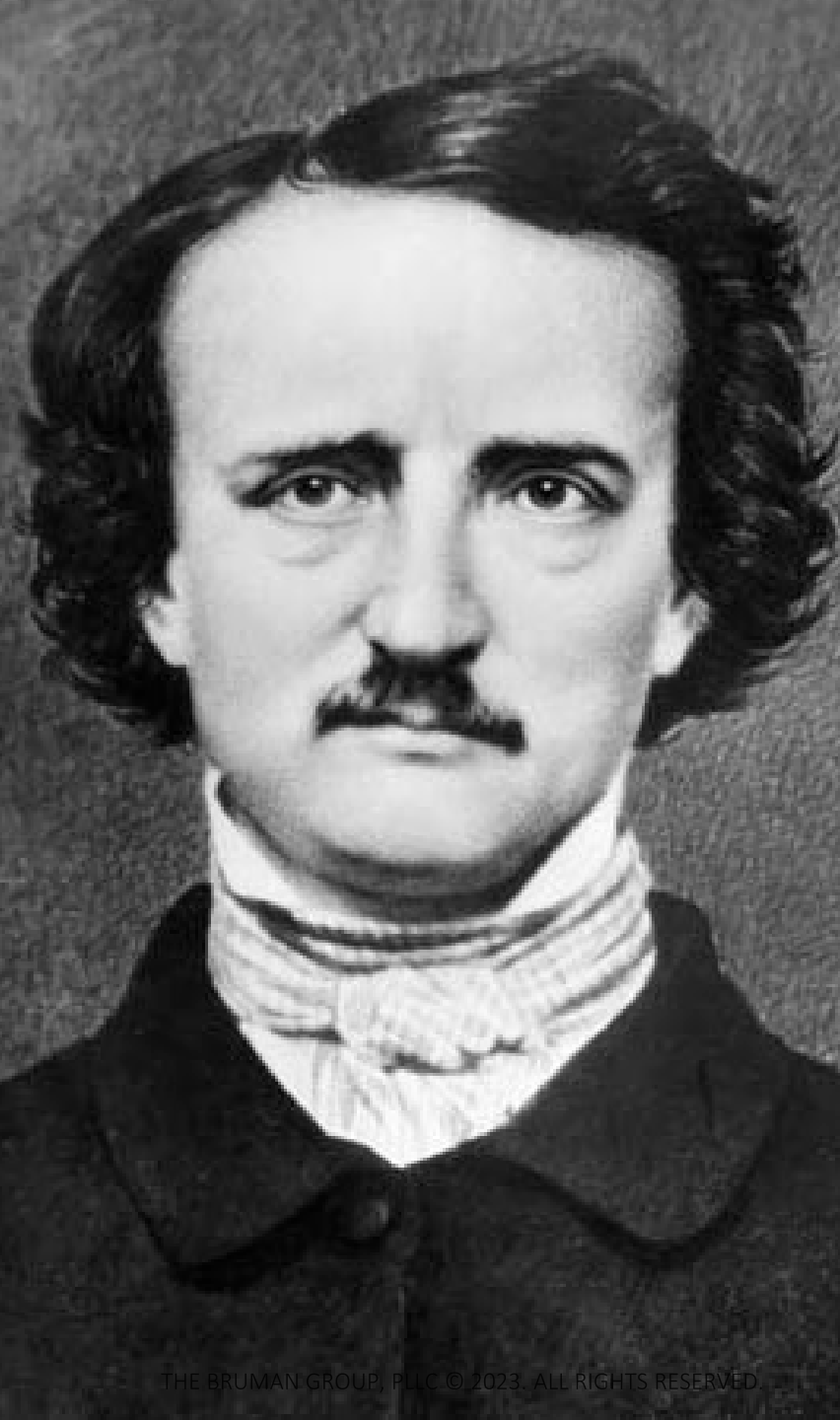
UGG/EDGAR Overview & Updates from OMB

Red Flags for Auditors and Recent Audits

UGG/EDGAR Compliance

ESSER Hot Topics and Use of Funds FAQs

# UGG/EDGAR Overview & Updates from OMB



# Who Is EDGAR?

EDUCATION DEPARTMENT  
GENERAL ADMINISTRATIVE  
REGULATIONS

[HTTPS://WWW2.ED.GOV/POLICY  
/FUND/REG/EDGARREG/EDGAR.  
HTML](https://www2.ed.gov/policy/fund/reg/edgarreg/edgar.html)

# Education Department General Administrative Regulations (EDGAR) and the UGG

- The Education Department General Administrative Regulations (EDGAR) includes various grants management rules applicable to all federal awards issued by the U.S. Department of Education (ED).
- The Uniform Grant Guidance (UGG) are federal grants management rules that apply to all awards issued by all federal awarding agencies.
- Created and amended by the Office of Management and Budget (OMB)
- EDGAR incorporated the UGG back in 2014
- Parts 74 and 80 of EDGAR were replaced with 2 CFR Part 200

# Key Sections of EDGAR

## Title 34

Part 75 – Direct Grant Programs

Part 76 – State-Administered Programs

Part 77 – Definitions

Part 81 – Enforcement Regulations

## Title 2

Part 200 – Cost/Administrative/Audit Rules

Part 3485 – Non-procurement Debarment and Suspension

*Incorporates 2 CFR Part 180, OMB's Guidelines on Debarment and Suspension*

# Uniform Grant Guidance – 2 CFR Part 200

Subpart A – Definitions

Subpart B – General Provisions

Subpart C – Pre- Federal Award Requirements

Subpart D – Post Federal Award Requirements

Subpart E – Cost Principles

Subpart F – Audit Requirements

# 2023 Proposed Changes to the UGG

- OMB announced on February 9, 2023 that it would be proposing revisions to the UGG in 2023
- <https://www.federalregister.gov/documents/2023/02/09/2023-02158/omb-request-for-information-rfi/>
- Comments closed on March 13, 2023
- OMB anticipates publishing final update by December 2023



# OMB Goals For 2023 Proposed Changes

1. Revise guidance to incorporate statutory requirements and administration priorities;
2. Revise guidance to reduce agency and recipient burden;
3. Clarify guidance by addressing sections that recipients or agencies have interpreted in different ways; and
4. Clarify guidance by rewriting applicable sections in plain English, improving flow, and addressing inconsistent use of terms. The revision will not represent a complete revision or restructuring of 2 CFR. OMB will strive to maintain the same overall structure of 2 CFR, including section numbers.

