ESSER and GEER Updates

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ESSER General Updates

- Annual Reports are due 3/15/24
  - GEER webinar link: https://youtu.be/1_7ilMD7ojM
  - ESSER webinar link: https://youtu.be/xykzuXSJrT0

- Second Round Monitoring for ESSER II and III will begin soon.

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Davis-Bacon

Core Davis-Bacon Requirements

- DB applies to all construction contracts (construction, repair or alteration, including painting) in excess of $2,000 paid in whole or in part with federal funds.

Core DB compliance issues:

- Must have required contract provisions;
- Must pay Prevailing Wages;
- Contractor must pay wages weekly; and
- LEA/subrecipient must collect certified payroll records.

Davis-Bacon: USED February 2024 Guidance

- Who is responsible for DB compliance?
  - "Shared Responsibility" among SEA, LEA and contractor
  - LEA must include applicable provisions in contracts and collect payroll data from contractors.
  - LEA should spot monitor contractors.
  - SEAs should monitor LEAs.
  - Contractors are responsible for fulfilling obligations in the contract(s).

Davis-Bacon: USED February 2024 Guidance

"We understand that some States may have limited time and resources to monitor all aspects of the ESSER grants. When monitoring for Davis-Bacon compliance, we suggest that the SEA first focus on open projects or contracts that are not yet finalized prior to the September 30, 2024, obligation deadline."

Davis-Bacon: USED February 2024 Guidance

- If an LEA did not include applicable contract clauses and contract is still open, the LEA must incorporate the clauses into the contract through an amendment/change order.
- If an LEA did not include applicable contract clauses, but prevailing wages were paid, SEA must contact USED. DOL may waive retroactive application of remaining unmet requirements.
- If an LEA is unable to seek a waiver from DOL or amend the contracts “the LEA might consider an accounting adjustment and substitute non-Federal funds to pay for these contracts.”
- SEAs should inform USED when it finds noncompliance.

Davis-Bacon: USED February 2024 Guidance

Remedies for Non-Compliance:

- Ensuring that a contractor corrects its practices;
- Ensuring that an LEA improves its contract practices;
- Audit findings;
- USED imposing special conditions;
- Other enforcement action such as partly suspending or terminating an award.

Davis Bacon - Waivers

- "…under some limited circumstances, DOL may grant a waiver of the Davis-Bacon requirements."

Example: Contracts entered into prior to the federal award.

- LEA may submit a waiver request by letter through the SEA:
  - Describe situation and reasons why waiver should be granted;
  - Include information explaining any specific injustice or hardship; and
  - Include mitigating factors (such as that prevailing wages were actually paid).

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Disposition of Equipment and Supplies

Definitions – Equipment and Supplies

- **Equipment**: Under 2 C.F.R. § 200.1, *equipment* is defined as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000.
- **Supplies**: Under 2 C.F.R. § 200.1, *supplies* is defined as all tangible personal property that is not equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000, regardless of the length of its useful life.

Continued Use of Equipment and Supplies

- Equipment and Supplies may be used by the LEA for purposes of the ESSER program during the period of performance or until the equipment and supplies are no longer needed for the purposes of the ESSER program.
- If no longer needed for ESSER, an LEA may, in preferential order:
  - Use the E&S in another federal education program; or
  - Use the E&S in a federal program under different federal agency

Disposition of Equipment

Where Equipment is no longer needed for ESSER or any federal program:

- Where Fair Market Value (FMV) at time of disposition is less than $5,000 per unit, LEA may retain, sell or dispose the equipment without additional responsibility to USED.
- Where FMV is more than $5,000 per unit, LEA may retain or sell the equipment, and must pay the federal portion back to USED.

See 2 CFR s. 200.313(e).

Disposition of Supplies

Where Supplies are no longer needed for ESSER or any federal program:

- Supplies that cost less than $5,000 per unit vest in the LEA upon acquisition.
- If there is a residual inventory of supplies that are not needed and that exceed $5,000 in aggregate, the LEA may retain or sell the supplies, but must pay the USED the federal portion.
- Given that disposition may occur at different times, the LEA may calculate the total aggregate value when disposition occurs – e.g., at the end of each year for which supplies are disposed.

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Requests for Extension of ARP ESSER Liquidation Period

Definitions – Obligations

If the obligation is for -	The obligation is made
a) Acquisition of real or personal property	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
b) Personal services by an employee of the State or subgrantee	When the services are performed.
c) Personal services by a contractor who is not an employee of the State or subgrantee	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.

Definitions – Obligations

If the obligation is for -	The obligation is made
e) Public utility services	When the State or subgrantee receives the services
f) Travel	When the travel is taken
g) Rental of real or personal property	When the State or subgrantee uses the property
h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, Subpart E - Cost Principles	On the first day of the grant or subgrant performance period

Liquidation Extension Request - Criteria

- Obligation must have been incurred by the end of the program period (for most ARP ESSER programs, 9/30/24).
  - Note: Only contractual goods and services can continue past program period end date into the liquidation period.
  - Extension of the liquidation period will not extend the opportunity to incur employee costs, travel, rentals
- If granted by USED, Liquidation period can be extended up to 14 months.

Liquidation Extension Request - Process

- FDOE communication pending.
- LEAs/Subrecipients will submit:
  - USED template; and
  - Proof of Obligation
- Charter Schools will submit through their sponsoring LEA.
  - We recommend that LEAs advise charter schools of this upcoming opportunity in advance.

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Activities After Liquidation Ends

Activities After Liquidation Period

- It is generally discouraged to pay for services during the program or liquidation period for services that will extend "many years into the future."
- ESSER funds are emergency funds intended to be utilized in a timely manner to carry out activities to prevent, prepare for, or respond to COVID.
- However, under limited circumstances where a subgrantee timely obligates ESSER funds, ESSER activities may continue for a reasonable time beyond the liquidation period (including an approved late liquidation period).
- **Under no circumstances may services extend beyond September 30, 2028 for ARP ESSER grants.**
- **This is not an extension of the program or liquidation period. The obligation is still incurred by the end of the program period, and the payment is made by the end of the liquidation period. The difference is that the services are received after the end of the liquidation period.**

Activities After Liquidation Period

- Factors impacting how long ESSER- funded activities may extend past the liquidation period include:
  - Whether funds were properly obligated and liquidated in a timely manner;
  - Whether the activities would be allowed to extend beyond the liquidation period under state and local procurement rules;
  - Whether the extended activities constitute a reasonable and necessary use of Federal funds; and
  - Whether prudent business practices and internal controls would support the proposed activity.
- Example: **Software licenses and Subscriptions**

- LEAs seeking approval to pay for services to be received after the liquidation period ends should include the information in their budget/amendment or send an email to ESSER2@fldoe.org.

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