EDGAR AND OMB CIRCULAR TUTORIAL

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Former Secretary of the Puerto Rico Department of Education found guilty of stealing federal funds used for financing political campaigns through kickbacks from contracts with vendors.

- Sentenced to 12 years in prison
Ripped from the Headlines

- Former Georgia State Superintendent indicted by a federal grand jury for embezzling more than $600,000 in federal education funds for her campaign for governor and plastic surgery
  - Sentenced to 8 years in prison, fined $414,000, 3 years probation and 100 community service hours upon release
OIG Audit Findings

- Alum Rock Union Elementary School District

- ED/OIG found:
  - Charged $65,523 of unallowable and $139,741 of unsupported costs
  - Unallowable costs: computer purchased charged more than once to grant; employee salaries for non-grant work; event expenses occurring before start of grant; unallowable food charges
  - Unsupported costs: Payroll charges not supported by personnel activity reports (PARs); undocumented field trip charges; and admission fees
OIG Audit Findings

- Mt. Judea Public School

- ED/OIG found:
  - $24,786 of unallowable charges and $372,714 of unsupported costs
  - Unallowable included: unrelated charges for daycare services; employee reimbursement for unsubstantiated expenses; and excessive and unallowable travel charges
  - Unsupported included: personnel charges without PARs
Key Questions

1. What is the significance of EDGAR?
2. Which OMB Circulars apply?
3. What is the relationship to program regulations?
4. What legal authorities do you rely on?
Legal Structure of Federal Programs

Statutes
NCLB, IDEA, WIA, CTE
General Education Provisions Act (GEPA)

Regulations
Program Regulations
Education Department General Administrative Regulations (EDGAR)

Office of Management & Budget (OMB) Circulars

Guidance
Anatomy of EDGAR

- Administrative Rules
  - SEAs/LEAs – Part 80
  - Postsecondary – Part 74
  - Nonprofits – Part 74
  - State-Administered Programs – Part 76
  - Direct Grant – Part 75
  - Enforcement – Part 81
  - Lobbying – Part 82
  - Debarment/Suspension – 2 CFR Part 3485
  - FERPA – Part 99
Cost Principles

- SEAs / LEAs – A-87
- Postsecondary Institutions – A-21
- Nonprofits – A-122
Audit Principles

- SEAs/LEAs – A-133
- Postsecondary Institutions – A-133
- Nonprofits – A-133
Roadmap

1. Standards for Financial Management
2. How to Determine if a Cost is Allowable
3. Cash Management Controls and Obligations
4. Asset Controls
5. Procurement Controls
6. Selected Cost Items
7. Audits and Enforcement
Roadmap of EDGAR and OMB Circulars

a) Standards for Financial Management Systems
   - 80.20 (b) (p. 106)

b) Allowable Costs
   - 80.22 (p. 108)

c) Basic Guidelines
   - A-87 (p. 297-298)

d) Composition of Cost
   - A-87 (p. 298)
All costs must be:

1. Necessary
2. Reasonable
3. Allocable
4. Legal under state and local law
5. Conform with federal laws & grant terms
6. Consistently treated
7. Generally Accepted Accounting Principles
8. Not included as match
9. Net of applicable credits
10. Adequately documented
Necessary & Reasonable

- Necessary and Reasonable
  - Must be necessary for the performance or administration of the grant
  - Must follow sound business practices:
    - Arms length bargaining (hint: procurement processes)
    - Follow federal, state and local laws
  - Fair market prices
  - Act with prudence under the circumstances
  - No significant deviation from established prices
Necessary & Reasonable

- **Practical aspects of “necessary”**
  - Do I really need this?
    - Surplus property/existing resources
    - Lease vs. purchase
  - Is this the minimum amount I need to spend to meet my need?

