

DEPARTMENT OF EDUCATION-
REGULATION AND
DEREGULATION

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- 1960s: Congress began recognizing unmet educational needs
 - Children in Poverty
 - Students with Disabilities
 - Vocational Training
 - Limited English Proficient Students
 - Homeless Students



- Federal education programs
 - Designed to address specific unmet needs



LIMITED FEDERAL CAPACITY

- State administered programs created



DEPARTMENT OF HEALTH EDUCATION AND WELFARE

- Education responsibility generally given to the U.S. Department of Health, Education, and Welfare (HEW)
- United States Office of Education
 - Divided into program bureaus with specific responsibility
 - Elementary and Secondary Education
 - Vocational Education
 - Special Education, etc.



OFFICE OF EDUCATION

- Bureaus: Responsibility for individual program
- Individual programs contained separate administrative rules
 - Not always consistent
 - Burdensome due to differing requirements



U.S. DEPARTMENT OF EDUCATION (ED) IN 1980

- Education responsibility transferred
- HEW becomes ED and Health & Human Services (HHS)



ED

- Separation of program function is preserved
 - Funds allocated to States for program administration
 - Funds allocated to States for distribution to school districts – local education agencies (LEAs)



STATE EDUCATION AGENCIES (SEAS)

- SEAs expanded
 - Significant function: Administer federal programs
 - Divided into program offices
 - Generally reflect federal organization
 - Examples
 - Elementary and Secondary
 - Students with Disabilities
 - Career Education



• **Federal Government recognizes inefficiency!**

- Programs with separate administrative requirements
 - Duplication of efforts
 - Inconsistent requirements
 - Changes need to be program by program
- Leads to administrative standardization



ADMINISTRATIVE STANDARDIZATION

- General Education Provisions Act (GEPA)
- Education Department General Administrative Regulations (EDGAR)
- Single Audit Act
- Office of Management and Budget (OMB) Circulars

GEPA

- Part of the organic law establishing ED's structure
- Cross-cutting provisions



EDGAR

- Department of Education administrative rules covering all ED programs



OMB CIRCULARS

- Government-wide principles for determining what costs are allowable
- Uniform Grants Guidance incorporates previous circulars
- http://www.whitehouse.gov/omb/circulars_default



EXAMPLE: APPLICATION OF FEDERAL LAWS/ AUTHORITIES

- Title I of the Elementary and Secondary Education Act (Title I)
- Reauthorized by Every Student Succeeds Act in 2015
- Analysis of applicability of Federal laws/ authorities to Title I

EXAMPLE: TITLE I HOW MUCH MONEY WILL WE RECEIVE?

- Congress appropriates a total amount for the Nation
- Title I formula allocates to
 - Local Education Agencies (LEA)
 - Funds flow SEA → LEA
- All based on formula in the law



HOW CAN WE SPEND THESE FUNDS?

- Always begin with program statute...
 - Ask:
 - a) What can we do?
 - b) Who can we serve?
 - c) Any specific restrictions?

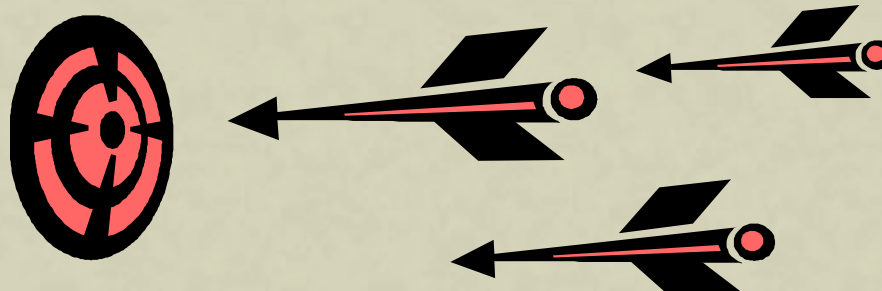


TITLE I, PART A – TARGETED ASSISTANCE

- Congress mandates Title I is for:
 - a) Educational Supports
 - What qualifies as an educational support?
 - b) Educationally Disadvantaged Student
 - Who are the educationally disadvantaged students?
 - c) Supplemental Services
 - What are the additional fiscal rules?
 - Non supplant- New ESSA
 - Maintenance of Effort- Modified ESSA
 - Comparability

TITLE I, PART A - TARGETED ASSISTANCE (CONT.)

