

EANS Services and Assistance After the Period of Performance Ends

Under the Emergency Assistance to Non-Public Schools (EANS) program, when providing services or assistance to a non-public school, may a State educational agency (SEA) enter into a contract that extends beyond the period of performance?

As a preliminary matter, SEAs should keep in mind that EANS funds are emergency funds that are intended to be utilized in a timely manner to provide eligible non-public schools with the allowable services or assistance that are needed as a result of the COVID-19 pandemic. Further, the CRRSA EANS and ARP EANS periods of availability end on September 30, 2023, and September 30, 2024, respectively, and States must liquidate valid obligations within 120 days of the end of the period of availability (2 C.F.R. § 200.344(b)).

Generally, it is not good stewardship of Federal funds or prudent business practice to prepay for services that will extend many years into the future. However, under limited circumstances where an SEA timely obligates EANS funds, EANS services or assistance to non-public schools may continue for a reasonable time beyond the liquidation period.

Factors impacting how long EANS-funded services or assistance may extend past the liquidation period include:

- 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 procurement rules (i.e., the SEA 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;
- 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; and
- Whether the SEA is willing to continue to maintain administrative direction and control over the services or assistance.

The SEA must obligate CRRSA and ARP EANS funds by each program's deadline, which means that if an SEA enters into a contract for services or assistance that extend beyond the liquidation period and the contractor does not provide the services, the SEA may not enter into a new contract or obligate those funds for a different allowable use after September 30, 2023, and September 30, 2024, respectively. Instead, those funds will be returned to the U.S. Treasury.

Because EANS is a State-administered program, the SEA or the Governor determines whether activities extending past the liquidation period are allowable under the circumstances. For example, an SEA might determine that it is reasonable and necessary under 2 CFR §§ 200.403-200.404 to enter into a multi-year software licensing contract with a vendor during the period of availability of ARP EANS funds and to pay for the entirety of the software license within the liquidation period. However, under the contract, the vendor would continue to provide the services (i.e., software and technical support) for some time after the funds had been liquidated.

Again, the SEA would be responsible for returning to the Federal government the cost of any services that were paid with Federal funds but not received. Under no circumstances may services extend beyond the date on which funds revert to the U.S. Department of Treasury (31 USC § 1552), which occurs four years after the obligation deadlines.