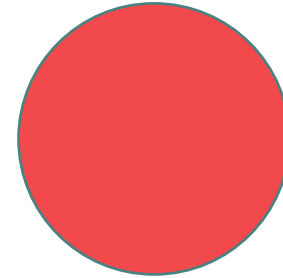


# Compliance Updates

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# Agenda



Introduction to EDGAR and the UGG

Proposed UGG Changes

Proposed EDGAR Changes

New Evidence Basis Guidance

Monitoring Updates



# What Rules Apply to Grants Management?

## Education Department General Administrative Regulations (EDGAR)

- 34 CFR Parts 74-99

## Uniform Guidance (UGG)

- 2 CFR Part 200

## Program Statutes and Regulations

- ESEA, ESSER, GEER, IDEA, WIOA, Perkins, AEFLA, etc.

# EDGAR and the UGG

- The Uniform Grant Guidance (UGG) are federal grants management rules created and amended by the Office of Management and Budget (OMB) that apply to all awards issued by all federal awarding agencies.
- 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).
  - EDGAR incorporated the UGG in 2014



# EDGAR and the UGG

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## EDGAR:

Direct Grant Programs – 34 CFR Part 75

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State-Administered Programs – 34 CFR Part 76

Definitions – 34 CFR Part 77

Enforcement Regulations – 34 CFR Part 81

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## UGG:

Subpart A – Acronyms and Definitions

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Subpart B – General Provisions

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Subpart C – Pre-Federal Award Requirements

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Subpart D – Post Federal Award Requirements

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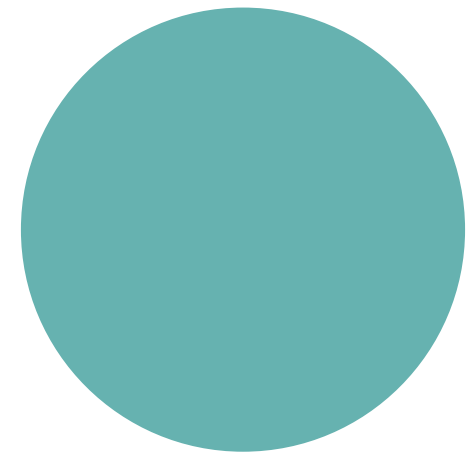
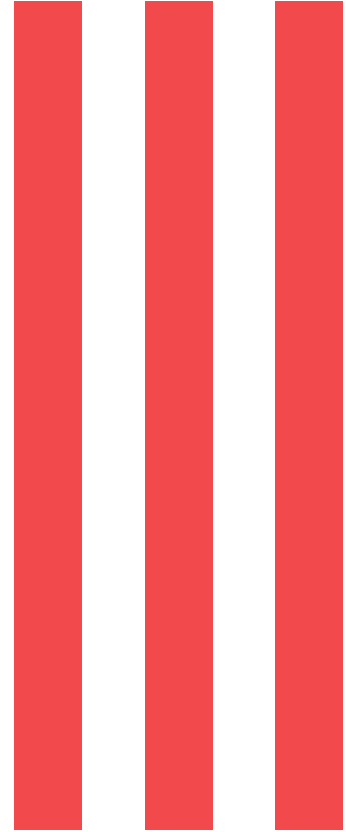
Subpart E – Cost Principles

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Subpart F – Audit Requirements

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# Proposed UGG Changes



# Proposed Changes to the UGG



# OMB Objectives



1. Incorporating statutory requirements and administration priorities;
2. Reducing agency and recipient burden;
3. Clarifying sections that recipients or agencies have interpreted in different ways; and
4. Rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms.



