EDGAR, ESSER, and ESSA Hot Topics

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What's New?

- EDGAR Updates (August/November 2020)**:** https://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html
- 2021 Compliance Supplement: https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-2021-Compliance-Supplement_Final_V2.pdf
- 2021 Compliance Supplement Addendum I: https://www.cfo.gov/2021-addendum-1/
- Pilot FY20 SEA Self-Assessment and Protocol: https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/performance-review/
- Within District Allocations Under ESEA Title I-A (February 2022): https://oese.ed.gov/files/2022/02/Within-district-allocations-FINAL.pdf
- The Impact of COVID-19 on Accountability Systems under ESSA (February 2022): https://oese.ed.gov/files/2022/02/Acct-FAQ-Final-2.11.22-1.pdf

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Topics

- EDGAR Updates
- Time and Effort Documentation Requirements
- ESEA Updates and SSA Monitoring
  - Supplement Not Supplant
  - Maintenance of Effort
- Documentation

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Final UGG Revisions

Published, August 13, 2020

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Effective Dates

- Effective as of **November 12, 2020**
  - Except for 200.216 and 200.340, effective August 13, 2020
- 200.216: Prohibition on certain telecommunications and video surveillance services or equipment
  - Prohibits grantees from entering into contracts with certain covered entities
- 200.340: Termination
  - Allows awards to be terminated “if an award no longer effectuates the program goals or agency priorities”
  - Previously: “For cause”

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Allowability Procedures (200.403) (p. 154)

- Necessary, reasonable and allocable
- In compliance with the cost principles and federal award
- Consistent with policies and procedures applying uniformly to federal and non-federal activities and costs
- Consistently treated as either direct or indirect costs
- Determined in accordance with GAAP
- Not included or used to meet cost sharing / match requirements
- Adequately documented
- Incurred during approved budget period (NEW)

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Definition Changes

New definitions!

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).

Financial Obligations

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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

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Closeout 2 CFR 200.344 (formerly 200.343)

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

2 CFR 200.343

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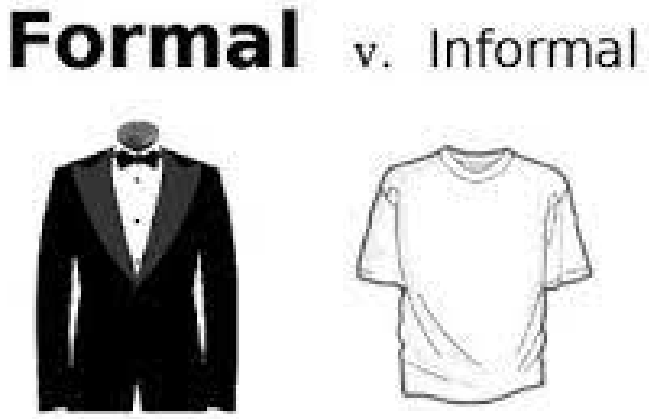
Methods of Procurement (200.320)

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



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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

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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.”

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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 indirect costs

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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

Thresholds. Established based on internal controls, risk and procedures, and documented. Cannot exceed the threshold in FAR ($250,000) but may be lowered.

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Noncompetitive Proposals (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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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

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Debarment and Suspension Updates

Debarment and Suspension Check

- 200.216: Prohibition on certain telecommunications and video surveillance services or equipment
  - Prohibits grantees from entering into contracts with certain covered entities
  - Check sam.gov for all telecommunications contracts
  - Effective August 13, 2020

