

Cross-Cutting Federal Education Issues

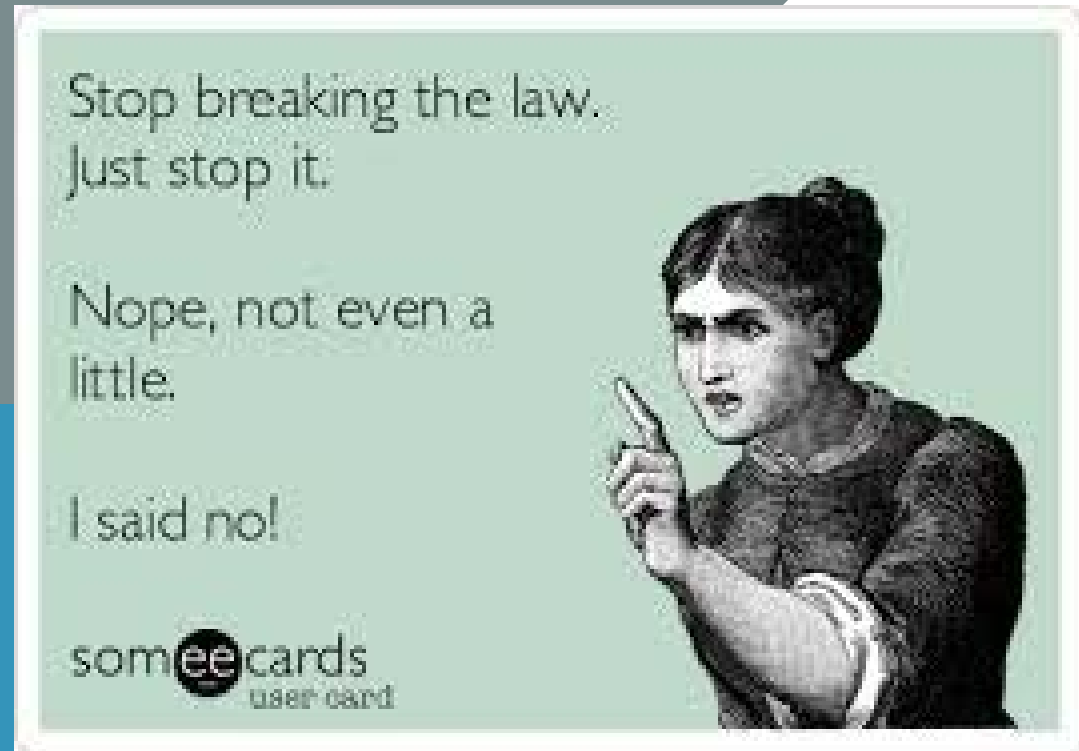
Tiffany Kessler, Esq. tkessler@bruman.com

Steve Spillan, Esq. sspillan@bruman.com

www.bruman.com

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How to Prevent and Detect Fraud



What is Fraud?

We hear the terms “fraud”, “waste”, and “abuse” often, but it is not uncommon for individuals to not understand what is meant by each term.

What is Fraud?

- Depends on who you ask and on the specific scenario!
- A legal term, such that laymen typically speak to suspected, likely, or possible fraud.
- **Webster’s Dictionary**: “*Deceit, Trickery; Intentional* perversion of truth in order to induce another to *part with something of value or to surrender a legal right.*”

What is Fraud? (cont.)

Most people hear “fraud” and think of criminal violations and penalties, but there are also non-criminal matters to consider.