# Red Flags for Auditors and Recent Audit Findings



# AUDITOR RED FLAG: NONCOMPETITIVE PROCUREMENT

# Case Study: University of Cincinnati

- Questioned \$1.9 million in contract costs that were not competitively selected; recommended review of contracts for reasonableness, and if not reasonable; repayment of funds.
  - Did not follow internal procedures on completing bid waiver form
  - Did not document justification for using alternative procurement procedures
  - Did not document cost/price analysis for contracts over \$250,000
- University Response: Had to rely on blanket and verbal approvals, given the emergency circumstances; State of Ohio Dept. of Admin. services suspended competitive procurement requirements for state agency purchases of resources and supplies to protect health and safety; University argued it likewise followed this directive

# Case Study: University of Cincinnati

- “With noncompetitive procurements that did not consider reasonableness of cost, the University might be paying more for the same goods and services, or receiving goods and services of inferior quality, when compared to other vendors. Lack of approval for noncompetitive procurements improperly precludes the cost and quality benefits of a competitive procurement process. Further, it is important that Federal grantees, such as the University of Cincinnati, perform a price analysis for purchases over the SAT to ensure that they do not overpay for large purchases.”
- Relying on State approval may not insulate a district from audit findings. While State weighs in for single audits, ED OIG has broad authority.

# Case Study: OIG HEERF Audit – Remington College

- Finding: College entered into 4 contracts with vendors to help adjust the curriculum of certain programs to a hybrid format: Cosmetology, HVAC, Medical Assistant, and Facility Maintenance programs
- OIG: Each contract was \$79,200 – exceeded micro-purchase threshold. Accordingly, should have gotten comparison quotes
- Remington: Long-term relationship, vendors knew the programs, satisfied with the work, needed to move quickly

# Case Study: OIG HEERF Audit – Remington College

OIG: “[N]one of the exceptions to a competitive procurement process available under 2 C.F.R. § 200.320(f) applied to these contracts. There were other vendors available to provide similar services or resources (not a sole-source situation) and the contracts were executed in the latter part of 2020. Because the contracts were executed 6–9 months after the coronavirus pandemic began, Remington College should have had sufficient time to use a competitive procurement process for these contracts.”



# AUDITOR RED FLAG: PREPAYING FOR MULTI-YEAR SUBSCRIPTIONS



# Case Study: Lincoln College

- Questioned a software subscription that extended past the grant performance period:
- “While the dollar amount of costs we questioned was small, it is critical that grantees not prepay costs that extend beyond the grant performance period. Properly allocating costs to the grant performance period helps to protect taxpayer dollars; minimize the risk of fraud, waste, and abuse; and ensure Federal funds are used for allowable and intended purposes.”

# Case Study: Remington College

- Auditors argued that online subscription costs could not extend past the close of the grant, even just to finish the semester:

“However, to comply with 2 C.F.R. § 200.309, Remington College should have charged to the Institutional grant only those subscription costs through May 19, 2022. Subscription costs after that date should be paid for with other (non-HEERF) school funds.”



# AUDITOR RED FLAG: CONFLICTS OF INTEREST

# Special Assistant to Former Secretary of PRDE Sentenced for Fraud

- A special assistant to the former Secretary of the Puerto Rico Department of Education and her sister were each sentenced to one year of probation for their roles in a conspiracy scheme.
- The former Secretary and others used their positions to benefit and enrich themselves with Federal funds, specifically by awarding contracts through a corrupt bidding process.
- This included a \$95,000 professional services contract that the Puerto Rico Department of Education awarded to an unqualified contractor with close ties to the former Secretary, the contractor being a company owned and operated by the sisters.

# NY School District Uses Public Tax Dollars to fund Private Religious Organization

- Auditors uncovered that this public school district is paying more than \$2.4 million a year — about 5 percent of its annual budget — to companies affiliated with a religious private school organization.
- In addition, district used ESSER dollars to make millions of dollars in repairs to buildings owned by the religious organization and an affiliated nonprofit.
- The decision to pay for the repairs was made by the public district's school board. But two of its members also serve on the board of the private religious organization that received the money—a conflict that auditors flagged more than a decade earlier.
- The district is also paying the son of one of the Board members a six-figure salary to work as a teacher's aide and emergency medical technician, and has a multimillion-dollar contract for bus service with a company managed by another son of that same Board member.
- Both Board members remain on the Board, despite multiple audits and legal challenges

# Other Red Flags for Auditors

- Davis Bacon requirements
- Lapsing funds
- Lack of written policies and procedures



# UGG/EDGAR Compliance

# Financial Management

2 CFR 200.302





# Financial Management States – 200.302(a)

- States - follow State law
- Documentation must be sufficient to:
- Permit the preparation of reports required by general and program-specific terms and conditions; and
- Tracing funds to a level of expenditures adequate to establish that such funds have been used in an allowable manner.