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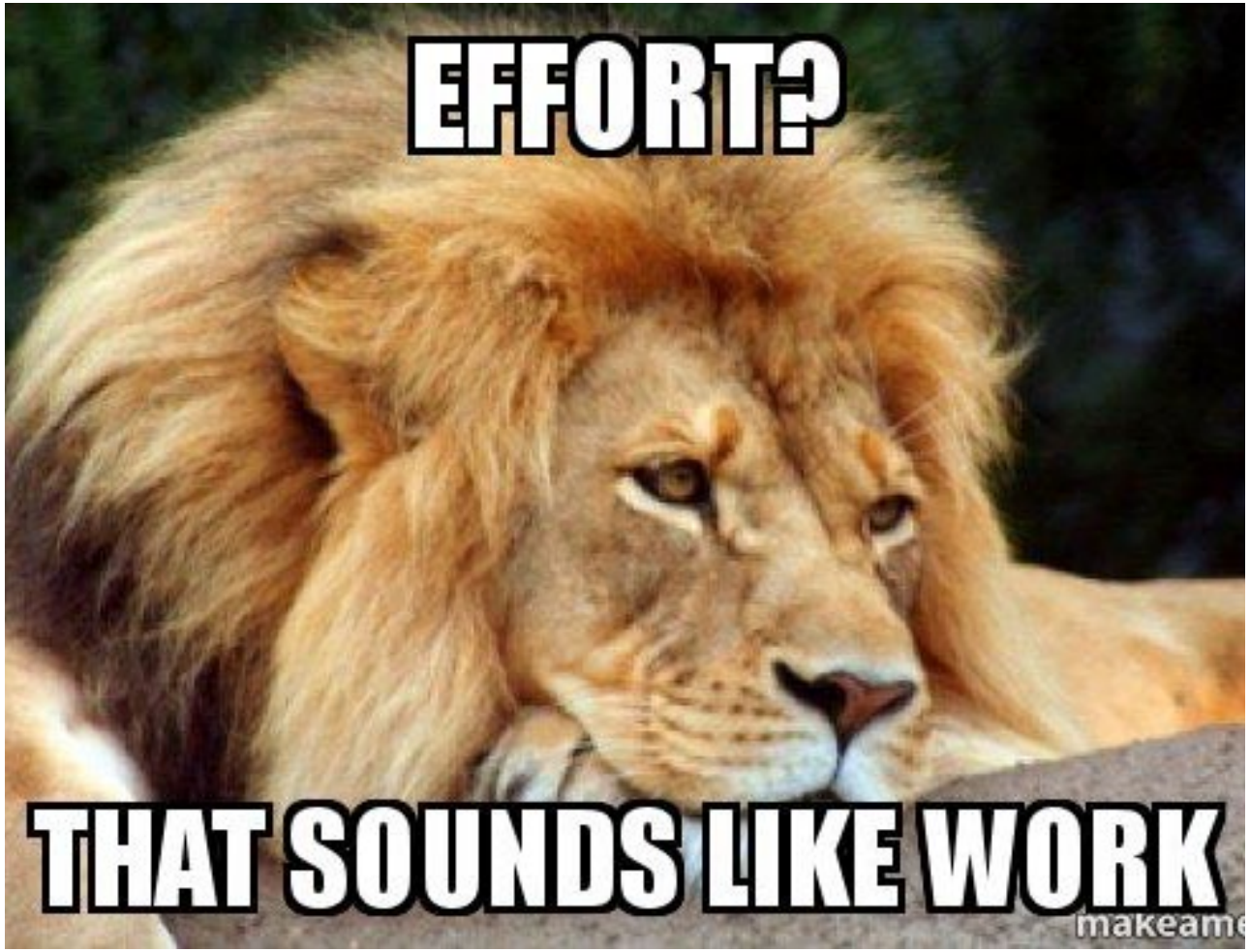
Suspension and Debarment (200.214 2 CFR 180.300)

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

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Time and Effort Documentation Requirements

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Time & Effort - Common Findings



Organization pays salaries based on budget



Organization does not have a control system, for time & effort



Effort certifications are not accurate



Failure to reconcile actual effort to funding source

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Who? 200.430(i)(1) & (4) (p. 164)

Time and effort must be collected for all employees (not contractors) whose salaries are:

- Paid in whole or in part with federal funds ; and
- Used to meet a match/cost share requirement.

Includes:

- *Full time and part time employees;*
- *Federal stipends that are considered salary expenses;*
- *Substitute teachers (if employees), etc.*

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Time and Effort Documentation 200.430(i)(1)

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and allocable;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting polices and practices; and
6. Support distribution among specific activities or cost objectives.

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1. Supported by a System of Internal Controls

What are the best controls?

