



TO: Peter Zamora
Director Federal Relations
Council of Chief State School Officers (CCSSO)

FROM: Melissa Junge; Sheara Krvaric

DATE: March 13, 2020

RE: Employee Compensation During COVID-19 Prompted Closures

As requested, this memorandum addresses the use of U.S. Department of Education (ED) grant funds to pay employees during closures prompted by COVID-19.

Federal regulations require that any expense charged to federal grant funds “be consistent with policies and procedures that apply uniformly to both federally-financed and other activities.”¹ In other words, when spending federal funds, states, school districts, and other recipients should follow the same policies and procedures they apply when spending state, local, or other non-federal funds.

This requirement applies to employee compensation policies and procedures. To be supported with federal funds, employee compensation must “[conform] to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities.”²

Accordingly, ED has taken the position that if a state, district, or other recipient has a policy of paying employees during a closure, it should follow that policy for its ED-funded staff as well. In other words, the state, district, or other recipient may use ED funds to pay its ED-funded staff during a closure if it uses state or local funds to pay state- and locally-funded staff during the closure. For example, if state funds will pay state-funded staff during a closure, then Title I funds can pay Title I-funded staff, Title II funds can pay Title II-funded staff, IDEA funds can pay IDEA-funded staff, etc.

Specifically, in 2009, ED provided the following guidance to states, districts, and other recipients responding to pandemic influenza (the H1N1 virus):

What does the Department expect with regard to the treatment of institutional employees who are supported by federal higher education grants or other employees paid with federal education program funds?

¹ 2 CFR § 200.403(c).

² 2 CFR § 200.430(a)(1).

Institutional employees who are supported with federal grants awarded by the Department, including grants authorized by Titles II, III, IV, V, VI, and VII of the HEA, and the other programs discussed in this guidance such as Title I of ESEA, and IDEA, should be treated the same as similarly situated employees of the institution. *In the case of programs serving K-12, federally-funded employees should be treated the same as similarly situated state and locally-funded employees. This means that if the institution's policy or state and local law and policies provide for similarly situated employees to be paid during an H1N1 outbreak, those supported with federal grants would also be paid.* These employees should return to the duties for which the grant funds were provided as soon as possible, and to the extent practicable, should work on project activities during the time the school is closed. Employees supported with federal grant funds who are intended to provide direct services to students may maintain contact with students during the period of an H1N1 outbreak using alternative, appropriate methods such as telephone, videophone, and e-mail. *(Emphasis added)*

Although this guidance was specific to the H1N1 pandemic, the federal cost principles it is based on are still in effect, so it is reasonable to apply the guidance to the current COVID-19 situation.