

COVID Flexibilities and Compliance

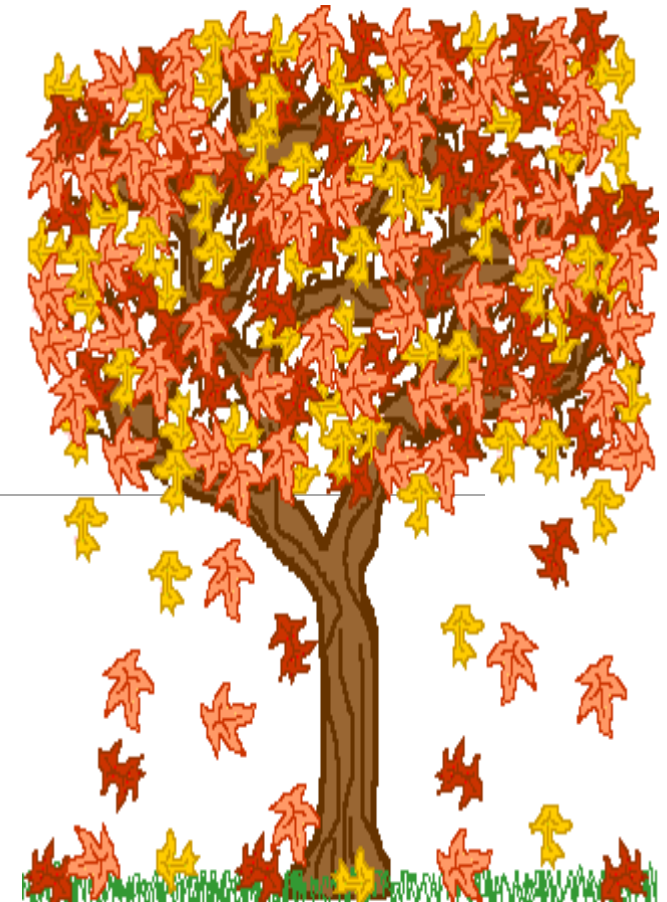
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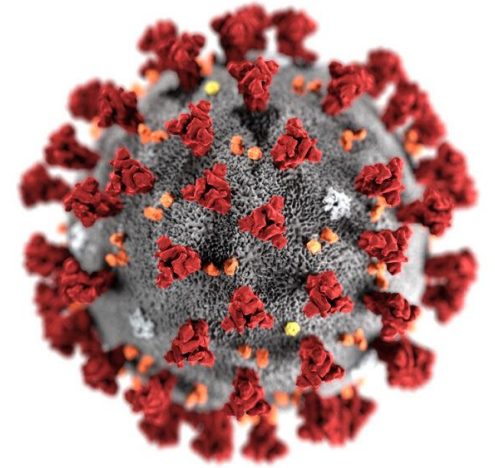
Agenda

- Recent ED waivers
- OMB and ED UGG COVID Flexibility
- CARES Act
 - Equitable Services Updates

<https://www.bruman.com/resources/>



COVID-19 Administration Update



Department of Education Fiscal Waivers SY 19-20

Tydings Amendment (FY 2018)

- ESSA
- Perkins (SEA only)
- AEFLA (SEA only)
- IDEA

ESSA waivers

- Title I-A 15 percent carryover (can waive more than once every three years)
- Title IV-A
 - Needs assessment
 - Content-area spending requirements
 - Spending limitation for technology
- Definition of “professional development