- Anything that will go towards the veracity and accuracy of documentation supporting salaries
- Verifiable documentation
  - Signatures (not required but a good control)
    - Electronic signatures are allowable!
  - Documentation from person with first-hand knowledge
- T&E Policies & Procedures 200.430(a)
  - ED's new Cost Allocation Guide

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ED's Cost Allocation Guide (Sept 2019)

"Department grantees that do not adhere to these parameters in documenting personnel expenses charged to federal grants could face questioned costs in audit findings"

"***Written policies and procedures are essential to implementing an effective time reporting system***."

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2. Incorporated Into Official Records

No federal standard

However, YOUR non-federal entity maintains documentation, time distribution records MUST conform

For subrecipients, may have specific requirements from pass-through



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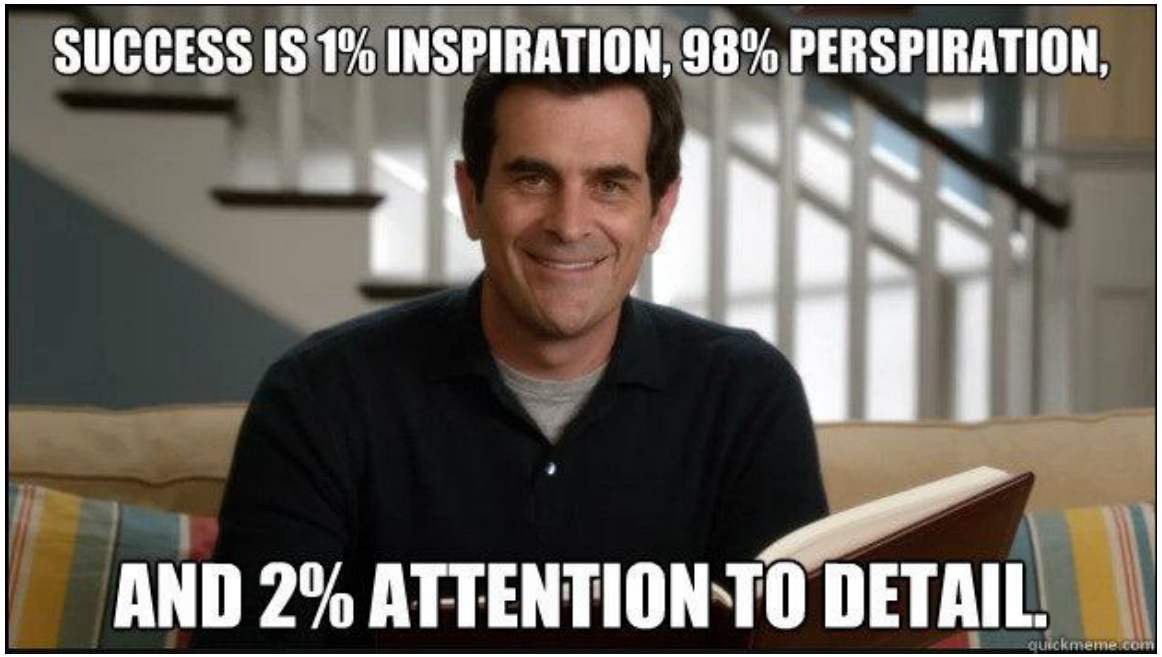
"I always give 110% to my job —
40% on Monday, 30% on Tuesday, 20% on
Wednesday, 15% on Thursday and 5% on Friday."

