Federal Education Program Updates

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Agenda

- EOs and Litigation Updates
- Does any of this matter? (Law vs Regs vs Policy)
- Effective date of UGG changes
- Key Updates EDGAR/UGG
- Audits and Investigations
- Equitable Services

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Executive Order: Dismantle ED

Directs Secretary McMahan to “take all necessary steps to facilitate the closure the Department of Education and return education authority to the States, while continuing to ensure the effective and uninterrupted delivery of services, programs, and benefits on which Americans rely.”

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Let the lawsuits begin ….

- Teachers Unions
- NAACP
- Democratic Attorney Generals (RIFs)

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The Constitutional Arguments

- Separation of powers (Defendants actions to close ED, including the March 11 mass terminations, exceed presidential and executive authority)
- Take care clause (violates duty of President 'to take care that laws be faithfully executed')
- Ultra vires action (statutes require ED to administer TI, TV, IDEA, civil rights, CTE and federal student aid; Defendants lack/exceed their authority to dismantle ED)
- Appropriations /Spending clause (Defendants impoundment of Dept's appropriated funds infringes Congress's exclusive power over the federal purse) (NAACP-only)

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The Administrative Procedures Act Arguments

- Contrary to Constitutional right (agency action cannot be contrary to Constitution; violates separation of powers)
- Excess of statutory authority (no statute authorizes the executive / agency to dismantle ED, in whole or in part)
- Not in accordance with law (contrary to Dept of Ed Organization Act, IDEA, statutes vesting "responsibility" to implement federal student aid)
- Arbitrary and capricious (fails to consider effects of mass terminations; reliance interests; impact on institutional knowledge; continuity of services; no reasoned action; impedes Dept's ability to perform required functions)

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Request Relief

- Declaration that EO and March 11 RIFs and related actions are unlawful, violate Constitution (and APA)
- Preliminary and permanent relief barring March 11 RIF
- Preliminary and permanent relief barring Agency Defendants from carrying out EO

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ED Reduction in Force, related lawsuits

- NY, et al, vs ED
  - RIF so severe that Dept cannot perform functions mandated by statute (e.g., Civil Rights); violates separation of powers
  - Secretary of ED may restructure Dept, but limited to allocate among ED officers or modify organizational entities *within* ED; not to eliminate functions of statute, or transfer to another agency; exceeds statutory authority conferred to executive
  - RIF violates APA, arbitrary and capricious, contrary to law (cites *Loper Bright* that ED is not entitled to deference)

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ED Reduction in Force, related lawsuits

- Council of Parent Atty and Advocates, et al, vs ED
  - RIF closing 7 of 12 OCR regional offices, freezing and politicizing investigations, and related OCR guidance and policies violate the APA, arbitrary, capricious, abuse of discretion
  - Decimation of OCR's ability to process and investigate complaints violates statutory requirements to fulfill statutory function to administer civil rights laws and "promptly investigate" civil rights complaints
  - OCR RIF exceeds agency authority, violates due process denying equal protection

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Other Lawsuits …

- NAFOE vs Trump (challenging parts of EO against "illegal DEI"; won injunction at district court; appeal lifted injunction)
- AACTE vs ED; CA vs ED (challenging terminations of teacher preparedness programs; won injunction and reinstatement of awards; upheld pending appeal process)
- Mass v. NIH (challenging 15% indirect cost cap; won injunction at district court)

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Statutes, Regs, EOs, oh my!

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The Department of Education Organization Act (Public Law 96-88)

- Outlines the purpose of the education department
  - Equal educational opportunity, supplicant efforts, encourage enrollment, improvement coordination in Federal education programs, etc.
- Outlines which Departments and staff are required by law (examples):
  - There shall be in the Department:
    - An Assistant Secretary for Elementary and Secondary Education; Postsecondary Education; Career, Technical, and Adult Education; Special Education and Rehabilitative Services; and Civil Rights;
    - A Special Assistant for Gender Equity, a Director of the Institute of Education Sciences, an Inspector General, and a General Counsel;
    - An Office of Elementary and Secondary Education, Migrant Education, Postsecondary Education, CTE, OSERS, English Language Acquisition, General Counsel, Inspector General, Indian Education, etc.

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The Department of Education Organization Act (cont.)

- PERSONNEL REDUCTION AND ANNUAL LIMITATIONS SEC. 403. (20 U.S.C. 3463)(a)(3)
- (a)(3)If the President transmits any reorganization plan under 5 USC Ch.9, which would result in the transfer of functions or offices to the Secretary or the Department, it shall include any adjustments which may be necessary in a work-year limitation

5 USC 905 – Limitations on Powers

- (a)A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—(1)creating a new executive department or renaming an existing executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;

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The Department of Education Organization Act (cont.)

- REORGANIZATION SEC. 413. (20 U.S.C. 3473)

(a) The Secretary is authorized, subject to the requirements of section 202(f), to allocate or reallocate functions among the officers of the Department, and to establish, consolidate, alter, or discontinue such organizational entities within the Department as may be necessary or appropriate, **but the authority of the Secretary under this subsection does not extend to**—

(b) any office, bureau, unit, or other entity **transferred to the Department and established by statute or any function vested by statute** in such an entity or officer of such an entity, except as provided in subsection (b);

(c) the abolition of organizational entities established by this Act; or

(d) the alteration of the delegation of functions to any specific organizational entity **required by this Act**.