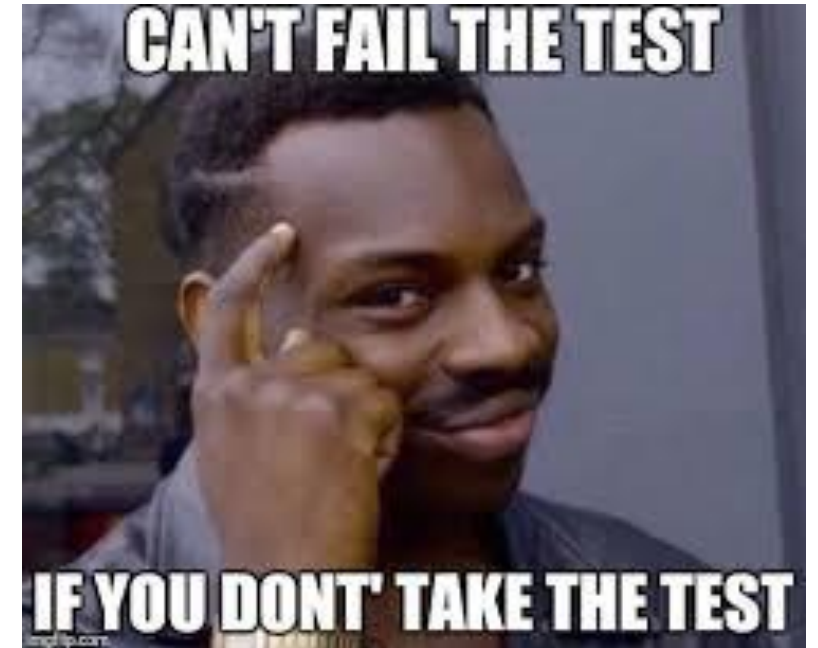
Waivers for SY 2020-2021?

No assessment waivers

Likely forthcoming...

- Title IV-A waivers
- 21st Century Community Learning Centers waivers

Could change if new administration elected



CARES Act Funding: Period of Availability

ESSER, GEER : Pre-award costs from March 13, 2020 – September 2022

- Follows EDGAR Part 76; UGG: requires “obligation” of funds within period

CRF: Pre-award costs from March 1, 2020 – December 30 2020

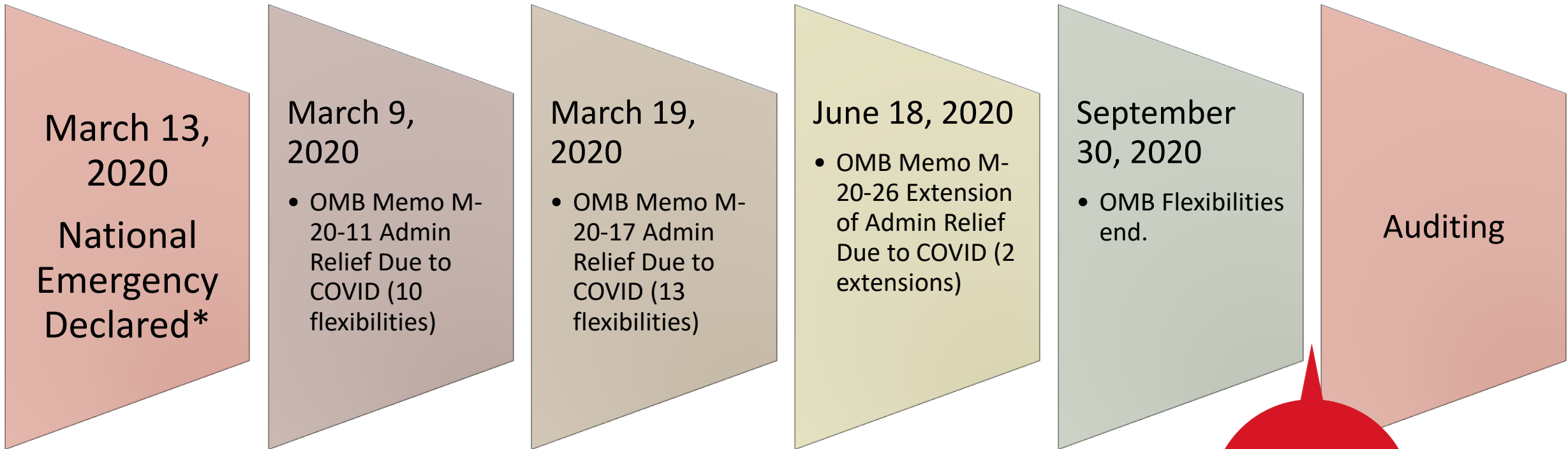
- Cash management improvement act does not apply: requires costs to be “incurred” within period
- Services provided / goods delivered within the covered period
- Payment may happen within 90 days after period ends

OMB and ED COVID Flexibility



30 days hath
September, April, June
and November, all the
rest have 31, except
for 2020 which has
5328.