3. Reasonably Reflect Total Activity

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4. Encompass ALL Activities

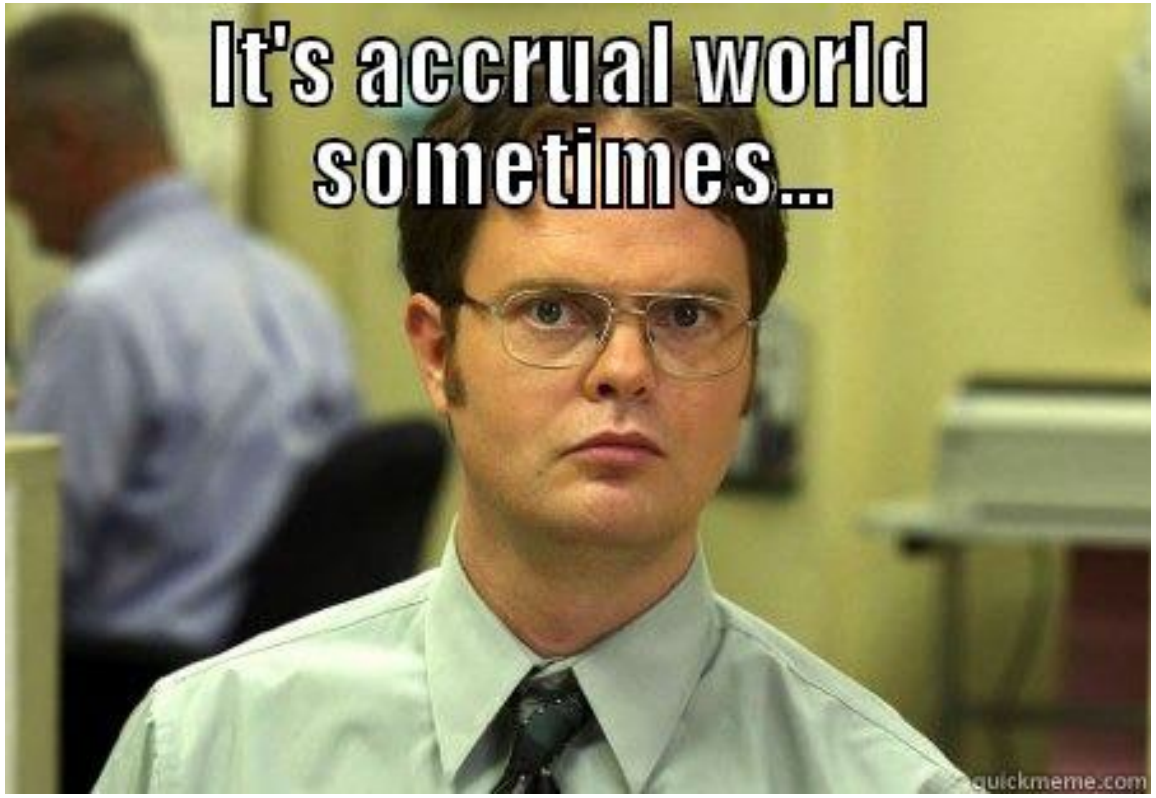
All 100% of effort must be recorded, regardless of federal vs. non-federal time.



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5. Comply With Established Accounting Polices and Practices

- Salary expenses, tracking and reconciliation should all follow the entity's standard accounting practices.
- Anomalies are red flags to auditors.



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6. Track Time By Cost Objective

Cost Objective 200.1 (p. 111)

- *Program, function, activity,* award, organizational subdivision, contract, or work unit *for which cost data are desired* …
  - Examples: set-asides, mandatory spending caps, etc.

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Can the Prior OMB Circular Rules Still Be Used?

Yes, but if using old circular standards…



Do not cite to the old OMB Circulars



Show how your current process meets the UGG requirements.

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Altering Prior Processes
Old Circular A-87 Rule

Semi-Annual Certifications
If an employee works on a **single cost objective**:
➢ After the fact
➢ Account for total activity
➢ Signed by employee or supervisor **Or no signature?**
➢ Every six months (at least twice a year) **Annually??**

Personnel Activity Report (PAR)
If an employee works on **multiple cost objectives**:
➢ After the fact
➢ Account for total activity
➢ Signed by the employee **or supervisor? Or no signature?**
➢ Prepared at least monthly and coincides with one or more pay periods **Quarterly??**

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Conclusion…

Follow your existing policies and procedures

Work with cognizant agency for indirect (SEA / ED) if interested in implementing flexibilities

Keep an eye out for ED's guidance

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Noncompliance

Findings!!

Repayment of Unallowable Costs!

ED may require personnel activity reports (PARs), including prescribed certifications or equivalent documentation that support the records as required in this section (200.430(i)(8)).