# Terminology/General Changes

- Current rule uses the term “non-Federal entity”
  - Proposed rule uses “*recipient*” and “*subrecipient*”
- 200.331: Subrecipient and Contractor Determinations – the Federal Agency *does not have a direct legal relationship* with subrecipients or contractors of any tier
- 200.1 – New definition of improper payment
- 200.404 – Notice of funding opportunities

# Proposed Timely Spending Changes

- Revisions to definition of period of performance and financial obligations
  - *Period of performance* means the time during which the recipient and subrecipient must perform and complete the work authorized under the Federal award.
  - *Financial Obligation*: Orders placed for property and services, contracts and subawards made, and similar transactions that require payment by a recipient or subrecipient under a Federal award that result in expenditures by a recipient or subrecipient under a Federal award.
- Some liquidation timeline flexibility – pass through can approve extensions when “justified”

# Proposed 200.472 – Termination and standard closeout costs

- Administrative costs associated with the closeout activities of a Federal award are allowable.
- May charge the Federal award during the closeout for necessary administrative costs (ex. salaries of personnel preparing final reports, publication and printing costs, and the costs associated with the disposition of equipment and property).
- These costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.

# Proposed Selected Items of Cost Changes

## Entertainment and Prizes - 200.438

- (a) Not allowable they have a specific and direct programmatic purpose and are included in a Federal award.
- (b) Costs of prizes or challenges are allowable if they have specific and direct programmatic purpose and included in federal award.

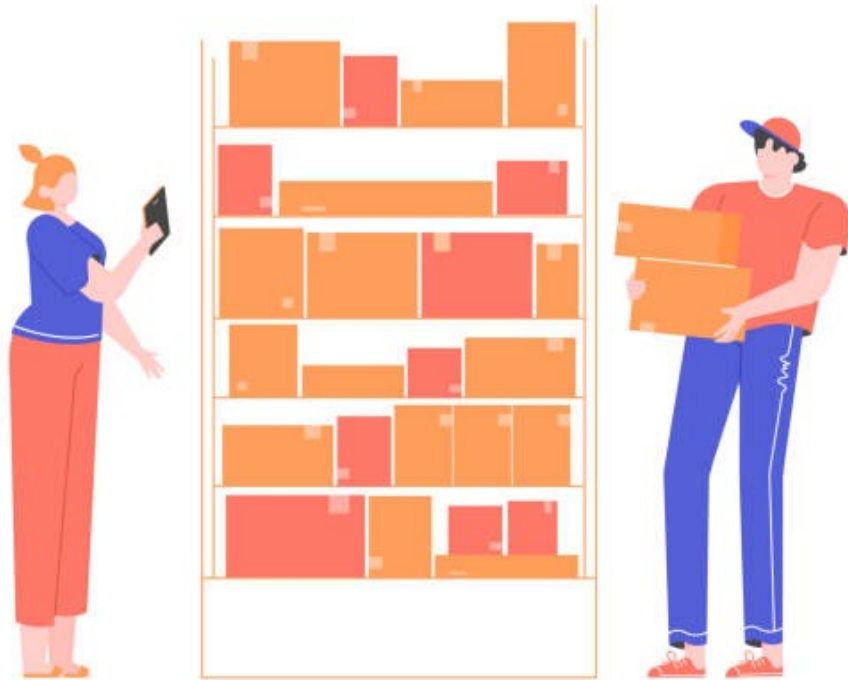
## Participant Support Costs – 200.456

- Participant support costs are allowable (see § 200.1). The classification of items as participant support costs must be documented in the recipient's or subrecipient's written policies and procedures and treated consistently across all Federal awards.
- Prior approval requirement removed

# Proposed Whistleblower Protections – 200.217

- An employee of a recipient or subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is:
  - Evidence of gross mismanagement of a Federal contract or grant,
  - A gross waste of Federal funds,
  - An abuse of authority relating to a Federal contract or grant,
  - A substantial and specific danger to public health or safety, or
  - A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

# Inventory Procedures – 200.313(d)



- Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacing equipment) utilizing procedures that meet the following requirements:

# Inventory Procedures (con't.) –

## (1) Property records

- Description, serial number or other ID, source of funding, title, acquisition date and cost, percent of Federal contribution, location, use and condition, and disposition date including sale price.  
Recipient is responsible for maintaining and updating property records when there is a change in status of the property.

