



Fall Forum 2021

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

# Come Together! Braiding Stimulus Funds for Sustainability

Tiffany Kessler, Esq.

[tkessler@bruman.com](mailto:tkessler@bruman.com)

[www.bruman.com](http://www.bruman.com)

**M & BRUSTEIN**  
**MANASEVIT, PLLC**  
ATTORNEYS AT LAW



# Blending v. Braiding

## What's The Difference?

**Braided funding** is coordinated financial assistance, so each individual award maintains its program identity.

**Blended funding** is when financial assistance is merged into one award and each individual award loses its program identity.



# Blended Funding



# Blended Funding

## Benefits

- Less federal accountability
- Focus on outcomes
- More flexible allowable uses of funds
- Simplifies accounting

## Challenges

- Required statutory authority
  - *Waivers available?*
- Requires upfront accounting adjustments



# **Blended Funding Example: Elementary and Secondary Education Act (ESEA/ESSA)**

---

## Schoolwide Consolidation

- Federal, state and local funding options

## Consolidated Administration

- Consolidate ESEA administrative funds at SEA or LEA level
- Additional allowable uses of funds
- Guidance allows ESSER/GEER admin funds to be blended under consolidated admin subject to certain requirements



# Blended Funding Example: Workforce Investment Opportunity Act (WIOA) Sec. 121

---

## Infrastructure Costs

- Memorandum of Understanding between Local Workforce Board, One-Stop Partners, Chief Elected Officials
  - *Non-personnel costs necessary for one-stop operations*
- Source of Funding (34 CFR 463.720):
  - *WIOA Title I: Program funds and/or administrative funds*
  - *Partner Programs: Limited to admin funds, as appropriate*
  - *Adult Ed (WIOA Title II): Must come from local admin funds*
  - *Perkins: Local admin of postsecondary programs*



# Braided Funding



# Braided Funding

## Benefits

- No statutory authority required
- Allows you to leverage funding from multiple sources to complete projects/programs that could otherwise not occur

## Challenges

- Each funding stream maintains its identity including eligibility criteria and scope of authorized activities
- Supplement not supplant requirements
- Clearly document allocability
- Loss of “ownership” / “territory”





# Braiding Example: Response to Intervention Model

---

## Response to Intervention

- Typically, three tiers. The tiers generally include:
  - *First Tier: Class-wide group instruction in their general education setting (State/local funds)*
  - *Second Tier - Targeted or remedial intervention (Title I,A funds)*
  - *Third Tier - Intensive individual interventions*
    - *IDEA funds (CEIS or Child Find)*
    - *Title III,A funds, etc.*



# Allocability and Proportional Benefit

---

Can use funds under more than one program to support different parts of the same project if it meets the following conditions:

- *The costs comply with the requirements of each program with respect to the part of the project assisted with funds under that program;*
- *The accounting system can identify the costs paid for under each program; and*
- *Document proportionate benefit.*

34 CFR 76.760



# Allocability and Proportional Benefit (cont.)

---

- If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the programs or activities based on the proportional benefit.
- If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis.

2 CFR 200.405



## Clarifying Program Allowable Uses



# Examples of ESSER Allowable Uses

- Any activity allowed under ESEA, IDEA, AEFLA, Perkins, or McKinney-Vento Title VIIB
- Activities to address the needs of
  - *low-income students,*
  - *children with disabilities,*
  - *English learners,*
  - *racial and ethnic minorities,*
  - *students experiencing homelessness, and*
  - *foster care youth*
- Mental Health Services
- Addressing learning loss
- School facility repairs
- Improve indoor air quality
- Other activities that are necessary to maintain the operation of and continuity of services
- Continuing to employ existing staff

ESSER FAQs:

[https://oese.ed.gov/files/2021/05/ESSER.GEER\\_.FAQs\\_5.26.21\\_745AM\\_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf](https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf)



# ESSA Allowable Uses of Funds Examples

---

- Title I,A – improving academic achievement of eligible students, teachers, parents
- Migrant Education Program – academic instruction for eligible students
- Title II,A – professional development all teachers, school leaders
- Title III,A – English acquisition for eligible students
- Title IV,A – programs for all students
  - *Well rounded educational opportunities*
  - *Safe and healthy schools*
  - *Education technology*
- 21<sup>st</sup> CCLC – after-school programs for all students



# IDEA Allowable Uses of Funds

---

- Generally, for special education and related services to eligible identified students
- Child find – identification of special education students
- Coordinated early intervening services (CEIS)– additional academic support for struggling students not identified under IDEA (grades K-12)
- Comprehensive coordinated early intervening services (CCEIS)– additional academic support for both identified and students not identified under IDEA (age 3 through grade 12)



