When the Auditor Comes Knocking:
Grant Audits Under the Uniform Grant Guidance

Wednesday, March 11, 2015

Leigh Manasevit, Esq.
Imanasevit@bruman.com
Brustein & Manasevit, PLLC
Sources of Non-Compliance Findings

1. OIG Audit
2. A-133 Audit
Preparation

• Key to successful outcome
• Self assessment - critical
Self Assessment

- Identify potential trouble spots
  - Review significant violations from other processes
  - Review prior findings
  - Conduct self assessment
  - Prepare staff!
### Conversations About Internal Controls

Office of the Inspector General, Department of Transportation
Presentation at National Grants Management Conference

<table>
<thead>
<tr>
<th>WHAT AUDITEES SAY</th>
<th>WHAT AUDITORS HEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our policies are being drafted.</td>
<td>The program may not be administered effectively. Let’s increase our testing sample.</td>
</tr>
<tr>
<td>We have a small staff, and many people have collateral duties.</td>
<td>No segregation of duties. High potential for fraud.</td>
</tr>
<tr>
<td>I need to check around to find that document.</td>
<td>There is no document management system. The records are not accurate.</td>
</tr>
<tr>
<td>You can use my logon to review system records.</td>
<td>There are no controls over systems. There is potential error, fraud, and unauthorized use.</td>
</tr>
</tbody>
</table>
Review of 27 OIG Audit Reports

- $1,398,564 unallowable personnel costs
  - Employee compensation charged to grants on which the employee did not work
- $826,183 unallowable non-personnel costs
  - Unnecessary or unreasonable to carry out the grant or not-for-program purposes
- $810,055 unallowable non-personnel costs
  - Contracts were: missing required elements; unfulfilled; not approved; or included expenditures that exceeded the contract amounts
• **$66,666,155** inadequately documented personnel costs
  - Time and effort documentation (both semi-annual certifications and PARs) were missing, incomplete, inaccurate, or untimely

• **$16,010,550** inadequately documented non-personnel costs
  - Missing or inaccurate supporting documentation

• **$2,693,004** in lost or unaccounted for property
  - Improper inventory control systems

• **$2,504,617** unallowable supplanting of Federal grant funds
• Pervasive non-compliance issues
  • Inadequate policies and procedures (34 times)
  • No policies and procedures (15 times)
  • Not understanding the regulations and guidance (10 times)
  • Policies in place, but not followed (5 times)
Audit Violations Deemed “Significant” by the U.S. Education Department
Significant Violations

1. Time Distribution
2. MOE
3. Supplement, Not Supplant
4. Unallowable Expenses
Significant Violations

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, Inconsistency
11. Audits of Subrecipient Unresolved
Significant Violations

12. Lack of Subrecipient Monitoring
13. Drawdown before they are needed or more than 90 days after the end of funding period
14. Large Carryover Balances
15. Lack of valid, reliable or complete performance data
Significant Violations – Specific to Title I

- Equitable Services
- Parental Involvement (including notices)
- Skipping Schools
- School Allocations
Evaluate Areas to be Examined

1. OIG Audit
   • Notice of Audit: Correspondence
2. A-133 Audit
   • Prior Audits (Findings)
   • A-133 Compliance Supplement
Audit Resolution – The Uniform Grant Guidance

• Audit threshold raised $500k to $750k
Additional Audits

- Federal agency, OIG or GAO may conduct additional audits at federal cost
Auditee Responsibilities

• Arrange single audit
• Prepare financial statements
• Follow up and corrective action on findings
• Provide access
Auditor Selection

- Must follow procurement standards
Audit Records Access

• Can the auditee refuse to provide the auditors with requested documents?

• GEPA 20 USC 1232(f) requires that ED and its representatives (which arguably includes A-133 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”

• EDGAR 80.26(b)(5) also indicates audit access to records without qualifiers.
  • If requested records are not provided, likely receive an audit limitation.
Audit Resolution

• Schedule of Prior Findings
• Corrective Action Plan
• Include reference numbers and fiscal year
Schedule of Prior Findings

• Status of all findings in prior schedule
  • Unless corrected
• Corrected findings – note only corrective action taken
• Uncorrected
  • Reason for recurrence
  • Partial corrective action taken
  • Additional corrective action planned
Schedule of Prior Findings

- Auditee believes finding unwarranted
- Basis:
  - No longer valid if:
    - 2 years have passed and
    - Pass through entity not following up and
    - No management decision
Corrective Action Plan

• Addresses each finding
• Separate from schedule of findings
• Name of contact person
• Corrective action planned
• Anticipated completion date
• If auditee disagrees…

  Reasons
Submission to Federal Audit Clearing House (FAC)

- Reporting package
  - Financial statements
  - Schedule prior findings
  - Auditors report
  - Corrective action plan
  - Management letters
Federal Agency Responsibility