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ESEA Updates and SSA Monitoring

NEW GUIDANCE

- **Within District Allocations**
- **Accountability**

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School Support and Accountability (SSA) Monitoring

PILOT FY20 SEA SELF-ASSESSMENT AND PROTOCOL:

CROSS-CUTTING FISCAL

PROGRAM FISCAL

TITLE I

TITLE II

TITLE III

HTTPS://OESE.ED.GOV/OFFICES/OFFICE-OF-FORMULA-GRANTS/SCHOOL-SUPPORT-AND-ACCOUNTABILITY/PERFORMANCE-REVIEW/

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SSA Monitoring (cont.)

Program Fiscal:

- Allocations
- Local Applications and Plan
- Risk Assessment
- Subrecipient Monitoring
- **Supplement Not Supplant**
- **Maintenance of Effort**
- Comparability
- Equitable Services
- Data Quality

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Supplement Not Supplant

SSA Monitoring: The SEA and its subgrantees must ensure that funds from the Title I, Part A, Title II, Part A and Title III, Part A programs are used to supplement not supplant State and local funds (as well as ensuring Title III, Part A funds supplement and don't supplant other Federal funds).

Non-Regulatory Informational Document Released: June 2019

https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf

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SNS Requirements

SNS Standard	Programs									
		Title I,A	Migrant Education	Title II,A	Title III,A	Title IV,A	REAP/ SRSA	21st CCLC	IDEA	ESSER
	State and Local Funds	ESSA Sec. 1118(b)	ESSA Sec. 1304(c)(2)							---
	Non-Federal Funds			ESSA Sec. 2301		ESSA Sec. 4110				---
	Federal, State and Local Funds				ESSA Sec. 3115(g)		ESSA Sec. 5232	ESSA Sec. 4204 Subs Non-federal funds (4202(b)(2)(G)	34 CFR 300.164 (a) (SEA); 300.202(a) (LEA)	---

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SNS Requirements (cont.)

- An SEA and LEA may use program funds *only to supplement* and, to the extent practical, increase the level of funds that would, in the absence of the federal funds, be made *available from non-federal sources* for the education of participating students.
- *In no case may an LEA use federal program funds to supplant funds from non-federal sources*.

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SNS – Presumptions of Supplanting

Presumptions of Supplanting

1. Used Federal funds to provide services that are required under other Federal, State or local laws.
2. Used non-federal funds in prior year.
3. Used Migrant (MEP) funds to provide services for participating children and non-federal funds for nonparticipating children.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-federal funds had the federal funds not been available.

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ESSA Titles I,A (1118(b)) SNS

- A LEA may use Part A funds *only to supplement* the funds that would, in the absence of the Part A funds, be made available from *state and local sources* for the education of students participating in a Part A program.
- *In no case may a LEA use Part A funds to supplant funds from state and local sources*.

An LEA may not be required to

1) identify that an individual cost or service supported with Part A funds is supplemental; or
2) provide services through a particular instructional method or in a particular instructional setting.

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ESSA Titles I,A (1118(b)) SNS (cont.)

- To demonstrate compliance, a LEA must demonstrate that it has a methodology (e.g., *through written procedures*) and uses it to allocate **state and local funds to each Title I school** [and] ensures that the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds—i.e., the LEA's methodology may not take into account a school's Title I status

Applies to:

- LEAs; and
- Educational Service Agencies (ESAs) if the ESA obtains Title I,A funding on behalf of LEAs for allocation:
  - The ESA must ensure the allocation of state and local funds meets the SNS requirement or ensure it is met by each LEA depending on the funding structure.

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What About District-level Activities?

If a LEA reserves state and local funds for district-level activities:

- The LEA must conduct activities with those funds in a manner that does not take into account a school's Title I status.
- For example, the LEA reserves the State and local funds for a social worker at the district level.
  - The LEA deploys the social worker to different schools throughout the school year on an as-needed basis.
  - Access to or assignment of the social worker must be Title I neutral in order to comply with the general SNS requirement.

SNS Guidance Section VI.

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Are there any SNS exceptions?

- Excluded Funds:

SEA or LEA may exclude supplemental state or local funds used for program that meet the *intents and purposes* of Title I,A. SNS Guidance Q&A 7

  - This also applies to the MEP program re: supplemental funds that meet MEP intents and purposes.

