

# How to Prepare for and Defend an Audit Under the UGG aka EDGAR

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# Agenda

## Audits and the UGG

### Before the Visit

- Self-Assessment & Corrective Actions

### The Visit

- Logistics
- Where are they looking?

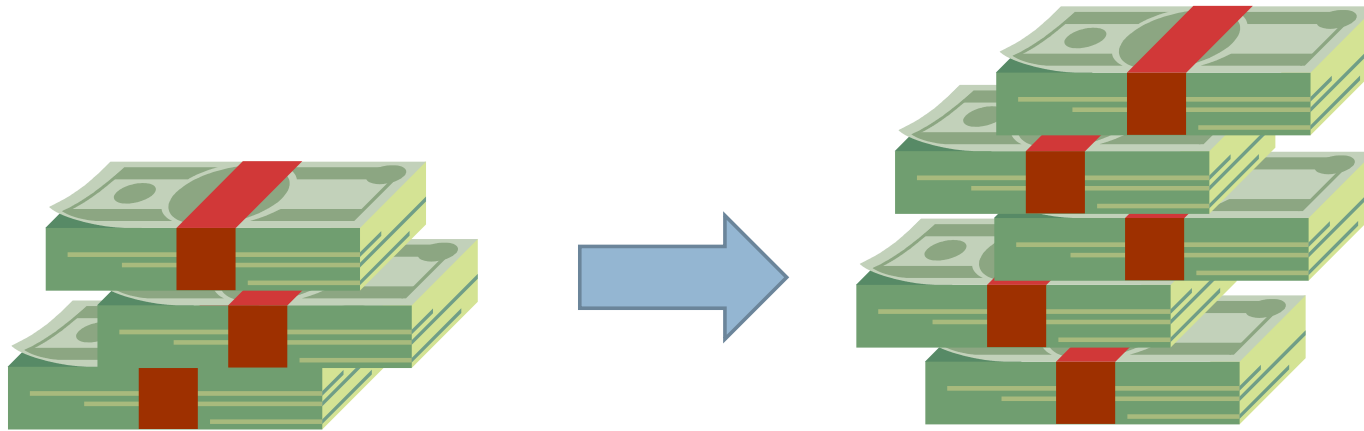
### After the Visit

- Audit Defense and Resolution

## Compliance Supplement

# The Uniform Grant Guidance Threshold 2 C.F.R. 200.501.

Audit threshold raised \$500k to \$750k



# Additional Audits

Federal agency, OIG or GAO may conduct additional audits at federal cost. 2 C.F.R. 200.503.



# Auditee Responsibilities

Arrange single audit

- Must follow procurement standards

Prepare financial statements

Follow up and corrective action on findings

Provide access (2 C.F.R. 200.508)



# Corrective Action Plan

2 C.F.R. 200.511(c)

***Corrective action plan.*** At the completion of the audit, the auditee must prepare ... a corrective action plan to address each audit finding included in the current year auditor's reports.

The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date.

If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

# Federal Agency Responsibility

2 C.F.R. 200.513

Cognizant agency for audit provides predominant amount-funds

## Responsibilities

- TA to auditees
- Quality control
- Advice to auditors; Notice of audit deficiencies
- Coordinate management decisions
- Monitor corrective actions
- Use of cooperative audit resolutions

# Major Program Determination

## Risk-Based

### Step 1 - Type A or Type B

- Total Funds Awarded – Rising thresholds
- Largest → Type A

### Step 2 – Identify Type A at Low Risk

### Step 3 – Identify Type B at High Risk



# Major Program Determination (cont.)

## Reporting

- Questioned costs above \$25K - major program
- Questioned costs above \$25K in non-major program if auditor becomes aware

# Major Program Determination (cont.)

## Step 2 – Type A Low Risk

- Audited as major program at least once prior 2 yrs
- No internal control deficiencies
- No modified opinion
- No questioned costs above 5% program
- Fed awarding agency may request high risk

# Major Program Deter. High Risk

## Step 3 – Type B High Risk

- Weaknesses in internal controls
- Weak monitoring
- Inherent risk
- Others
- Professional judgment – not rely on 1 factor