- Cognizant agency for audit
  - TA to auditees
  - Quality control
  - Advice to auditors
  - Notice to auditors of audit deficiencies
  - Coordinate management decisions
Federal Agency Responsibilities

- Awarding agency responsibility
  - Ensure completion of audits – timely
  - TA to auditees and auditors
  - Follow up – ensure corrective action
  - Management decision
  - Monitor corrective action
  - Use CAROI
CAROI

- Cooperative Audit Resolution Oversight Initiative
  - Developed with ED and pilot states
  - Adopted by ED as standard audit resolution
Historically:

- Rejected by most other agencies
  - Labor
  - Agriculture
  - Health Human Services
Uniform Grant Guidance Applies CAROI

• To all federal agencies –
• Government wide policy
CAROI 200.25

- Audit and follow up that promotes prompt corrective action
- Improve communication
- Foster collaboration
- Promote trust
- Develop federal – non federal agency understanding
CAROI (cont.)

• Basis
  • Leadership commitment to program integrity
  • Partnership, federal
    • Non federal and auditors
  • Focus
    • Current conditions and cooperative action
• Message:
  • Continued failure to correct unacceptable
• Prompt corrective action as shown by audits
  • Federal agencies offer
  • Appropriate relief Past non-compliance
CAROI (cont.)

• Federal agency responsibilities 200.513
  • Use CAROI to improve outcomes
    • Audit resolution
    • Follow up
    • Corrective action
CAROI (cont.)

- Management Decision
  - Audit finding sustained or not sustained
  - Reasons for decision
  - Expected action
    - Repayment?
  - Corrective action
  - Appeal available
  - 6 months of filing with Federal Audit Clearing House (FAC)
Next Steps

• Audits
• Letter of final audit determination
• Appeal
  • Office of Hearings and Appeals (ED)
Audit Defense and Resolution
Common Defenses

- Harm to the Federal interest
- Equitable offset
- Statute of limitations
Harm to the Federal Interest 34 CFR 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 program...”
Harm – Always

- Ineligible Beneficiaries
- Example: Title I, Part C funds for non migrant students
• Unauthorized activities
  • Example: Title II, Part A funds used to pay salary of regular Ed teacher (not CSR)
  • Example: Title I funds pay for attendance at a conference unrelated to teaching educationally disadvantaged students
Harm Always (cont.)

- Fiscal
  - Set-aside
    - Example: LEA spends less than 100% of its Title I parental involvement
  - MOE
  - Comparability
  - Supplanting
Possible: No Harm

• LEA requires prior SEA approval for expenditure
• LEA makes expenditure without approval
• No harm possible if –
  • Action was not intentional violation
  • Action was isolated – not a pattern
  • Expenditure would have been granted if sought
  • Expenditure allowable under the program
Possible: No Harm

- LEA operates a school-wide program
- SW teachers must keep time and effort semi-annually
- SW teachers fail to keep time and effort
- LEA establishes by schedules
Possible: No Harm

- Teacher affidavits
- Attendance sheets
- Supervisory affidavits
  - That teachers taught in the school-wide full-time
- No harm finding possible although time and effort violation
Possible: No Harm

• Caution: ED takes more limited view – may require litigation
• Application of the New York State Department of Education (April 21, 1995)
  • After-the-fact affidavits and other pertinent documentation are admissible as evidence.

• Consolidated Appeals of the Florida Department of Education (June 26, 1990)
  • Accepted affidavits completed by supervisors years later as credible and useful evidence.
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.

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 USC 1234a(k); 34 CFR 81.31(c)

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

• To ask a question, please press *1 on your touchtone phone.
• If you are using a speaker phone, please lift the receiver and then press *1.
• If you would like to withdraw your question, press *1.
Follow-Up Questions

If you have any remaining questions after the conclusion of today’s webinar please do not hesitate to get in touch.

Ask our editor: karen.norris@thompson.com

For more information and great grants related resources feel free to visit us online:

• http://www.thompson.com/
• http://grants.complianceexpert.com/ (Thompson’s subscription website, federal compliance regulations are available to all free of charge)
This presentation is intended solely to provide general information and does not constitute legal advice or a legal service. This presentation does not create a client-lawyer relationship with Brustein & Manasevit, PLLC and, therefore, carries none of the protections under the D.C. Rules of Professional Conduct. Attendance at this presentation, a later review of any printed or electronic materials, or any follow-up questions or communications arising out of this presentation with any attorney at Brustein & Manasevit, PLLC does not create an attorney-client relationship with Brustein & Manasevit, PLLC. You should not take any action based upon any information in this presentation without first consulting legal counsel familiar with your particular circumstances.
When the Auditor Comes Knocking: Grant Audits Under the Uniform Grant Guidance

Wednesday, March 11, 2015

Leigh Manasevit, Esq.
Imanasevit@bruman.com
Brustein & Manasevit, PLLC