

ARKANSAS DEPARTMENT OF WORKFORCE EDUCATION FEDERAL GRANTS MANAGEMENT TRAINING

FUNDING

LEGISLATION

EDGAR

Presented by Michael
Brustein, Esq.
Brustein & Manasevit, PLLC
mbrustein@bruman.com

Little Rock, Arkansas
November 18, 2013



AGENDA

1. Federal Funding
2. Reauthorization Pipeline
3. Roadmap to EDGAR
4. Super Circular Changes
5. OIG Reaction
6. Questions

FEDERAL FUNDING

1. Perkins is Advanced Funded
2. Congress Did Not Enact Budget / Appropriation
3. Sequestration – CBA
4. Government Shutdown
5. New Budget Committee
6. Second Sequestration Targets

NATIONAL PERKINS FUNDING LEVELS

- FY 2014: \$1,023,030,000
- FY 2013: \$1,064,445,530
- FY 2012: \$1,123,030,274

ARKANSAS PERKINS FUNDING LEVELS

FY 2014	\$11,403,795
FY 2013	\$11,421,660
FY 2012	\$11,466,830

ARKANSAS WIA FUNDING

	1-July-11	1-July-12	1-July-13
WIA, Adult	\$6,399,544	\$6,067,684	\$6,105,212
WIA, Youth	\$6,794,393	\$6,431,994	\$6,367,716
WIA, Dislocated Workers	\$6,535,066	\$7,022,211	\$6,881,074

ARKANSAS TAA FUNDING

- FY 2011, Northwest Arkansas Community College received \$14,794,422. Also in FY 2011, Northwest Arkansas Community College was part of the Anne Arundel Community College consortium, the total consortium amount was \$19,730,281 (funding was not broken down at the institution level).

TAA FUNDING

- FY 2013, the South Arkansas Community consortium received a total of \$8,419,390. The individual grantees and the money awarded were:
 - South Arkansas Community College - \$3,904,256
 - College of the Ouachitas - \$1,801,912
 - Cossatot Community College of the University of Arkansas - \$450,000
 - National Park Community College - \$1,003,800
 - Rich Mountain Community College - \$300,000
 - Southern Arkansas University Tech - \$417,800
 - University of Arkansas Community College at Hope - \$541,622

TAA FUNDING

- FY 2013, Mid-South Community College received \$2,065,596 as part of the Lewis & Clark Community College consortium

REAUTHORIZATION PIPELINE

1. ESEA – Unlikely Anytime Soon
2. Perkins – Unlikely Anytime Soon
3. WIA - ??



WIA REAUTHORIZATION

ISSUES TO WATCH

- Composition of Workforce Investment Boards (WIBs)
- Consolidation of Programs
- Changes to State Administration Funds
- Reforms in Governor's Designation Authority

HOUSE PROPOSAL

- Supporting Knowledge and Investing in Lifelong Skills (SKILLS) Act
- H.R. 803
- Introduced by Representative Virginia Foxx (R-NC) on February 25, 2013

SENATE PROPOSAL

- Workforce Investment Act of 2013
- S. 1356
- Introduced by Senator Patty Murray (D-WA) on July 24, 2013

COMPOSITION OF WIBS – CURRENT LAW

- Governor
- 2 members of each chamber of State legislature
- Business representatives
- Majority of the WIBs are business owners
- (Section 111)

COMPOSITION OF WIBS – HOUSE PROPOSAL – SKILLS ACT (H.R. 803)

- Eliminates the requirement for 2 members of each chamber of the State legislature
- Amends business representatives to include large and small businesses with immediate and long-term employment opportunities
- Business representatives need to be a 2/3 majority
- Removes requirement for labor organization representative, replaced with State economic development official
- Removes requirement for individuals with youth and workforce investment experience
- (Section 103)

COMPOSITION OF WIBS - SENATE PROPOSAL - WORKFORCE INVESTMENT ACT OF 2013 (S. 1356)

- Changes WIBs to Workforce Development Boards (WDBs)
- Retains the requirement that a majority of the WDBs are businesses
- 20% of State WDBs are representatives of labor, community organizations, individuals with employment, training, or education experience
- Local WDBs would not be required to have seats for all one-stop partners
- (Section 111)

CONSOLIDATION OF PROGRAMS - CURRENT LAW

- No consolidation

CONSOLIDATION OF PROGRAMS - HOUSE PROPOSAL - SKILLS ACT (H.R. 803)