OMB COVID Flexibility Timeline



*The National Emergencies Act defines the disaster start date on March 13, 2020

**YOU ARE
HERE**

March 19, 2020 (OMB Memo M-20-17)

Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations

- Short term relief for the requirements under 2 CFR Part 200 without compromising accountability requirements. (per authority under 200.102 exceptions)
- Applies to All Federal Granting Agencies!
- Expired June 19, 2020 (valid 90 days)



<https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-17.pdf>

OMB COVID-19 Guidance

1. SAM registration
2. Application deadline flexibility
3. Waiver of Notice of Funding Opportunities
4. No-cost extensions
5. Abbreviated non-competitive continuation
6. Salary and benefits allowability
7. Cancellation fees allowability
8. Waivers from prior approval
9. Procurement exemptions
10. Reporting extensions
11. Indirect cost rate extensions
12. Closeout extensions
13. Single audit extension

April 8, 2020 ED Fact Sheet

Select Questions Related to Use of Department of Education Grant Funds During the Novel Coronavirus Disease 2019

- ED adopted 2 of the OMB flexibilities



<https://www2.ed.gov/documents/coronavirus/factsheet-fiscal-questions.pdf>

6. Allowability of salaries and other project activities (200.403; 200.404; 200.405)

May continue to charge salaries and benefits to current active Federal award consistent with recipients policy of paying salaries (*under unexpected or extraordinary circumstances*) from all funding sources (Federal and non-Federal)

Appropriate records and cost documentation must be maintained (200.302; 200.333) to substantiate costs.



ED Fact Sheet

May a grantee or subgrantee continue to pay the compensation of an employee paid with grant funds from ED during the period the employee is unable to work because his or her organization is closed due to novel Coronavirus Disease 2019 (COVID-19)?

Yes. Generally, a grantee or subgrantee may continue to charge the compensation

- Consistent with the organization's policies and procedures re: emergencies
- The grantee or subgrantee may amend or create a policy in order to put emergency contingencies in place for Federal and non-Federal similarly situated employees.

ED Fact Sheet (cont.)

However, an employee who is being paid with Department grant funds while the program grant activities are closed in whole or in part due to the COVID-19 pandemic may not also be paid for the time during which the program is closed by the organization or another organization for working on other activities that are not closed down.

Maintain appropriate records and cost documentation.

At the same time, recipients should consider ways that employees paid with grant funds can support continuing activities, including distance learning opportunities for students served by the grant.

7. Allowability of Costs not Normally Chargeable to Awards (200.403 -.405)

Recipients are permitted to charge costs related to the cancellation of events, travel, or other activities necessary and reasonable for the performance of the award, or the pausing and restarting of grant funded activities, due to the public health emergency.

May charge the full cost of cancellation .

Does not mean additional funds may be available in the future to eventually carry over the event or travel.

Recipients must maintain appropriate cost documentation (200.302; 200.333)

Awarding agencies may list additional guidance on specific cost allowability on website or provide agency program contact.



ED Fact Sheet

If a conference, training, or other activity related to a grant from the Department is cancelled due to COVID-19, may grant funds be used to reimburse nonrefundable travel (e.g., conveyance or lodging) or registration costs that were properly chargeable to the grant at the time of booking?

Yes, provided that a grantee or subgrantee first seeks to recover nonrefundable costs (e.g., travel, registration fees).

- Must seek to exercise “Act of God” clauses to the extent possible in light of the COVID-19 outbreak.

May charge the appropriate grant for the cancellation costs, provided the costs were reasonable and incurred in order to carry out an allowable activity under the grant.

Must maintain appropriate records and cost to substantiate the charging of any cancellation or other fees related to the interruption of operations or services.