## Audit: at least

- All Type A not low risk
- All Type B – High Risk

# Before the Visit



# Know Potential Trouble Spots

Self assessment – critical

- **Required – 200.328(a)**

Look at Available Information

- Review significant violations from other processes
- Review prior findings
- Review performance data/outcomes

# Audit violations deemed “significant” by the U.S. Department of Education?



1. Time Distribution
2. MOE
3. Supplement Not Supplant
4. Unallowable Expenses
5. Procurement Irregularity
6. Ineligible Students
7. Lack of Accountability for Equipment/Materials
8. Lack of Appropriate Record Keeping
9. Record Retention Problems
10. Late or No Submission of Required Reports, Inaccuracies, Inconsistence
11. Audits of Subrecipient Unresolved
12. Lack of Subrecipient Monitoring
13. Large Carryover Balances
14. Lack of valid, reliable or complete performance data



# Evaluate Areas to be Examined

## 1. OIG Audit

- Notice of Audit: Correspondence

## 2. Single Audit

- Prior Audits
- Compliance Supplement

# Evaluate Areas to be Examined (cont.)

## 3. Monitoring

- E.g., Perkins IV Checklist, IDEA Fiscal Monitoring Tool

## ➤ Request for Documentation

- “Audit Binder”

# Corrective Action Plan

**Critical** – have in place at time of visit, even if implementation will be in the **future**

- Specific Measurable Objectives
- Timelines
- Clear Lines of Responsibility

# Remedy Problem Areas or Develop Corrective Action Plan

E.g., Los Angeles Unified School District Internal Controls over Nonpayroll Purchases

**○ No findings!!!**



# Remedy Problem Areas or Develop Corrective Action Plan

The independent public accountant determined that LAUSD staff had erroneously charged more than \$84,000 to the Federal Teacher Incentive Fund grant ... LAUSD reported to the independent public accountant that it implemented monitoring and review procedures, including a monthly tracking system for the program expenditures, biweekly budget meetings, and a review process for budget reports. **Although we did not verify that the corrective actions were implemented, the actions should improve controls over the Federal Teacher Incentive Fund grant program expenditures and help ensure that errors of this type do not occur in the future.**

# The Visit



# Logistics

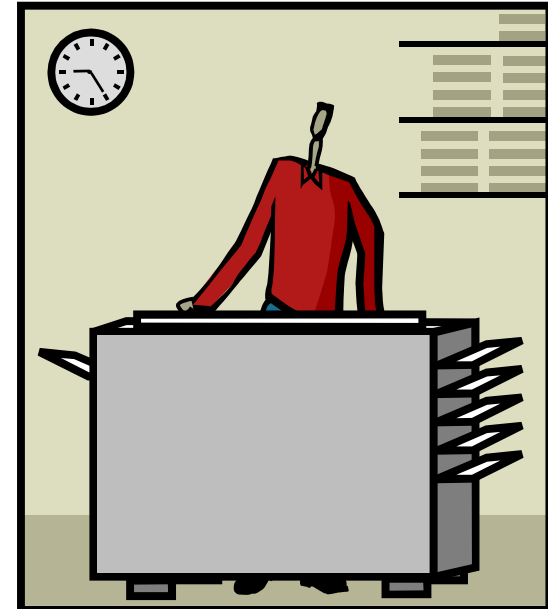
Secure Space

Audit Binder

Copy Machine

- Keep extra copy of all documents supplied!!!

Professional Demeanor



# Audit Records

- Can the auditee refuse to provide the auditors with requested documents?
  - GEPA 20 U.S.C. 1232(f) requires that ED and its representatives (which arguably includes single auditors) “shall have access, for the purpose of audit examination, to any records maintained by a recipient that may be related, or pertinent to, grants”



# Audit Records

- 2 C.F.R. 200.336 also provides audit access to records without qualifiers
  - If requested records are not provided, likely receive an audit limitation or finding

# Identify Key Staff (Audit Committee)



## **Audit Liaison:**

- Key contact for all questions, interview arrangements, documents requests, logistical arrangements