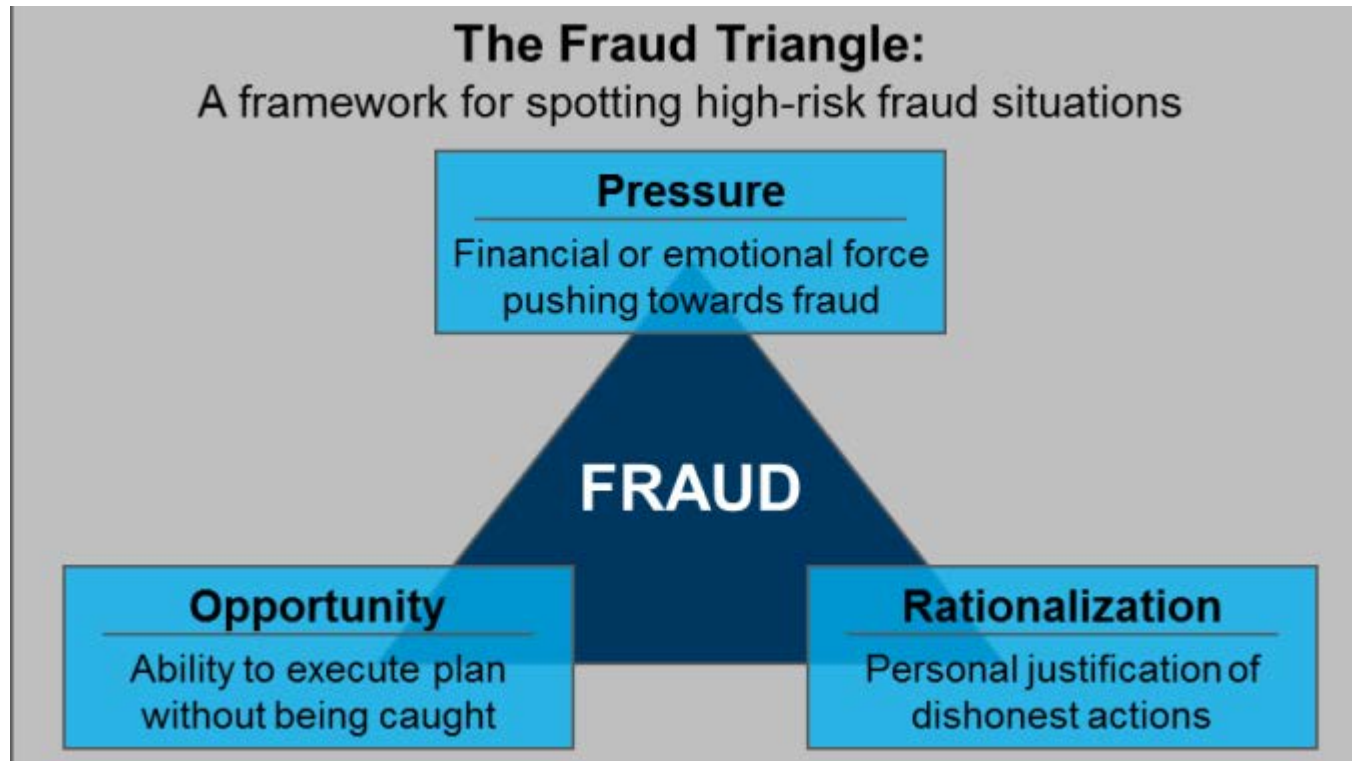
False Claims Act

- Codified in Title 31, Section 3729 of the United States Code
- Civil and Criminal Matters
- Violations include false claims or payment requests, false records or statements, and issues that cause errors in the Government’s receipt of property or money.
- The Government may be entitled to treble damages (3xs damages)

Improper Payments

- Are all improper payments “fraud”?

What are the leading causes of fraud?



Fun Fraud Facts

FIG. 88 How does the perpetrator's level of authority relate to occupational fraud in the United States?



- Medium Loss in US - \$108,000
- Median duration of scheme – 16 months
- Small businesses lost almost twice as much per fraud scheme as large businesses (> 100 employees)
- Only 4% fraudsters had a prior fraud conviction
- Losses by men were 75% larger than by women
- Employees with > 5 years experience stole 2xs more!

Chart

- Owners/Executives accounted for only 18% of cases in US, but median loss is \$637,000
- Employees accounted for 48% of loss – averaging \$50,000

Fun Fraud Facts (cont.)

*ACFE 2018 Report to the Nations

What are the most common occupational fraud schemes in the United States?

- **Corruption 30%**
- **Billing 26%**
- Noncash 21%
- Expense reimbursements 17%
- Cash on hand 15%
- Check and payment tampering 15%
- Skimming 14%
- Cash larceny 11%
- Payroll 10%
- Financial statement fraud 9%
- Register disbursements 3%

How is occupational fraud initially detected in the United States?

- **Tip 37%**
- Management review 14%
- Internal audit 13%
- By accident 9%
- Document examination 5%
- External audit 5%
- Account reconciliation 3%
- Notification by law enforcement 3%
- Surveillance/monitoring 3%
- Confession 1%
- IT controls 1%

Fun Fraud Facts (cont.)

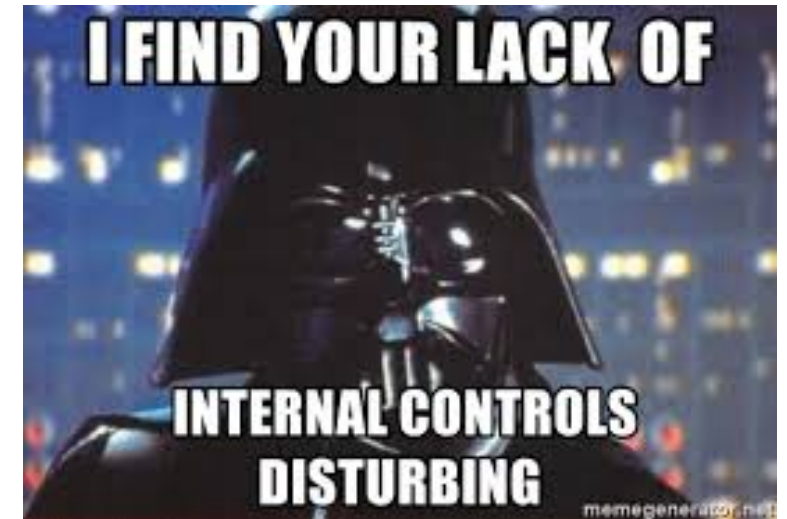
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What anti-fraud controls are the most common in the United States?