## (2) Physical inventory at least every two years (or more often, if required by State or your own policies)

## (3) Control system to prevent property loss, damage, theft

- All incidents must be investigated and reported to the Federal agency or pass-through entity

## (4) Regular maintenance procedures in place

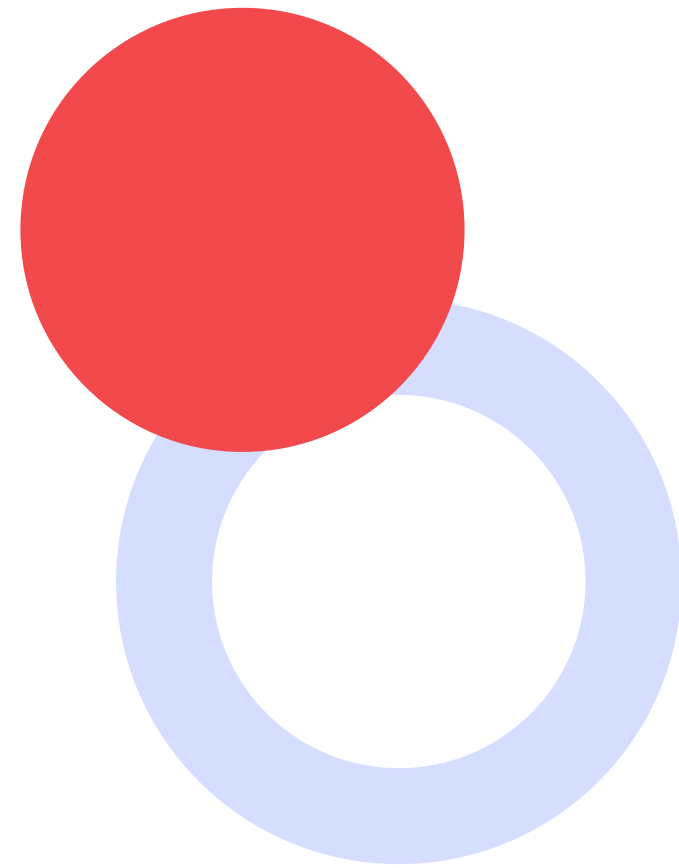
## (5) If authorized or required to sell property, proper sales procedures to ensure highest possible return

# Disposition

- 200.313(f): *Equipment retention*. When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.
- 200.314: If there is a residual inventory of unused supplies **at the end of the period of performance** exceeding **\$10,000** in total aggregate value, and the supplies are not needed for any other Federal award, the State or LEA may retain or sell the supplies
  - **Unused supplies** means supplies that are in new condition, not having been used or opened before. The aggregate value of unused supplies consists of all supply types, not just like-item supplies



# Proposed EDGAR Changes



# Proposed EDGAR Changes



- Comment Period: 45 days from January 2024 Federal Register Notice (February 26)
- Last major update to EDGAR was 2013
  - “Given that EDGAR serves as the foundational set of regulations for the Department, we have reviewed EDGAR, evaluated it for provisions that, over time, have become outdated, unnecessary, or inconsistent with other Department regulations, and identified ways in which EDGAR could be updated, streamlined, and otherwise improved.”

# **Proposed 75.600-75.617 – Construction and real property acquisition**

- Reorganizes the regs in 75.600-75.614 to follow progression (Dept approval 75.601, planning 75.602, beginning project 75.603, during project 75.604, and after project 75.605)
- Secretary considers grantee compliance prior to approving a construction project, 75.602(c)
- Adds nondiscrimination assurances, 75.606
- Decreasing period for which grantee must retain title from 50 years to 25 years, 75.610

# Proposed 75.600-75.617 – Construction and real property acquisition (cont.)

- Clarifying Nat’l Environmental Policy Act guidance applies to “major Federal projects, 75.611
- Clarifying process and roles of Secretary and State in reviewing construction projects involving historic preservation, 75.614 and 75.600
- Adding Build American, Buy America Act applicability, 75.615
- Updating requirements to ensure current ASHRAE (energy conservation) standards, 75.616