# Financial Management

## Non-Federal Entities 200.302(b)

Everyone else – seven standards

- Identification in accounts
- Financial reporting
- Accounting records
- Internal controls, internal controls, internal controls!!
- Budget control
- Written procedures for cash management
- Written procedures for determining allowability

# Identification and Tracking of Awards

## 200.302(b)(1),(5)

- All federal “awards” received and expended
  - Identification # of award
  - CFDA Title and Number (Assistance Listings Number)
  - Federal Award I.D. #
  - Fiscal Year of Award
  - Federal Agency
  - Pass-Through (If S/A)
  - Comparison of expenditures with budget amounts for each award

# Financial and Accounting Records

## 200.302(b)(2),(3)

- Accurate and current financial data.
- Documentation must be kept on:
  - Federal Awards
  - Authorizations
  - Obligations
  - Unobligated balances
  - Assets
  - Expenditures
  - Income
  - Interest

## Internal Controls 200.303

### MUST:

- Comply with requirements (U.S. Constitution, State and Federal law, terms and conditions of the award)
- Evaluate and monitor compliance
- Take prompt action to correct noncompliance
- Safeguard personally identifiable information (PII)
- Compliance Supplement, Internal Controls: “Control activities are the policies and procedures that help ensure the management’s directives are carried out.”
- Clearly written and clearly communicated

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# Federal Payment 200.305(b)

Written procedures must describe whether non-federal entity uses:

1) Advance Payments

*Limited to minimum amounts needed to meet immediate cash needs*

*Subject to cash management requirements*

2) Reimbursement

*Pass through must make payment within 30 calendar days after receipt of the billing*

*Initial payments made with state/local funds*

# Cash Management Procedures 200.305

## (a) and (b)

- For non-federal entities, payments must minimize time elapsing between draw down and disbursement (not obligation)
- Cash advances must be maintained in insured accounts  
Accounts must be interest bearing unless:
  1. Aggregate federal awards under \$120,000
  2. Account not expected to earn in excess of \$500 per year
  3. Bank require minimum balance so high, that such account not feasible
- Interest earned must be remitted annually to HHS  
Payment Management System
  - Interest amounts up to \$500 may be retained by non-federal entity for administrative purposes.

# Written Allowability Procedures

## 200.302(b)(7)

- Written procedures for determining allowability of costs in accordance with Subpart E – Cost Principles
- Procedures cannot simply restate the UGG.
- Should explain the process used throughout the grant development and budget process
- Training tool and guide for employees

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# Program Income – 200.307

Defined at 200.1 – not an exhaustive list

- Fees for services performed
- Fees for the use or rental of real or personal property acquired under federal awards
- Sale of commodities or items fabricated under a federal award
- License fees and royalties on patents and copyrights, and
- Principal and interest on loans made with federal award funds

# Program Income – 200.307

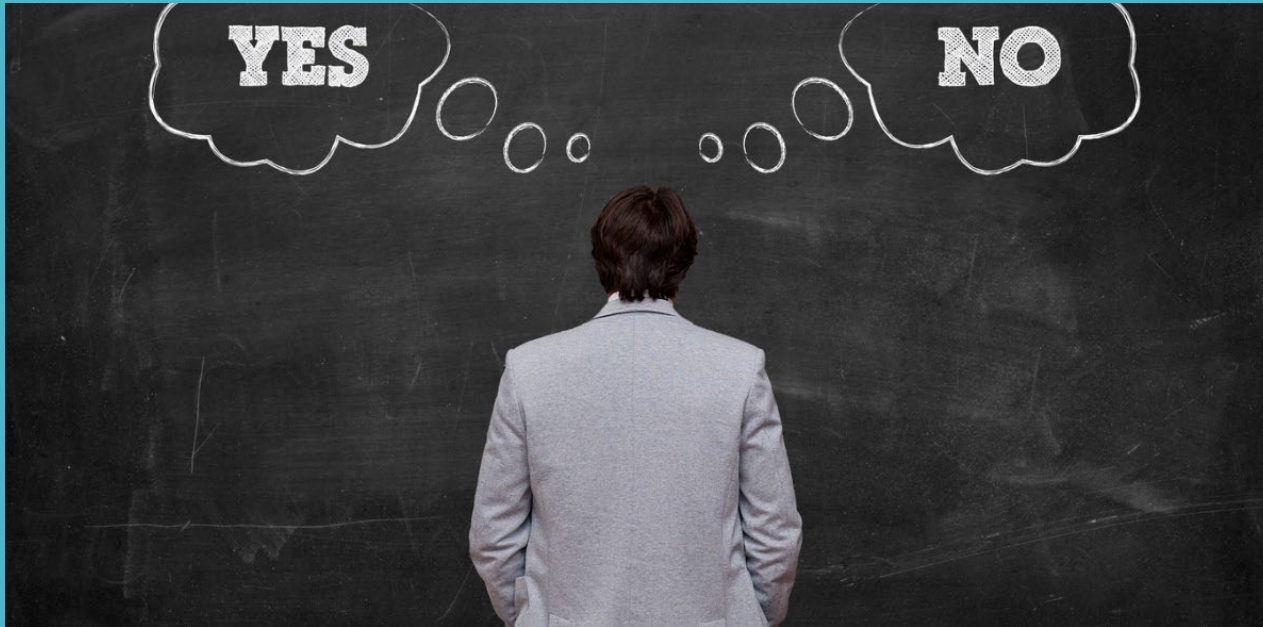
## Deduction method

- Deduct program income from total allowable costs to determine the net allowable costs; must be used for **current** costs unless the Federal awarding agency authorizes otherwise.
- Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.
- In practice – deduction method means taking your program income out of the next request for reimbursement, so that request would be net any program income.

# Program Income – 200.307

## Addition method

- With prior approval of the Federal awarding agency, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.
- In practice – addition method looks like adding a new line item to your budget.



