

Improper Payments Under the Uniform Grants Guidance

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Uniform Grants Guidance Most Significant Changes

- Shift from focus on *Compliance* to focus on **PERFORMANCE!!!**
 - Auditors (A-133 + Federal OIG) and Monitors (Federal and State Pass Through) must look more to “outcomes” than to “process”
 - The uniform grant guidance adds significant flexibility to way grantees / subgrantees can adopt their own processes

Uniform Grants Guidance Most Significant Changes (cont.)

- The uniform grant guidance has a MAJOR emphasis on “strengthening accountability” by improving policies that protect against waste, fraud and abuse
- Significant emphasis on agency improper payments responsibilities

Background on Improper Payments

- 2002 Improper Payments Information Act (IPIA) initial framework:
 - Identify
 - Measure
 - Prevent
 - Report
- 2002 Recovery Audit Act
 - Agencies awarding over \$500 million in contracts:
 - Programs to recover overpayments

Background on Improper Payments (cont.)

- 2010 Improper Payments Elimination and Recovery Audit Act (IPERA):
 - Replace and consolidate IPIA and Recovery Act
 - Retain core elements
 - Requires
 - Improvement in estimation procedures
 - Improper payment reduction plans
 - Expands reporting

Background on Improper Payments (cont.)

- IPERA 6 Requirements
 1. Performance, Accountability Report
 2. Program Specific Risk Assessments
 3. Publish Improper Payment Estimates
 4. Corrective Action Plans
 5. Annual Reduction Targets
 6. Publish Gross Rate under 10%
- 2012 Improper Payments Elimination and Recovery Improvement Act (IPERIA)
 - Improve estimation process
 - Do Not Pay Initiative

Background on Improper Payments (cont.)

- Executive Order 13520, Nov. 25, 2009
 - Intensify efforts to eliminate payment error, waste, fraud and abuse
 - Background
 - Federal agencies to tailor methodologies to identify and measure improper payment where most likely to occur

Uniform Grants Guidance Improper Payment – Definition 200.53

- Payment should not have been made
- Incorrect amount
- Ineligible
 - Party
 - Goods
 - Service
- Duplicate
- Good or service not received
- Does not account for
 - Credit
 - Discount
- Lack of “sufficient” documentation

Congressional Research Services (CRS) Report on Improper Payments – Jan. 2, 2013

- <http://fas.org/sgp/crs/misc/R42878.pdf>
- Exceeded \$115 Billion in FY 2011
- May be even higher as certain agencies (especially DOD) unreliable data

Congressional Research Services (CRS) Report on Improper Payments – Jan. 2, 2013 (cont.)

- 3 Most Common Causes
 - Failure to:
 - Verify recipient reported information
 - Ensure payments are for proper purposes
 - Have required documentation

Department of Education

- *OIG – May 2015 (FY 2014)*
- *OIG May 2016 (FY 2015)*
 - ED did not reduce improper payment rate in Direct Loan Program

Department of Education (cont.)

OIG – May 2016

- Improper Payment Methodologies for Pell Grant & Direct Loan Programs Flawed:
 - Did not include all program reviews
 - Excluded other sources
 - FAFSA, IRS studies, Fraud
 - Methodology too volatile – single review can distort
 - Did not include ineligible programs or sites

Department of Education (cont.)

Department of Education

May 2017 (FY 2016)

- ED did not comply with IPERA
- Did not meet target reductions
- Risk assessments not compliant

Department of Education

Department of Education

May 2018 (FY 2017)

- ED did not comply with IPERA
- Did not meet target reduction - PELL

Department Health and Human Services

- May 2016 OIG Report (FY 2015)
 - Did not comply with IPERA
 - Required risk assessment on
 - Employee payments
 - Charge cards
 - Failed to meet reduction targets for certain programs

Department of Health and Human Services

May 2018 (FY 2017)

- Ernst & Young – OIG Contract

- HHS did not comply with IPERA
- No improper payment estimate TANF
- Did not obtain rate under 10%
Medicaid
- Did not meet rate reduction targets
 - Medicaid, Chip & Foster

Department of Labor

OIG Contract with KPMG

- Did not meet target reduction rates



Government Accountability Office

- Government wide estimates and reduction strategies
- July 2014 Report
<http://www.gao.gov/assets/670/664692.pdf>
 - FY 2013 \longrightarrow 105.8 billion
 - 84 programs \longrightarrow 18 agencies

Government Accountability Office (cont.)

