January 30, 2023

Administrative Costs During the ESSER I and GEER I Liquidation Period

Several grantees have asked the Department how they can support contractors or employees who are administering ESSER I or GEER I funds after the obligation deadline, during the liquidation period. By way of background, pursuant to 34 C.F.R. 76.707, the delivery of personal services may be obligated in two distinct ways: Services provided by an employee of a State or subgrantee such as an LEA are considered obligated when the services are rendered or the work is performed (34 C.F.R. 76.707(b)), while personal services rendered by a contractor who is not an employee of the State or subgrantee/LEA are considered obligated on the date on which the State or subgrantee/LEA makes a binding written commitment to obtain the work, such as through the execution of a written contract (34 C.F.R. 76.707(c)).

Accordingly, if the State or subgrantee obligated the funds prior to September 30, 2022, through a contract (e.g., a contract that includes the work of administering the program throughout the liquidation period), then the State or subgrantee may continue to use ESSER I or GEER I funds to pay the cost of the contract throughout the liquidation period. Under this same provision, the State or subgrantee may not use ESSER I or GEER I funds to pay the salary of an employee of the State or subgrantee who is administering the program after September 30, 2022, since the obligation of funds for an employee does not occur until the work is performed.

Thus, payroll expenses for employees of a State or subgrantee may only be liquidated with ESSER I or GEER I funds for services provided by the end of the obligation period (September 30, 2022). Payroll expenses for the personal services of staff that are obligated through a third-party contractor may continue through the liquidation period if the associated written contract for those services was executed by September 30, 2022.

A State or subgrantee may also choose to use later iterations of the same funding source to pay for close-out activities of the preceding ESSER or GEER program through the liquidation period. For example, an SEA may pay a State employee with ESSER funds under the Coronavirus Response and Relief Supplemental Appropriation Act, 2021 (ESSER II) or American Rescue Plan Act of 2021 (ARP ESSER) to perform a reasonable amount of close-out services for the ESSER I program. Similarly, a State or subgrantee may use GEER II funds to pay an employee for close-out activities under the GEER I program. However, an LEA may not use funds from a different program to pay for close-out activities. For example, an LEA would not be able to use ESSER II funds to pay for State employee or contractual GEER I close-out activities.