# Allowability and cost principles

2 CFR PART  
200, SUBPART E

# FACTORS AFFECTING ALLOWABILITY 2 CFR 200.403

- Necessary and reasonable for the performance of the federal award
- Allocable to the federal award
- Consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the District
- Conforms to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the federal award
- Accorded consistent treatment as either a direct or indirect cost
- Adequately documented
- Determined in accordance with GAAP
- Not included as a match or cost-share, unless authorized by the federal program
- Net of applicable credits
- Incurred during the approved budget period

# Necessary 200.404

- Cost is “generally recognized as ordinary and necessary for the operation of the non-federal entity or the proper and efficient performance of the federal award.”
  - *Is the cost included in your plan / grant application?*
  - *Is it aligned with the goals of the program / grant?*
  - *Does your agency have the capacity to use what you are purchasing?*
  - *Is the staff knowledgeable regarding the program?*

Q: If a cost was included in my district's plan that was approved by the State, can my district get an audit finding on that cost?

A: YES!

- While including a cost in your state-approved plan or budget is a safeguard to support the necessity of a cost, it does not absolve a district of all potential audit liability.
- Remember, in single audits, the State has the final say in sustaining or disagreeing with audit findings. But in an ED OIG audit, the State cannot insulate districts from findings.

# Reasonable 200.404

“A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a reasonably prudent person under the circumstances prevailing at the time the decision was made to incur the cost”

## Consideration must be given to:

- Sound business practices
- Arms length bargaining
- Terms of the grant award
- Market Prices for comparable goods or services in the geographical area
- Whether the individuals acted with prudence under the circumstances
- No significant deviation from established prices.



# Allocable 200.405

- 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.
  - 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.

# Allocable (cont.)

- Do you have enough time to implement the cost?
- Is the program that bought the product using it?
- Is the program sharing the use of the item(s)?
- Was this shared use known at the time of purchase?
- If so, how are costs being shared?
- How is the use being documented?



# Direct v. Indirect Costs

- Direct and Indirect costs: 2 CFR 200.413; 200.414
- Most costs are directly charged to the grant.
- Salaries of administrative and clerical staff should typically be treated as “indirect”
- For costs that can not be directly charged, grantees have an indirect cost rate.

# Selected Items of Cost

## 56 Selected Items of Cost

### ❖ Allowable

E.g., collection of improper payments (200.428); training and education costs (200.473)

### ❖ Allowable with special conditions

E.g., only as an indirect charge (leave payout, 200.431; advisory councils, 200.422); only with necessary documentation (compensation – personal services, 200.430)

### ❖ Allowable with prior approval

E.g., equipment and capital expenditures (200.438); entertainment (200.439); participant support costs (200.456)

### ❖ Unallowable

E.g., alcohol (200.423); bad debts (200.426)

# Field Trips/Entertainment — 200.438

Not allowable UNLESS Prior Written Approval of Federal Awarding Agency

- Field Trips & Holiday Parties are common examples
- Field trips may be allowed where:
  - They have a clear programmatic purpose
  - And are authorized by the federal awarding agency



# Travel Costs – 200.475

- Travel costs may be charged on actual, per diem, or mileage basis
- Travel charges must be consistent with entity's written travel reimbursement policies
- Allows costs for “above and beyond regular dependent care”
- Grantee must retain documentation that participation of individual is necessary for the project



# Food

ED Guidance (2014):

- “Generally, there is a very high burden of proof to show that paying for food and beverages [...] is necessary to meet the goals and objectives of a Federal grant.”
- BUT “a ‘working lunch’ may be allowable if in order to carry out a conference or meeting agenda within the time available, it is necessary to work through lunch.”
- ASK: Is a working lunch necessary? Is there a genuine time constraint that requires the working lunch? Is the cost reasonable?

**Alcohol § 200.423 -**  
Not allowable



# Pre-Award Cost (PAC)

- The SEA may award pre-award costs.
- SEA may permit a subgrantee to charge PACs, so long as they are necessary and reasonable for carrying out the program, consistent with all applicable statutes and regulations, and are for obligations incurred during the period of availability of the SEA's grant.
- Pre-award costs are those incurred prior to the effective date of the Federal award and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work.
- Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. 2 CFR 200.458.



# Participant Support Costs (PSC)

- ED permitting participant support costs of \$5,000 or less per participant per event.
- Must be associated with an ESEA approved formula grant program.
- Participant Support Costs are “direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.” (2 CFR 200.1.)
  - Examples: Parents to attend a program-related conference or training, or
  - Private school teachers as part of equitable services to attend a training or conference, or
  - For students’ expenses for travel to a program-related conference or training.

# Real Property 2 CFR 200.330

- When purchasing property with federal money, must compute federal interest
- Federal interest form
- 15 year reporting requirement – requires system to track all federal interest
- When you get to disposition, have to pay back federal interest
- Recommendation – do not use federal funds to purchase real property



# Timely Spending

# Period of Performance, Budget Period, Renewal 200.1

- May have more than one budget period within period of performance; renewal starts a new period of performance (200.1).
- Period of Performance- The total estimated time interval between the start of an initial Federal award and the planned end date.
- Does not commit the awarding agency to fund beyond the approved budget period.
- Modifications to Period of Performance (200.309)
- Extension = Period of Performance will be extended.
- Termination = Period of Performance will be amended to end upon termination date.
- Renewal = A distinct Period of Performance will begin.

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# Financial Obligations 200.1

Financial obligation = Means orders placed for property and services, contracts and subawards made and similar transactions during a given period that require payment during the same or a future period.