# Perkins Allowable Uses of Funds

---

- Develop, coordinate, implement, or improve CTE programs to meet the needs identified in the comprehensive local needs assessment (CLNA)
  - *Career Exploration*
  - *Professional Development*
  - *Skills for high-skill, high-wage, or in-demand occupations/industry*
  - *Integrating academic skills into CTE programs and programs of study*
  - *Improving student achievement of local levels of performance*
  - *Evaluations of Perkins activities (including CLNA)*





# AEFLA Allowable Uses of Funds

---

- Establish or operate programs that provide adult education and literacy activities, including programs that provide such activities concurrently:
  - *Adult education*
  - *Literacy*
  - *Workplace adult education and literacy activities*
  - *Family literacy activities*
  - *English language acquisition activities*
  - *Integrated English literacy and civics education*
  - *Workforce preparation activities*
  - *Integrated education and training.*



# Navigating Supplement not Supplant



# Not all SNS requirements are the same!



It's critical to understand the limits of each program.



# SNS Requirement Examples

## Program Examples

	Title I,A	Migrant Education	Title II,A	Title III,A	Title IV,A	REAP/SRSA	21 <sup>st</sup> CCLC	IDEA	Perkins	
<b>SNS Standard</b>	State and Local Funds	ESSA Sec. 1118(b)	ESSA Sec. 1304(c)(2)	X	X	X	X	X	X	
	Non-Federal Funds	X	X	ESSA Sec. 2301	X	ESSA Sec. 4110	X	Subs ESSA Sec. 4202(b)(2) (G)	X	Sec. 211
	Federal, State and Local Funds	X	X	X	ESSA Sec. 3115(g)	ESSA Sec. 5232	SEA ESSA Sec. 4204	SEA 34 CFR 300.164(a); LEA 300.202(a)	X	



# SNS Presumptions of Supplanting

---

Applicable to some but not all SNS requirements!

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. (Limited to Migrant and Perkins Program) - Used 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.



# SNS – Additional Program Requirements

---

- Rural Education Achievement Program (REAP) and Small, Rural School Achievement (SRSA) – include an additional SNS provisions:
  - *If the activity is one that would ordinarily be covered with other Federal, State, or local funds (for example, in most cases, standard textbook purchases would ordinarily be covered with State or local funds)*
- To rebut the presumptions: *“the school district may be able to demonstrate that, because of certain changes, it no longer can support an activity with other Federal, State, or local funds that it supported in the prior year.”*
- <https://oese.ed.gov/tag/elementary-secondary-education/page/69/>



# SNS Testing!



- SNS is a current to prior year test.
- ESSER and GEER funds do not have a SNS requirement but are considered Federal Funds.
- May be able to use GEER/ESSER funds to remove supplanting presumptions for programs without an "other Federal" SNS test.



# Example: Transition to Perkins V

---

- Perkins V allows for activities and supports not previously allowed in Perkins IV:
  - *CTSO costs for skills competitions*
  - *Reduce or eliminate out-of-pocket expenses for special populations*
- If local recipients paid for such activities with non-federal funds in the prior year, using Perkins V funds would raise presumption of supplanting
- Since ESSER funds have no SNS provisions, locals could move from non-federal to ESSER one year, and then from ESSER funds to Perkins the next.





# **Who is working or currently collaborating with staff on creating braided projects?**





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





# Steps

---



**Create a braided project plan.  
(Include program administrators from the programs utilized.)**



**Develop a budget for the project that shows the share of funds provided from each contributing program.**



**Monitor accountability, outputs and outcomes for each program that contributes to the project.**



# Questions to Consider:

---

- 1. Can we clearly articulate the scope of the project and how each program will contribute?**
  - *Determine whether this is a new project or program or whether the goal is to expand the scope of an existing project.*
  - *Articulate how braiding funds would help accomplish what you want to achieve.*
  - *Address long term sustainability, as applicable.*



# Questions to Consider (cont.):

---

## 2. Have we identified suitable programs that can contribute?

- *Find programs with similar or complimentary goals.*
  - Example: if you are seeking to address student homelessness, consider funds from the U.S. Departments of Housing and Urban Development, Agriculture and Education, whose programs share related missions.
- *Does another office or program already run something similar?*
  - Assists in demonstrating allowable uses.
  - Must ensure not supplanting, as applicable.
- *Consider risks in partnering with other programs, agencies, etc.*
  - Clearly articulate roles, responsibilities, financial management capabilities, etc.



# Questions to Consider (cont.):

---

## 3. Have we verified that sufficient resources will be available to accomplish our goals?

- *Requires clear budgets.*
- *Documentation demonstrating that funding is available to accomplish and complete the program.*
- *Verification each program contribution is allowable.*
- *Clearly identify how any matching or in-kind services required will be met and documented.*



# Questions to Consider (cont.):

---

## 4. Have we identified potential barriers or challenges to implementation and determined how we can overcome them?

- *Does the entity have the financial capability to track the braided funding?*
- *Each program should clarify all limitations on funding or allowable uses.*
  - Administrative caps, allowable use limitations, supplanting, etc.
  - Inevitably adjustments will need to be made, it must be clear how adjustments must occur.



