**Education Innovation and Research (EIR)**

**U.S. Department of Education**

FAQs in Response to “Understanding the EIR Open Licensing Requirement” Webinar (6/21/2022)

[**Webinar Recording**](https://www.youtube.com/watch?v=6yk_c2pkOeo)[**PowerPoint**](https://oese.ed.gov/files/2022/06/Open-Licensing-Training-PPT-Final-6.21.22-with-508.pdf)

1. How to Apply the Rule

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| A1. Does the requirement apply to EIR grants starting on 01/01/2017? | The open licensing rule went into effect on 5/22/2017 ([**https://www.federalregister.gov/documents/2017/03/21/2017-05723/open-licensing-requirement-for-competitive-grant-programs**](https://www.federalregister.gov/documents/2017/03/21/2017-05723/open-licensing-requirement-for-competitive-grant-programs)) so it only applies to EIR grants made in FY 2018 or later. The rule does not apply to those FY 2017 EIR awards that began on 1/1/2017. |
| A2. How long must the materials be available for public use? Will EIR support website fees beyond grant dates? | Once materials have been openly licensed, the license cannot be revoked and would continue into perpetuity. Grantees, however, should consult with their program officer if they believe that materials that are openly licensed can be removed from public facing websites and made available only upon request; or, if the materials remain available on a public facing website, information can be included indicating the materials may be outdated.  No, your EIR grant cannot be used to pay for any fees that fall outside of the grant performance period. |
| A3. Do the terms of the rule extend into perpetuity, or does it only apply during the federal grant period? | The terms of the rule extend into perpetuity. Once an open license has been applied to a copyrightable work that is subject to the open licensing requirement, it cannot be revoked. The open licensing requirement applies to grant deliverables that were funded wholly or in part with Department competitive grant funds and are not exempt from the requirement. The open licensing requirement defines the grant deliverable as “a final version of a work, including any final version of program support materials necessary to the use of the deliverable, developed to carry out the purpose of the grant, as specified in the grant announcement.”  The open licensing requirement applies to the final versions of a work. |
| A4. Some of our materials are professional development materials that require additional training for educators to be able to implement the program properly. Would we be able to only make the materials available to anyone that has the appropriate level of training? | Generally, no. The open licensing rule applies to all grant deliverables. One way to address this is to make the materials available with a note about how to use it, who should be using it, and other relevant notes, making the materials available, but including a context and information on how and what steps might need to be taken to ensure effective and proper use of the materials. |
| A5. I understand that once it becomes open licensed it cannot be revoked. But is it up to the grantees to decide what must be open licensed and what can remain behind a paywall if we mix old and new materials? | A grantee does not have the discretion to pick and choose which deliverables will be open licensed. However, older materials that were produced prior to the grant are not covered by the rule, and if those older materials are modified under the grant, only the modifications are covered by the rule. |
| A6. This open licensing requirement assumes that the "materials" are the intervention. We can open license materials, but without coaching attached to it, they will not be particularly useful. If folks use them without support, it could damage the reputation of the intervention.  Further, as we move from an early-phase to mid-phase, how are we supposed to ensure our comparison schools do not get access to our materials if they are open sourced? | Under the open licensing rule, you are required to openly license your final grant deliverables, and users may use or modify them as they see fit, as long as they honor the specific conditions of the open license that you select. This rule applies even if you have concerns about the ability of outside parties to use the materials effectively without proper support and coaching from our organization. While these concerns do not alleviate your obligation to open license grant supported deliverables, you can, in disseminating these materials, make potential users aware of these concerns and inform them of potential support your organization can provide in using the openly licensed materials.  You also expressed a concern that openly licensing the interventions you have developed under your EIR grant could compromise the validity of an evaluation of that intervention because schools may use your materials other than directed. To address this concern, you may wish to enter into formal agreements with these schools in which they will promise not to use your materials except as you direct during the length of your program evaluation. |
| A7. We have a deliverable that will assist teachers participating in teacher-directed Professional Development (PD) to see what they have attended. We cannot make that public but the dashboard is a deliverable that may be helpful for other educational institutions to see how the platform functions.  What are your thoughts on creating an overview of PDs attended by all educators in the target population to help us thread the needle of meeting the OER requirement? | While the grantee cannot make attendance data public, the dashboard is a deliverable that would be covered by the open licensing rule, and it should be made available to other institutions. Additionally, the professional development program and its materials are likely also a grant deliverable that would be subject to the open licensing requirement. Unless these are covered by an exception to the rule, you must make them available through an open license. |
| A8. In ambiguous cases or derivative products, how do you determine what’s covered by the requirement? | Specific context is important, so it’s hard to give a general answer to this question. In cases where Department funds are being used to modify an existing work, the open license only applies to copyrightable material that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works.  So, to the extent the material cannot be separately identified, the rule would not apply, but you should discuss this with Department program officials. |