Code of conduct	73%	Fraud training for managers/Executives	49%
External audit of financial statements	69%	Independent audit committee	49%
Employee support programs	62%	Anti-fraud policy	47%
Management certification of financial statements	61%	Formal fraud risk assessments	37%
Internal audit department	60%	Proactive data monitoring/analysis	36%
External audit of internal controls over financial reporting	60%	Dedicated fraud department	35%
Management review	59%	Surprise audits	31%
Hotline	56%	Job Rotation/mandatory vacation	15%
Fraud training for employees	50%	Rewards for whistleblowers	12%

Top Internal Controls Weaknesses

- **Lack of Internal Controls – 30%**
- **Override of existing controls – 19%**
- **Lack of management review – 18%**
- **Poor tone at the top – 10%**
- **Lack of competent personnel in oversight roles – 8%**
- **Other – 6%**
- **Lack of independent checks/audits – 4%**
- **Lack of employee fraud education – 2%**
- **Lack of clear lines of authority – 2%**
- **Lack of reporting mechanism – <1%**



*ACFE 2018 Report to the Nations

10 Ways to Embezzle

Everyone please state the following:

“By Listening to this presentation, I, (insert name) promise to use the information for good and not evil.”

1 – Take an Asset

- From 1996 to 2000, employees from a McDonald's vendor stole winning game pieces and “won” virtually all the top prizes in the Monopoly game, a total of \$13 million.
 - ▷ The eight arrested included an employee in the security department.
 - ▷ <http://www.nytimes.com/2001/08/22/us/eight-charged-with-rigging-mcdonald-s-prize-contests.html>

2 – Accept Donations

- An 81 year old man in Camden, Maine was the President of the Board for a charity for 17 years and was found to have deposited \$3.8 Million in his personal account.
 - ▷ <http://bangordailynews.com/2015/02/09/news/midcoast/criminal-charges-anticipated-against-man-accused-of-stealing-3-8m-from-camden-charity/>

3 – Borrow Money

- An 83-year old Virginia man served as a volunteer treasurer of a fire department and “borrowed” \$121,022.90 without permission and without ever paying back the “loans”
 - ▷ <http://www.delmarvanow.com/story/news/local/virginia/2014/1/18/james-morris-fire-department/19223217/>

4 – Charge It

- From 2006 to 2011, a 33-year-old woman employed as a purchasing agent for HHS used an organization credit card to make over 250 unauthorized personal purchases totaling \$114,494.
 - ▷ <http://www.justice.gov/opa/pr/departments-health-and-human-services-employee-pleads-guilty-theft-government-funds>

5 – Recognize Your Hard Work

- A law firm manager stole \$603,560 by paying herself unearned overtime pay and by giving herself unauthorized pay raises.
 - ▷ <http://www.highbeam.com/doc/1P2-37076736.html>
 - ▷ <http://www.jdjournal.com/2014/08/14/former-law-firm-office-manager-pleads-guilty-to-fraud/>

6 – Fake or Padded Travel Vouchers

- The former head of Oxfam's counter-fraud efforts submitted phony invoices to obtain \$108,000 in fraudulent travel reimbursements.
 - ▷ <http://www.telegraph.co.uk/news/uknews/crime/10858267/Oxfam-anti-fraud-boss-jailed-for-stealing-65000-from-the-charity.html>

8 – Pay You, Pay Me

- From 2006 to 2010, a woman embezzled almost \$300,000 from a non-profit by falsifying beneficiary's TANF eligibility and splitting proceeds with recipients.
 - ▷ <http://www.greatfallsribune.com/story/news/crime/2014/06/12/ex-blackfeet-director-gets-years-theft/10396929/>

9 - Fake Company / Fake Invoices

- A 59-year old school district security manager created two shell companies and invoiced his employer for equipment and services that were never received, resulting in up to \$7 Million in losses.

▷ <http://www.wfaa.com/story/news/crime/2014/08/21/14189836/>

10 - Transfer Funds to You

- Over a 22 year period, the comptroller of a small town transferred over \$54 Million to an official sounding account that she actually controlled.
 - ▷ <https://www.illinoispolicy.org/former-dixon-comptroller-sentenced-to-19-5-years-in-prison-for-53-million-tax-theft/>

Fraud Consequences

■ Program Integrity and Reputation of Organization

■ Reporting

- ▷ IRS Form 990 (Return of Organization Exempt From Income Tax)
 - ▷ “Did the organization become aware during the year of a significant diversion of the organization’s assets?”
- ▷ 2 CFR 200.113 Mandatory Disclosures
 - ▷ Must disclose in writing, in a timely manner all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Fraud Consequences (cont.)

■ Administrative Actions by USDE, DOL, HHS, etc.

- ▷ Cancelled awards or repayment
- ▷ Suspension and Debarment

■ Civil False Claims Act

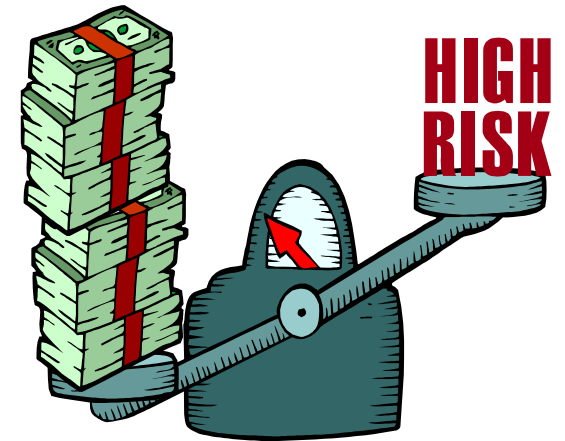
- ▷ Restitution (Up To \$5,500 to \$11,000 per false claim)
- ▷ Triple damages

■ Criminal Prosecution

- ▷ Arrest
- ▷ Restitution
- ▷ Imprisonment

How Do I Know If We Have Problems?