- Consolidates **35** programs into a new “Workforce Investment Fund”
- Programs include Youth Activities, Adult and Dislocated Worker Activities, Youth Opportunity Grants, YouthBuild Program

CONSOLIDATION OF PROGRAMS - SENATE
PROPOSAL - WORKFORCE INVESTMENT ACT OF
2013 (S. 1356)

- No consolidation

STATE ADMINISTRATION FUNDS – CURRENT LAW

- Each one-stop partner must (at the local level) provide a proportionate amount of federal funds to support the establishment of the one-stop and infrastructure costs
- (Section 134)

STATE ADMINISTRATION FUNDS - HOUSE PROPOSAL - SKILLS ACT (H.R. 803)

- Governor would be given authority to use AEFLA and Perkins State Administration funds to support the establishment of one-stop centers and one-stop infrastructure costs
- (Section 108)

STATE ADMINISTRATION FUNDS - SENATE PROPOSAL - WORKFORCE INVESTMENT ACT OF 2013 (S. 1356)

- Similar provision to SKILLS Act
- Governor is given authority to determine the contribution of one-stop partners
- Governor permitted to use Perkins and AEFLA State Administration funds to support one-stop infrastructure costs
- (Section 221)

STATUS OF CURRENT PROPOSALS

- SKILLS Act
 - Passed House Committee on Education and the Workforce 23-0 on March 9, 2013
 - Passed House of Representatives 215-202 on March 15, 2013
- Workforce Investment Act of 2013
 - Senate Committee on Health, Education, Labor and Pensions approved the bill, 18-3, on July 31, 2013
 - Senate has not scheduled a floor vote

EDGAR AND OMB CIRCULAR TUTORIAL

25

KEY QUESTIONS

1. What is the significance of EDGAR?
2. Which OMB Circulars apply?
3. What is the relationship to program regulations?
4. What legal authorities do you rely on?

ANATOMY OF EDGAR



- Administrative Rules
 - SEAs / LEAs – Part 80
 - Postsecondary – Part 74
 - Non Profits – Part 74
 - S / A Programs – Part 76
 - Direct Grant – Part 75
 - Enforcement – Part 81
 - Lobbying – Part 82
 - Debarment / Suspension – Part 85
 - FERPA – Part 99

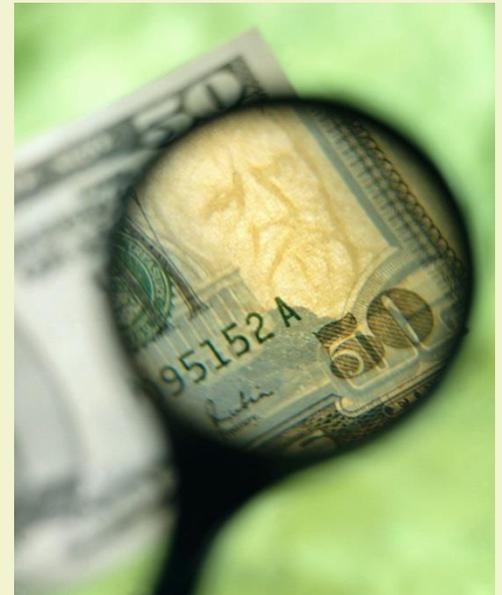
COST PRINCIPLES

- SEAs / LEAs – A-87
- P / S Institutions – A-21
- Non Profits – A-122



AUDIT PRINCIPLES

- SEAs / LEAs – A-133
- Postsecondary Institutions – A-133
- Non Profits – A-133



ROADMAP



1. Standards for Financial Management
2. How to Determine if a Cost is Allowable
3. Cash Management Controls and Obligations
4. Asset Controls
5. Procurement Controls
6. Selected Cost Items
7. Audits and Enforcement

ROADMAP OF EDGAR AND OMB CIRCULARS

- Standards for Financial Management Systems
 - 80.20 (b) (p. 112)
- Allowable Costs
 - 80.22 (p. 114)
- Basic Guidelines
 - A-87 (p. 227-228)
- Composition of Cost
 - A-87 (p. 228)