- **Practical aspects of “reasonable”**
  - Is the expense targeted to valid programmatic/administrative considerations?
  - Do I have the capacity to use what I am purchasing?
  - Did I pay a fair rate? Can I prove it?
  - If asked, would I be comfortable defending this purchase?
Allocable

- Allocable
- Can only charge in proportion to the value received by the program
  - Example: LEA purchases a computer to use 50% in the 21st CCLC program and 50% in State program
  - Can only charge half the cost to 21st CCLC
Properly Documented

- Adequately documented
  - Amount of funds under grant
  - How the funds are used
  - Total cost of the project
  - Share of costs provided by other sources
  - Records that show compliance
  - Records that show performance
  - Other records to facilitate an effective audit
Allowability

- Is the proposed cost consistent with the applicable OMB Circular?
  - A-21 Educational Institutions
  - A-87 State, Local & Indian Tribal Governments
  - A-122 Non-Profit Organizations
  - 48 CFR part 31 For-Profit Organizations

- Is the proposed cost allowable under the program?

- Is the proposed cost consistent with program specific fiscal rules?

- Is the proposed cost consistent with EDGAR?

- Is the proposed cost consistent with special conditions imposed on the grant?
Internal controls are tools to help program and financial managers achieve results and safeguard the integrity of their programs.

- Includes processes for planning, organizing, directing, controlling, and reporting on agency operations.
Internal Controls

- Objectives of Internal Controls
  - Effectiveness and efficiency of operations
  - Reliability of financial reporting
  - Compliance with applicable laws and regulations
  - Safeguarding assets
Types of Internal Controls

- **Preventative Controls** - designed to discourage errors or irregularities.
- **Detective Controls** - designed to identify an error or irregularity after it has occurred.
- **Corrective Controls** - detect if a risk has been realized and reacts.

The cost of any internal control should not exceed the benefit!
Components of Internal Controls

1. Control Environment
2. Risk Assessment
3. Control Activities
4. Information and Communications
5. Monitoring
Internal Controls –
Control Environment

Goal: Sets the tone for the organization – allows management and employees to maintain a positive and supporting attitude toward compliance.

- Maintaining a level of competence that allows personnel to accomplish their assigned duties
- Clearly defined organizational structure
- Proper amounts of supervision
- Maintaining a good relationship with oversight agencies (like ED and OIG for example!)
Examples:

- Well-written policies and procedures manuals addressing employee responsibilities, limits to authority, performance standards, control procedures, and reporting relationships.
- Discuss ethical questions.
- Make sure all personnel comply with Conflict of Interest policies.
- Clear job descriptions so all personnel understand their responsibilities.
- Adequate training programs.
- Performance evaluations.
Every Agency Has Problems and Risks!!

- First Establish clear and consistent objectives

  - Operation objectives – pertain to achievement of efficiency of operations, performance standards and safeguarding resources.
  - Financial reporting objectives – pertain to preventing fraudulent financial reporting.
  - Compliance objectives – pertain to adherence with applicable laws and regulations.
Internal Controls – Risk Assessment

- Then determine internal and external risks to obtaining those objectives:
  - What could go wrong?
  - What assets do we need to protect?
  - How could someone steal or disrupt operations?
  - What information do we rely on?

- Examples:
  - Changes in operating environment
  - New personnel
  - New or updated information systems or technology
  - Rapid growth
  - New programs, activities or grants
  - Lack of personnel
Internal Controls – Risk Assessment

- Risk Assessment – best practice or requirement?
  - ED uses risk-based grant management strategies
    - RMS: Active Engagement and High-Risk
  - Required corrective action in PDLs
Internal Controls – Control Activities

Goal: Help ensure that management’s directives are carried out.

- Examples:
  - Segregating Key Responsibilities Among Different People
  - Restricting Access to Systems and Records
    - Authorizations / Passwords
  - Implementing Clear Written Policies in Key Areas
  - Performance Reviews
  - Maintaining Physical Control Over Valuable Assets
    - Maintenance of Security
Internal Controls – Control Activities

- Examples
  - Maintaining Appropriate Documentation
    - Approvals
    - Record Retention
  - Data System Checks
    - Check for accounting of transactions in numerical sequence.
  - Accurate and Timely Recording of Information
Goal: Ensure personnel receive relevant, reliable and timely information that enables them to carry out their responsibilities.