- March 2015 Report
 - Improper payments FY14: 124.7 billion
 - Increase of 19 billion from FY13
 - 124 programs – 22 services
 - Numerous courses: including payments to deceased persons

Government Accountability Office (cont.)

- June 2016 Report
 - FY 2014-15 OIG's reported non-compliance with reduction targets
 - OIG's reported 38 programs → 100.6 B estimated
 - GAO finds 136.7 B for → FY 2015

Government Accountability Office (cont.)

- May 2018 Report
 - Reviewed 6 agencies, 10 programs
 - 2.5 trillion total expenditures (FY 2017)

Government Accountability Office (cont.)

- Recommendations
 - OMB develop guidance on outside agency nonresponse
 - DOD OPM assess their estimation processes
 - IRS must include recovered payments

Government Accountability Office (cont.)

Agencies reviewed	Improper payment estimated in millions
• Defense	183.4
• Education	3,863.3
• HHS	88,586.4
• Treasury	16,231.6
• OPM	313.8
• Social Security	2,758.4
	<hr/>
	111,756.9

Government Accountability Office (cont.)

- FY 2017 estimates \$141 billion improper payments
- Federal agencies continue to be unable to estimate full extent

2018 Compliance Supplement

- Changes only
- Must also refer to 2017 Compliance Supplement

12 Compliance Areas

1. Activities allowed, unallowed
2. Allowable cost
3. Cash management
4. Eligibility
5. Equipment
6. Match, level of effort

12 Compliance Areas

7. Period of performance
8. Suspension, debarment
9. Program income
10. Reporting
11. Subrecipient monitoring
12. Special tests

Compliance Supplement (cont.)

- Auditors must be alert to improper payments, especially 1, 2, 4, possibly 12

Required Certifications 200.415

- **New:** Official authorized to legally bind the non-federal entity **must certify on annual and final fiscal reports or vouchers requesting payment:**
 - “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete and accurate and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information or the omission of any material fact, may subject me to criminal civil or administrative penalties for fraud, false statements, false claims, or otherwise.”

Mandatory Disclosures 200.113

- **New:** Non federal entity must disclose in writing in timely manner to federal agency or pass-through all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting federal award

Conflict of Interest 200.112

- **New:** All non federal entities must establish conflict of interest policies, **and disclose in writing any potential conflict to federal awarding agency in accordance with applicable Federal awarding agency policy.**

Internal Controls 200.303

- Must:
 - Establish and maintain effective internal controls
 - Reasonable assurance federal award in compliance with:
 - Statutes
 - Regulations
 - Terms of award
 - Prompt action – non compliance

Internal Controls – Federal

- A-123 – Appendix C
 - Management responsible for establishing and maintaining internal controls
 - Agencies must review and identify programs/activities that may be susceptible to improper payments
 - Use single audits to reduce improper payments

Federal Agency Responsibilities 200.513

- Work with OMB
- Ensure compliance supplement focuses auditor to test requirements:
 - Most likely to cause improper payments, fraud waste, abuse or findings resulting in sanctions

Cooperative Audit Resolution 200.25

- Approach includes
 - Agency leadership clear message:
 - Continued failure to correct conditions identified in audits
 - “Likely to cause” improper payments, fraud waste or abuse:
 - **Unacceptable**

Bad Debts 200.426 - 200.428

- Related costs of collection (including legal) for uncollectable debts → unallowable –
 - But: cost of recovery of improper payments → allowable
 - Direct or Indirect
 - Amounts collected may be used by non federal entity

Single Audits 200.511

- Auditee responsible:
 - Follow up corrective action on findings
 - Corrective action plan

Improper Payments Controls

- Establish a Program Integrity Board
 - Identify and prioritize root causes
 - Utilize algorithms
 - Data trends
 - Unusual activities

Resources

- Green Book
 - <https://www.gao.gov/assets/670/665712.pdf>
- AGA Fraud Prevention Toolkit
 - <https://www.agacgfm.org/Tools-Resources/intergov/Fraud-Prevention.aspx>

Payment Should Not Have Been Made

New: Period of Performance 200.309 (7.)