- Excluded from SNS Methodology Test:
  - Single School LEAs;
  - LEAs with only Title I schools.
  - A grade span that contains only: a single school, non-Title I schools, or Title I schools.

SNS Guidance Q&A 26

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Evidence of Compliance

The LEA must maintain documentation to demonstrate that the LEA allocated State and local funds to schools in accordance with its methodology

An LEA must keep records to show compliance with program requirements and facilitate an effective audit. (34 C.F.R. §§ 76.730-76.731)

Examples: written methodology, calculations performed by the LEA to implement the methodology.

SNS Guidance Q&A 19.

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What happens if the LEA does not meet the SNS requirements?



- Audit Finding
- Update methodology
- Enforcement provisions under GEPA and the UGG (2 CFR Part 200)
  - ED's "Summary Response to Comments on Title I, Part A Supplement Not Supplant Non-Regulatory Informational Document," dated June 19, 2019

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SSA Monitoring - SNS

E1. Describe the process (or processes) the SEA uses to ensure that the method each LEA uses to allocate State and local funds results in each school receiving Title I, Part A funds receiving all of the State and local funds it would otherwise receive if it were not receiving assistance under Title I, Part A.

E2. How often does the SEA review the LEA methodologies used to demonstrate compliance with Title I supplement not supplant requirements?

E3. How does the SEA ensure compliance with the requirement that expenditures supplement State and local funds that would otherwise be used for activities authorized under Title II?

E4. How does the SEA ensure compliance with the Title III, Part A requirement that expenditures supplement the level of Federal, State, and local funds that, would otherwise be expended for programs for English learners and immigrant children and youth?

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Maintenance of Effort

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ESSA Maintenance of Effort (MOE) ESSA Sec. 1118(a) and 8521

- The combined fiscal effort per student or the aggregate expenditures of the LEA
- from *state and local* funds
- from preceding year must not be less than 90% of the second preceding year.

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MOE

ESSA MOE applies to:

- Title I, Part A (Improving Basic Programs Operated by Local Educational Agencies)
- Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At Risk)
- Title II, Part A (Improving Teacher Quality)
- Title III, Part A (English Language State Grants)
- Title IV, Part B (21st Century Learning Centers)
- Title V, Part B (Subpart 2, Rural Education Programs)

34 CFR 299.5

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MOE Calculation

LEAs demonstrate MOE by either:

The combined fiscal effort per student

OR

The aggregate expenditures (of non-federal funds i.e. state and local funds) of the LEA for preceding year was not be less than 90% of the second preceding year.

Sec. 1118(a) and 8521

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MOE Calculation (cont.)

Include state and local expenditures for:

- Expenditures for administration
- Instruction
- Attendance and health services
- Pupil transportation services
- Operation and maintenance of plant
- Fixed charges
- Net expenditures to cover deficits for food services and student body activities.

34 CFR 299.5

Exclude state and local expenditures for:

- Community services
- Capital outlay
- Debt service
- Supplemental expenditures made as a result of a declared disaster

34 CFR 299.5

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20/21 MOE Example: Expenditure analysis

MOE Not Met = Reduce by 5.3%		
Analysis for Meeting MOE in Previous Year	Fiscal Effort per Student	Aggregate Expenditures
2018-19 Actual Amount	$6,100	$1,000,000
90% of 2018-19 Amount	$5,490	$900,000
2019-20 Actual Amount	$5,200	$850,000
Difference (Shortfall)	($290)	($50,000)
Percent Shortfall/Reduction in Award for 2021-22	-5.3%	-5.6%

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MOE Waiver ESSA Sec. 8521(c)

Secretary of Education may waive MOE if “equitable”:

- Exceptional or uncontrollable circumstances, such as a natural disaster; or
- A change in the organizational structure of the LEA; or
- A precipitous decline in the financial resources of the LEA.

Waiver = meeting MOE!

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MOE Consequences ESSA Sec. 8521(b)

5 Year Penalty-Free

- LEA is not subject to sanctions for failing to maintain 90% effort for one year (either combined fiscal per student or aggregate State and agency expenditures) provided it has not failed to meet MOE for one or more of five immediately preceding fiscal years.

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SSA Monitoring - MOE

F1. Does the SEA or LEA perform MOE calculations?