- “Because We’ve Always Done It That Way!”
- Magical Letters
- “I signed off on it because Joe did”
- Attempts to Circumvent Procedures
- Missing Property
- Employees in the News



Internal Controls 200.303

The non-Federal entity **must**:

- a. Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.

Internal Controls 200.303 (cont.)

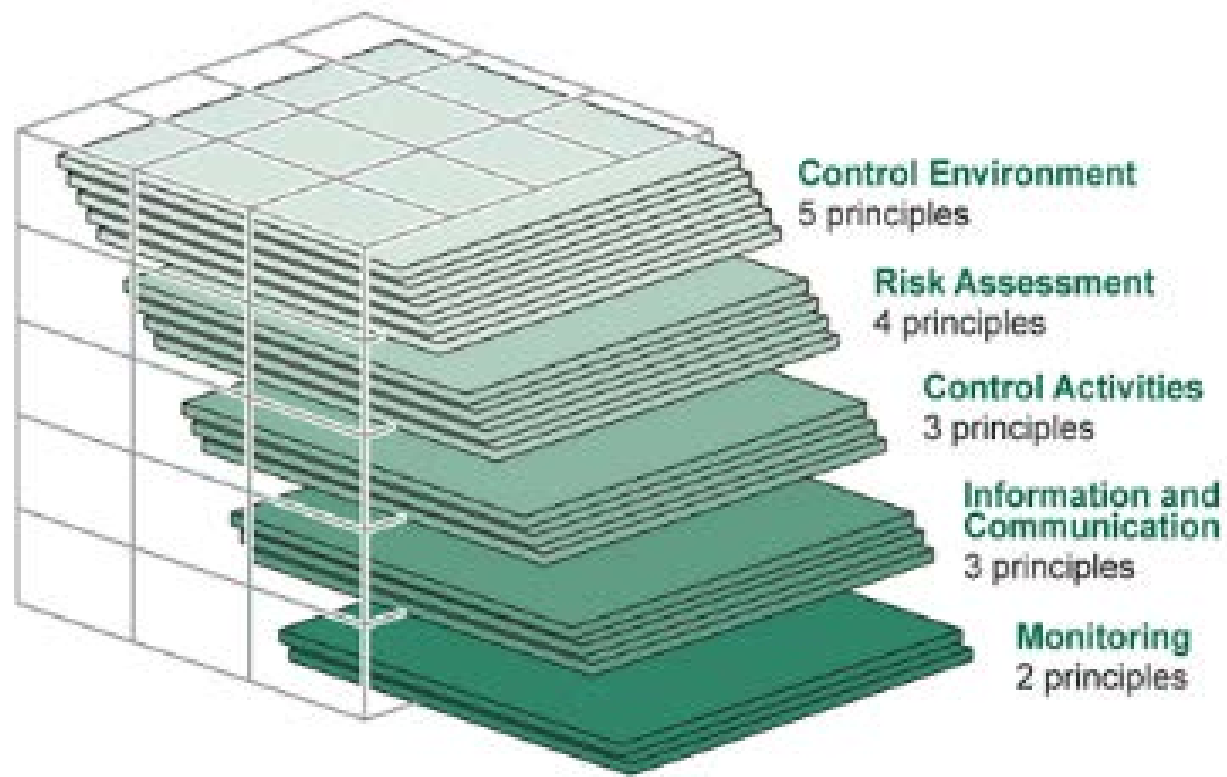
These internal controls should be in compliance with guidance in:

- “Standards for Internal Control in the Federal Government”, issued by the Comptroller General of the United States, or
- The “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Internal Controls 200.303 (cont.)

- b. Comply with Federal statutes, regs, and the terms and conditions of the Federal awards.
- c. Evaluate and monitor the non-Federal entity's compliance with statutes, regs and the terms and conditions of Federal awards.
- d. Take prompt action when instances of noncompliance are identified including in audit findings.
- e. Take reasonable measures to safeguard protected personally identifiable info (PII) and other information designated or deemed sensitive

The 5 Components and 17 Principles of Internal Controls



Source: GAO. | GAO-14-704G

Control Environment Principles

1. A commitment to integrity and ethical values;
2. Independent oversight over the development and performance of internal controls;
3. Clearly defined organizational structure, clear reporting lines, appropriate authorities;
4. A commitment to attract, develop and retain competent individuals; and
5. Maintain a level of competence that allows personnel to accomplish their assigned duties (and holding individuals accountable)

Control Environment Examples

- Well-written policies and procedures manuals
 - Addressing employee responsibilities, limits to authority, performance standards, hiring practices, whistleblower policies, conflict of interests, etc.
- Organizational chart
 - Clear lines of authority and responsibility
- Accurate Job descriptions
- Adequate training programs and performance evaluations

Risk Assessment Principles

1. Clear objectives to enable the identification and assessment of risks;
2. Identify risks to achievement of objectives across the entity and analyze risks as a basis for determining how the risks should be managed;
3. Consider the potential for fraud; and
4. Identify and assess changes that could significantly impact the system.