- Develop procedures for identifying pertinent information and distributing it in a form and timeframe that permits people to perform their duties efficiently.
- All personnel must receive a clear message from top down that control responsibilities must be taken seriously.
- Personnel must understand how they relate to one another in the system.
Goal: Assess the quality of internal controls over time and ensure any findings are promptly resolved.

- Ongoing program and fiscal monitoring
- Regular oversight by supervisors
- Record reconciliation
- Formal program reviews / audits
- OMB Circular A-133 audits

- Include policies and procedures for correcting any findings in a timely manner.
Roadmap of EDGAR and OMB Circulars

e) Period of Availability of Funds
   - 80.23 (p. 108)

f) When Obligations are Made
   - 76.707 (p. 87)

g) When Certain Subgrantees May Begin to Obligate Funds
   - 76.708 (p. 87)

h) Obligations Made During a Carryover Period are Subject to Current Statutes, Regulations, and Applications
   - 76.710 (p. 88)
Allowability and Obligation of Funds

- Obligation: Transaction that requires payment
# Obligation of Funds

<table>
<thead>
<tr>
<th>If the obligation is for...</th>
<th>The obligation is made...</th>
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<tbody>
<tr>
<td>Acquisition of property</td>
<td>Date of binding written commitment (contract/PO)</td>
</tr>
<tr>
<td>Personal services by employee</td>
<td>When services are performed</td>
</tr>
<tr>
<td>Personal services by contractor</td>
<td>Date of binding written commitment (contract/PO)</td>
</tr>
<tr>
<td>Public utility services</td>
<td>When services are received</td>
</tr>
<tr>
<td>Travel</td>
<td>When travel is taken</td>
</tr>
<tr>
<td>Rental of Property</td>
<td>When property is used</td>
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Source: EDGAR Sections 75.707 and 76.707
Roadmap of EDGAR and OMB Circulars

i) Equipment
   - 80.32 (p. 113-114)

j) Procurement
   - 80.36 (p. 115-121)

k) Retention and Access Requirements for Records
   - 80.42 (p. 124)
Roadmap of EDGAR and OMB Circulars

1) Records Related to Grant Funds
   ▪ 76.730 (p. 89)

m) Monitoring and Reporting Program Performance
   ▪ 80.40 (p. 122)

n) Enforcement
   ▪ 80.43 (p. 126)

o) Disapproval of an Application – Opportunity for a Hearing
   ▪ 76.401 (p. 74)
Roadmap of EDGAR and OMB Circulars

p) Selected Items of Cost
   - Appendix B to A-87 (p. 299)
     + Advertising (p. 300) (outreach)
     + Personnel Costs (p. 301)
     + Meetings (p. 311)
     + Travel (p. 314)
Compensation for Personnel Services:

- If federal funds used for salaries, then time distribution records are required.

- Must demonstrate - If employee paid with federal funds, then employee worked on that specific federal program/cost objective.
Who must participate?

- Any employee who is working on a federal program
  - Not contractors
  - All employees paid with federal funds
  - Some employees paid with non-federal funds
A-87: If employee works 100% on single cost objective

- Semi-Annual Certification
  - Completed at least every six months
  - Signed by a supervisor with first hand-knowledge of the employee
  - After-the-fact record (dated)
  - Accounts for the total activity for which employee compensated
  - Must coincide with one or more pay periods
A-87: If employee works 100% on single cost objective

- Semi-Annual Certification

- “This is to certify that J.R. Ewing has worked 100% of her time for the period July 1, 2011, through December 31, 2011, on Title I Admin.”
  
  Signature of employee: /s/
  
  Date: January 5, 2012
A-87: If employee works on multiple cost objectives

Personnel Activity Reports

- After-the-fact record (dated)
- Accounts for the total activity for which employee compensated
- At least monthly
  (unless substitute system)
- Signed by the employee
- Must coincide with one or more pay periods
Personnel Activity Reports (PAR)

- “For the month of August 2012, I, J.R. Ewing, spent my time 50% on Title I Program Services and 50% on non-federal programs.”