F2. How many LEAs missed MOE in the prior three years?

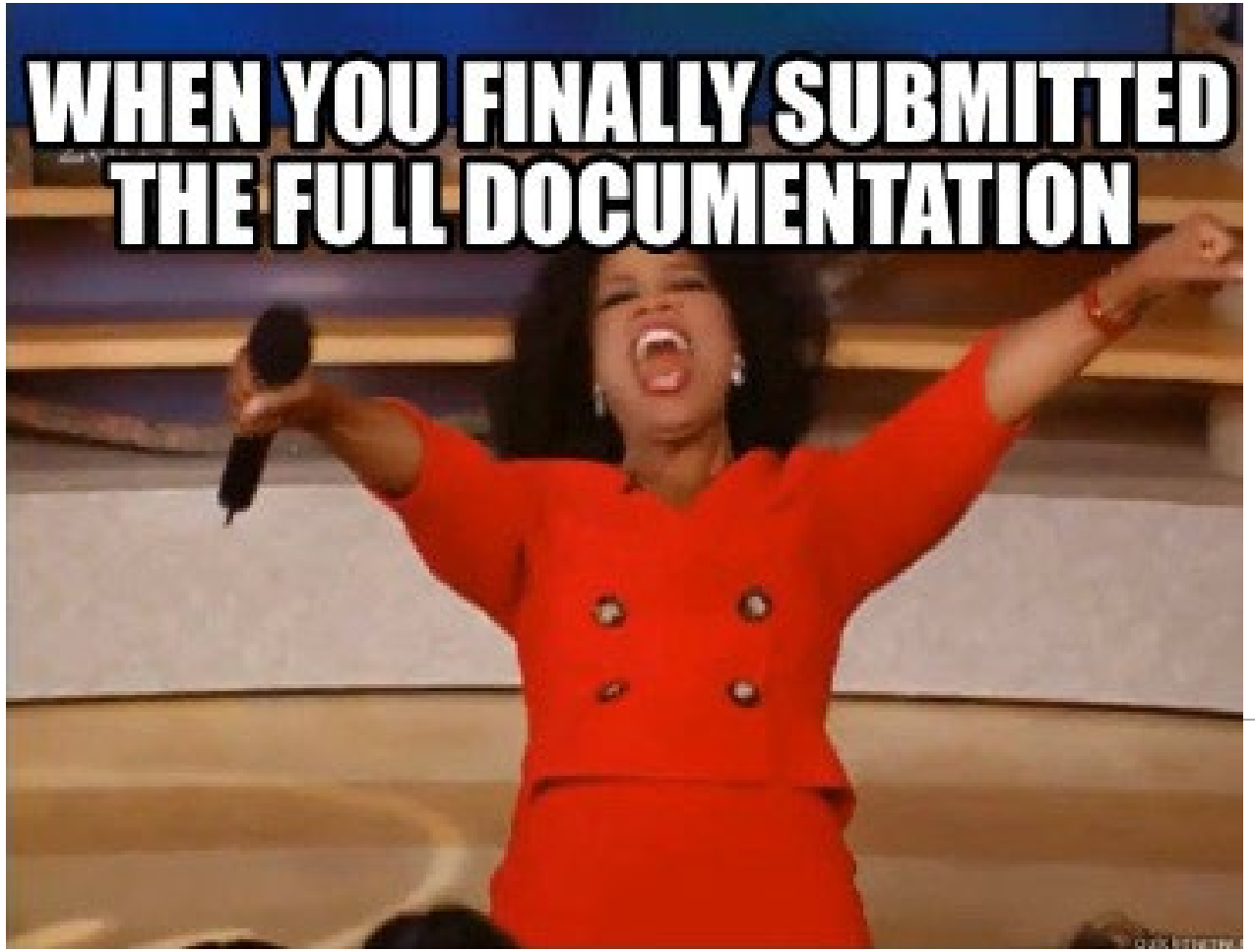
F3. How many LEAs requested and received a waiver in the prior three years?

F4. Please describe the process used to calculate MOE?

F5. What additional guidance and/or technical assistance does the SEA provide to LEAs regarding compliance with MOE requirements (including MOE calculations if the LEAs perform the MOE calculations)?

