


Fall Forum 2021
Stimulus Funds and UGG, and You and Me, So Happy (Back) Together




Monitoring Stimulus Funds

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Agenda

- 2021 OMB Compliance Supplement
- Recent Audit Findings

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Question

- Which rules apply to Stimulus funds?
 - a. The UGG
 - b. GEPA
 - c. Agency Guidance
 - d. No one really knows
 - e. It depends

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2021 Compliance Supplement

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2021 Compliance Supplement

- https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-2021-Compliance-Supplement_Final_V2.pdf
- Released on August 25, 2021
- 1,788 Pages

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- The Compliance Supplement is a document that identifies existing, important compliance requirements that the federal government expects to be considered as part of an annual Single Audit required by the 1996 Amendments of the Single Audit Act of 1984.

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Key Requirements

- Identifying Subawards on the SEFA and Data Collection Form
 - Auditees should identify the individual subprogram(s) the funds were expended under, including each separate Assistance Listing with the applicable alpha character.
 - A total for the ESF in its entirety should also be provided.
 - Auditees may need to determine which subprogram funds were expended through review of grant documents and inquiry of the source agency.
- Major Program Determination
 - Many auditees will have received and expended funds under multiple subprograms.
 - For major program purposes, auditors must evaluate ESF in its entirety.
 - All ESF subprogram expenditures, even those expenditures of subprograms not addressed in this ESF Compliance Supplement, must be considered as part of the ESF program for major program determination purposes.

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Compliance Requirements – ESSER, GEER, EANS

- | | |
|--|---|
| 1. Activities Allowed/Unallowed | 7. Period of Performance |
| 2. Allowable Costs/Cost Principles | 8. Procurement and Suspension & Debarment |
| 3. Cash Management | 9. Program Income |
| 4. Eligibility | 10. Reporting |
| 5. Equipment & Real Property Management | 11. Subrecipient Monitoring |
| 6. Matching, Level of Effort, Earmarking | 12. Special Tests & Provisions |

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Activities Allowed or Unallowed

- Allowable uses under GEER, ESSER, EANS: "to prevent, prepare for, and respond to coronavirus."
- Refer back to the statute, FAQs, and other guidance from ED
- <https://www.ed.gov/coronavirus?src=feature>

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Allowable Cots / Cost Principles

- For ESSER I, ESSER II, ESF-SEA, ESF II-SEA Funds, auditors should refer to the Cost Principles for States, Local Governments, and Indian Tribes.
- For GEER I, GEER II (including EANS), ESF-Governor, ESF II-Governor Funds has broad discretion for awarding funds under these subprograms to states, local governments and Indian tribes, educational institutions, or nonprofits. In order to determine which requirements apply, auditors should examine how each respective governor allocated the funds to subrecipients to determine which cost principles apply for each subrecipient.
- ALL EMPLOYEES PAID WITH ESF FUNDS MUST KEEP TIME & EFFORT!!!

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Stimulus Funds – Time & Effort

- For all ESF funds (ESSER/GEER/etc.), auditors should note that SEAs, LEAs, IHES, and other subrecipients must maintain time distribution records for all employees including when an individual employee is splitting their time between activities that are allowable and unallowable under all ESF programs.
- The requirements in the Uniform Guidance apply to all ESF expenditures including the requirements related to documenting personnel expenses in 2 CFR section 200.430(i).
- This would mean, for example, that an LEA maintains the records it generally maintains for salaries and wages, including for employees in leave status as permitted under CARES Act Section 18003(d)(12).

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Cash Management

- States will follow their Treasury-State Agreements
- All other non-federal entities must follow 2 CFR 200.305
- All non-federal entities must have written cash management procedures (2 CFR 200.302(b)(6))

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Equipment/Real Property Management

- ESF funds may be used to purchase equipment.
- Capital expenditures for general and special purpose equipment purchases are subject to prior approval by ED or the pass-through entity.
- In addition, with prior approval by the ED or the pass-through entity, recipients and subrecipients may use ESF funds to purchase real property and perform construction for improvements to land, buildings, or equipment that meet the overall purpose of the ESF program, which is "to prevent, prepare for, and respond to" the COVID-19 pandemic.

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Equipment/Real Property (cont.)

- Use of ESF funds for construction must also comply with the UGG and applicable requirements in 34 CFR 76.600 and 34 CFR 75.600–617.
- All construction contracts over \$2,000 must meet Davis-Bacon prevailing wage requirements.
- For information about the prevailing wages in the applicable region, see <https://www.doi.gov/agencies/whd/government-contracts/construction/regions>.

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Equipment/Real property (cont.)