Signature of Employee: /s/
Date: September 1, 2012
New Time and Effort Guidance by OCFO!!


WHAT IS A SINGLE COST OBJECTIVE???

OCFO: “The criteria for whether an employee may document time and effort using a semiannual certification or must fill out a monthly PAR can be confusing.”
What is a “Cost Objective”?

- A–87 Definition: A function, organizational subdivision, contract, grant or other cost activity for which cost data are needed and for which costs are incurred.
Multiple activities or cost objectives for which a PAR is required — that is, if an employee works on

- More than one Federal award.
- A Federal award and a non-Federal award.
- An indirect cost activity and a direct cost activity.
- Two or more indirect activities that are allocated using different allocation bases.
- An unallowable activity and a direct or indirect cost activity.
Examples

- **A Minimum Set-Aside or Maximum Cap:**
  - Title I - LEA Parent Involvement minimum (at least 1%);
  - Title III – Cap on administration (no more than 2%)

- **Program services**
  - Title I program services
OCFO Guidance

- It is possible for multiple programs to have the same cost objective, which creates confusion over whether the presence of a single cost objective or being funded by multiple programs should determine what time-and-effort documentation an employee must complete.
OCFO Guidance

- It is possible to work on a single cost objective even if an employee works on more than one Federal award or on a Federal award and a non-Federal award.

- The key to determining whether it is a single cost objective is whether the employee’s salary and wages can be supported in full from each of the Federal awards on which the employee is working or from the Federal award alone if the employee’s salary is also paid with non-Federal funds.
OCFO Guidance Examples of Single Cost Objectives:

Title I, Part A funds and State compensatory education funds

- An LEA supports a supplemental math teacher to serve low-achieving students with 50 percent Title I, Part A funds and 50 percent State compensatory education funds.

- Teaching math to low-achieving students is a single cost objective because it can be fully supported under Title I, Part A.

- Only a semiannual certification, therefore, is required even though the employee’s salary is supported by a Federal award and a non-Federal award.

- Enclosure C, p. 448
OCFO Guidance Examples of Single Cost Objectives:

Funds under Sections 611 and 619 of the Individuals with Disabilities Education Act (IDEA)

- A preschool special education teacher is funded with 50 percent IDEA section 611 funds and 50 percent with IDEA section 619 funds.
- Teaching preschool special education is an allowable activity under both IDEA sections 611 and 619.
- Accordingly, the teacher is performing a single cost objective even though she is supported with funds from two separate Federal awards; therefore, she need only file a semiannual certification.

p. 449
Title I, Part A funds and CEIS (comprehensive early intervening services) funds under IDEA

- A teacher works with low-achieving students and is supported with 60 percent Title I, Part A funds and 40 percent CEIS funds.
- Teaching low-achieving students is a single cost objective because it can be fully supported under both Title I, Part A and CEIS.
- Only a semiannual certification, therefore, is required even though the employee’s salary is supported by two Federal awards.
Title I, Part A funds and local funds

- An LEA supports an elementary school teacher with local funds but pays her with Title I, Part A funds to provide after-school tutoring for low-achieving students.

- Although the teacher could not be paid with Title I, Part A funds to provide elementary education, the portion of her time spent on after-school tutoring is easily separated from her teaching position by her schedule.

- Accordingly, the teacher’s after-school tutoring is a single cost objective and she need only file a semiannual certification for the time she works in the after-school program supported by Title I, Part A funds.
Why Are These Examples WRONG?
I, Justin Bieber, certify that I worked solely on the Federal Grant program from January 1, 2012 to June 30, 2012.

Signature of Employee

__/s/_____________________

Date: September 1, 2012
I, Taylor Swift, certify that I worked 100% of my time on Title I, Part A Administration from January 1, 2012 to June 30, 2012.

Signature of Employee

_____/s/____________________

Date: June 20, 2012
I, Julia Roberts, certify that I worked 100% of my time on Title I, Part A program teaching class from January 1, 2012 to June 30, 2012.