## Reimbursement Payment Process

- Obligation
- Payment
- Drawdown
- Liquidation



# Financial Obligations

- When Obligations Are Made
  - 34 CFR 76.707
- When certain subgrantees may begin to obligate funds
  - 76.708
- Obligations made during a carryover period
  - 76.710

Type of Obligation	When Obligation Occurs
Acquisition of Property	Date of binding written commitment
Personal Services by Employee	When services are performed
Personal Services by Contractor	Date of binding written commitment
Travel	<sup>54</sup> When travel is taken
Approved Pre-Agreement Cost	On the first day of the grant or subgrant performance period.

# Closeout 2 CFR 200.344

- Subrecipients must prepare closeout reports and final accounting within 90 days after period; pass-through entities have 120 days
- Unless federal or pass-through gives extension, all financial obligations must be liquidated no later than 120 days after period ends
- Effectively limits subrecipient liquidation to 90 days

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# Procurement

2 CFR 200.317 – 200.327



# Procurement by States

## 200.317

- State must follow the same policies and procedures it uses for procurements from its non-Federal funds.
- Must also comply with 200.321; 322 and 323.
- Include all required contractual provisions under Appendix II

# Other non-federal entities Procurement Standards 200.318

- All nonfederal entities must have documented procurement procedures which reflect applicable Federal, State, and local laws and regulations.
  - Open and Full Competition (Maximum Extent Possible)
  - Specific Thresholds for Purchasing
  - Prohibited In-State and Local Preferences
  - Contract Administration System
  - Conflict of Interest Rules
  - Mandatory Disclosures

# Contract Administration 200.318(b)

Nonfederal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract



# Conflict of Interest

## 200.318(c)(1) (cont.)

- Must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors / subcontractors.
- However, may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.
- Standards of conduct must include disciplinary actions applies for violations.



# Competition 200.319

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.

...

(f) Noncompetitive procurement can only be awarded in accordance with 200.320(c).

# Methods of Procurement 200.320

Grantee must have and use documented procurement procedures for the following methods:

(a) Informal procurement methods

*Micro-purchase*

*Small purchase procedures*

(b) Formal procurement methods

*Competitive sealed bids*

*Competitive proposals*

(c) Noncompetitive proposals

**Formal** v. Informal



# Informal Procurement 200.320(a)

- Use when value does not exceed \$250,000 (simplified acquisition threshold) or a lower threshold established by a non-federal entity
- Procurement of property or services required under federal award
- Purpose: to expedite completion and minimize administrative burden and cost

# Informal Procurement, 200.320(a)(1)

## Micro-purchases

- Distribution. “To the maximum extent practicable, the non-federal entity should distribute ... among qualified suppliers.”
- Awards. May be awarded without price or rate quotes if non-federal entity “considers the price to be reasonable based on research, experience, purchase history or other information and documents its files accordingly.”



# Informal Procurement, 200.320(a)(1)

## Micro-purchases (cont.)

- Thresholds. Determined and documented by grantee, based on internal controls, risk, and procedures. Authorized by state, local laws. May be higher than threshold in FAR (\$10,000).
- Nonfederal entity may self-certify threshold up to \$50,000, if:
  - *Low-risk auditee for most recent audit (200.520)*
  - *Annual internal institutional risk assessment to identify, mitigate and manage financial risks; or*
  - *For public institutions, a higher threshold **consistent with state law***
- Over \$50,000, must have approval of cognizant agency in direct costs

# Informal Procurement, 200.320(a)(2)

## Small Purchases

- Used when for purchases greater than micro-purchase threshold, but less than simplified acquisition threshold (\$250,000).
- Price or rate quotations from “adequate number of qualified sources” as determined appropriate by non-federal entity

# Formal Procurement, 200.320(b)

- Used for purchases that exceed small purchase threshold (\$250,000, or lower, if set by the non-federal entity)
- Require documented procedures
- Require public advertising

Two options:

1. Sealed bids
2. Proposals

# Sealed Bids

Used when:

1. A complete, adequate, and realistic specification or purchase description is available
2. Two or more responsible bidders are willing and able to compete effectively
3. The procurement lends itself to a firm, fixed-price contract and selection is principally based on cost.

# Request for Proposal

Used when item is the item to be purchased or the services to be rendered are difficult to describe.

1. Must have a written method for conducting technical evaluations of proposals and making selections.
2. Contract is awarded to offeror whose proposal is most advantageous considering price and other factors.

# Noncompetitive Procurements

## 200.320(c)

Appropriate only when:

- Micro-purchases
- The item is only available from a single source;
- There is a public emergency for the requirement that will not permit delay resulting from publicizing a competitive solicitation;
- The Federal awarding agency or pass-through expressly authorizes noncompetitive procurement in response to a written request from non-Federal entity; or
- After soliciting a number of sources, competition is determined inadequate.

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# Mandatory reporting

- Conflict of Interest 200.112
- All non-federal entities must establish conflict of interest policies and disclose in writing any potential conflict to federal awarding agency in accordance with applicable Federal awarding agency policy.
- Mandatory Disclosures 200.113
- Must disclose to federal or pass-through agency “all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting the federal award.”

# Domestic Preferences for Procurements 200.322

- “To the greatest extent practicable” must provide a preference for the purchase of goods and materials produced in the U.S.
- Must include this section in all subawards, contracts and purchase orders





# Suspension and Debarment 2 CFR 180.300

For contracts over \$25,000 (“covered transaction” 3485.220) you must verify that the person with whom you intend to do business is not excluded or disqualified.

This MUST be done by either:

- a. Checking SAM; or
- b. Collecting a certification from that person; or
- c. Adding a clause or condition to the covered transaction with that person.

## Prohibition on certain telecommunications and video surveillance services or equipment 200.216

- Prohibits grantees from **entering into** contracts with certain covered entities
- 200.471: Telecommunication and video surveillance services or equipment are allowable, *except*:
- “Covered” telecommunications and surveillance under 200.216
- Applies to new contracts, services, equipment, and any renewals or extensions

Prohibition on  
certain  
telecommunica  
tions and video  
surveillance  
services or  
equipment  
200.216 (cont.)