Risk Areas (cont.)

Risks are not stagnate; they increase and change as laws and operational environments change.

Examples:

- New personnel
- Experienced personnel
- Lack of personnel
- Reorganizations
- Rapid growth
- Changes in Population
- Leadership Changes
- Change in Laws / Regulations
- New Grants
- New Technology
- High Crime Area

Risk Mapping



Example: "Current Risk Severity Map" graphically shows the level of risk prior to mitigation.

Control Activities Principles

1. Select and develop control activities that contribute to the mitigation of risk and achievement of objectives to acceptable levels;
2. Select and develop general control activities over technology to support the achievement of objectives; and
3. Deploy control activities through policies that establish what is expected and procedures that put policies into action.

Control Activity Examples

■ **Preventive Controls:** Control that helps management avoid issues before they occur.

- Approval for purchases
- Restricting Access (Passwords)
- Training
- Security and surveillance systems
- Segregation of Duties
- Safeguarding Assets

■ **Detective Controls:** Control that discover issues after they occur.

- ▷ Match receiving to Pos
- ▷ Compare actual expenditures to budgeted
- ▷ Reconciliations
- ▷ Physical inventory count
- ▷ Review activity logs

Information and Communication Principles

1. Obtain or generate or use relevant, quality information to support the functioning of the entity;
2. Internally communicate info, including objectives and responsibilities necessary to support the entity; and
3. Communicate with external parties regarding matters affecting the functioning of the entity.

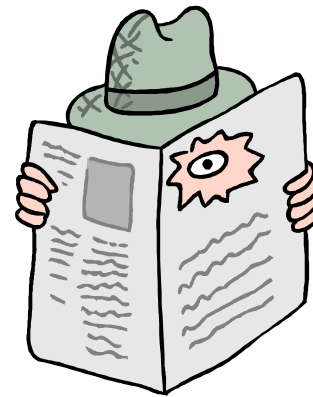
Develop procedures for identifying pertinent information and distributing it in a form and timeframe that permits people to perform their duties efficiently.

Monitoring Principles

1. Select, develop and perform ongoing and/or separate evaluations to ascertain whether the components of internal controls are present and functioning;
2. Evaluate and communicate internal control deficiencies in a timely manner to parties responsible for taking corrective action.

Monitoring Examples

- Ongoing program and fiscal monitoring
- Regular oversight by supervisors
- Record reconciliation
- Formal program reviews/audits
- Annual single audits



Include policies and procedures for correcting any findings in a timely manner

Weak Internal Controls – What Now?

- Document findings
- Discuss the results of the walkthrough with management and inform them of any deficiencies that need immediate attention.



Supplement Not Supplant



ESSA Title I, A Supplement Not Supplant

Final Informational Document Released: June 19, 2019

<https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf>



NEW SNS Test Under ESSA Title I,A

- The SNS requirement is unchanged.
- The way to demonstrate compliance has changed.
- The LEA must show that its methodology to allocate State and local funds to schools results in each Title I school receiving all of the State and local funds it would otherwise receive if it were not receiving Title I,A funds.
- The presumptions of supplanting DO NOT APPLY to Title I,A!

ESSA's Two SNS Tests

ESSA Titles I, A

The LEA shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that the school receives all the State and local funds it would otherwise receive if it were not receiving Title I funds.

ESSA Section 1118(b)

Applicable to I,C and I,D? ED says no because funds do not flow to schools!
SNS Guidance Q&A 22.

ESSA Titles I,C, I,D and II-VII

Presumptions of Supplanting

1. Used Federal funds to provide services that are required under other Federal, State or local laws.
2. Used non-federal funds in prior year.
3. Used Migrant (MEP) funds to provide services for participating children and nonFederal funds for nonparticipating children.

OMB Compliance Supp (2019)

How Does an Educational Service Agency Comply?

- If the ESA obtains Title I, A funding on behalf of numerous LEAs for allocation:
 - The ESA must cooperate with LEAs it serves and that do the allocation of state and local funds to ensure that the SNS requirement is met by each LEA.
- If the ESA does not a recipient of Title I, A funds but insteads enters into an agreement with one or more LEAs to provide services, then there is no SNS requirement for the ESA since it is an LEA requirement.

Which State/local funds?

“all the State and local funds it would otherwise receive”

- Must include State and local funds for activities required by Federal, State or local law. SNS Guidance Q&A 16.
- Otherwise it includes the State and local funds each school is allocated from its LEA.
 - ▷ At LEA discretion
- For State and local funds that an LEA does not allocate to schools, the LEA is required to conduct activities supported by such funds in a manner that does not take into account a school's Title I status.
- Does not take into account private contributions, fundraising, or parent fees.

SNS Guidance Q&A 5 and 6.

Methodology Flexibilities

- As long as the methodology is neutral, LEAs may consider:
 - Whether to use a single districtwide methodology or a variable methodology/multiple methodologies based on grade [span] or school type;
 - How the methodology may vary or scale based on student enrollment size; or
 - How the methodology may account for schools in need of additional funds to serve high concentrations of children with disabilities, English learners, or other such groups of students the LEA determines require additional support.