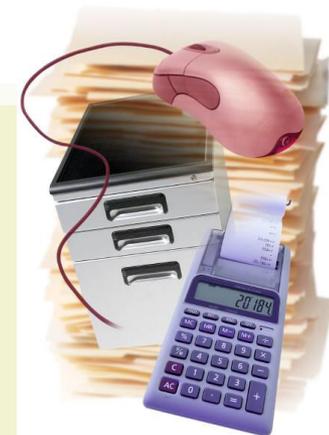
ROADMAP OF EDGAR AND OMB CIRCULARS

- Period of Availability of Funds
 - 80.23 (p. 114)



ROADMAP OF EDGAR AND OMB CIRCULARS

- Equipment
 - 74.34 (p. 16)
- Procurement
 - 74.40 (p. 19)
- Retention and Access Requirements for Records
 - 74.53 (p. 25)



ROADMAP OF EDGAR AND OMB CIRCULARS

- i) Equipment
 - 80.32 (p. 119)
- j) Procurement
 - 80.36 (p. 121)
- k) Retention and Access Requirements for Records
 - 80.42 (p. 130)



ROADMAP OF EDGAR AND OMB CIRCULARS



- Monitoring and Reporting Program Performance
 - 80.40 (p. 128)
- Enforcement
 - 80.43 (p. 131)

ROADMAP OF EDGAR AND OMB CIRCULARS

- Selected Items of Cost
 - Appendix J to A-21 (p. 235)
 - + Advertising (p. 254) (outreach)
 - + Personnel Costs (p. 255)
 - + Meetings (p. 269)
 - + Travel (p. 274)



ROADMAP OF EDGAR AND OMB CIRCULARS



p) Selected Items of Cost

- Appendix B to A-87 (p. 229)
 - + Advertising (p. 230) (outreach)
 - + Meetings (p. 241)
 - + Travel (p. 244)

ROADMAP OF EDGAR AND OMB CIRCULARS

- q) A-133 – Single Audits
 - + 210 (p. 294) – Subrecipient and Vendor Determinations
 - + 200 (p. 293) – Audit Requirements
 - + 320 (p. 299) – Report Submission
 - + Pass Through (p. 303)
- r) 81.32 (p. 140) – Proportionality
- s) Appendix to Part 81 (p. 145) – Illustrations of Proportionality
- t) 81.33 (p. 141) – Mitigating Circumstances

A Battle Over the Future
Direction of Federal Grants
Management
OMB vs. OIG

Who?

What?

Why?

When?

WHO?

- OMB did not issue 2/1/13 NPRM (Super Circular) in vacuum. Drafters from Council of Finance Assistance Reform (COFAR)

HHS, ED, DOL, NSF, AG, HS, DOT, HUD,
Energy

WHO?

- But did “COFAR” include “CIGIE”?
 - Council of Inspectors General for Integrity and Efficiency



- 20 Federal Agencies 94% of \$1.2 trillion in direct federal awards covered by A-133

WHAT?

- Substantive revisions to:

A-87

A-102

A-133

A-21

A-110

A-122

WHY?

- OMB Goal:
 1. Greater Simplicity
 2. Greater Consistency
 3. Elimination of Requirements
 4. Shifting of Burden

WHY?

- OIG Goal:
 1. Promote accountability
 2. Eliminate fraud, waste, abuse and improper payments

WHY?

- Because goals are not aligned, OIG disagrees , strongly disagrees, and extremely disagrees with many of the proposed OMB changes.

WHEN?

- Gil Tran (OMB) promised the final regulation by late fall 2013

WHEN?

- Prediction: The OIG comments will either delay the final regulation or result in issuance of the new NPRM

WHEN?

- EDGAR must be revised within 12 months of final regulation
- Since changes must be prospective, effective date may be 7/1/16, not 7/1/15



FIRST BATTLEGROUND

TIME AND EFFORT CERTIFICATIONS

OMB PROPOSAL

- Eliminate reference to PARs
- Now “Certified Reports”
- Reports may be electronic
- Semi-Annual for single cost objective – same

TIME AND EFFORT MANAGEMENT

- After the fact, unless mutually satisfactory alternative approved by awarding agency
- Certification periods cannot exceed 12 months
- Activities may be expressed as percentages

TIME AND EFFORT MANAGEMENT

- At postsecondary level, “reliance may be placed on estimates in which a degree of tolerance is appropriate”



TIME AND EFFORT MANAGEMENT

- Certified Reports on 2 or more cost objectives certified by employee or individual responsible for verification



TIME AND EFFORT MANAGEMENT

- No additional support other than certification is necessary

TIME AND EFFORT MANAGEMENT

- Substitute systems may be used if approved by cognizant agency
- Federal agencies are encouraged to approve alternative proposals based on outcomes

TIME AND EFFORT MANAGEMENT

- Awarding agencies may approve “blended funding” where multiple programs involved, and “performance-oriented metrics” are used

OIG REBUTTAL - CERTIFICATIONS

- All certifications must reference consequences of false certification
 - By signing this report... 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.