OMB FAQ 47: How do you know if an entity has been added to the list of covered entities?

Entities added to this list will be incorporated into the excluded parties list in the SAM ([www.sam.gov](http://www.sam.gov)). When a user conducts a search of the excluded parties list, a record will appear describing the nature of the exclusion for any entity identified as covered by this prohibition.

*Recommendation: Check SAM.gov for applicable contracts!*



# Inventory Management

2 CFR 200.313/ 200.314

# Definitions 200.1



**EQUIPMENT:** TANGIBLE, NON-EXPENDABLE, PERSONAL PROPERTY HAVING A USEFUL LIFE OF MORE THAN ONE YEAR AND AN ACQUISITION COST OF \$5,000 OR MORE PER UNIT.



**SUPPLIES:** ALL TANGIBLE PERSONAL PROPERTY OTHER THAN EQUIPMENT



**COMPUTING DEVICES:** IF LESS THAN \$5,000 PER UNIT, DEFINED AS SUPPLIES

# Inventory Procedures 200.313(d)

- Property records
  - Description, serial number or other ID, source of funding, title, acquisition date and cost, percent of federal participation, location, use and condition, and ultimate disposition date including sale price
- Physical inventory at least every two years
- Control system to prevent loss, damage, theft
- All incidents must be investigated
- Adequate maintenance procedures
- If authorized or required to sell property, proper sales procedures to ensure highest possible return.

# Use of Equipment 200.313(c)

- Equipment must be used by the Non-Federal entity in the program or project for which it was acquired if needed, whether or not the project or program continues to be supported by the Federal award.
- When used it must be shared, provided such use will not interfere with work on the original projects/programs, and it follows this order of priority:
  - First by other programs from same agency
  - Then open to other federal programs
  - Non-federal programs



## Disposition 200.313(c)(1) & (e)

- When no longer needed, may be used in other activities with the following priority:
  - Projects supported by Federal awarding agency
  - Project funded by other Federal agencies
- When property is no longer needed in any current or previously Federally-funded supported activity, must follow disposition rules:
  - Fair market value > \$5,000 = pay federal share back to awarding agency
  - Fair market value of \$5,000 or less = no money owed back to feds
  - Supplies 200.314: Depends on value of residual inventory of unused supplies



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**“I am not disorganized — I know *exactly* where everything is!  
The newer stuff is on top and the older stuff is on the bottom.”**

# DOCUMENTATION

# Required Policies

- Conflicts of Interest Policy – 200.318(c)
- Accounting Policies – 200.306(h)(2)(i); 200.400; 200.430(i)
- Time and Effort Policies – 200.430(a)
- Fringe Benefits Policies – 200.431
- Employee Health and Welfare Policies – 200.437
- Travel Reimbursement Policy – 200.475(a)

# Required Procedures

- Real property sales procedures – 200.311(c)(2)
- Time & Effort Procedures – ED Cost Allocation Guide
- Written Allowability Procedures – 200.302(b)(7); 200.403(c)
- Written Cash Management Procedures – 200.302(b)(6) and 200.305
- Written Procurement Procedures – 200.318(a), 200.319(d), and 200.320
- Procedures for Managing Equipment – 200.313(d)

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# Suggested Policies and Procedures

- Record Retention
- Audit Resolution
- For the pass-through entity: Subrecipient Monitoring (listed in OMB Compliance Supplement)
- Program Specific Requirements

# Allowability Documentation

## Retention Requirements For Records 200.334

- Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a **period of three years** from the date of submission of the final expenditure report.
- Watch Statute of Limitations! (Example, False Claims Act = 6 years)

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# How to Maintain Documentation?

- When original records are electronic and cannot be altered, there is no need to create and retain paper copies. 200.336
- When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided they:
  - Are subject to periodic quality control reviews;
  - Provide reasonable safeguards against alteration; and
  - Remain readable.



# Single Audit Requirements

2 CFR PART 200, SUBPART F

# Annual Single Audits

- Expending \$750,000 or more in federal funds in a year (200.501), must have single audit
- Follow procurement rules in selecting auditor
- Implement Corrective Action Plans
- Major Programs (200.518)
- Report material weaknesses in internal controls or questioned costs greater than \$25,000 (200.516)
- Cooperative Audit Resolution (200.1 & 200.513)
- Pass-Through Management Decisions (200.521)
  - Within six months of report being uploaded to FAC

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# 2023 Compliance Supplement Requirements

[Link: 2023 Compliance Supplement – 2 CFR Part 200 Appendix XI \(May 2023\) \(whitehouse.gov\)](#)

1. **Activities Allowed or Unallowed**
2. **Allowable Costs/Costs Principles**
3. **Cash Management**
4. **Eligibility**
7. Equipment & Real Property Management
8. **Matching, Level of Effort, Earmarking**

7. **Period of Performance**
8. Procurement and Suspension & Debarment
9. Program Income
10. Reporting
11. **Subrecipient Monitoring**
12. Special Tests & Provisions

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# ESSER Hot Topics and Use of Funds FAQs



# Updated Guidance ESSER and GEER Use of Funds FAQs

ED Guidance Dec 2022: <https://oese.ed.gov/files/2022/12/ESSER-and-GEER-Use-of-Funds-FAQs-December-7-2022-Update.pdf>

# The COVID Tie Still Critical

## 1. Be an allowable use of ESSER funds

Any of the ESSER funds may be used to support all of the allowable uses of funds listed in any of the ESSER Programs (ESSER FAQ A-1)