SNS Guidance Q&A 9

Q&A from Final SNS Guidance

- Can Title I schools receive more State/local funds than non-Title I schools?
 - ▷ Yes. SNS Guidance Q&A 7
- Can a combination of methodologies be used?
 - ▷ Yes. An LEA might use a different methodology for allocating State and local funds to high schools than it uses to allocate such funds to elementary schools.
SNS Guidance Q&A 8
- Must use same methodology for charter schools?
 - ▷ No. For example, some LEAs allocate State and local funds to charter schools to cover facility costs but do not allocate such funds to traditional public schools.
SNS Guidance Q&A 13

Title I SNS Exceptions

- Excluded Funds: SEA or LEA may exclude supplemental state or local funds used for program that meet the *intent and purposes* of Title I Part A (Sec. 1118(d)). SNS Guidance Q&A 7.
- Excluded from SNS Methodology Test:
 - Single School LEAs;
 - LEAs with only Title I schools.
 - A grade span that contains only: a single school, non-Title I schools, or Title I schools.

SNS Guidance Q&A 26

Must the State Approve the Methodology?

- No.
- However, the State must monitor compliance under ESSA Sec. 8304
 - ▷ Includes a compliant methodology
- State may request to review the methodology as part of its monitoring process.
 - ▷ Could include requesting methodology in application
 - ▷ EDGAR 76.730/76.731; UGG 200.336 – Record Retention and Access to Records

SNS Guidance Q&A 24.

Continuously Update SNS Methodology?

Must an LEA adjust its allocation of State and local resources to account for changes during the school year that might result in the LEA's non-compliance?

- No. It's an annual allocation of State and local funds to demonstrate compliance.
- Accordingly, an LEA makes this demonstration at only one point during the year and is not required to continuously demonstrate compliance throughout the school year.

SNS Guidance Q&A 14.

Last Minute Changes

- Will last minute changes before the start of school affect compliance?
 - No. Last-minute changes in resources allocation that often occur prior to the beginning of the school should not affect an LEA's compliance.
 - Example: employee transfers or resigns prior to beginning of school year. The LEA may replace that employee as long as the school's Title I status is not a factor.
 - Were an LEA to not allocate a resource because a school is a Title I school, it would not be compliant.

SNS Guidance Q&A 15.

SNS is NOT an Expenditure Test

SNS is based on a methodology by which State and local funds are *allocated* to schools.

Report Cards – actual per-pupil expenditure reporting of Federal, State and local funds, disaggregated by source of funds.

- Retrospective analysis of how much was spent by each school.
- This is not a methodology and therefore, can not be used for SNS compliance.

■ Expenditures as Risk Assessment?

- States considering using expenditure data on report card to see if Title I school State/local spending is less than their non-Title I counterparts.

SNS Guidance Q&A 12.

Does This Mean All Costs are Allowable?

- NO!!
- Keep in mind just because a cost is not a supplanting issue does not make it automatically allowable!
- All costs must be allowable under Title I, A!
 - Must be included in your district/schoolwide/targeted assistance plan
- All costs must be necessary, reasonable and allocable under UGG/EDGAR!

SNS Guidance Q&A 28.

So Title I,A is ONLY a Single Methodology Test?

- No! Because all of an LEA's funds are not given to schools!!!
- Means two SNS tests!
 1. Methodology test applies to school-level expenditures.
 2. Allocation of funds test applies to district-level initiatives.
 - ▶ Districtwide initiatives must be expended in a way that ensures all applicable schools receive the same amount of State/local funding on a neutral basis with respect to Title I status.
 - ▶ Looks like a specific cost test.

District-level Activities/Initiatives

Example

- An LEA must conduct districtwide activities supported by such funds in a manner that does not take into account a school's Title I status.
 - For example, the LEA reserves the State and local funds for a social worker at the district level.
 - The LEA deploys the social worker to different schools throughout the school year on an as-needed basis.
 - Access to or assignment of the social worker must be Title I neutral in order to comply with the general SNS requirement.

SNS Guidance Section VI.

Districtwide Initiative Test

- The Summerlong District needs to increase its scores in reading comprehension so it begins a Districtwide Reading Program whereby a reading specialist will be placed in every school in the District to provide supplemental assistance to low performing students.
- Because it lacks enough state funds to put a specialist in every school, the district intends to pay for the reading specialists in its Title I Schools with Title I funds and its non-Title I schools with State funds.
- *Does this meet the SNS requirement?*

Evidence of Compliance

The LEA must maintain documentation to demonstrate that the LEA allocated State and local funds to schools in accordance with its methodology

- An LEA must keep records to show compliance with program requirements and facilitate an effective audit. (34 C.F.R. §§ 76.730-76.731)
- Examples: written methodology, calculations performed by the LEA to implement the methodology.

SNS Guidance Q&A 19.



SNS Noncompliance?