1. How to Acquire an Open License

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| B1. Should we assume that the type of open license a grantee chooses is a decision best decided with our own legal counsel - and would depend on the type of project being proposed?  Correct? | Yes, you should work with your own legal counsel to determine the best license. At least four license options mentioned in EIR’s Open Licensing Training Webinar fulfill the requirement (see slide 24 at: [**https://oese.ed.gov/files/2022/06/Open-Licensing-Training-PPT-Final-6.21.22-with-508.pdf**](https://oese.ed.gov/files/2022/06/Open-Licensing-Training-PPT-Final-6.21.22-with-508.pdf)):   * CC BY: Credit original author * CC BY-SA: Credit author and license adaptations under the same   terms.   * CC BY-NC: Credit author and use work for non-commercial   purposes.   * CC BY-NC-SA: Credit author, use work for non-commercial purposes, and license adaptations under same terms. |

1. How Open Licensing Affects Previously Copyrighted Material

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| C1. What is considered by EIR as intellectual property? Can we retain intellectual property (IP) rights under an open license? | The open licensing requirement applies to “any grant deliverable that is created wholly or in part with Department competitive grant funds.” 2 CFR 3474.20(a). A grant deliverable is defined as “a final version of a work, including any final version of program support materials necessary to the use of the deliverable, developed to carry out the purpose of the grant, as specified in the grant announcement.” 2 CFR 3474.20(f)(1). Any grant deliverables that meet these criteria are subject to the open licensing requirement. |
| C2. We developed a product prior to the grant (the grant will focus on studying its impact). I presume that the open licensing requirement would not apply to these materials developed outside of the grant, is that correct? | The open licensing requirement does not apply to products which were developed prior to or outside of the grant. If such products are modified, the open licensing requirements apply only to the modifications. |
| C3. Does open licensing apply to modifications of copyrighted materials or to extensions? For example, if we apply for funding to extend or modify our copyrighted product, does open licensing apply in this case? | The open licensing rule only applies to "to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works." |

1. Dissemination Plan

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| D1. Could you provide a list of Open License repositories which we might use to host materials? | Here are several examples of repositories that could be used to host open licensed materials and are provided for the user's convenience:  OER Commons - [**https://www.oercommons.org/**](https://www.oercommons.org/)  MERLOT - [**https://www.merlot.org/merlot/**](https://www.merlot.org/merlot/)  CurrikiStudio - [**https://www.curriki.org/studio/**](https://www.curriki.org/studio/)  WikiEducator - [**https://wikieducator.org/**](https://wikieducator.org/)  The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of this non-Department information. The inclusion of these links is not intended to reflect their importance, nor is it intended to endorse views expressed, or products or services offered, on these non-Department sites. |
| D2. While I appreciate the need for equitable dissemination, I wonder how we are to support the promotion and maintenance that we are to report in our dissemination plan. | Using grant funds to pay for dissemination costs that are required under the open licensing rule is permitted, but only during the grant period. Further, the costs must be allowable, allocable, and reasonable and meet the general cost principles. If your approved budget does not include dissemination costs, then you should consult with your program officer about whether a budget modification may be necessary. |
| D3. What needs to go into the dissemination plan? | As you might recall from the language in the Notice Inviting Applications, grantees are required to not only license their deliverables, but also to develop a dissemination plan. There are no required components or formats for the dissemination plan. If the dissemination costs are reasonable and necessary to carry out the project, then using grant funds for dissemination would likely be permissible.  Once the grant period has ended, however, grantees cannot use grant funds for maintenance. |

1. Commercialization/Revenue

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| E1. As a small non-profit we will not be able to support ongoing learning technology needs and any updates to materials without a small revenue from some part of the materials or associated service. Is this the type of exception that I should discuss with my PO? | Yes, discuss with your program officer. There are platforms for open licensing deliverables without incurring additional cost to your organization. |
| E2. What are grantees’ options for commercialization? | The open licensing requirement aims to benefit learners, educators, and schools; and to increase equity by providing all students with access to high quality learning materials that have the most up-to-date and relevant content because openly licensed educational resources can be freely distributed to anyone.  The purpose of open licensing is to use open mechanisms rather than commercialization to enhance dissemination of deliverables and provide the education community and members of the public with a simpler and more transparent framework to access, use, and possibly modify these deliverables for the benefit of their communities. |

1. Exceptions to the Open Licensing Rule

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| F1. What is the process of applying for an exception? | Initially, a grantee would make a request to their program office. |