# Proposed 76.50 – Basic Requirements for Subgrants

- Where not prohibited by law, regulation or terms and conditions of the grant award, States have subgranting authority under State-administered formula grant programs **and can authorize a subgrantee to make subgrants**
  - If subgranting, must comply with pass-through requirements in 2 CFR 200.332, including subrecipient monitoring
- If subgranting is prohibited, grantees may still contract for goods and services

# Proposed Requirements for Pass-Through Entities – 200.332

- **Prior to issuing a subaward**, evaluate each subrecipient's risk of noncompliance with subaward to determine appropriate subrecipient monitoring
  - → ED has said previously this can actually be done at any time during the year
- Should consider risk factors at 200.332(c):
  - Prior experience with same or similar awards
  - Results of previous audits
  - New personnel or substantially changes systems, **policies, or procedures**
  - Any federal agency monitoring results

# Proposed Requirements for Pass-Through Entities – 200.332 (con't.)

- Depending on pass-through entity's assessment of risk, the following monitoring tools might be useful:
  - Providing subrecipients with TA
  - Performing site visits to review program operations
  - Arranging for agreed-upon procedures under 200.425
  - Verifying that every subrecipient is audited as required by subpart F
  - Consider whether results of audit, on site review, or other monitoring necessitate adjustments to PTE's records
  - Consider taking enforcement action against noncompliant subrecipients

# **Proposed 76.401 – Appeal process for denied applicants**

- Clarifies the hearing and appeal process under 76.401, including clarifying that aggrieved applicants must allege a specific federal or state statute or regulation has been violated.
  - Subsequent appeals to the Secretary must include a federal citation
  - Secretary may dismiss an appeal without a federal citation after asking the appellant to “show cause” why the appeal should not be dismissed.
- Appeals only for SEAs and related to denial of state-administered formula grant applicants
  - Other appeals of SEA final actions are in 76.783



# Proposed 76.560-76.569, Indirect Costs

- Amended to align with UGG
- Includes reference to the de minimis rates
- Continues to offer flat restricted rate of 8 percent MTDC for non-LEA subgrantees without a negotiated restricted rate
- Cross references UGG for definition of MTDC
  - Notes that EDGAR will use whatever threshold for subawards is in the UGG (proposed to increase from \$25k to \$50k)
  - Notes that if grantee's own threshold for equipment is under UGG threshold, the grantee's lower threshold is used for calculating MTDC

# Proposed 76.650-76.662, Equitable Services

- Removes since programs have their own equitable services regulations
- If no specific programmatic regs, will default to Title VIII equitable services regs in Part 299
  - Also moves bypass regulations to Part 299
- **Adds** 299.16: SEA resolution of equitable services complaints, required elements
- **Adds** 299.17: Appeal of SEA resolution of equitable services complaints, required elements

# Proposed Definitions updates, Part 77

- Clarifies Period of performance to mean “period during which funds can be obligated by the grantee” (removes cross reference to UGG definition)
- Adds definition of construction, clarifies that construction is different from minor remodeling
  - Clarifies minor remodeling definition
- Adds definitions of evaluation, independent evaluation,
- Clarifies definition of evidenced-based for direct grants
  - Updates to “moderate evidence”, “national level”, “promising evidence,” “regional level” and “strong evidence”, “evidence-building”

# New Evidence Basis Guidance



# Evidence-Based

- As defined in Sec. 8101 of ESEA
- an activity, strategy, or intervention that—
  - (i) demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—
    - (I) strong evidence from at least 1 well-designed and well-implemented experimental study;
    - (II) moderate evidence from at least 1 well-designed and well-implemented quasi-experimental study; or
    - (III) promising evidence from at least 1 well-designed and well-implemented correlational study with statistical controls for selection bias; or
  - (ii)(I) demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and
  - (II) includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

# Evidence Basis Requirements

Must be done and be evidence-based	May do, if done <u>must</u> be evidence-based
Title I CSI and TSI plans	Title II class-size reduction
Title I parent and family engagement strategies	Other Title II activities (including professional development)
	Title IVA: drug and violence prevention, mental health services, practices to reduce exclusionary discipline