ED Fact Sheet (cont.)

If a grantee or subgrantee is planning future travel under a grant from the Department, may it purchase travel insurance with grant funds?

Due to health concerns related to COVID-19, grant-supported travel generally should not be occurring.

However, if travel is permitted and is the only means to carry out an essential grant function that must be undertaken on a time-sensitive basis during the COVID-19 pandemic,

Consistent with the grantee's or subgrantee's travel policy, travel insurance is allowable provided the cost is reasonable and allocable to the grant consistent with the Federal cost principles described in 2 CFR Part 200 Subpart E of the Uniform Guidance.

11. Single audit extension (200.512)

- Audits, not yet filed (as of March 19, 2020) with the Federal Audit Clearinghouse, should be permitted to delay submission for 6 months (September 2020).
- No further action is required to enact this extension.
- Maintain documentation of the reason for the delay – approval not required.

June 18, 2020 (OMB Memo M-20-26)

Extension of Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations

- Extended two flexibilities
- Applies to All Federal Granting Agencies!



<https://www.whitehouse.gov/wp-content/uploads/2020/06/M-20-26.pdf>

6. Allowability of salaries and other project activities (200.403; 200.404; 200.405)

- Extended through September 30, 2020

- May continue to charge salaries and benefits ... consistent with recipients policy of paying salaries (*under unexpected or extraordinary circumstances*) from all funding sources
 - Awarding agencies may evaluate grantee's ability to resume activity and appropriateness of future funding (as normally done)
 - Payroll costs paid with Paycheck Protection Program (PPP) loans or other CARES Act funds may not also be charged to current Federal awards as it would be double payment.
 - Due to limited funding, awarding agencies MUST inform recipients to exhaust other available funding sources to sustain its workforce and implement necessary steps to save overall operational costs (such as rent negotiations) during this pandemic period in order to preserve Federal funds for the ramp-up effect.
 - Recipients should retain documentation of their efforts to exhaust other funding sources and reduce overall operational costs.

13. Single Audit Extension (200.512)

- Audits not filed by March 19, 2020: Federal awarding agencies may delay audits with normal due dates from March 30, 2020 through Jun 30, 2020 up to 6 months.
- Audits with a normal due date from July 31, 2020 through September 30, 2020 will have a 3 month extension – to December 31, 2020.
 - No further action by Federal awarding agency is required to enact this extension.
 - No specific approval is required.
 - Documentation of the reason for the delayed filing must be maintained.

Schedule of Expenditures of Federal Awards (SEFA) Requirement:

- Recipients and subrecipients must separately identify the COVID-19 Emergency Acts expenditures on the SEFA and audit report findings.

April 29, 2020 ED Fact Sheet



Repurposing Federal
Equipment and
Supplies to Combat
COVID-19



<https://www2.ed.gov/documents/coronavirus/covid19-repurposing-equipment-supplies.pdf>

Allowable Uses

Pre-COVID

Equipment must be used in the program for which it was originally acquired. Shared use allowed, so long as it does not interfere. 2 CFR 200.313.

Both equipment and supplies must be reasonable, necessary and allocable to the federal awards



COVID FAQs

“For temporary use, grantees and subgrantees may repurpose federally purchased equipment and supplies that are not currently in use to carry out a Department grant program to meet the general education needs of teachers, related service providers, and other educational personnel during the national emergency caused by COVID-19.”

How to repurpose equipment and supplies

To do this, grantees / subgrantees must mark the items as being repurposed, and include the following documentation:

- (1) Description and itemization of items
- (2) Source/amount of federal funds involved
- (3) Where the equipment/supplies are assigned for use during the emergency
- (4) Date on which the equipment or non-consumed supplies are returned for federal purposes

What if items are lost, stolen?

- Must replace equipment and **non-consumable** supplies with nonfederal funds

Can I buy new equipment/supplies with federal funds to be repurposed?