- What happens if the LEA does not meet the methodology test?
- What happens if the LEA refuses to change its methodology?
 - SEA follows the enforcement provisions under GEPA and the UGG (2 CFR Part 200)
 - ED's "Summary Response to Comments on Title I, Part A Supplement Not Supplant Non-Regulatory Informational Document," dated June 19, 2019



Supplement Not Supplant Under IDEA



LEA Supplement Not Supplant

IDEA Part B funds must be used to supplement State, local and other Federal funds (used for providing services to children with disabilities) 34 CFR 300.202

- If LEA meets MOE, then LEA meets supplement/not supplant requirements
 - No particular cost test
 - ARRA Guidance, April 2009

LEA Supplement Not Supplant (cont.)

Notwithstanding 300.202 (SNS), 300.203 (MOE), and 300.162 (Commingling), funds provided to an LEA may be used for:

- Services and aids that also benefit nondisabled children
- **Early intervening services**
- High cost special education and related services

34 CFR 300.208

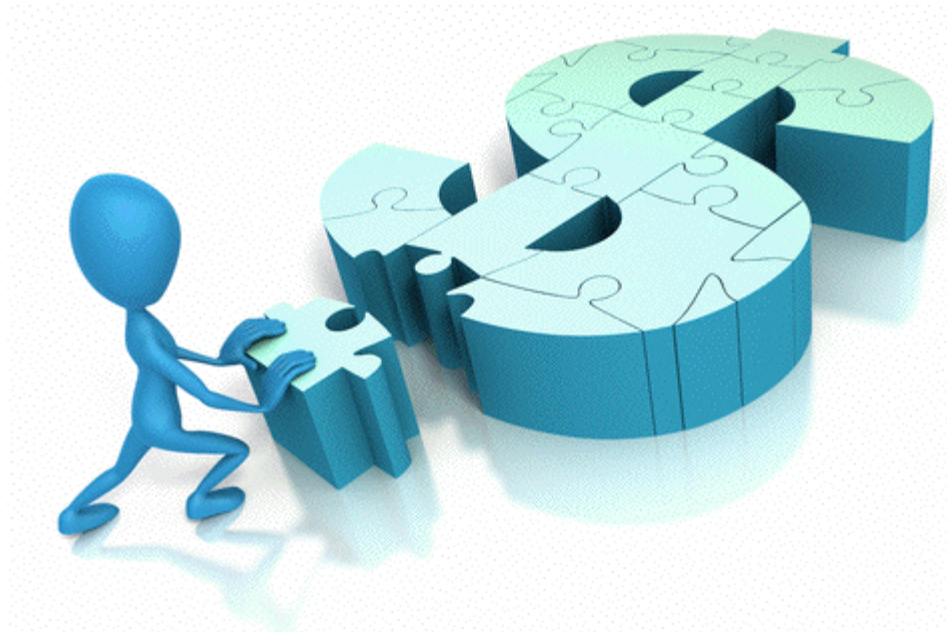
IDEA Supplement Not Supplant

Exceptions to SNS	
State Administrative Set-Aside	IDEA Regs § 300.704(d)
Other State-Level Activities Set-Aside	IDEA Regs § 300.704(d)
Equitable Services (reverse supplement not supplant)	IDEA Regs § 300.133(d)
Services and aids that also benefit nondisabled children	IDEA Regs § 300.208(a)(1)
Early Intervening Services	IDEA Regs § 300.208(a)(2)
High Cost Fund	IDEA Regs § 300.208(a)(3)
Schoolwide Funds (only amount consolidated)	IDEA Regs § 300.206(a)

CEIS and SNS

- CEIS must supplement any ESEA activities or services.
34 CFR 300.226(e)
- MN Dept of ED, Jan. 30, 2013
 - “The district would be required to demonstrate that the federal IDEA Part B funds they are requesting to be used for CEIS supplement and do not supplant existing state, local and other federal funds, including ESEA funds, the district is using for [its program].”

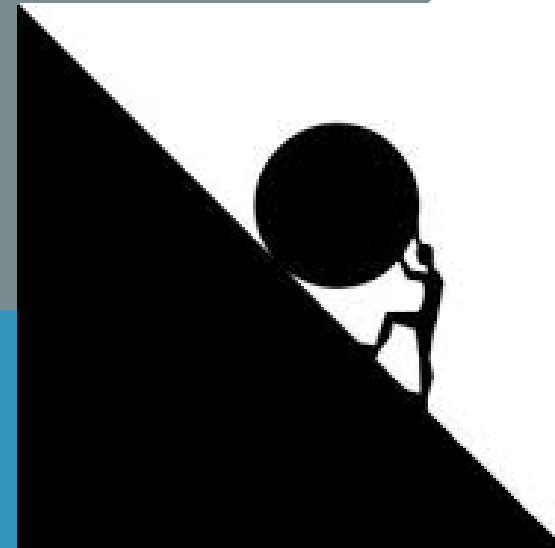
Perkins SNS



Perkins V: Sec. 211(a)

- Funds made available under this Act for career and technical education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out career and technical education activities.
- 2 Tests
 - Are Perkins funds being used to provide goods or services required under State or local law?
 - Are Perkins funds used to pay for costs that were paid with non-federal funds in the prior year?
 - 3rd Presumption?

Maintenance of Effort



ESSA Maintenance of Effort



Maintenance of Effort (MOE)

Sec. 1118(a) and 8521

- 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.

MOE Consequences (cont.)