OIG REBUTTAL - TIME AND EFFORT

- Any relaxation of time and effort rules would have “significant detrimental impact on government’s ability to protect from fraud, waste, abuse, improper payments

OIG REBUTTAL - TIME AND EFFORT

- NPRM proposed standards “would seriously undermine our community’s ability to identify and question unallowable and even fraudulent charges.”

OIG REBUTTAL - TIME AND EFFORT

- Do not issue final rule until results from four national pilot projects are considered



OIG REBUTTAL - TIME AND EFFORT

- OMB should provide uniform language:
 1. Time charged reflects time actually worked on project
 2. Alerts signer that he/she subject to federal laws on submission of false information

OIG REBUTTAL - TIME AND EFFORT

- Retain A-87 language:
 - “Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation.”

OIG REBUTTAL - TIME AND EFFORT

- Payroll distributions are based on budget estimates that do not focus on actual activity

OIG REBUTTAL - TIME AND EFFORT

- 12 month certifications do not provide adequate oversight it is too extensive a period for persons to identify actual activity performed (unless supported by additional source documentation)

OIG REBUTTAL - TIME AND EFFORT

- Drop phrase “mutually satisfactory alternative” in lieu of “after the fact certifications.” According to OIG, there are “no mutually satisfactory alternatives.”

OIG REBUTTAL - TIME AND EFFORT

- How would quarterly adjustments be validated using 12 month certifications?

OIG REBUTTAL - TIME AND EFFORT

- Certifications from supervisory personnel must include review of labor distribution reports to ensure effort being charged is reasonable.

OIG REBUTTAL - TIME AND EFFORT

- Charges for salaries and wages of nonprofessional employees (old A-21) must be supported by records that include time on tasks
- Substitute systems must contain sufficient detail to be useful for audit purposes



SECOND BATTLEGROUND

EMPLOYEE MORALE, HEALTH AND
WELFARE COSTS

EMPLOYEE MORALE

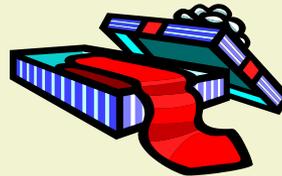
- A-87 / A-21 currently allows for expenses incurred in accordance with the entity's "established practice or custom for the improvement of working conditions, employer – employee relations, employee morale"

OMB - PROPOSAL

- No Change

OIG REBUTTAL - EMPLOYEE MORALE

- Do not allow expenses for recipient's established practices → could result in purchase of:
 - Groceries
 - Pizza parties
 - Toiletries
 - T-shirts
 - Gifts
 - Jewelry
 - Flowers
 - Balloons
- Funds must be closely related to grant purposes



THIRD BATTLEGROUND



FOOD / MEETINGS / CONFERENCES

3 WAY BATTLE

OMB / OIG / ED

? ? ? ?

CURRENT LAW: A-87 / A-21

- Costs of meals and transportation if primary purpose of meeting / conference is dissemination of technical information

OMB PROPOSAL

- Cost of Meetings
 - Costs from meetings and conferences “beyond the recipient entity” are allowable



OMB PROPOSAL

- Travel Costs
 - Grantee must retain documentation
 - a) Participation of individual is necessary to the federal award
 - b) Costs are reasonable and consistent with entity's established travel policy

COST PRINCIPLE CHANGES

- Travel

- If no institutional travel policy, GSA rates apply

-48 CFR 31.205



OIG REBUTTAL - MEETINGS AND CONFERENCES

- OIGs have found conferences held by recipients where per-person cost of daily catering was between 189% and 400% of applicable location's federal per diem for meals and incidental expenses

OIG REBUTTAL - MEETINGS AND CONFERENCES

- OMB should limit meal costs to federal per diem rates and document a cost comparison of at least three sites to determine most cost-advantageous location

NEW ED GUIDANCE ON USING FEDERAL FUNDS FOR CONFERENCES AND MEETINGS

- Very high burden of proof to show that paying for food is necessary
- Grantee should structure agenda so there is time for participants to purchase own food; use location with easy access to food