# Evidence-Based

- New evidence basis guidance (September 2023)
  - “activities” and “strategies” → “project components”
- <https://www2.ed.gov/fund/grant/about/discretionary/2023-non-regulatory-guidance-evidence.pdf>



# Evidence-Based

- 2023 Evidence basis guidance
  - Needs analysis (including stakeholder outreach) encouraged
  - Look at project components to address identified needs, considering:
    - “the broadest possible range of relevant evidence”
    - Project components that are supported by rigorous and relevant evidence for that population and the context involved
    - What is feasible within organization’s capacity/expertise/funding



# Evidence-Based

- 2023 Evidence basis guidance
  - Select project components in consideration of:
    - What is the highest level of evidence available for the issue seeking to be addressed?
    - What do most studies find? Is anything statistically significant?
    - Are the settings and populations similar?
    - Is it based on a logic model?
      - “Logic model, as defined in 34 CFR 77.1, ...means a framework that identifies key project components of the proposed project ... and describes the theoretical and operational relationships among the key project components and relevant outcomes.”
  - How can outcomes be measured?

# Evidence-Based

- 2023 Evidence basis guidance
  - Questions about capacity
    - What resources are available to support?
    - What are the potential outcomes and are there more cost-effective options?
    - What additional capacity is needed to implement?
    - How does this fit with organizational goals and existing efforts?
    - Is there sustainability over time?

# Tiers of Evidence



- Outlined in 34 CFR 77.1
- Broken down into:
  - Strong → “this works and we can prove it”
  - Moderate → “we’re fairly certain this works”
  - Promising → “this seems like it works”
  - Demonstrates a Rationale → “this sounds like it would work”

# Strong Evidence

- “There is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component,” based on one of the following:
  - (i) A practice guide prepared by the What Works Clearinghouse (WWC) reporting a “strong evidence base”;
  - (ii) An intervention report prepared by the WWC reporting a “positive effect” on a relevant outcome based on a “medium to large” extent of evidence, with no reporting of a “negative effect” or “potentially negative effect” on a relevant outcome; **OR**
  - (iii) A single experimental study reviewed and reported by the WWC that
    - a) Meets WWC standards without reservations;
    - b) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome;
    - c) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report and
    - d) Is based on a sample from more than one and includes at least 350 students or other individuals across sites. (this may mean data from multiple different studies)

# Moderate Evidence

- “There is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:”
  - (i) A practice guide prepared by the WWC reporting a “strong evidence base” or “moderate evidence base”
  - (ii) An intervention report reporting a “positive effect” or “potentially positive effect” on a relevant outcome based on a “medium to large” extent of evidence, with no reporting of a “negative effect” or “potentially negative effect” on a relevant outcome; **OR**
  - (iii) A single experimental study or quasi-experimental design study that—
    - a) Meets WWC standards with or without reservations;
    - b) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome;
    - c) Includes no overriding statistically significant and negative effects; **AND**
    - d) Is based on a sample from more than one site (e.g., State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites.

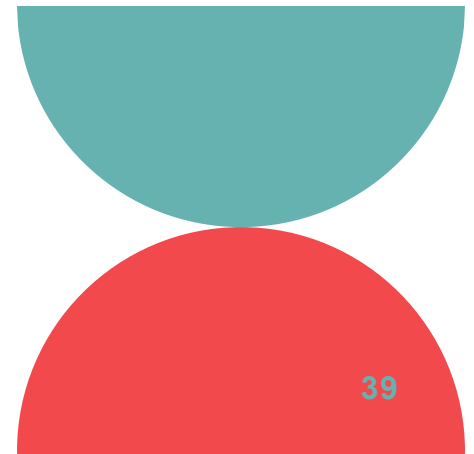
# Promising Evidence

- “There is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following: “
  - (i) A practice guide prepared by WWC reporting a “strong evidence base” or “moderate evidence base” for the corresponding practice guide recommendation;
  - (ii) An intervention report prepared by the WWC reporting a “positive effect” or “potentially positive effect” on a relevant outcome with no reporting of a “negative effect” or “potentially negative effect” on a relevant outcome; or
  - (iii) A single study assessed by the Department, as appropriate, that—
    - a) Is an experimental study, a quasi-experimental design study, or a well-designed and well implemented correlational study with statistical controls for selection bias (e.g., a study using regression methods to account for differences between a treatment group and a comparison group); and
    - b) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome.