Sec. 8521(b)

5 Year Penalty-Free

- LEA is not subject to sanctions for failing to maintain 90% effort for one year (either combined fiscal per student or aggregate State and agency expenditures) provided it has not failed to meet MOE for one or more of five immediately preceding fiscal years.

MOE Waiver Sec. 8521(c)

Secretary of Education may waive MOE if “equitable”:

- ▶ Exceptional or uncontrollable circumstances, such as a natural disaster; or
- ▶ A change in the organizational structure of the LEA; or
- ▶ A precipitous decline in the financial resources of the LEA.

Waiver = meeting MOE!

IDEA Maintenance of State Financial Support / LEA Maintenance of Effort



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.

(34 CFR §300.203(a))

LEA MOE - 2 Parts:

■ Eligibility Standard

- SEA must determine LEA has budgeted same amount of local or state and local funds as it actually spent during most recent fiscal year for which info is available

■ Compliance Standard

- LEA must maintain (or increase) amount of local or state and local funds it spends for education of SWDs when compared to the preceding fiscal year

OSEP Policy Letter, April 2008

■ **Question Topic No. 2 - LEA Maintenance of Effort Requirement**

■ The local-level maintenance of effort requirement focuses on "the education of children with disabilities." The wording of this phrase could encompass not only special education and related services, or excess costs of educating children with disabilities, but also the basic cost of providing children with disabilities a public education.

■ See IDEA section 613(a)(2)(A)(iii); 34 CFR §§300.203(a) and (b).

Local-level MOE (cont.)

■ 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.

(34 CFR §300.203(b))

LEA MOE Reductions

Allowable reductions:

- ▶ Voluntary departure of special education or related services personnel
- ▶ A decrease in the enrollment of children with disabilities
- ▶ The assumption of cost by the SEA's high cost fund
- ▶ 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
- ▶ The termination of costly expenditures for long-term purchases, such as the acquisition of equipment.

(34 CFR §300.204)

LEA MOE Reductions (cont.)

- If the LEA receives an increase in its IDEA grant, it may reduce its MOE by half of the IDEA increase.
 - Must use the reduction on ESSA-allowable activities
- However, 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).
- Therefore, if this reduction is used, the LEA must subtract any CEIS set-aside from the LEA MOE reduction amount!
- (34 CFR §§300.205(d) and 300.226(a))

LEA MOE 300.203(c)

- Subsequent years. If LEA fails to meet MOE, level of expenditures required is the amount that would have been required in the absence of that failure and not the LEA's reduced level of expenditures.
 - Initially stated in the Boundy Letter (April 2012), overturning East letter (June 2011)
- Comparison Year. Because of subsequent years rule above, comparison year is, in effect, last fiscal year in which LEA met MOE.

LEA MOE 300.203(d)

- Consequence of failure to maintain effort. If LEA fails to meet MOE, the SEA is liable in a recovery action to return to ED, using non-federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures or the amount of the LEA's subgrant in that fiscal year, whichever is lower
 - GEPA appeal proceedings
 - SEA seek reimbursement from LEA



Maintenance of State Financial Support

- Under 34 C.F.R. §300.163, a state must not reduce the amount of State financial support made available for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year.
- The SEA must include support provided by other State agencies, such as a State Department of Health or a State Vocational Rehabilitation Agency for special education and related services (see OSEP Letter to CCSSO, dated Dec. 2, 2009).

Failure to Meet State MFS

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

Example: This means the State's MFS will revert back to the amount when the State last met MFS. So, for example, if a State made \$1 million available in FY 2011 for special education and related services, then in FY 2012 made only \$900,000 available, the MFS support requirement in FY 2013 will be \$1 million, even if the State received a waiver for its deficiency in FY 2012.

Exceptions

- The IDEA permits the secretary to waive the MFS requirement for one fiscal year due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.
 - Case-by-case basis

Perkins MOE

EFFORT



Perkins V: Sec. 211(b)

- Changed from Perkins IV
- Must still maintain effort at the State level (per student or in the aggregate), comparing the preceding fiscal year to the second preceding fiscal year.
- But now it's a proportionate reduction rather than risking the entire award (as under Perkins IV)

Perkins MOE Sanctions

- Must fail twice in a six-year period
 - If the State fails in a given fiscal year, ED will look at previous 5 fiscal year.
 - If the State failed during that preceding five year period, sanctions apply
 - Failure to meet MOE **does not** rest level of effort for the succeeding fiscal year

Perkins MOE Waiver

- ED may grant a waiver due to exceptional or uncontrollable circumstances affecting the ability of the State to meet the requirement such as a natural disaster or an unforeseen and precipitous decline in financial resources.
- If a State receives a waiver, then the State is considered to have met MOE for that year (does not count toward the six-year window)
- Granting of a waiver **does not** rest MOE level for the next year

Perkins MOE – One-Time Reset

- With respect to the first full fiscal year following the date of enactment of Perkins V (7/1/19 – 6/30/20) the State may determine the State's fiscal effort by—
 - Continuing to use the State's fiscal effort as was in effect on the day before the date of enactment of Perkins V; or
 - Establishing a new level of fiscal effort, which is not less than 95 percent of the State's fiscal effort for the preceding fiscal year.

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