Signature of District Superintendent

_____/s/_______________

Date: July 2, 2012
I, Barack Obama, certify that I worked solely on project, initiatives, and issues which have implications and consequences based and/or related to Federal programs and policies.
I certify that for the month of December 2011 I, Lady Gaga, spent my time working on the following programs:

Title I, Admin 100%
State programs 100%

Total 200%

Signed: /s/

January 5, 2012
I certify that for the month of August 2012 I, Michelle Obama, spent my time working on the following programs:

Title I, Admin 20%
State programs 30%

Total 50%

Signed: /s/
September 10, 2012
Dear Employee: Please sign the pre-populated form if accurate.

I certify that for the month of July 2012, Ashton Kutcher, spent my time working on the following programs:

Title I, Admin 75%
State programs 25%

Total 100%

Signed: /s/___________

August 5, 2012
Substitute Systems and OCFO Changes
Substitute Systems Generally

- OMB Circular A-87 authorizes the use of substitute systems for allocating salaries and wages.

- ED must approve SEA’s system.
  - Can include:
    - Random moment sampling
    - Case counts
    - Other quantifiable measures of employee effort

Enclosure A, p. 445
An SEA would be permitted to allow an LEA to use alternative documentation through approved substitute system. For example, could use a teacher's course schedule (instead of PARs) for an individual who works on multiple activities or cost objectives but does so on a predetermined schedule. An individual documenting time and effort under the substitute system would be permitted to certify time and effort on a semiannual basis, provided certain requirements are met.
Substitute Systems Changes (cont.)

- The SEA must obtain from the LEA a management certification certifying that:
  - Only eligible employees will participate
  - Sufficient controls are in place to ensure that the schedules are accurate

- The certification must disclose any known deficiencies with the system or known challenges with implementing the substitute system.
The SEA must obtain from the LEA a management certification certifying that:

1. Only eligible employees will participate
   - **Employees must** –
     - Currently work on multiple activities or cost objectives (require PARs);
     - Work on specific activities or cost objectives based on a predetermined schedule; and
     - Not work on multiple activities or cost objectives at the exact same time on their schedule.
     - Not work on multiple activities or cost objectives at the exact same time on their schedule.

2. Sufficient controls are in place to ensure that the schedules are accurate

3. The certification must disclose any known deficiencies
New Substitute Systems
Requirements


2. In lieu of PARs, eligible employees may support a distribution of their salaries and wages through documentation of an established work schedule that meets the standards under section (3).

3. Each Employee’s work schedule must indicate the cost objective(s) that the employee worked on and account for the total hours compensated:
   - Be certified at least semiannually; and
   - Signed by the employee and a supervisory official having firsthand knowledge of the work performed by the employee.

4. Any revisions to an employee’s established schedule that continue for a prolonged period must be documented and certified.

5. PARs must be used when there is a significant deviation.
### Roadmap of EDGAR and OMB Circulars

- **q)** **A-133 – Single Audits (p. 359)**
  - §____.210 – Subrecipient and Vendor Determinations (p. 364)
  - Compliance Supplement (p. 379)
  - §____.200 – Audit Requirements (p. 363)
  - §____.320 – Report Submission (p. 369)
  - Pass Through (p. 373)

- **q)** **81.32 (p. 134) – Proportionality**

- **r)** **Appendix to Part 81 (p. 139) – Illustrations of Proportionality**

- **s)** **81.33 (p. 135) – Mitigating Circumstances**
PROGRAM FISCAL RULES

✓ Maintenance of Effort (ESEA Title I, A and IDEA, B); and

✓ Supplement Not Supplant
Most Directly Affected by Declining Budgets
ESEA MOE

- The combined fiscal effort per student or the aggregate expenditures of the LEA

- From state and local funds

- From preceding year must not be less than 90% of the second preceding year
ESEA MOE: Preceding Fiscal Year

- Need to compare final financial data
- Compare “immediately” PFY to “second” PFY
- EX: To receive funds available July 2012, compare 2010-11 school year to 2009-10 school year
ESEA MOE: Failure under NCLB

- SEA must reduce amount of allocation in the exact proportion by which LEA fails to maintain effort below 90%

- Reduce all applicable NCLB programs, not just Title I
ESEA MOE: Waiver

☐ USDE Secretary may waive if:
  • Exceptional or uncontrollable circumstances such as natural disaster
  ☑ OR
  • Precipitous decline in financial resources of the LEA

• To State to Grant to LEAs
IDEA Maintenance of State Financial Support (MSFS)

- A State must not reduce the amount of State financial support for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year.
- Must use ALL State funds!