F6. In the last five years, what process has the SEA used to notify and assist LEAs that have failed to meet MOE in a given fiscal year, including support for requesting a waiver from the Department?

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Documentation

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Documentation *HOT BUTTON* Issues

Are records kept by school, grant, fiscal year?

Do you backup documentation?

What happens when staff retire or voluntarily leave?

What happens when staff are fired?

What happens when a school closes?

Staff keep documentation at home?

How document flexibilities/ changes since pandemic?



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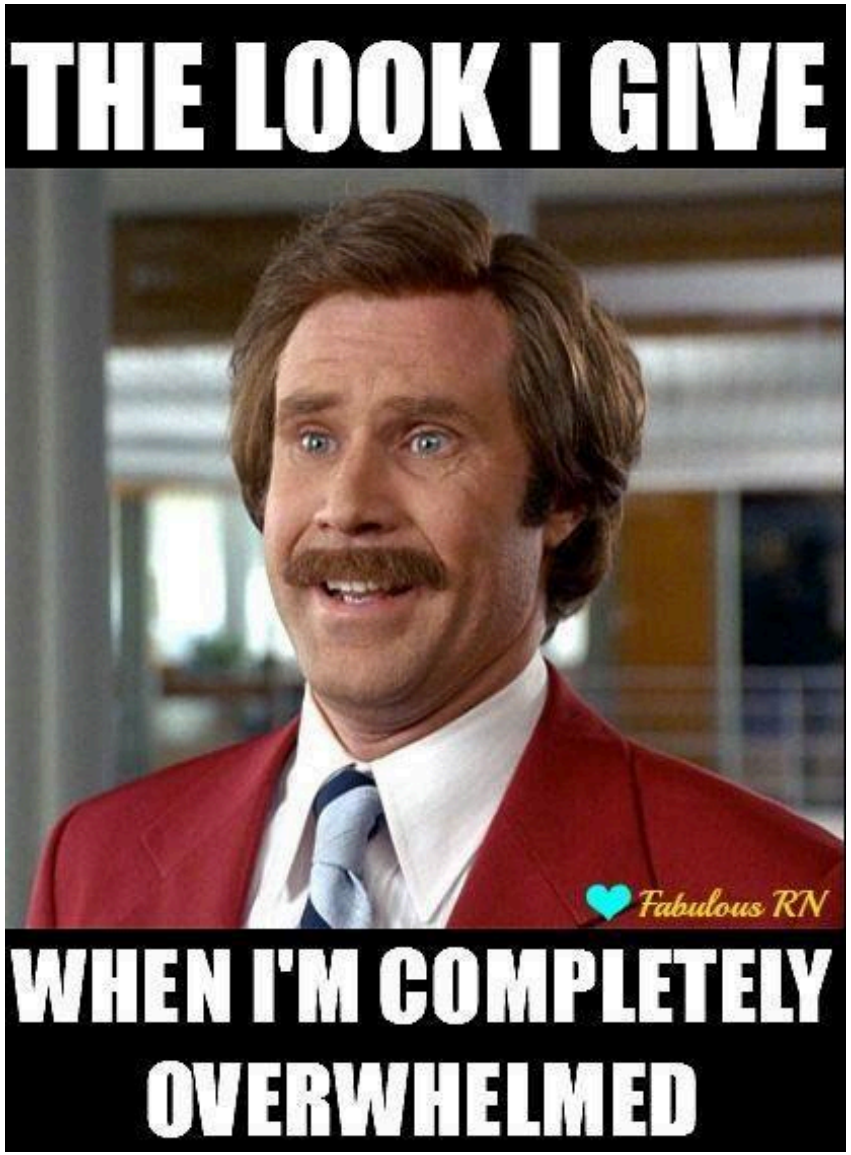
Allowability Documentation

- Retention Requirements For Records – 2 CFR 200.334 (new citation!)
- When original records are electronic and cannot be altered, there is no need to create and retain paper copies. (UGG Section 200.336 (new citation))
  - 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 and State Requirements!

- **SC = 6 years!!**
- (USDE = 5 years under the General Education Provisions Act)

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Questions??

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