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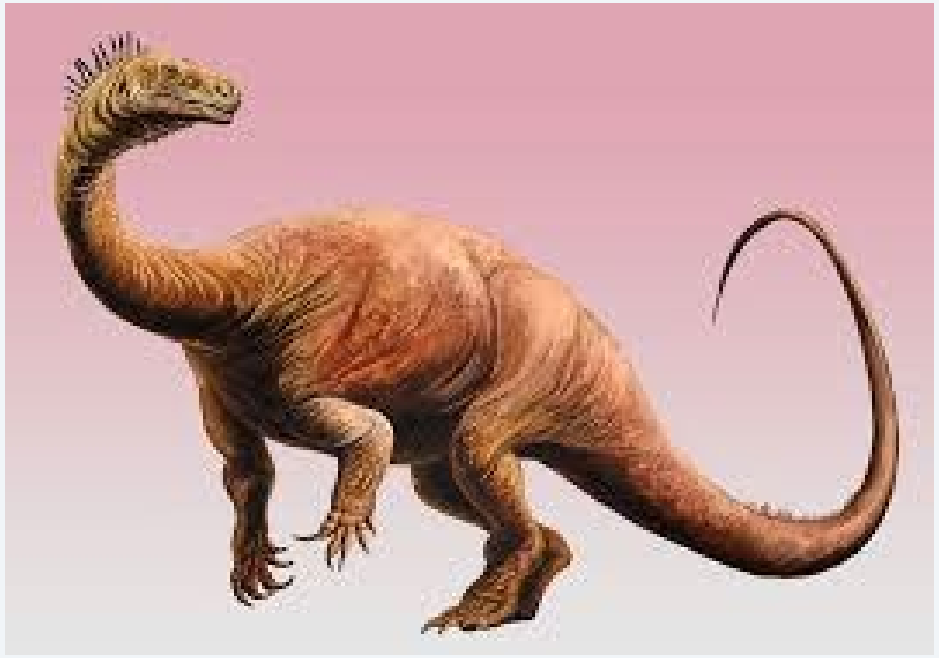
The Department of Education Organization Act (cont.)

- (b)(1) The Secretary may consolidate, alter, or discontinue any of the following statutory entities, or reallocate any functions vested by statute in the following statutory entities:

A. the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students; B. the Teacher Corps; C. the Community College Unit; D. the National Center for Education Statistics; E. the National Institute of Education; F. the Office of Environmental Education;	G. the Office of Consumers' Education; H. the Office of Indian Education; I. the Office of Career Education; J. the Office of Non-Public Education; K. the bureau for the education and training for the handicapped; and L. the administrative units for guidance and counseling programs, the veterans' cost of instruction program, and the program for the gifted and talented children.

- (b)(2) requires expiration of 90 days notice to Congressional committees.

Other ED-related Statutes



- Impact Aid (1950)
- HEA (1965)
- ESEA (1965)
- GEPA (1968)
- Rehabilitation Act (1973)
- IDEA (1975)

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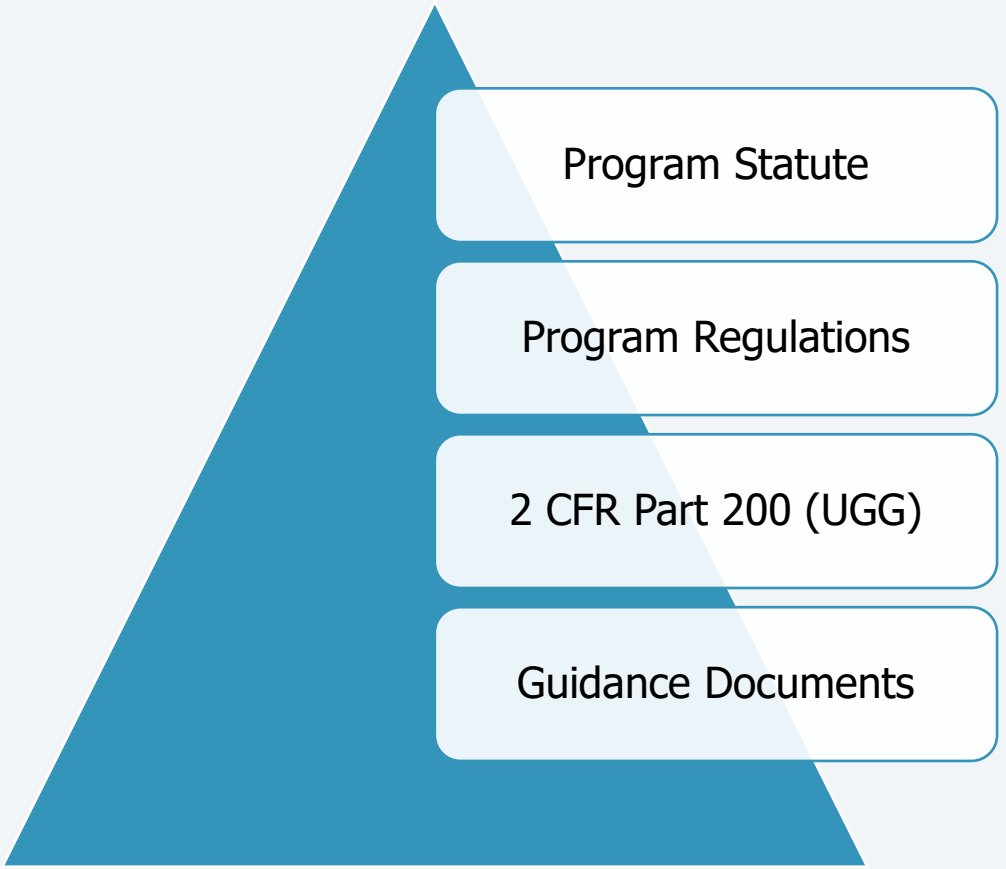
What if the "rules" conflict?

*Remember to follow all state and local rules.

Look for the most restrictive rule.



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The Supremacy Clause:

State law v. Federal law

Federal law wins

State law v. Federal guidance

State law wins

State law v. Federal regulations

????????