## **Agency Leadership:**

- Entrance, exit conference

# Identify Key Staff

## ○ Relevant Staff (Audit Committee):

- Assure staff are prepared for interview
- Subject matter awareness
- Terminology/Definitions
  - Time and Effort
  - Necessary and Reasonable
  - Inventory
- Familiarity with job description
- Familiarity with prior problem areas
- Familiarity with likely areas of inquiry

# Entrance Conference



- Leadership
  - Set positive but professional tone
- Audit Liaison
  - Review process/logistics
  - Request all interview requests go through manager
  - Request periodic updates (especially problem areas)
    - Do not wait for exit conference

# DURING THE VISIT

Debrief staff after interviews

Clear up misunderstandings



# Exit Conference (but don't wait)

- Press for specifics
- If issues:
  - Documents requested?
    - List and send
- Potential noncompliance findings
  - Review carefully
  - If confirmed, develop corrective actions proactively

# After the Visit



# Next Steps

- OIG Audit, Single Audit
  - Draft Audit Report
  - Final Audit Report
  - Final determination (ED, State Agency)
- Respond carefully at each level
  - Problems always easier to resolve at earliest level



# Next Steps

- ED can:
  - Accept finding as is
  - Accept finding but reduce or eliminate liability
  - Reject finding
- Letter of final audit determination
  - Establishes prima facie case
    - 34 C.F.R. 81.34

# Review by ED

ED accepts finding with \$ liability

Appeal to Office of Hearings and Appeals (OHA), 34 CFR 81.37

Administrative Law Judges (ALJs) are independent

## **Caution** –

- Time limits
- Other Rules of Procedure for Appeals

# Review by ED

ALJ Decision

Appeal to Secretary



# Example: St. Louis School District

## ○OIG Audit Finding:

- Purchased 700 laptops with IDEA funds; stored in unlocked room
- Used 300 laptops in training, several teachers left without returning – district could not account for 125 laptops
- Required refund and corrective actions

## ○District's Response:

- Disputed number of missing laptops
- Asked to replace laptops using general funds, rather than return federal funding
- Agreed to corrective actions

## ○ED Determination:

- Sustained the finding, but did not seek recovery of funds
- Permitted district to use nonfederal funds spent on special education transportation as “equitable offset”

# Audit Defense and Resolution



# Common Defenses

- Harm to the Federal interest
- Equitable offset
- Statute of limitations



# Harm to the Federal Interest 34 C.F.R. 81.32 and Appendix

“A recipient that made an unallowable expenditure or otherwise failed to account properly for funds shall return an amount that is proportional to the extent of the harm its violation caused to an identifiable Federal interest associated with the program. . .”

# Harm – Always



## Ineligible Beneficiaries

- Example: IDEA, Part B program funds for students without a disability

## Unauthorized activities

- Example: Migrant funds used for local agency staff to attend conference unrelated to Migrant program



# Harm - Always (cont.)

## Fiscal

- Set-aside
  - Example: SEA spends more than 10% on Perkins state leadership
- MOE
- Comparability
- Supplanting
- Excess cost
- Matching



# Possible No Harm



May argue “no harm” if:

- Did not obtain required prior approval
- Missing required time and effort documentation
- Missing evidence of procurement

**Caution: ED takes more limited view – may require litigation**

# ALJ Decisions - Reconstruction

- *Application of the New York State Department of Education, No. 90-70-R (April 21, 1994)*
  - After-the-fact affidavits and other pertinent documentation are admissible as evidence
- *Consolidated Appeals of the Florida Department of Education, Nos. 29(293)88 & 33(297)88 (June 26, 1990)*
  - Accepted affidavits completed by supervisors years later as credible and useful evidence

# Reconstruction (cont.)

## Reconstruction sufficient for performance documentation?

- Ohio Dept. of Ed Audit: OIG did not accept affidavits from Ohio staff as adequate support for reported performance data on RTT objectives



# Equitable Offset

In effect, an equitable offset permits the substitution of any costs paid under the grant that are subsequently disallowed with otherwise allowable expenditures paid by the grantee, and thereby reduces or eliminates a liability due to ED.