- Auditors should determine whether governors, SEAs, and/or subrecipients received prior approval for capital expenditures for equipment acquisition or improvements to land, buildings, or equipment.
- For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the governor or SEA must receive prior approval from ED.
- For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the governor or SEA pass-through agency must provide prior approval to subrecipients.
- For construction, the pass-through entity must have considered applicable ED construction requirements as part of the pass-through entity's prior approval process for construction.
 - *For example, if an LEA proposed renovating a school building to increase the filters or ventilation to its HVAC system, did the pass-through entity appropriately ensure compliance with applicable construction regulations (such as 34 CFR 75.609 (Safety and Health standards) and 75.616 (Energy Conservation)).*

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Reporting

- FFATA Reporting is Required!
 - Auditors should review the compliance of the direct recipient with the reporting requirements of 2 CFR Part 170 and the accuracy of the amount reported by the recipient in FSRs against data in the direct recipient's accounting system. (Subrecipients?)
- ESSER and GEER
 - Under CRRSA, each governor/SEA that receives GEER I/ESSER II funds must meet the CARES Act reporting requirements that apply, and the SEA must submit a report to the Secretary within six months of the award.
 - Depending on the time the audit is conducted, auditors should examine the ESSER II and/or GEER II report and reconcile that reported data with underlying documentation and the public quarterly reporting amounts to ensure accuracy.
- Annual Reporting!!!

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Subrecipient Monitoring

- Auditors will look for Subrecipient Monitoring policies and procedures
 - *Not required by UGG*
 - *STRONGLY encouraged based on Compliance Supplement (Part 3)*

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Special Tests

- Participation of Private School Children
- Prioritizing Services or Assistance to Non-Public Schools Under EANS
 - *Determine whether SEAs have established and implemented criteria for prioritizing services or assistance to nonpublic schools that enroll low-income students and are most impacted by COVID-19.*
 - Ascertain that the SEA established criteria to prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by COVID-19.
 - Verify that the SEA implemented the relevant criteria to prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by COVID-19.

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Compliance Requirements - HEERF

- 1. **Activities Allowed/Unallowed**
- 2. **Allowable Costs/Cost Principles**
- 3. **Cash Management**
- 4. **Eligibility**
- 5. **Equipment & Real Property Management**
- 6. **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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Activities Allowed or Unallowed

- To prevent, prepare for, and respond to coronavirus.*
- Student Aid Portion
 - *HEERF I: Expended prior to December 27, 2020 – for expenses related to the disruption of campus operations due to COVID*
 - *HEERF I, II, III: Liquidated on or after 12/27/2020, financial aid to students*
 - *Prioritize students with exceptional need*
 - *May not condition the receipt on continued or future enrollment in the institution*
 - *May not require a student to consent to the application of the financial aid grants to satisfy a student's outstanding account balance as a condition of receipt of or eligibility for the financial aid grant.*
 - *"Institutions that add preconditions to receiving a financial aid grant that thwart this requirement may be subjected to oversight and corrective action."*

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Allowed or Unallowed (cont.)

- Institutional Portion spent on or before 12/27/2020; "to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship"
- Liquidated (spent) on or after 12/27/2020, may be used to defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll) and to make additional financial grants to students

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Allowed or Unallowed (cont.)

- HEERF III Has 2 additional use of funds:
 - To implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and
 - Conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances.

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Allowable Costs/Cost Principles

- In addition to the UGG restrictions, HEERF funds must NOT be used for:
 - *Endowments*
 - *Marketing or Recruitment*
 - *Funding contractors for pre-enrollment recruitment*
 - *Capital outlays with facilities related to athletics, sectarian instruction, or religious worship*
 - *Senior administrator or executive salaries/benefits/bonuses, etc...*
 - *Construction or Purchase of Real Property (minor remodeling?)*

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Earmarking

- Must use 50% of award for student aid portion
- CRRSAA requires institutions to provide at least the same amount of funding in financial aid grants to students as was required to be provided under its original Student Aid Portion HEERF I allocation amount.
- Under ARP, the amount of funds that a public and private nonprofit institution must devote to financial aid grants to students is the full amount allocated under the Student Portion subprogram of HEERF III.

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Period of Performance

- In the CARES Act, CRRSAA, and ARP Certification and Agreements, all institutions were given one calendar year (12 months) from the date of award in their HEERF Grant Award Notifications (GAN) to complete the performance of their HEERF grants.
- Institutions that received a supplemental award under ARP have one year to spend all remaining HEERF I, HEERF II, and new HEERF III funds for each grant from the date their HEERF III supplemental award is made.
- For CARES Act HEERF I awards, institutions were allowed to incur pre-award costs on or after March 13, 2020, to the date of their HEERF grant award for their Institutional Portion.