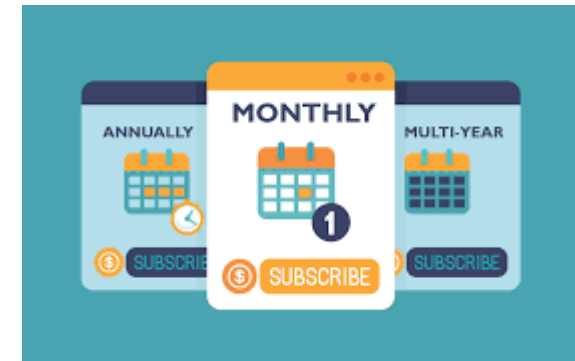
## 2. Prevent, Prepare and Respond to Coronavirus (ESSER FAQ B-6)

For needs arising from or exacerbated by the COVID-19 pandemic, or to emerge stronger post-pandemic (to address pre-existing challenges that, if left unaddressed, will impede recovery from the pandemic)

## 3. Be allowable under EDGAR (including in approved plan, prior approvals, necessary, reasonable, allowable, etc.).

# Use of Funds – Multi-Year Subscriptions/Licenses

- Generally, it is not good stewardship of Federal funds 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).



# NEW ESSER Guidance on Multi-Year Subscriptions

- June 2023 Guidance: [TA-on-activities-continuing-beyond-E3d.pdf \(ed.gov\)](#)
- “The question of whether services may extend a reasonable time beyond the obligation and liquidation period is fact-specific and should be considered by the State on a case-by-case basis.”
- LEA should document, at the time it enters into the contract, its analysis leading to the decision to enter into the multi-year contract. Factors to document include:
  - 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

# NEW ESSER Guidance on Multi-Year Subscriptions

- “It is possible that the Department would sustain an audit finding that services continuing beyond the obligation and liquidation period are unallowable if, for example, 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.”
- Who has final say in an ED OIG audit? In a single audit?

## Use of Funds – Mitigate Flood, Tornado and other Natural Disaster-related Damage (Updated FAQ B-10 Dec 2022)

Yes, in limited circumstances.

To the extent there are activities that are necessary to meet students' needs in response to the pandemic, including needs exacerbated by a recent natural disaster, ESSER or GEER funds may be used to cover the costs consistent with the ESSER or GEER allowability considerations (i.e., allowable under the statute and consistent with the Uniform Guidance).

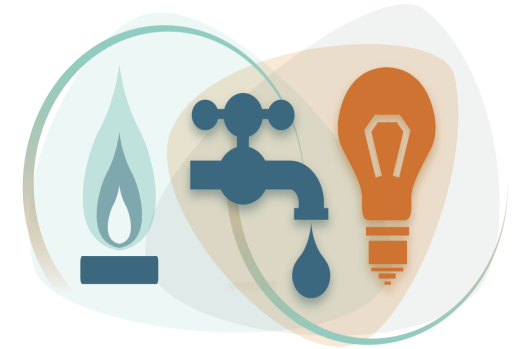
*Example: To the extent that a natural disaster has caused damage to school infrastructure and buildings that would increase the risk of virus transmission or impact in-person learning, such as flood or fire damage, then ESSER or GEER funds may be used to cover the costs of activities to reduce that risk.*

*It is important for an LEA to maintain documentation and written justification as to how uses of ESSER or GEER funds are related to the COVID-19 response, particularly where costs are closely associated with damage from a natural disaster.*

Should also look at available FEMA funding and/or insurance recovery



# Use of Funds – Utilities or Gasoline (Updated FAQ B-11 Dec 2022)



Yes.

Generally, ESSER or GEER funds may be used to support activities that are necessary to maintain the operation and continuity of services in the LEA as schools and students recover from the pandemic.

For example, there may be instances where the use of funds to support this type of cost would be acceptable, such as in a case where an LEA has incurred additional expenses for utilities due to efforts related to improving indoor air quality.

## Use of Funds – Paying Student Fees (Updated FAQ B-12 Dec 2022)

Yes, under certain circumstances.

Because ESSER or GEER funds may be used to support activities addressing the unique needs of students from low-income backgrounds, students with disabilities, English learners, students of color, students experiencing homelessness, and children and youth in foster care, and help students recover from the pandemic

An LEA may use ESSER or GEER funds to pay fees, including outstanding balances, to help ensure equitable access to programs that meet students' social, emotional, mental health, and academic needs.

Alternatively, an LEA could use ESSER or GEER funds to support such activities for all students, such that no fee is charged.

## Use of Funds – Paying Students (Updated FAQ C-11 Dec 2022)

An LEA may not provide direct monetary rewards to students or families for required school attendance.

*Generally mandatory activities can not be compelled by any type of incentives.*

However, ESSER or GEER funds may be used to develop and pay for recognition programs that encourage student attendance (e.g., rewarding strong or improved attendance through eligibility to participate in special events for a class) (see FAQ C-23.a).

*Incentives may be offered for optional activities or programs.*

## Use of Funds – Meals for Students (Updated FAQ C-16 Dec 2022)

Yes, under certain circumstances.

Typically, provided through U.S. Department of Agriculture (USDA) or other Federal programs.

However, if such funding is not available, or additional funds are necessary, an LEA may use ESSER or GEER funds to provide meals if the need arises from or relates to recovery from the pandemic.

*For example, ESSER or GEER funds could be used to increase food service staff capacity; cover additional labor costs associated with serving meals to students during the pandemic; or support COVID-19 pandemic-related expenses, such as school meal service equipment/supplies, meal packaging, and transportation services.*

## Use of Funds – Waive Student Meal Balances (Updated FAQ C-16.a Dec 2022)

To the extent a low-income family's ability to pay for school meals has been impacted by the COVID-19 pandemic, an LEA may use ESSER or GEER funds to cover the student's school lunch balance.