*Application of Pittsburg Pre-School Community Council,*  
Docket No. 09-20-R (May 16, 2012)

# Equitable Offset (cont.)

## Pennsylvania Decision: New Test:

- “[T]riers of fact must analyze each request for equitable offset individually, considering also the scope and persuasiveness of the underlying actions, whether the grantee acted in “good faith” in response to the issue, and the arguments, if any, that the Department offers in opposition to the request for offset.”

## Georgia Decision: Follows Pennsylvania

- Lesson Learned?

# Statute of Limitations

No recipient under an applicable program shall be liable to return funds which were expended in a manner not authorized by law more than 5 years before the recipient received written notice of a preliminary departmental decision.

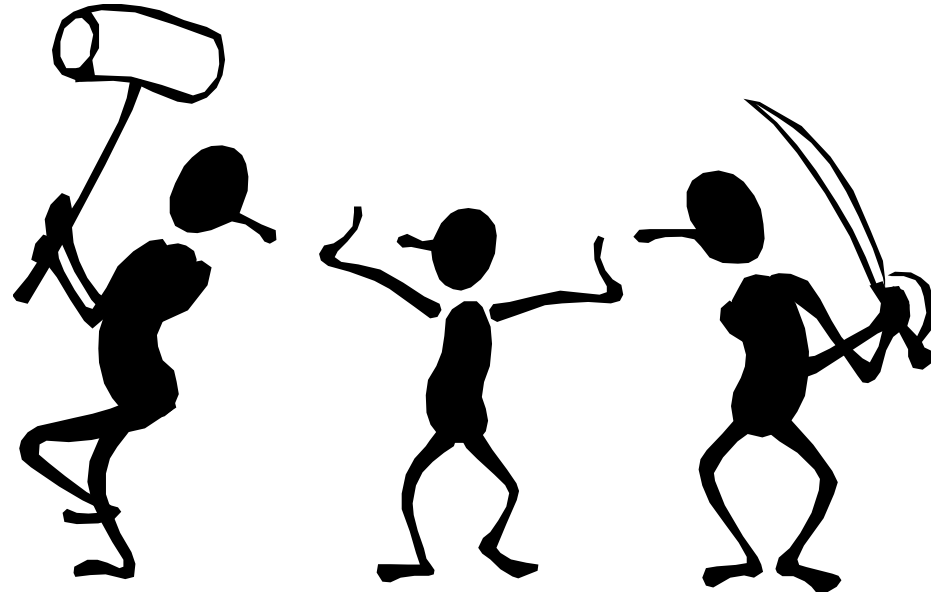
- 20 U.S.C. 1234a(k); 34 C.F.R. 81.31(c)

○ For purposes of measuring the statute of limitations, funds are “expended” as of the date of obligation.

- *Appeal of the State of Michigan*, Docket No. 8(272)88, 6 (September 14, 1989)

# Resolution Strategies

- CAROI
- Compromise
- Settlement
- Litigation





# Cooperative Audit Resolution (CAROI)

- 200.513: The Federal awarding agency must use cooperative audit resolution to improve federal program outcomes
  - Cooperative Audit Resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust and developing an understanding between the Federal agency and non-Federal entity (200.25).

# Monitoring Findings

## Opportunity to Respond

- Generally, Corrective Actions
- No Liability





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# Compliance Supplement

# Compliance Supplement

“While most commenters were in favor of the proposed reduction of the number of types of compliance requirements in the compliance supplement, many voiced concern about the process that would implement such changes.”

– 78 C.F.R. 78608

# 2017 Compliance Requirements

- Activities Allowed or Unallowed
- Allowable Costs
- Cash Management
- Eligibility
- Equipment, Real Property Management
- Matching, Level of Effort, Earmarking
- Period of Performance
- Procurement and Suspension and Debarment
- Program Income
- Reporting
- Subrecipient Monitoring
- Special Tests

# 2017 Compliance Supplement

- Program Specific Requirements
- Internal Controls

# SAVE THE DATE !!!

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HOW TO HANDLE MORE (RESPONSIBILITY) WITH LESS (DOLLARS)



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# Questions?





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