- No –only for existing equipment/supplies

August 2020 ED Fact Sheet

Regarding Contracted Services Not Performed Due to COVID-19



<https://www2.ed.gov/documents/coronavirus/factsheet-covid19-contracts.pdf>

Contracted Services Not Performed Due to COVID-19

Can grant funds be used to cover the cost of approved contracted services that were not performed by a contractor because of the COVID-19 pandemic?

Yes, in some limited circumstances, grant funds may be used to cover the costs of contracted services that were cancelled or otherwise not performed due to the COVID-19 pandemic if the contractor was ready and able to perform such services at the time.

Contracted Services Not Performed (cont.)

1. Check on alternative arrangements first:
 - Alternative ways to provide those services (e.g., teleconferencing, training via webinars, and other virtual or remote strategies for service delivery) to carry out the intent and purpose of contracts.
 - May require modification of the contract.
2. Steps if services cannot be provided in an alternative manner:
 - a) Recover refundable and nonrefundable costs paid in advance of services;
 - If unable to recover funds paid, and the contractor was prevented from performing under the contract, but was ready and able to perform such services at the time, due to the grantee's or subgrantee's closure or other inability to accept the services, caused by the pandemic then should try to negotiate a reasonable compromise amount.
 - b) Invoke emergency or "act of God" or "force majeure" provisions, as applicable;
 - c) If no compromise can be negotiated, may charge the appropriate grant for the costs of cancelling the contract.
 - Must be necessary, reasonable, allowable under the grant and meet UGG requirements.

What Now?

How to Assure Allowability in Light of COVID



Ensuring Allowability of COVID Costs 200.403

To be allowable, a cost must:

- Be **necessary, reasonable** and **allocable**
- Comply with the cost principles and federal award
- Be **consistent with policies and procedures** applying uniformly to federal and nonfederal activities and costs
- Be adequately **documented***

*Not complete list under 200.403

Amended Allowability Documentation

1. Rule: Ensure Costs are Allowable 200.403

- Generally unallowable: Fines, penalties, etc. (200.441); Losses on contracts 200.451
Correction: Document, Document, Document
- OMB Flexibility and supporting documents (cancellations, contract fees, etc.)

2. Rule: Prior Written Approval 200.407

- Revision of budgets and program plans (200.308)
Correction: After-the-fact Approval / Amendments
- Amend budgets to align with spending and submit for approval
- Amend grant applications, plans, etc. with adjustments made during COVID.

Amended Allowability Documentation

3. Rule: Contract Oversight 200.318(b)

- Maintain oversight to ensure contractors perform in accordance with the terms of contracts. 200.318(b)
- Invoices match agreements.

Correction: Amend contracts with 3rd party providers, as needed.

- Update/amend contracts to reflect changes in scope, etc. Do not pay invoices unless aligned with contract or amendments, approved changes, etc.

4. Rule: Methods of Procurement 200.320

- Noncompetitive procurement only permitted if emergency that will not permit a delay resulting from competitive procurement

Correction: Document immediate need.

Updated Policies and Procedures

■ Policies and procedures

- “the grantee or subgrantee may amend or create a policy in order to put emergency contingencies in place....” – ED’s Fact Sheet, April 8, 2020

Examples of potentially affected policies/procedures:

- Allowability Procedures - 200.302(b)(7)
- Managing Equipment – 200.313(d)
- Travel Policy - 200.474(b)
- Time and Effort Procedures - may be required, depending on the agency. Example: “essential” ED Cost Allocation Guide
- Subrecipient Monitoring Procedures – required by Compliance Supplement
- Record Retention Procedures

Tracking Time and Effort During COVID

Time and Effort: 2 CFR 200.430(i)

Look at:

Policies and procedures

- New forms? (no longer set-schedule?)
- Edited updates?