# Demonstrates a Rationale



“A key project component included in the project’s logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.”





# Monitoring Updates



# Recent Monitoring Topics

- Equitable Services
  - Consultation
  - Ensuring only eligible students receive services
  - Maintaining equipment and supplies under control of the LEA

# Recent Monitoring Topics

- Report Cards
  - Are indicators complete?  
See Sec. 1111(h)(1)(C)
  - Description of accountability system?
  - Information on teachers?
  - Assessment participation rates disaggregated by grade/school?



# Recent Monitoring Topics

- LEA Transportation for Students in Foster Care
  - ESEA section 1112(c)(5)(B)
  - LEA must provide an assurance that it will, in collaboration with the relevant local child welfare agency, develop and implement written transportation procedures describing how it will provide, arrange, and fund transportation for students in foster care.



# Recent Monitoring Topics

- Davis-Bacon
  - Do contracts include Davis-Bacon provisions/specifications?
  - Are contractors paying at least the federal prevailing wage?
  - Are LEAs reviewing weekly certified payroll and “spot-checking?”

# Expect Monitoring on...

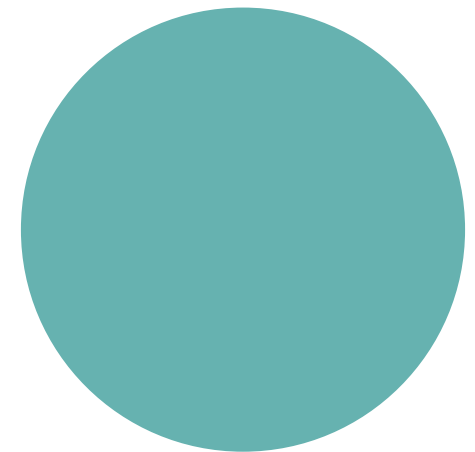
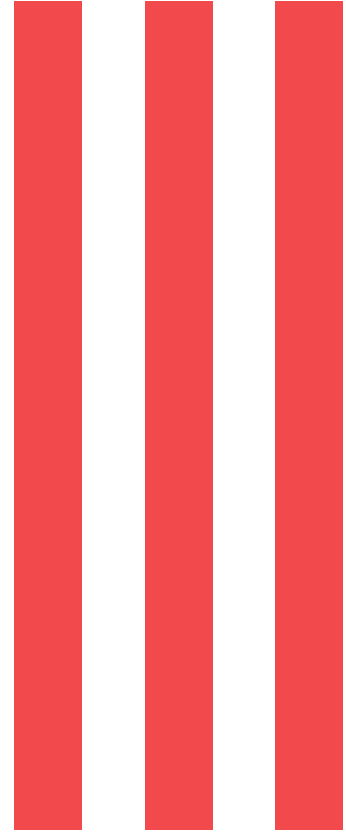
- ESSER Issues
  - Allowable expenditures
  - Pre-approval sought for capital expenditures
  - Filing of statement of federal interest
  - Maintenance of CARES equitable services items

# Expect Monitoring on...

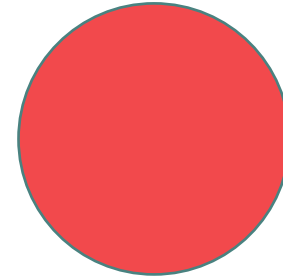
- Fiscal issues coming off of ESSER
  - Supplement, not supplant
  - Carryover limitation and waivers
  - MOE
  - Comparability



# Questions???



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