- Grantees should not use grant funds to pay for food and beverages for receptions and networking sessions

- When grantees contract with a hotel, food and beverage costs should be “backed out”



4TH BATTLEGROUND

SINGLE AUDIT THRESHOLDS

SINGLE AUDIT THRESHOLDS

Single Audit Thresholds

- Current Law  \$500,000
- OMB  Increase to \$750,000

OIG REBUTTAL - SINGLE AUDIT THRESHOLDS

- Increasing threshold from \$500,000 to \$750,000 loses audit coverage of 6400 auditees
- But these smaller auditees have more non-compliance and material weaknesses on internal control

OIG REBUTTAL - AUDIT QUALITY

- OIG recommends language that auditor engagement not exceed five consecutive years.

OIG REBUTTAL - SUBMISSION OF AUDIT REPORTS

- Do not eliminate requirement for subrecipients to submit audit reports to their “pass-through” entities. This would adversely impact the monitoring function.

OIG REBUTTAL - QUESTIONED COSTS

- Revise the proposed guidance to require the reporting of all known questioned costs, not just those over \$25,000.



5TH BATTLEGROUND

SHOULD COMPUTERS BE CLASSIFIED AS "SUPPLIES?"

CURRENT LAW:

- 34 CFR 80.3
 - Tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided such definition would at least included all equipment defined above

OMB

- Costs of computing devices classified as  "supplies."



RECLASSIFYING COMPUTING DEVICES AS “SUPPLIES” → OIG OPPOSES

- Accounting definition of “supplies” are general purpose consumable items with shorter life span than machines
- Computers would not be subject to basic inventory controls although “misuse” is high
- Federal agencies would not know if computers are being used for intended purposes or kept on entity’s premises



6TH BATTLEGROUND

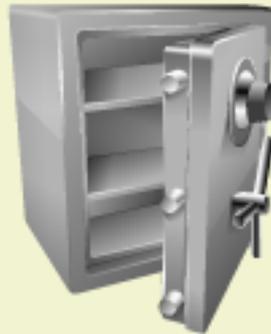
CASH MANAGEMENT

OMB - CASH MANAGEMENT

- Recipient shall maintain advances of federal funds in interest bearing accounts unless...
 - a) Recipient receives less than \$120,000 in federal \$ per year
 - b) Interest will not exceed \$500
 - c) Bank requires minimum balance

OMB - CASH MANAGEMENT

- Unrecovered indirect costs may be included as match only with approval of federal agency



OMB – CASH MANAGEMENT

- New general rule on program incomes
“program income shall be deducted from total allowable costs to determine the net allowable costs,” unless federal agency indicates otherwise

OIG

- Request OMB require recipients and subrecipients to provide interim financial statements
- Such statements must contain basic line item information on how federal funds are spent
- Without such interim statements pass-throughs and federal agencies cannot effectively monitor grantees

OIG - CASH MANAGEMENT

- Recommend specific time frames for which recipient can draw cash
- Terms such as “minimize” or “anticipated needs” are too general and not auditable

OIG - CASH MANAGEMENT

- Clarify the type of working capital analysis that is required of federal agencies prior to providing advance payments

OIG - CASH MANAGEMENT

- All recipients should account for program income using the “deduction method” unless federal agency indicates otherwise

OIG - CASH MANAGEMENT

- Align Circular with Compliance Supplement on “Reimbursement”
- Compliance Supplement requires that costs must be paid by the recipient before reimbursement is requested.
- Under accrual accounting, a cost could be expensed on an award that has not been paid.

OIG - CASH MANAGEMENT

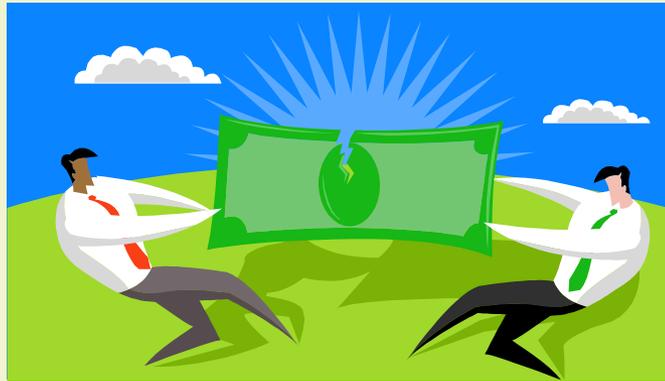
- Recommend that federal funds never placed in non-insured depository accounts