- May charge to the Federal award **only** allowable costs incurred during the period of performance.
 - Stated in grant award notice.
- Includes any costs prior to the award as permitted by the Federal awarding agency (similar to pre-award cost authority).

Cost Principles: “Factors Affecting Allowability of Costs” 200.403

(2.)

All Costs Must Be:

1. Necessary, Reasonable and Allocable
2. Conform to federal law & grant terms
3. Consistent with state and local policies
4. Consistently treated
5. In accordance with GAAP
6. Not included as match – in other federal programs
- 7. *Net of applicable credits (moved to 200.406)***
8. Adequately documented

New: Direct v. Indirect Costs 200.413

- Salaries of administrative and clerical staff should be treated as “indirect” unless all of following are met:
 1. Such services are integral to the activity
 2. Individuals can be specifically identified with the activity
 3. Such costs are explicitly included in the budget
 4. Costs not also recovered as indirect

(10.)

Sufficient Documentation!!!!



Incorrect Amount / Duplicate Payment

Ineligible Party

(8.)

- Debarment / Suspension (Appendix II)
 - Contract award may not be made to excluded individual (debarred or suspended)
(must check excluded party list)

Terms of Grant Program

Goods

(2.)

- Terms of Grant Program
- Selected Items of Cost
 - Alcohol



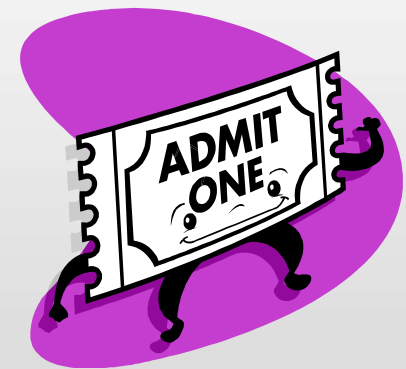
Title I – Elementary & Secondary Education Act

- Example:
- General curriculum Materials

Services

(1 and 4)

- Eligible beneficiaries terms of grant program
- Selected items of cost
 - Entertainment



Social Security -Medicare

(4.)

- Deceased individual
- Disability payments to non disabled



IDEA

(1.)

Example:

- Regular educational services



Credit or Discount 200.406

- Purchase discounts
- Rebates
- Allowances
- Credited as cost reduction or award received
- Failure: Improper payment

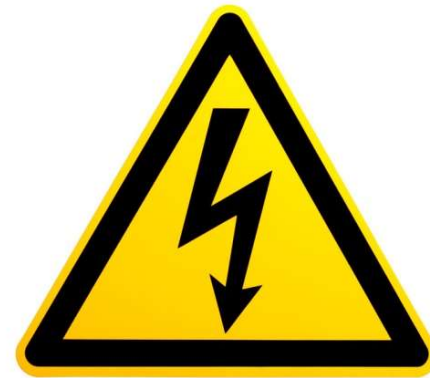
Lack of Documentation 200.403

(10.)

- All costs must be adequately documented



New Risk Management Requirements for Pass- Throughs



- Pass-through must evaluate each subrecipient's risk of non compliance (federal statute / regulations / terms of award) for purpose of monitoring



200.331

- Risk Factors:
 1. Subrecipient's prior experience with the grant program
 2. Results of previous audits
 3. New personnel or substantially changed systems
 4. Results of federal monitoring



200.331 (cont.)

- Pass-through may impose conditions on subgrant based on risk assessment:
 1. Shift to reimbursement
 2. Withhold payments until evidence of acceptable performance
 3. Require more reporting
 4. Require additional monitoring
 5. Require additional technical or management assistance
 6. Establish additional prior approvals
- Similar to High Risk Designation

34 CFR 80.12

200.331 (cont.)

- Pass-through must monitor its subrecipients to assure compliance and performance goals are achieved



200.331 (cont.)

- Monitoring must include:
 1. Review financial and programmatic reports
 2. Ensure corrective action
 3. Issue a “management decision” on audit findings if the award is from the pass-through



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 webinar producer:
mbarnes@columbiabooks.com

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

- <http://www.thompson.com/>
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