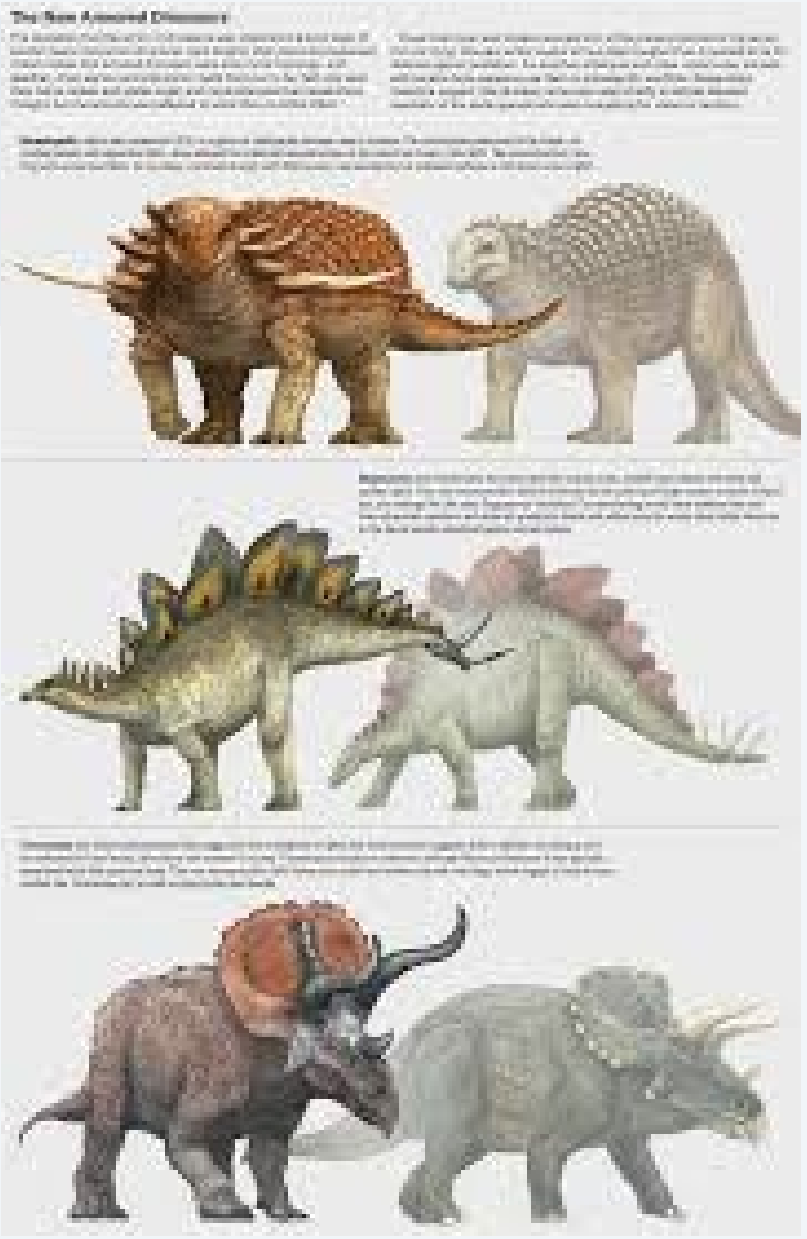
What about Executive Orders?

Federal law v. Executive Order

Federal law wins

Federal regulations v. Executive Order

Federal regs win



What Rules Apply to Grants Management?

Uniform Grants Guidance (UGG)

- 2 CFR Part 200

Education Department General Administrative Regulations (EDGAR)

- 34 CFR Parts 74-99

Program Statutes and Regulations

- ESEA, IDEA, WIOA, Perkins, AEFLA, etc.

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EDGAR and the UGG

EDGAR (34 CFR)

Part 75 - Direct Grant Programs
Part 76 - State-Administered Programs
Part 77 - Definitions
Part 81 - Enforcement Regulations

UGG (2 CFR Part 200)

Subpart A – Acronyms and Definitions
Subpart B – General Provisions
Subpart C – Pre-Federal Award Requirements
Subpart D – Post Federal Award Requirements
Subpart E – Cost Principles
Subpart F – Audit Requirements

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UGG Effective Date

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Effective Date – ED Guidance

- Awards issued on or after **October 1, 2024**
- State-administered programs, may implement with July 1, 2024 awards, but must update state procedures to reflect changes

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"~~The Department has updated the terms and conditions of Department grants clarifying that the revised Uniform Guidance (89 FR 30136, April 22, 2024) applies to all Department grants for the purpose of ensuring that the new flexibilities and due process protections for grantees set out in 2 CFR Part 200 that revised Guidance apply to all grantees as of the~~ **~~January 16, 2025~~**."

https://www.federalregister.gov/d/2025-01050

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“By the drawdown of funds under this GAN, the grantee accepts Department regulations that this award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR part 200. The specific version applicable depends on the date of the award: (i) grants issued on or after October 1, 2024, are subject to Title 2 CFR part 200 as revised at 89 FR 30136-30208 (April 22, 2024), while (ii) grants issued prior to the October 1, 2024 effective date of those revisions, 89 FR 30046-30208, are governed by the version of the Uniform Guidance applicable at the time of the Federal award, provided that for grants issued on or after June 21, 2024, where grantees drew down funds under the previous version of Box 10, those grants are subject to Title 2 CFR part 200 as revised at 89 FR 30136-30208 (April 22, 2024).”

https://public-inspection.federalregister.gov/2025-02396.pdf?utm_campaign=pi+subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov

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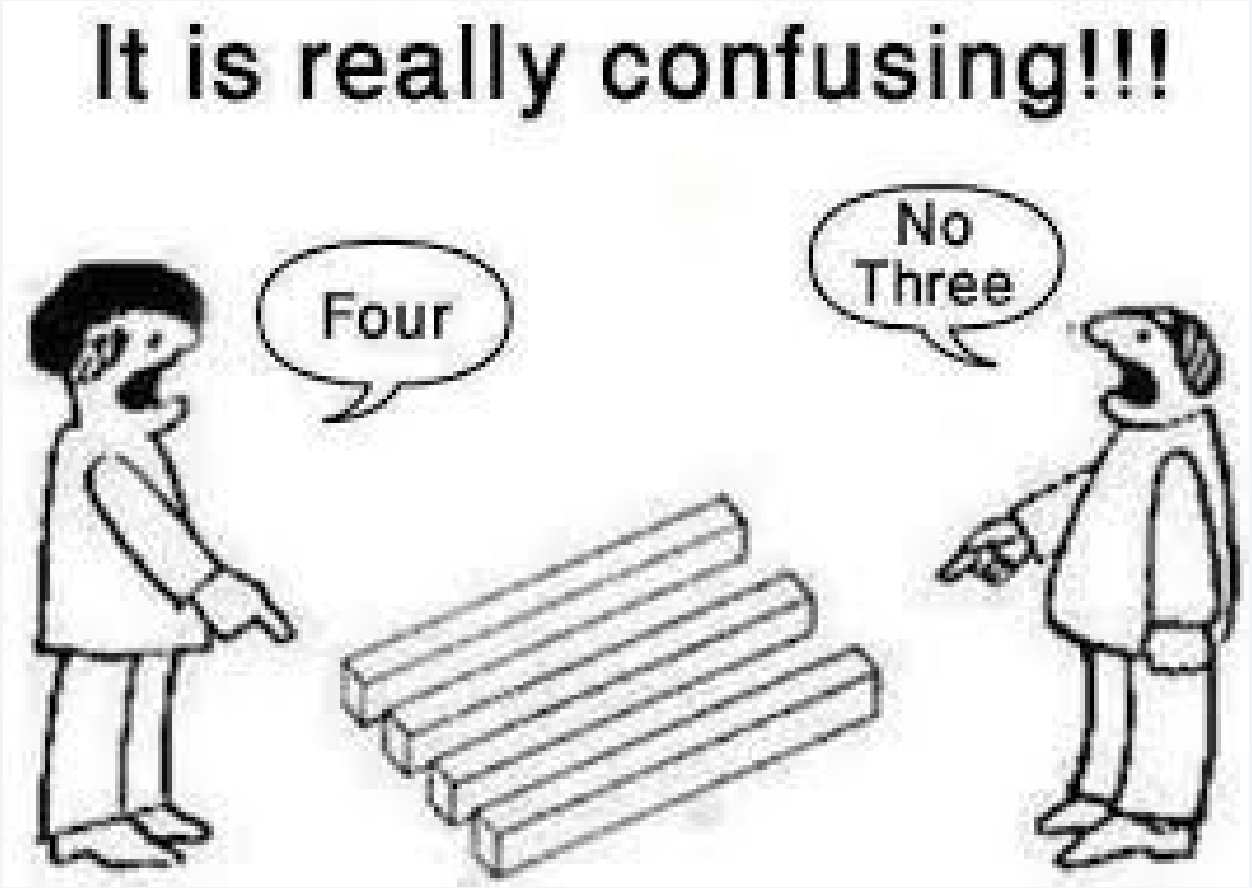

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Top 10 Key Changes / Updates

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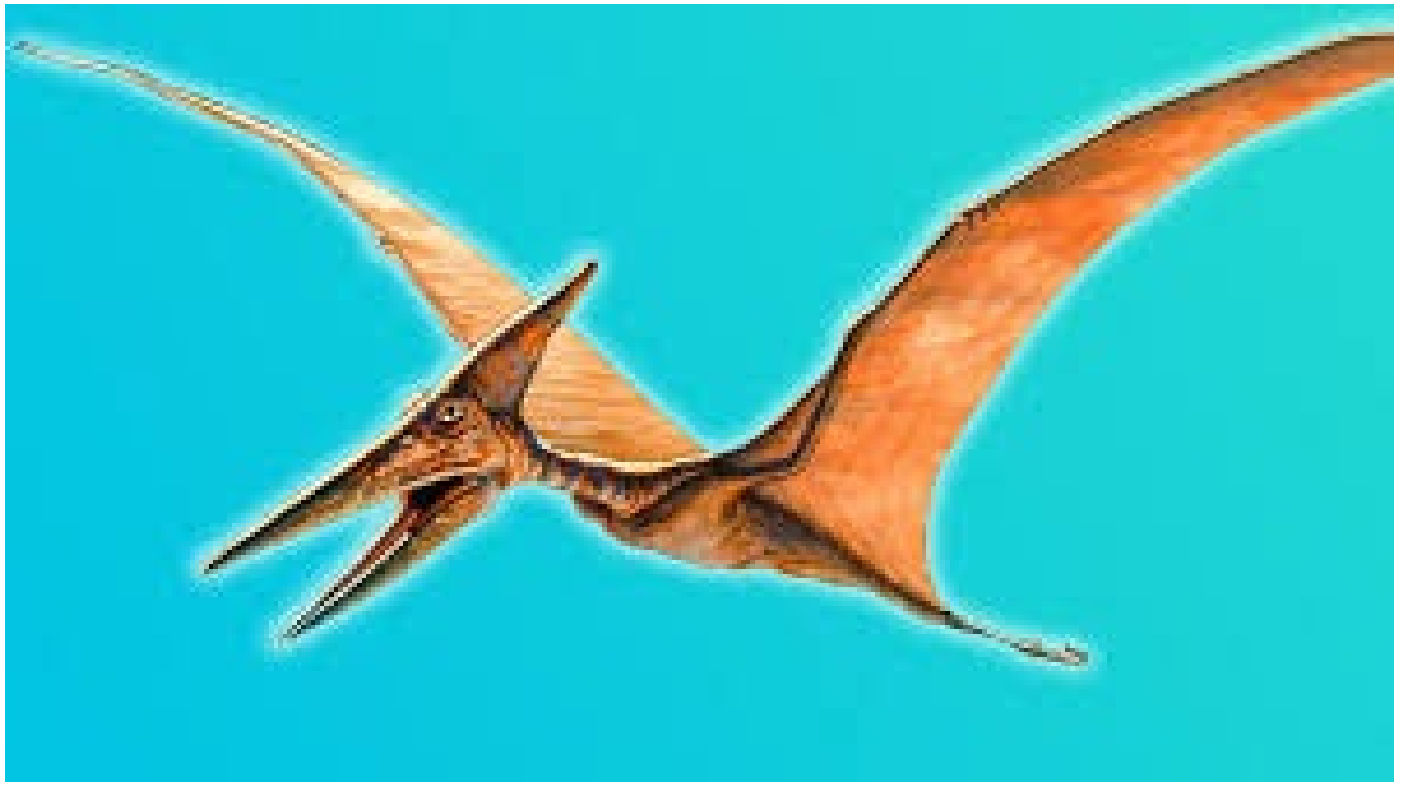

1. Mandatory Disclosures (and Whistleblower Protections)

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Mandatory Disclosures – 200.113

- Mandatory disclosures (200.113): Applicant, recipients, and subrecipients must promptly disclose whenever it has credible evidence **of the commission** a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations under Title 18 or Civil False Claims Act (31 U.S.C. 3729–3733)
  - Includes both criminal and civil false claims actions
  - Must be made in writing to the Federal agency, the agency's Office of Inspector General, and the pass-through entity (if applicable)
  - Also required to report matters to recipient integrity and performance (i.e. SAM and FAPIIS)
- Includes any activities or subawards **in connection with** the Federal award
- Failure to report can result in remedies for noncompliance (200.339)

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New Whistleblower Protections – 200.217

- An employee of a recipient or subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is:
  - Evidence of gross mismanagement of a Federal contract or grant;
  - A gross waste of Federal funds;
  - An abuse of authority relating to a Federal contract or grant;
  - A substantial and specific danger to public health or safety, or
  - A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.
- The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712
  - Recommendation: add to policies and procedures!