OIG - CASH MANAGEMENT

- Do not allow program income to meet matching requirements because it could skew equitable cost sharing

OIG - CASH MANAGEMENT

- Clear language is needed to assure “profit” is prohibited from all grants and cooperative agreements



7TH BATTLEGROUND

ADMINISTRATIVE COSTS

OMB PROPOSES

- Salaries of administrative and clerical staff should be treated as indirect, unless
 - a) Services are integral to project, and
 - b) Individuals can be specifically identified, and
 - c) Costs are explicitly set out in budget, and
 - d) Costs are not recovered as indirect

OIG REBUTTAL ADMINISTRATIVE COSTS VS. INDIRECT

- Circular must explicitly state that it is recipient's responsibility to prove through verifiable means that direct charging of administrative and clerical salaries are reasonable, necessary, allocable.

OIG REBUTTAL

ADMINISTRATIVE COSTS VS. INDIRECT

- OIG “would have a very difficult time auditing to determine whether administrative clerical salaries were charged both indirectly and directly, as indirect costs are not always identified by position.”

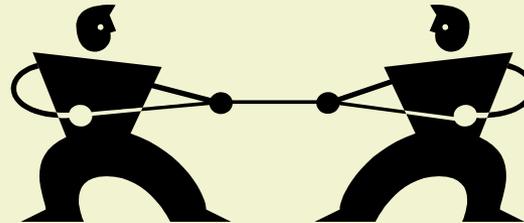
OIG REBUTTAL ADMINISTRATIVE COSTS VS. INDIRECT

- OIG demands more detailed reporting to justify charging administrative and clerical salaries as a direct cost → demonstrating that such costs “are so integral to a project or activity to warrant direct charging.”

OIG REBUTTAL JANITORIAL COSTS

- Circular must clarify how janitorial costs charged → directly or indirect. OIG has same concerns on clerical salaries.





8TH BATTLEGROUND

AUDIT RESOLUTION

ATTORNEY FEES

OMB PROPOSES

- Costs for services of counsel (in-house or Bruman) for administrative proceedings (OALJ) may not be charged if the ALJ imposes a “monetary penalty.” Legal expenses are allowable if the proceeding is resolved by consent or compromise.

OIG REBUTTAL - ATTORNEY FEES

- All costs related to administrative proceedings should be completely unallowable, regardless of disposition

OMB - AUDIT FOLLOW-UP

- Federal awarding agencies shall use “cooperative audit resolution mechanisms” to improve federal program outcomes through better audit resolution, follow-up and corrective action

COOPERATIVE AUDIT RESOLUTION

- Improve communication, foster collaboration, promote trust, and develop understanding between auditor and auditee



COOPERATIVE AUDIT RESOLUTION



- This approach is based upon “Federal agencies offering appropriate amnesty for past noncompliance when audits show prompt corrective action”

AGENCY DETERMINATION LETTERS

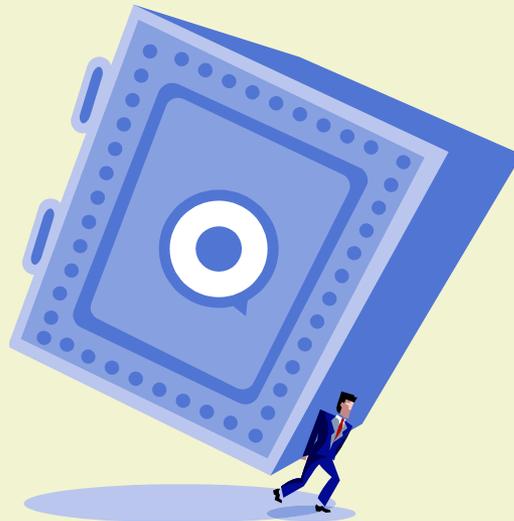
- The federal agency or pass-through entity may request additional information from auditee as a way of mitigating disallowed costs

ENFORCEMENT

- Agencies that do not provide an opportunity to challenge suspension or terminations until after the action is taken (NSF) should be permitted to do so

INTERNAL CONTROLS

- Do not delete A-21 control —————→
“ensure that no one person has complete control over all aspects of a financial transactions.”





QUESTIONS?

Disclaimer

This presentation is intended solely to provide general information and does not constitute legal advice. Attendance at the presentation or later review of these printed materials 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.