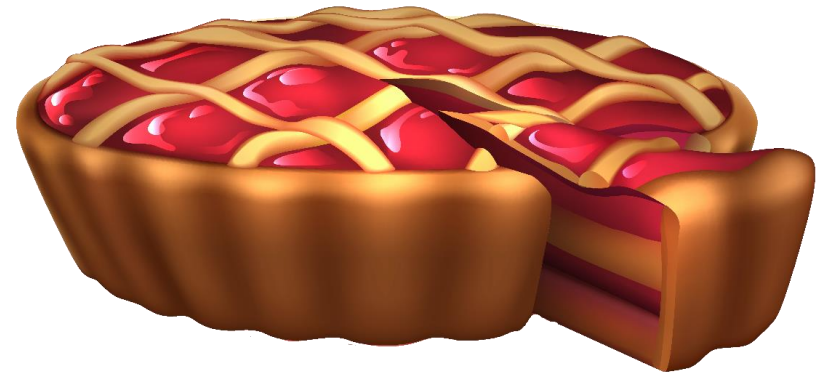
Allocability:

- Actual effort
- Allocate using prior, representative period

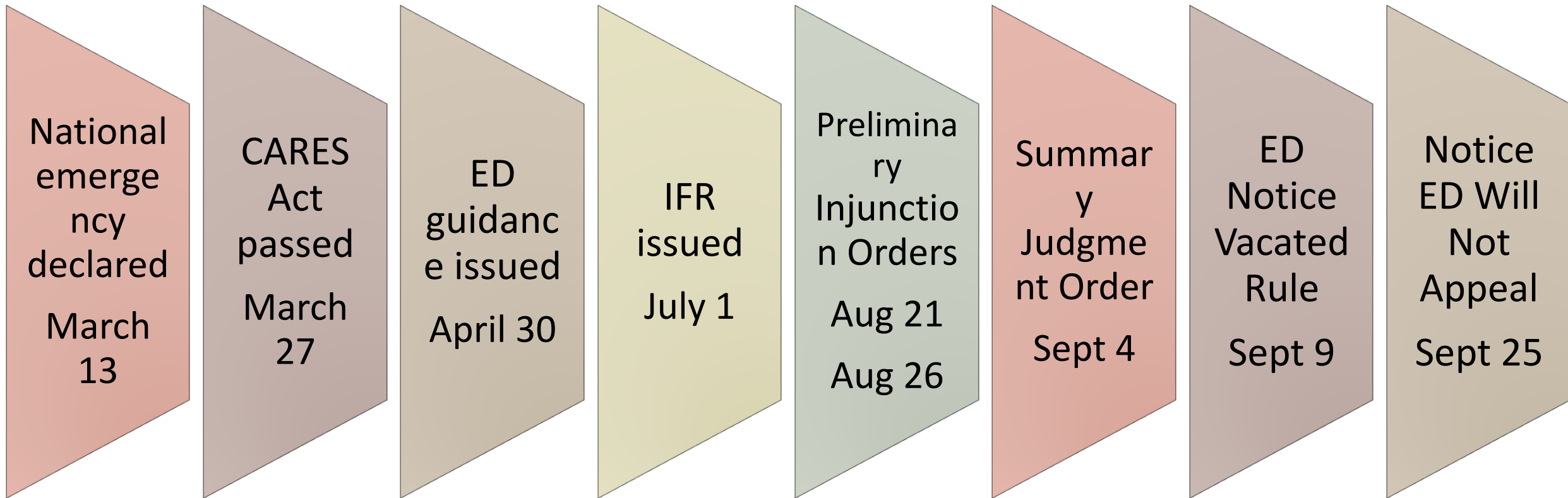


"I can't remember—do I work at home or do I live at work?"

CARES Act Equitable Services



CARES Act Equitable Services Timeline



I already calculated the proportional share and spent some of the money... now what?

Re-run the calculation based on the total award;

Review the revised calculation against the existing calculation;

Adjust the remaining, unobligated balance to the best of your ability.

Consult, consult, consult....



What is my audit exposure for funds already spent?

- “The Department will not take any action against States or local districts that followed the guidance and/or the IFR prior to notice of the court’s decision.” – ED Letter 9/25/20
- Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by erroneous written guidance from the department. 34 CFR 81.33(b)
- To meet this standard – reliance must be reasonable.
 - After the IFR was vacated, reliance is not “reasonable”.

Questions??



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