  - May not use Medicaid reimbursements towards SEA MOE requirements.
Compute how much is spent each year on special education and related services

Monitor spending for children with IEPs by other state agencies

Include a grand total for the application

Previously, States only affirmed that they were in compliance with MOE requirements
IDEA MSFS Waiver

- IDEA Waiver **ONLY** applies to State MOE! (not LEA MOE)
  - ED may waive SEA MOE (for one FY at a time) if ED determines that a waiver would be equitable due to:
    - Exceptional or **uncontrollable** circumstances such as a natural disaster or a precipitous & **unforeseen** decline in State financial resources; or
    - The SEA meets Supplement Not Supplant Waiver Requirements. IDEA Regs §§300.163(c) and 300.164

- Does **not** reduce State MOE for subsequent years
IDEA MSFS Waiver

- ED wants to make sure any reduction in State SPED funds is not greater than the % reduction in revenues experienced by the State (SPED treated equitably).

- Factors considered:
  - State’s revenues and extent of decrease based on exceptional or uncontrollable circumstances
  - State’s total appropriations for current versus prior year
  - State’s appropriations for other agencies
  - State’s compliance with Implementing IDEA, Part B and performance record
  - Other available funds to mitigate effects of waiver
IDEA Failure to Meet MSFS

- Consequences for failure to maintain support:
  - ED reduces allocation for **any** FY following the FY in which the State fails to comply.
  - Reduction is the same amount by which the State fails to meet the requirement.
  - Following year reverts back to previous level of effort.

- Ability of SEA to reduce its MOE is VERY RARE!
IDEA Local-level Maintenance of Effort (MOE)

- An LEA may not use its Part B funds to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(IDEA Regs Section 300.203(a))
IDEA Local-level MOE

- Four ways to calculate Local MOE:
  1. Comparison of total expenditures using local funds only,
  2. Comparison of total expenditures using state and local funds,
  3. Comparison of the per pupil amount using local funds only, or
  4. Comparison of the per pupil amount using state and local funds.

- All four options must be available to an LEA and the LEA must only meet MOE under one of these calculations.
  (IDEA Regs Section 300.203(b))
Allowable reductions:

1. Voluntary departure of special education or related services personnel
2. A decrease in the enrollment of children with disabilities
3. The assumption of cost by the SEA’s high cost fund
4. An exceptionally costly child has left the agency’s jurisdiction, aged out of the eligibility age-range, or no longer needs the program of special education, or
5. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment.

This will reduce next year’s MOE as well!

(IDEA Regs Section 300.204)
**IDEA Local-level MOE - Optional Flexibility**

- If there is an increase in the LEA’s allocation, compared to the previous FY allocation,
- Then the LEA may reduce the level of expenditures otherwise required by not more than 50% of the amount of excess in allocation,
- But the LEA must use an amount of local funds equal to the MOE reduction to carry out activities that could be supported with ESEA funds, regardless of whether the LEA is using ESEA funds for those activities. (IDEA Regs Section 300.205)

  - This will reduce next year’s MOE as well!
IDEA Local-level MOE – Optional Flexibility

- Flexibility may be unavailable if:
  - SEA determines that LEA is unable to establish and maintain programs of FAPE that comply with Part B and § 613(a); or
  - SEA took action against an LEA under § 613(a) of IDEA;
  - SEA has taken action against an LEA under § 616 and subpart F of regulations; or
  - LEA is identified as “significantly disproportionate”.

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The amount of LEA MOE reduction that an LEA can take is affected by an LEA’s use of Part B funds for coordinated early intervening services (CEIS).