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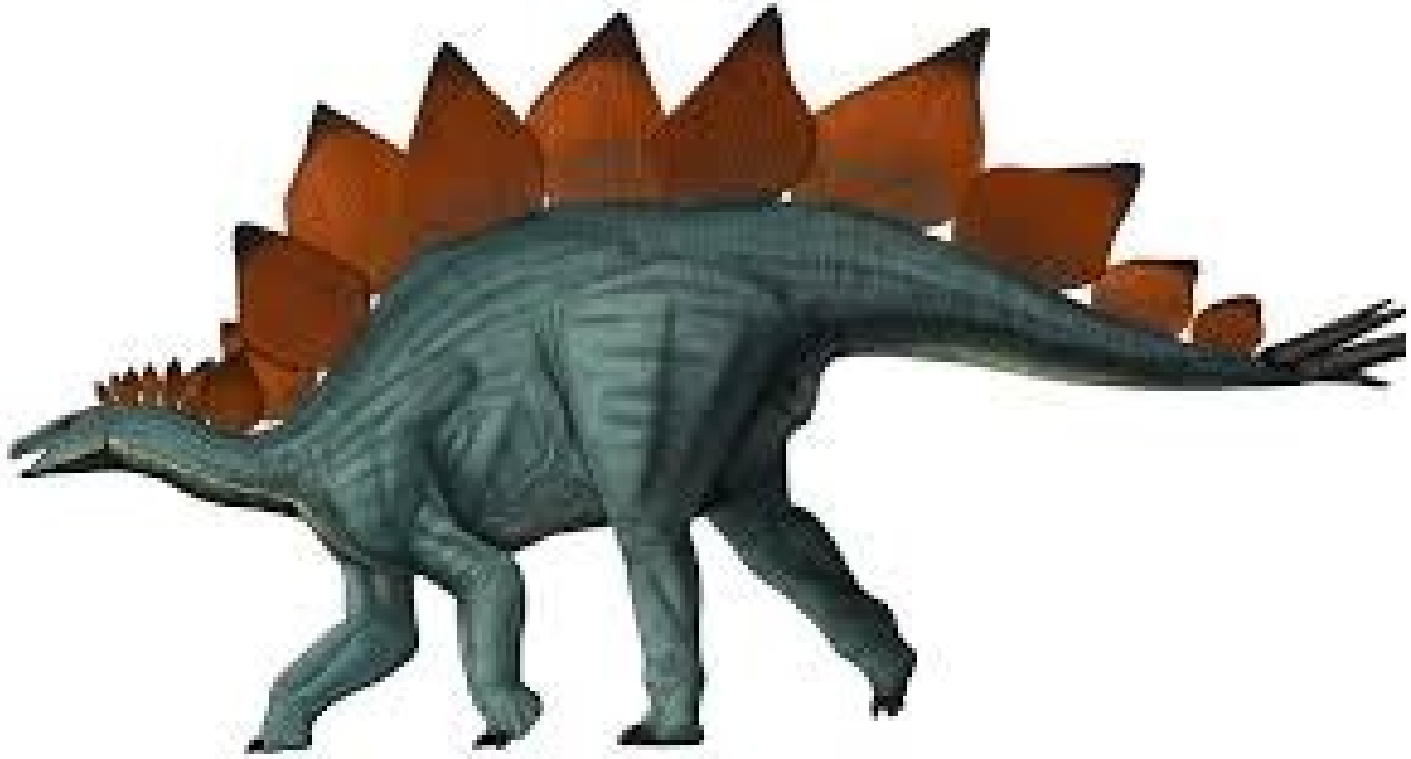

2. Internal Controls

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Internal Controls – 200.303

MUST:

- Establish, document, and maintain internal controls
- Comply with requirements (including U.S. Constitution)
- Evaluate and monitor compliance
- Take prompt action to correct noncompliance
- Take reasonable cybersecurity and other measures to safeguard information including personally identifiable information (PII) and other types of information
  - This includes info the federal agency or pass-through designates as sensitive or info the recipient/subrecipient considers sensitive and is consistent with laws re privacy and responsibility over confidentiality

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Internal Controls - Time and Effort

200.430(g)(1): Documentation must…

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and allocable;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting polices and practices; and
6. Support distribution among specific activities or cost objectives.

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Internal Controls – Time and Effort (cont.)
Budget Estimates - 200.430(g)(1)(vii)

- Budget estimates alone do not qualify as support for charges to Federal awards but may be used for interim accounting purposes if:
- Produces reasonable approximations
- **Significant** changes to the corresponding work activity are identified in a timely manner
- Internal controls in place to review after-the-fact interim charges based on budget estimates

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What is Significant?

- De minimis benefit (In re Michigan (ED, 1989))
- Limited work on another cost objective does not need to be captured in time and effort records.
- Employees may work 5% or less on another cost objective.
- The worked performed on these limited duties cannot deprive a benefit from the intended beneficiaries.

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What if the budget doesn't match effort?

- Two Options:
- (1) Change how the employee is working (program fix)
- (2) Change how the employee is paid (fiscal fix)

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3. Closeout /Termination of Awards

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Closeout & Liquidation – 200.344

- (a) Federal agency or pass-through must close out the award when it determines that all administrative actions and required work of the Federal award have been completed.
- (b) Recipient closeout reports: 120 days; subs: 90 days
- (c) SEA must liquidate within 120 days of obligation date
    - Complete scope of work
    - Finish accounting
    - Finalize draw-downs
- LEA has 90 days to liquidate (or an earlier date as agreed upon by the pass-through entity and subrecipient).
    - *When justified*, the Federal agency or pass-through entity may approve extensions for recipient or subrecipient

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200.472 –Termination and Standard Closeout Costs

- New (b) Closeout costs: Administrative costs associated with the closeout activities of a Federal award are allowable.
- May charge the Federal award during the closeout for necessary administrative costs (ex. salaries of personnel preparing final reports, publication and printing costs, and the costs associated with the disposition of equipment and property)
- Costs may be incurred until the due date of the final report(s)
- If incurred, costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency

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Basic Factors of Allowability - 200.403

To be allowable, a cost *must*:

- Be **necessary**, **reasonable** and **allocable**
- Comply with the cost principles and Federal award
- Be consistent with policies and procedures applying uniformly to Federal and non-Federal activities and costs
- Be consistently treated as either direct or indirect costs
- Be determined in accordance with GAAP
- Not be included or used to meet cost sharing / match requirements
- Be adequately **documented**
- **Administrative closeout costs may be incurred until due date of the final reports.** If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.