*As noted in FAQ C-16, the Department encourages the LEA to first utilize funding and flexibilities provided by USDA in addressing the costs associated with providing school meals.*

*This does not mean that money may be placed in the non-profit school food service account for school meals to refill the account generally.*

# Use of Funds – Video Surveillance Systems (Updated FAQ B-14 Dec 2022)

Only allowable in limited circumstances

Must consider other factors/federal requirements, including nondiscrimination and privacy considerations, State/local laws, and maintain clear policies.

“FAQs on Photos and Videos under FERPA” at <https://studentprivacy.ed.gov/faq/faqsphotos-and-videos-under-ferpa>

As a best practice, LEAs should only collect, use, and retain the minimum amount of PII that is relevant and necessary to accomplish an authorized purpose

LEAs should have clearly established policy on use of video systems on school property

## Federal Interest (Updated FAQ B-6.e Dec 2022)

- When SEAs or LEAS use federal funds to purchase land, construct a building, or make improvements, must:
  - Record the federal interest in the title of the property per agency instructions
  - *Include a covenant of nondiscrimination during useful life of project*
  - Agree not to dispose of, modify use of, or change terms or property without permission and instructions of awarding agency (OMB Standard forms 424B and D; Assurances for Non-Construction and Construction Programs)
  - Follow reporting requirements in the Uniform Guidance that are triggered when Federal funds are used to acquire or improve real property. (2 CFR 200.310-200.313).
  - Must report to the pass-through on the status of the property acquired with federal funds annually (unless different time period established) for at least the first 15 years (2 CFR 200.330)

# Davis Bacon Act

All federally-funded contracts over \$2,000

*Includes 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

*Must include language in the contracts that all contractors and subcontractors must pay wages that are not less than those established for the locality of the project (prevailing wage rates).*

Administered by Department of Labor's Wage and Hour Division



# Who bears responsibility for Davis-Bacon?

## Contractors and subcontractors must:

- Pay covered workers weekly*

- 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.*

## Contracting agencies must:

- Ensure contract includes Davis-Bacon provisions where applicable and determine prevailing wage schedule applicable*

- 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*

# ESSER Monitoring



# ESSER Monitoring

CARES ESSER monitoring protocols:

<https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/esser-comprehensive-monitoring-protocols/>

Supplements State reporting

CRRSA/ARP will look a little different

*E.g., Does not include EANS*

State	Date	Report Link	Closeout Letter
Tennessee	April 2020	<a href="#">PDF</a> , <a href="#">PDF</a>	<a href="#">PDF</a>
Kentucky	August 2020	<a href="#">PDF</a>	No findings
Indiana	October 2021	<a href="#">PDF</a>	<a href="#">PDF</a>
Iowa	October 2020	<a href="#">PDF</a>	<a href="#">PDF</a>
Texas	November 2020	<a href="#">PDF</a>	<a href="#">PDF</a>
Montana	December 2020	<a href="#">PDF</a>	<a href="#">PDF</a>
North Carolina	January 2021	<a href="#">PDF</a>	<a href="#">PDF</a>
Nevada	January 2021	<a href="#">PDF</a>	<a href="#">PDF</a>
Oklahoma	February 2021	<a href="#">PDF</a>	<a href="#">PDF</a>
West Virginia	February 2021	<a href="#">PDF</a>	<a href="#">PDF</a>
Maine	November 2021	<a href="#">PDF</a>	Pending
Nebraska	June 2022	<a href="#">PDF</a>	No Finding
Wisconsin	August 2022	<a href="#">PDF</a>	No Findings
California	July 2022	<a href="#">PDF</a>	<a href="#">PDF</a>

**GEER and ESSER  
Monitoring Reports**  
<https://oese.ed.gov/offices/american-rescue-plan/performance-and-reporting/>

# ESSER Top Monitoring Findings (so far)

- 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)

## Texas – CARES Act GEER Funds Targeted Monitoring Report: Office of the Texas Governor

**Required Actions Cash Management:** Rather than advance the entire subaward to subrecipients, OOG must limit advance payments to actual and immediate cash requirements.

**Required Action Internal Controls:** Lack of internal risk identification and assessment process, and a process for monitoring the operation of an organization's internal controls.

60 days to create a process to identify and review internal controls of the agency.

# CARES Act - GEER Funds Targeted Monitoring Report: Office of the West Virginia Governor

**Required Action Cash Management:** Rather than advance the entire subaward to subrecipients, OOG must limit advance payments to actual and immediate cash requirements.

Return unexpended advance payments; remind subrecipients of CMIA and “immediate cash needs”; calculation of required interest on cash advances and return over \$500.

**Required Action Financial Management:** Lack of required financial allowability and reconciliation procedures. (60 days to submit procedures)

**Required Action Internal Controls:** Lack of internal risk identification and assessment process, and a process for monitoring the operation of an organization’s internal controls.

60 days to create a process to identify and review internal controls of the agency.

**Required Action Subrecipient Monitoring:** No subrecipient monitoring process. (60 days to create a plan)

# Maine Comprehensive Performance Review Report FY 2020 ESSER and GEER

**Recommended Action Debarment/Suspension Review:** have a process in place to verify vendor debarment and suspension at the state level as part of their internal control system as part of the risk assessment process.

**Required Action Subrecipient Monitoring:** MDE noted that, while they have informal monitoring and review activities with LEAs, its subrecipient monitoring process had not been fully developed and implemented.

Within 60 business days, MDE must provide a plan and timeline to implement a post award fiscal monitoring process.



# California ESSER Program Monitoring FY 2022

**Required Action Audit :** Upload audit to Federal Audit Clearinghouse (untimely – past 9-month requirement) 2 CFR 200.512(a)(1)

**Recommended Action Debarment/Suspension Review:** have a process in place to verify vendor debarment and suspension.

# Questions



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