- d) Services to students in private schools
 - How do I determine amount of funding? What are the uses?
- e) Schools served on basis of poverty rates
 - Which schools can be served with Title I funds?



GENERAL EDUCATION PROVISIONS ACT (GEPA)

- GEPA: Is the program subject to the cross-cutting authority of ED on State Administered Programs?
- “Applicable program”
 - Program for which the Secretary of Education has administrative responsibility
 - No Child Left Behind
 - Individuals with Disabilities Education Act
 - Carl Perkins Career and Technical Education Act

WHAT CONTROLS THE STATE - LEA RELATIONSHIP REGARDING THE FEDERAL PROGRAMS?

- Part 76 – 34 CFR Part 76 (Code of Federal Regulations)- Now incorporates UGG
- LEA applies to the State for funding
- State notifies LEA
 - Amount
 - Timing
 - Federal requirements applicable
- SEA assures intended uses are within the law
- LEA commits to follow the plan it submits to SEA

GEPA – EDGAR

- EDGAR applies and expands GEPA requirements- Adopts UGG
- Application Process
 - State applies to ED
 - Local Education Agency (LEA) applies to State (SEA)

GEPA – EDGAR

- Funds flow ED → SEA → LEA
- States are responsible for and must monitor LEA compliance
- SEAs are responsible to ED to properly administer federal grant funds

GEPA – EDGAR

- Funds flow to SEA after ED approval of application
- Funds flow to LEA after SEA approves local application
- Available for 27 months for obligation
- Obligation is not expenditure
- 90 days additional for liquidation
 - Obligation defined

EDGAR

- Uniform Grant Rules
 - Pre/post award requirements
 - Program income
 - Property management
 - Procurement process
- Subgrants
 - In most major education programs, LEAs are allocated funds based on a formula enacted by Congress
 - May not subgrant unless authorized by law



SINGLE AUDIT ACT ~~—OMB CIRCULAR A 133—~~ UGG

- **Historically:**
 - Audit requirements historically separate and within program statutes
 - Requirements inconsistent
- **Single Audit Act (~~A-133~~) UGG**
 - Requires audit by independent auditor of federal programs whenever recipient expends over \$750,000 federal funds – all services
 - Creates uniform standards of
 - Independence
 - Selection of items to be audited
 - Auditing standards
 - Contains program guides for auditor use
 - Compliance supplements

SINGLE AUDIT ACT ~~—OMB CIRCULAR A-133~~ UGG

- Compliance Supplement
 - Each major program
 - Guide developed by ED/OMB
 - Important resource
 - ED view of important elements
 - Auditor responsibility

UGG ~~OMB CIRCULAR A 87-~~ TITLE I, PART A

Example –

- Can I use Title I to buy a computer to provide educational support?
 - Necessary
 - Reasonable
 - Allocable



EDGAR

- What procurement process do I use?
- What property management (inventory) do I need?



UGG ~~OMB CIRCULAR A-87~~ - 54 ITEMS OF COST

- Can I pay for attendance at a professional development meeting for a Title I teacher?
- What documentation do I need to support salary payments?

REGULATIONS

- Formal rulemaking by agencies
- Notice- Opportunity for comment
- Required where new rule or new interpretation
 - Not required for “clarification” of existing rule
 - Agency must consider and respond to comments
- Proposed – Final public comment
 - Negotiated Rulemaking

REGULATIONS

- When final- Force of law
- Must comply
- Administrative law judge may not strike down

REGULATIONS

- Binding unless/until court finds the regulation
 - Violates the statute
 - Violates the constitution
 - Was enacted without proper process
 - Most common challenge

REGULATIONS

- Meant to clarify
- Fill in the blanks
 - Example:
 - Law says “reasonable effort to notify EL parents”, regulations says “at least two attempts”

REGULATIONS

- Public Input and Negotiated Rulemaking
 - Implementing programs under Title I of the Elementary and Secondary Education Act
 - Federal Register (December 22, 2005):
 - <https://www.gpo.gov/fdsys/pkg/FR-2005-12-22/pdf/E5-7720.pdf>

STEP ONE

- Secretary solicits advice and recommendations:
 - Areas where regulations-helpful
 - Two regional meetings
 - References to ESSA

STEP ONE CONT.