  All other costs must be incurred during the approved budget period.

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Termination – 200.340

- Fails to comply with requirements
- Consent/ agreement between awarding agency and recipient or subrecipient
- By recipient or subrecipient with notice of termination
- By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

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4. Food and Travel

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ED's Guidance on Food, Conferences and Meetings (NEW!)

Food and beverage costs are not of a type generally recognized as ordinary and necessary for the operation of the grantee or the proper and efficient performance of the Federal award.

- A grantee needs to substantiate with specificity the rationale for why paying for food and beverages with Department funds is necessary to meet the goals and objectives of a grant.
- Hosting an event: First consider structuring the agenda for the meeting so that there is time for participants to bring or purchase their own food, beverages, and snacks.
  - Consider a location in which participants have easy access to food and beverages.

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Allowable Food Examples

Food costs for a working lunch at a day-long meeting:

- The grantee may be able to justify that it is reasonable and necessary to provide meals or a snack to attendees if the grantee is able to demonstrate that:
  - The lunchtime session is **necessary** to achieve the goals of the project
  - Attendance at the lunchtime session is necessary to achieve full participation by attendees and
  - The business carried out at the lunchtime session could not be carried out at another reasonable time

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Allowable Food Examples (cont.)

Food costs at a family engagement event:

- If a family meeting would occur during a typical mealtime, or if the grantee has evidence that attendance at the event would be affected by the absence of food or snacks, the grantee may be able to justify that is reasonable and necessary to provide light refreshments or meals to participants.

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Allowable Food Examples (cont.)

Light refreshments at a series of regular after-hours meetings:

- If the grantee can demonstrate that the sessions have planned agendas that are central to the grant, that engaging this group of people is necessary to achieve the purposes of the grant, and that there is evidence that attendance at the meetings would be affected by the absence of food, the grantee may be able to justify that it is reasonable and necessary to provide light refreshments to participants.

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Allowable Food Examples (cont.)

Costs of light snacks at a day-long meeting:

- If the grantee has evidence that providing light snacks (e.g., granola bars and water) at the meeting will result in improved participation, such as more time spent on grant activities and less time needed for breaks during the sessions, the grantee may be able to justify that is reasonable and necessary to provide light snacks to participants

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Unallowable Food Examples

Food costs at regular staff meetings: Food costs for recurring business meetings, staff meetings, or other day-to-day activities are generally not reasonable

Food costs for remote meetings: Food costs for meetings conducted remotely, such as sending food to individual meeting participants' locations, are generally not justified

Entertainment: Celebrations, receptions, banquets, and other social events generally are not events where purchasing food with ED grant funds is appropriate

Food costs at networking sessions: Purely social focus is not justified

Alcohol: In all cases, use of Federal funds for alcoholic beverages is unallowable

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ED's Guidance on Food, Conferences and Meetings (cont.)

What if the costs of meals are included in hotel meeting rooms? What if the hotel provides complimentary beverages?

- It would not be acceptable for a vendor to embed the cost of beverages in other costs, such as meeting space, without those costs being separately allowable.
  - The grantee should work with the hotel to have the food and beverage costs removed and have the price for the meeting space appropriately adjusted.

May indirect cost funds be used to pay for food and beverages?

- No. They are more appropriately treated as direct costs rather than indirect costs. Federal grant funds cannot be used to pay for food and beverages unless doing so is reasonable and necessary.

Can we provide participants with the option of paying for their food?

- Yes.

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ED's Disclaimer

- FAQs are not binding
- *"Other than statutory and regulatory requirements included in the document, the contents of this FAQ document do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies."*

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Travel - 200.475

- Travel costs may be charged on actual cost basis, a per diem or mileage basis or a combination of the two, provided the method used is applied to an entire trop and not selected days of the trip
  - The method used must be consistent with state/local activities and established written policies
- Travel charges must be consistent with entity's established **written** policies
  - Must also document and justify that participation of an induvial is necessary for the federal award and costs are reasonable and consistent with written policies.
- Allows costs for "above and beyond regular dependent care" if:
  - Costs are directly related to federal award travel
  - Consistent with established written policy for all travel and
  - Costs are temporary during travel period

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Travel (cont.)

- New ED Guidance
- "Among other considerations, grantees should consider how many people should attend a meeting or conference on its behalf. The number of attendees should be reasonable and necessary to accomplish the goals and objectives of the grant. The grantee should also determine whether it is necessary to attend the entire meeting or conference, or whether attending only a portion of the meeting or conference is reasonable and necessary."
- "To determine whether the expenses are 'reasonable,' grantees should consider how the costs (e.g., lodging, travel, registration fees) compare with other similar events and whether the public would view the expenses as a worthwhile use of Federal funds."

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5. Conferences and Participants

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Conferences – 200.432

- Generally allowable
- To be considered a "conference," must disseminate technical information beyond the recipient or subrecipient and be necessary and reasonable for successful performance under the Federal award
- Allowable conference costs include rental of facilities, costs of meals and refreshments, transportation . . . unless restricted by the Federal award
- Costs related to identifying and providing locally available dependent-care resources for participants are allowable as needed
- Conference hosts must exercise discretion in ensuring costs are appropriate, necessary, and managed to minimize costs to Federal award

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Participant Support Costs – 200.1, 200.456

- Participant support costs are allowable.
  - Direct costs that support participants and their involvement in a Federal award, such as stipends, subsistence allowances, travel allowances, registration fees, temporary dependent care, and per diem paid directly to or on behalf of participants (200.1)
    - *Must be defined in your policies and procedures and consistently treated!*
- Who is a Participant?
  - An individual participating in or attending program activities under a Federal award, such as trainings or conferences, but who is not responsible for implementation of the Federal award
  - DOES NOT INCLUDE: Individuals committing effort to develop or deliver the program including consultants, project personnel, or staff members
- Prior approval requirement removed.