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Procurement, Suspension, and Debarment

- For those procurements supported by HEERF grant funds, auditors should determine if institutions sufficiently documented rationales and determinations in making any sole-source awards during the time of national emergency due to the coronavirus.
- Exceptions from the competitive procurement requirements of the UGG may be accepted if institutions have documented that the public exigency or emergency would not permit a delay, in accordance with 2 CFR section 200.320(f)(2).
- A circumstance that may influence this determination is the length of time between the procurements and the emergency at issue. Specifically, exceptions are more likely to be acceptable the closer the procurement occurred to the March 13, 2020, declaration of the national emergency.

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Reporting

- There are three components to reporting for HEERF:
 - Public reporting on the Student Aid Portion (quarterly);
 - Public reporting on the Institutional Portion (quarterly); and
 - The annual report.
 - ED will be collecting an annual report for HEERF grantees in February 2022.
 - ED will share more information regarding this annual report, which will require institutions to report on their uses of HEERF I CARES Act funds, HEERF II CRRSAA funds, and HEERF III ARP funds in advance of the ARP annual reporting deadline.

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Compliance Requirements - CRF

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Activities Allowed or Unallowed

- Costs must be:
 - Necessary expenditures incurred due to the public health emergency with respect to COVID-19;
 - Not accounted for in the governments' most recently approved budget as of March 27, 2020;
 - Cannot lawfully be funded using a line item, allotment, or allocation within that budget; or
 - Must be for a substantially different use from any expected use of funds in such a line item, allotment, or allocation; and
 - Incurred during the period that begins on March 1, 2020; and ends on December 31, 2021.
 - Please see Treasury's FAQs at https://home.treasury.gov/system/files/136/CRFGuidance-Federal-Register_2021-00827.pdf

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Allowable Costs/Cost Principles

- Only some UGG provisions apply to the CRF:
 - Subpart A – Definitions
 - Subpart B – General provisions except for 2 CFR sections 200.111–113;
 - 2 CFR section 200.303 regarding internal controls;
 - 2 CFR sections 200.330–332 regarding subrecipient monitoring and management; and
 - Subpart F – Audit Requirements

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Period of Performance

- Governments must use the direct payments for necessary expenditures incurred between March 1, 2020, and December 31, 2021, due to the COVID-19 public health emergency.
 - *Was originally 12/31/2020, but extended under CRRSAA.*

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Reporting

- Each prime recipient of CRF shall provide a quarterly Financial Progress Report that contains COVID-19 related costs incurred during the covered period (the period beginning on March 1, 2020; and ending on December 31, 2021) to Treasury OIG.
 - *Began on 9/21/2020*
- Each prime recipient shall report this quarterly information into the GrantSolutions portal.
- The prime recipient's quarterly Financial Progress Report submissions should be supported by the data in the prime recipient's accounting system.

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Subrecipient Monitoring

- Must monitor for compliance with applicable UGG provision, interim final rule, and supporting FAQs.
- Auditors directed to review subrecipient monitoring policies and procedures.

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ARP Addendum Expected

- Likely later this month (2020 CARES Act addendum came out in Dec. 2020)

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Audit Findings

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CRF Audits (Rhode Island, Feb. 2021)

- Treasury OIG met with State representatives after local news story that Governor planned to withhold CRF proceeds to balance the State's budget shortfall
 - State provided assurance to Treasury OIG "that allegations of Rhode Island using funds to impermissibly resolve a government revenue shortfall are untrue."
 - Report issued "to advise your office that the use of [CRF] proceeds to cover revenue shortfalls remains an allowable use of funds."

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CRF Audits (Iowa, Dec. 2020)

- Returned \$20.1 million in payments to Workday; vendor that provided technological upgrades to Iowa's HR and finance accounting systems.
 - (Iowa): Allowed gov't employees to access systems remotely; facilitated telework; response efforts.*
 - (OIG): Contract was entered in Oct. 2019*
 - (OIG): HR upgrades would not go live until July 2021; Finance upgrades in June 2022*

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CRF Audits (Iowa, Dec. 2020)

"While the new and modern Workday system may provide additional functionalities through a cloud-based environment, the timeline for achieving them is nearly two years away and the system upgrades were contemplated well before the pandemic began. As such, the Workday system is not available to meet the State's urgent needs during the covered period. Accordingly, we maintain our position that funding the Workday contract with Coronavirus Relief Fund proceeds is not a reasonable, allowable use of funds related to address the COVID-19 health pandemic."

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CRF Audits (American Samoa, July 2020)

- Recovered stipends for telework for staff that were already teleworking prior to COVID-19
- Questioned pre-payment of one year leased facilities for staff

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HEERF Audit – Remington College

- Guidance vs. Law
 - Auditor's disagree with ED's guidance on allowability for computers with CARES HEERF:
 - "The Department's guidance, which is seemingly more permissive in terms of allowable costs than the statute itself, impacts our ability to assess whether the school improperly used \$64,985 of its Institutional grant funds for this purpose."

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HEERF Audit – Remington College

- Period of Availability
 - Auditors argue 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."

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Questions?

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