- Suggested areas for comment
- Statewide assessments
- Eliminate AYP-Substitute State System
- Meaningful differentiation of schools
- Evidence Based Interventions
- Teacher equity in distribution
- New Supplement/Supplant rule
- Request areas where regulatory (or non-regulatory) advice would be helpful

STEP TWO

- Secretary determines area to propose regulations
- Formal notice, comment
- Secretary-comment analysis
- Proposed regulations-Final regulations

STEP THREE

- Formal Negotiated Rulemaking
 - Statute can require (ESSA) or Department can initiate voluntarily
 - ESSA
 - Required: For Standards and Assessments
 - Supplement not Supplant

NEGOTIATED RULEMAKING

- Secretary selects individuals- to negotiate
- Negotiations occur with agency
- Final agreement
- Step 2 proposed regulations- Notice and Comment

DEREGULATION

- Formal – Notice and opportunity to comment
- Congressional Review Act
 - Rescind within 60 legislative days
- Agency gives little no priority to enforcement
- PROPOSED Regs – Can be withdrawn or just not finalized
 - Supplement not supplant

DEREGULATION (CONT.)

- ESSA
 - Supplement not supplant – Evident Secretary may not prescribe methodology
- Title VIII
 - Secretary may not ;
 - Incentivize : standards
 - Assessments or
 - Content
 - May not Require adoption of policies in exchange for waivers and may not
 - Specify additional pieces of accountability system

INFORMAL RULEMAKING BY AGENCIES

- Guidance
- 90 day letter
- Dear Colleague Letters
- Letters
- Emails
- Phone calls

GUIDANCE

- Called “non regulatory” guidance
- Used widely under NCLB
- States agency position-it is not binding
 - Only informs what agency believes is correct
- ALJ’s do not have to follow
- Grantees do not have to follow but cannot argue lack of notice of agency position
- Can argue agency position not consistent with law
- ESSA –
 - Secretary cannot issue non regulatory guidance that provides – exhaustive or strictly limited criteria for successful implementation

GOOD GUIDANCE

- OMB- Final Bulletin Good Guidance precedes January 25, 2007
- Guidance documents can be enormously helpful or poorly designed
- <https://www.gpo.gov/fdsys/pkg/FR-2007-01-25/pdf/E7-1177.pdf>

OMB GOOD GUIDANCE

- Internal review- senior agency official
- Public participation
- Justification
- Interagency review
- Congressional oversight
- Judicial review

OMB GOOD GUIDANCE (CONT.)

- 90 day letter-Department of Education only 34 CFR 81.33
- Erroneous written guidance from ED
 - IF:
 - Specific written request
 - To designated official
 - Official authorized to respond
 - Actual reliance-reasonable
 - OR:
 - Specific written request
 - Detailed description
 - Certification chief legal officer of the State
 - No response after 90 days

DEAR COLLEAGUE LETTERS

- Sent to field generally
- Have no legal binding authority
- Cannot make or change policy
- Proper use-
 - Only to emphasize pre-existing rules
- Use not always “proper”
- Can be revoked or changed by agency

LETTERS AND EMAILS

- Represent communication between an official and an individual
- No legal authority
- Can be helpful in clarifying agency position, especially in regard to a straightforward question in a grant
- Example:
 - Our project partner resigned can we appoint our state university as partner?
- Phone calls
 - Not worth the paper they're written on (Derivative Yogi Berra)
- Can be revoked – changed by agency

GEPA

- And finally...
 - What happens if I don't follow the rules?
 - Enforcement procedures
 - Recovery of funds
 - Termination of program
 - High Risk States
 - Compliance Agreement





QUESTIONS?

SAVE THE DATE!!!



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