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6. Equipment Threshold and Disposition

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Property Thresholds

Equipment: tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of **$10,000** or more per unit

Supply: All tangible personal property other than equipment

Computing Devices: If less than **$10,000** per unit, defined as supplies

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General Equipment Rules - 200.313(b)

- A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures.
- Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section.
- Other recipients and subrecipients, including subrecipients of a State must follow paragraphs rest of 200.313
- Equipment purchases required prior approval (200.439)

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Equipment Use – 200.313(c)

- Equipment must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award
- Equipment must be available for shared use, provided such use will not interfere with the purpose for which it was originally acquired, and it follows this order of preference:
  - First by other programs from same agency
  - Then open to other Federal programs
  - Non-Federal programs, provided such use will not interfere with the purpose for which it was originally acquired

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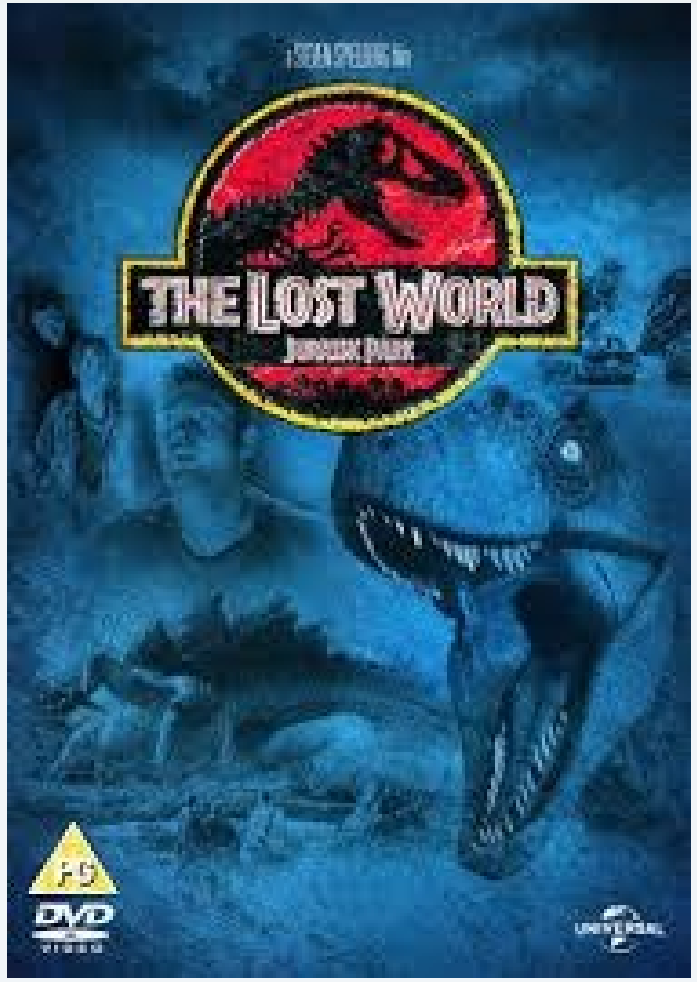
Replacement Equipment -200.313(c)(4)

- May use sale price of old equipment towards purchase price of replacement equipment
  - Calculate new federal share using % of federal funds initially used to purchase equipment



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Inventory Procedures – 200.313(d)

- Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacing equipment) utilizing procedures that meet the following requirements:

1) Property records
   - Description, serial number or other ID, source of funding (including FAIN), title, acquisition date and cost, percent of Federal contribution, location, use and condition, and disposition date including sale price.
   - Recipient/subrecipient is responsible for maintaining and updating property records when there is a change in status of the property

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Inventory Procedures – 200.313(d) (cont.)

2) Physical inventory at least every two years (or more often, if required by State or your own policies)
3) Control system to prevent property loss, damage, theft
   - All incidents must be investigated and reported to the Federal agency or pass-through entity
4) Regular maintenance procedures in place
5) If authorized or required to sell property, proper sales procedures to ensure highest possible return

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Equipment Disposition –200.313(e) and (f)

- When property is no longer needed in any current or previously Federally-funded supported activity, must request disposition instruction from the Federal agency or pass-through entity.
- Disposition will be made as follows, in accordance with Federal agency or pass-through entity disposition instructions:
  - Fair market value more than $10,000 (per unit) = pay Federal share back to federal agency or pass-through entity
    - May retain $1,000 to cover expenses associated with the selling and handling of the equipment.
  - Fair market value of $10,000 or less (per unit) = no money owed back to feds
- *Equipment retention*. When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment with no further obligation to the Federal Government unless prohibited by Federal statue or regulation.

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7. Disposition of Unused Supplies

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Supplies Disposition – 200.314

- If there is a residual inventory of unused supplies at the end of the period of performance exceeding $10,000 in total aggregate value, and the supplies are not needed for any other Federal award, the State or LEA may retain or sell the supplies
  - Unused supplies means supplies that are in new condition, not having been used or opened before.
  - The aggregate value of unused supplies consists of all supply types, not just like-item supplies
- Fair market value more than $10,000 (aggregate) = pay Federal share back to federal agency or pass-through entity
  - May retain $1,000 to cover expenses associated with the selling and handling of the supplies.

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8. Competitive Procurement

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Competition – 200.319

- Removes prohibition on geographic preferences!

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Competition – 200.319 (cont.)