# Questions to Consider (cont.):

---

5. How do we demonstrate project completion/goals have been met?
  - *Make sure all programs understand and agree to common goals and how success will be measured.*
  - *Agree how the project will be overseen and resources tracked.*





# **Braiding ESSER/ HEERF Funded Initiatives**



# Braided, not Blended

---

- ESSER and GEER funds may be used in combination with, but not blended with, funding under ESEA, IDEA, AEFLA, Perkins V, and McKinney-Vento, or any other education funds.
- May use ESSER and GEER funds to expand participation in an activity or services it is currently conducting or plans to conduct under these programs.



# ESSER Project: Build a new school

---

- ESSER funds to buy land/building?
  - *Possible, but when federal funds are used = conditional title, 15-year reporting for land, disposition instructions from USDE.*
  - *Recommend State/Local funds to purchase land/building*
- ESSER funds
  - *HVAC systems, touchless sinks and toilets, extra nurse space, outdoor classroom furniture, etc.*
- IDEA funding
  - *Accessibility requirements, specialized equipment and supplies for eligible student use, etc.*
- CTE/ Perkins funding
  - *Equipment for various CTE or programs of study (automotive, culinary, cosmetology, etc.)*



# **ESSER Project: Expand districtwide summer school program to address learning loss**

- ESSER funds cannot replace current programs because hard to justify that it “prepares for / responds to / prevents” coronavirus.
  - *Could expand current programming and braid ESSER funds into preexisting programs (usually run with State/local funds, Title I, A funds, 21<sup>st</sup> CCLC funds, etc.)*
    - Larger space, more sites for social distancing and/or serve more students
    - Services to more students
    - Expand hours/days of the program
    - Hire more staff, etc.



# **ESSER Project: LEA wants to apply for 21<sup>st</sup> CCLC subgrant but ESSER funds are being used for afterschool programs.**

21<sup>st</sup> CCLC 5-year subgrant. 2021 award be awarded through 2026.  
ESSER funds end Sept 2024.

- LEA need less funding for years 2021-2024 since 21<sup>st</sup> CCLC requires funds be used to supplement existing after-school programs (i.e., current ESSER program).
- When ESSER expire in 2024, 21<sup>st</sup> CCLC funds may be used to supplant the ESSER program because the LEA CAN rebut the presumption of supplanting.
- Therefore, less 21<sup>st</sup> CCLC funds may be needed in 2021- 2024 with more 21<sup>st</sup> CCLC funding needed in 2025-2026.



# ESSER Project: New District mental health services program

---

- ESSER funds may be generally used for mental health services related to the pandemic.
  - *Hire staff, equipment, supplies, etc.*
  - *May be used for staff and students!*
- Title IV, A funds – funds may be used for safe and healthy students
  - *Watch supplement not supplant of state/local funds. No federal SNS so Title IV,A may replace ESSER funds.*
- SLFRF funds may be used for mental health services.



# **HEERF Project: Expanding Current Programs**

---

- HEERF funds may be used for additional equipment for social distancing in hands-on learning
  - *Examples: dummies for CPR/dental classes, additional stations, tools, etc.*
- Local funds, etc. for construction of additional space



# Resources

---

- **AGA Intergovernmental Partnership Collaboration Series: Blended and Braided Funding: A Guide for Policy Makers and Practitioners by AGA (Dec 2014)**  
<https://www.agacgfm.org/AGA/Intergovernmental/documents/BlendedandBraidedFunding.pdf>
- **GAO Report (Feb 2014) – Implementation Approaches Used to Enhance Collaboration in Interagency Groups:** <https://www.gao.gov/assets/gao-14-220.pdf>
- **Non-Regulatory Informational Document Released: June 2019**  
<https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf>
- **2021 Compliance Supplement:** [https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-2021-Compliance-Supplement\\_Final\\_V2.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-2021-Compliance-Supplement_Final_V2.pdf)





# Legal Disclaimer

---

This presentation is intended solely to provide general information and does not constitute legal advice or a legal service. This presentation does not create a client-lawyer relationship with Brustein & Manasevit, PLLC and, therefore, carries none of the protections under the D.C. Rules of Professional Conduct. Attendance at this presentation, a later review of any printed or electronic materials, or any follow-up questions or communications arising out of this presentation with any attorney at Brustein & Manasevit, PLLC does not create an attorney-client relationship with Brustein & Manasevit, PLLC. You should not take any action based upon any information in this presentation without first consulting legal counsel familiar with your particular circumstances.