

Multi-Year Subscriptions and Licenses



Oftentimes, multi-year subscriptions and license purchases are deemed to be a more prudent purchase because the annual expense would be lower than if the license or subscription contract would be for an annual service. This calls into question, can ESSER funds be used to pre-pay for multi-year subscriptions or licenses?

There are two criteria that must be met for every ESSER-funded purchase to be allowable:

- The funded activities must be necessary to ***prevent, prepare for, or respond to COVID-19, including its impact on students***. Therefore, the first order of operations would be to demonstrate the connection between the need for the subscription and license and the LEA's response to COVID-19.
- The funded activities to prevent, prepare for, or respond to COVID-19 must be obligated within the period of availability (by 9/30/22 for ESSER I; 9/30/23 for ESSER II; and 9/30/24 for ESSER III).

Should subscriptions and licenses meet both of those criteria, the next factor that must be addressed when considering the allowability of multi-year contracts is the number of years being purchased. The U.S. Department of Education released an [FAQ document in December of 2022](#) outlining the risks associated with prepaying for services. One FAQ (FAQ E-3.d.) specifically responds to the question about how long ESSER-funded activities may continue beyond the liquidation period. The FAQ response indicates that under some circumstances, activities may continue for a ***reasonable period*** beyond the liquidation period. The FAQ also outlines the factors that impact how long ESSER-funded activities may extend past the liquidation period to be considered a ***reasonable period***:

- Whether the funds were properly obligated and liquidated in a timely manner;
- Whether the activities would be allowed to extend beyond the liquidation period under applicable State and local procurement rules (i.e., a State or LEA must follow the same policies and procedures it uses for procurements from its non-Federal funds) (see 2 CFR §§ 200.317 through 200.327, 200.403(c));
- Whether the extended activities constitute a reasonable and necessary use of Federal funds; and
- Whether prudent business practices (2 CFR § 200.404(b) & (d)) and internal controls (which generally limit prepayment) would support the continued activities for the length of time proposed.

The Colorado Department of Education (CDE) has determined that when multi-year subscriptions or licenses become a more reasonable and prudent use of federal funds than an annual subscription or license due to cost savings of a multi-year purchase, the reasonable period for such activities is until the end of the fiscal year within which the ESSER funds are liquidated. For example, if ARP ESSER III funds are used to purchase a multi-year subscription, the reasonable period would be until June 30, 2025. Therefore, any multi-year subscriptions and licenses purchased for implementation beyond the 2024-2025 school year must be prorated and ESSER funds can only be used to pay for the portion that covers through June 30, 2025.

Additionally, purchases made in the last 1 to 3 months of a performance period should be well documented and clearly allowable in terms of the need and requirement of the item/service for the intent of the grant. Very frequently, during an audit or federal monitoring, purchases made in the last several months of a performance period of an award come into question with regard to the actual need of the item or service. Questions include 'If this is a need to respond to the pandemic, why wasn't it needed for the entire performance period, or at least earlier in the performance period?', and 'How is it allocable to the grant?' An auditor or federal desk reviewer may question the expenditure and assume it was



made simply to 'spend down' the funds. CDE recommends retaining documentation to demonstrate that all of the criteria discussed in this document have been met.

This is in alignment with CDE's guidance on allowable uses of ESSER funds since 9/20/21 (please see the [Allowable Uses of ESSER Funds Matrix](#), available on the CDE [ESSER Application website](#)).