- **LEA MOE and CEIS set-asides are connected.**
- **Therefore, must subtract any CEIS set-aside from any potential LEA MOE reduction! Additionally, must subtract any LEA MOE reduction from any voluntary CEIS set-aside.**
  - If the CEIS set-aside is mandatory because an LEA is significantly disproportionate, the LEA can not reduce its MOE.
Consequences for violation: SEA can not reduce an LEA’s current or future allocation.

ED would handle an LEA MOE violation by seeking a recovery of funds from the SEA.

The level of recovery would depend on the degree to which the LEA failed to maintain effort, but would not exceed the amount of the LEA’s subgrant for the year in question. (See OSEP policy letter, July 26, 2006, to Carol Ann Baglin on www.bruman.com)

Up to SEA to recover funds from LEA.
Consequences for violation:

- The LEA’s MOE requirement reverts to the level set the last time the LEA met MOE!
  - Letter to the Center for Law and Education, Kathleen Boundy, dated April 4, 2012 on www.bruman.com
  - Rescinds previous Letter to NASDSE Executive Director Bill East, dated June 16, 2011.
  - What about LEAs that relied on June 2011 letter to reduce effort levels???
Supplement Not Supplant

Surprisingly **Not** Greatly Affected by Declining Budgets!
Supplement not Supplant

- Federal funds must be used to supplement and in no case supplant (federal) state and local resources
“What would have happened in the absence of the federal funds??”
Auditors’ Tests for Supplanting

- OMB Circular A-133 Compliance Supplement

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Auditors presume supplanting occurs if federal funds were used to provide services** . . .

1. Required to be made available under other federal, state, or local laws
2. Paid for with non-federal funds in prior year
3. Same service to non-Title I students with state/local funds

**Note that the compliance supplement states that these provisions do not apply to IDEA!
Presumption Rebutted!

- If SEA or LEA demonstrates it would not have provided services if the federal funds were not available
- NO non-federal resources available this year!

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What documentation needed?

- Fiscal or programmatic documentation to confirm that, in the absence of fed funds, would have eliminated staff or other services in question
- State or local legislative action
- Budget histories and information
Must show:

- Actual reduction in state or local funds
- Decision to eliminate service/position was made without regard to availability of federal funds (including reason decision was made)
Rebuttal Example

- State supports a reading coach program 2011 - 2012
- State cuts the program from State budget 2012 - 2013
- LEA wants to support Title I reading coach program 2012 - 2013
Rebuttal Example

- LEA must document
  a. State cut the program
  b. LEA does not have uncommitted funds available in operating budget to pick up
  c. LEA would cut the program unless federal funds picked it up
  d. The expense is allowable under Title I
Title I Flexibility Exception: 1120A(d)

- Exclusion of Funds:

- SEA or LEA may exclude supplemental state or local funds used for program that meets intents and purposes of Title I Part A

- EX: Exclude State Comp Ed funds
How does supplanting apply in a schoolwide program?
Schoolwide SNS (cont.)

- Statute 1114(a)(2)(B): Title I must supplement the amount of funds that would, in the absence of Title I, be made available from non-federal sources.
  - E-18 in schoolwide guidance

- The actual service need not be supplemental.
Schoolwide SNS (cont.)

- Guidance: School must receive all the state and local funds it would otherwise need to operate in the absence of Federal funds

- Includes routine operating expenses such as building maintenance and repairs, landscaping and custodial services
The SNS requirements do not apply to the state set-asides for administration and other state-level activities (see 34 C.F.R. §300.704(d)). Therefore, mainly applies if the State provides direct services on behalf of an LEA.

The State can also seek a waiver, under 34 C.F.R. §300.164(b), but the standard is very high (requires proof that 100% of all eligible students received a FAPE.)
How Does SNS Apply Under IDEA to LEAs?

- OSEP made it clear in 2009 that if an LEA meets its maintenance of effort (MOE) requirement, then
- The Part B funds are, in fact, supplementing those local, or state and local, expenditures and the LEA has met its MOE and supplement/not supplant requirements

OSEP Letter to CCSSO, dated Dec. 2, 2009
Questions???
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