- New Contractor Preferences
  - Does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work or products providing services on a contract, and other worker protections
  - Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award

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Noncompetitive Procurements – 200.320(c)

Allowable only when:

1. The aggregate amount of the transaction is under the micro-purchase threshold
2. The procurement transaction can only be fulfilled by a single source
3. There is a public emergency for the requirement that will not permit delay resulting from providing public notice of a competitive solicitation
4. The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the federal agency or pass-through entity provides written approval, or
5. After soliciting several sources, competition is determined inadequate

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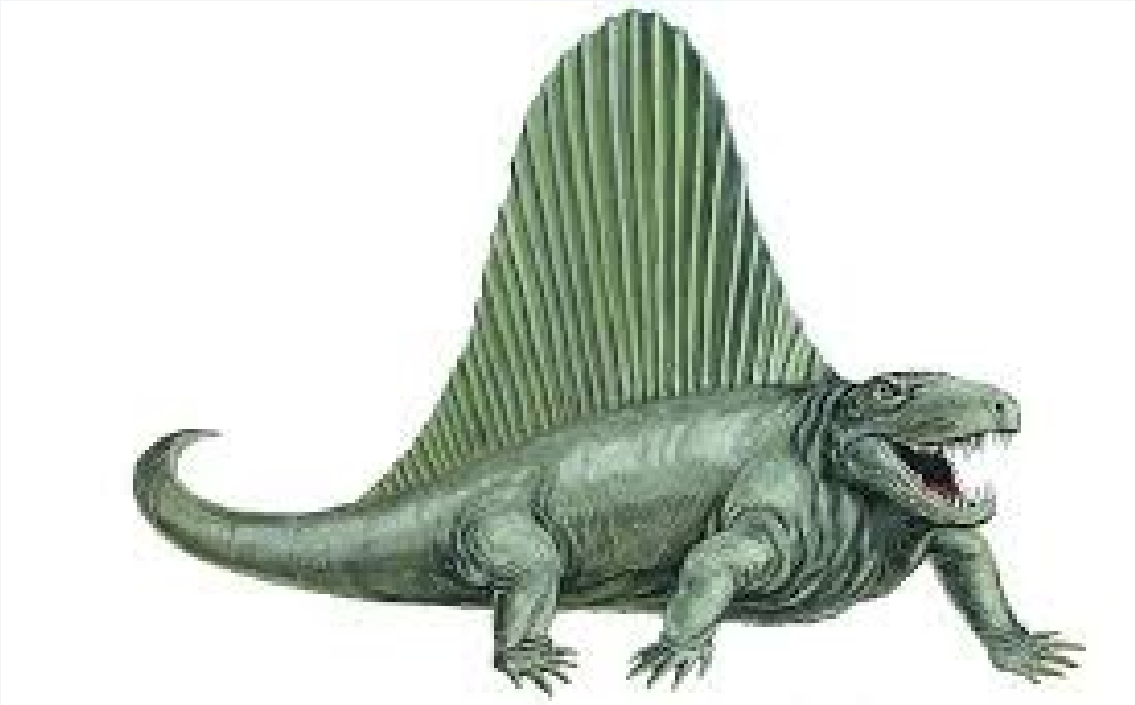
Honorable mention… 200.318(e)

Strategic / shared sourcing agreements (inter-governmental agreements or inter-entity agreements) that foster greater economy and efficiency **will meet the competition requirements**.



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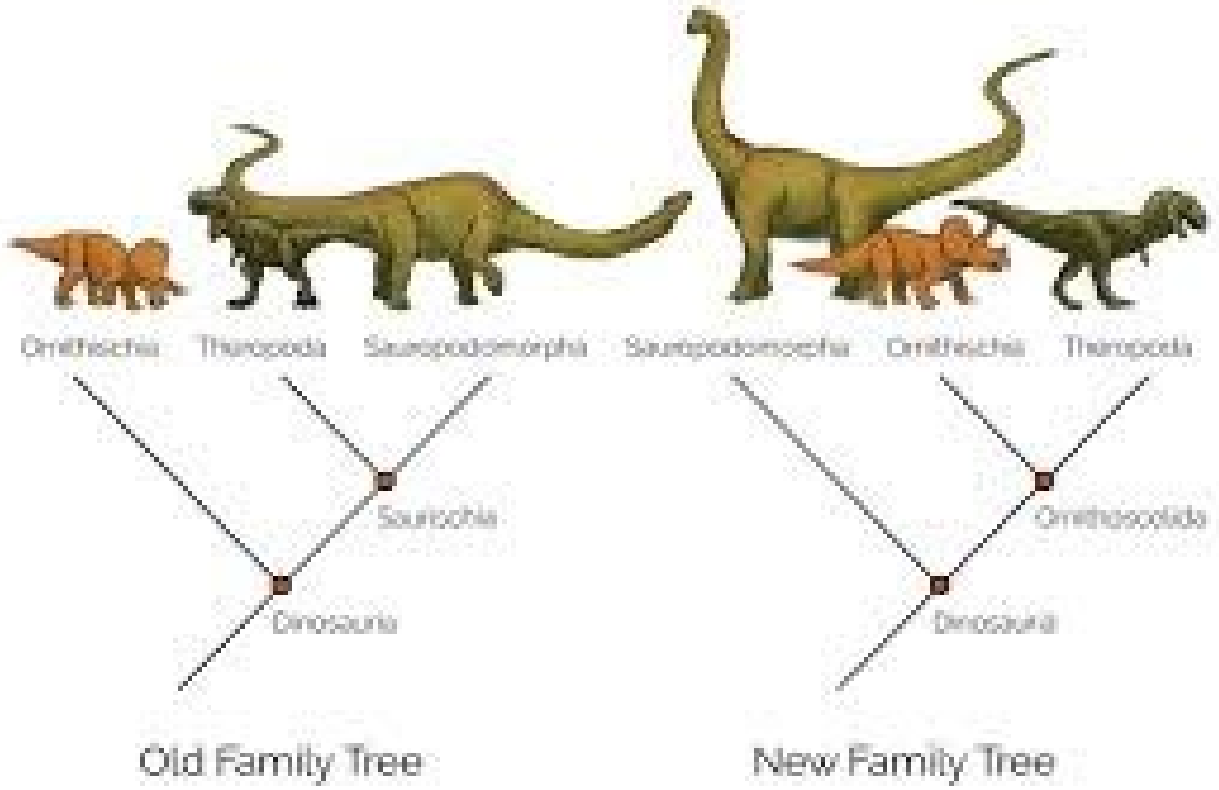

9. Pass-throughs and Subgranting Authority

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Final 76.50 – Basic Requirements for Subgrants

- Unless prohibited by applicable statutes or regulations or by the terms and conditions of the grant award, a State may use State-administered formula grant funds –
  - 1. Directly
  - 2. To make subgrants to eligible applicants, as determined by statutes or regulations, or if not addressed in law, as determined by the State; or
  - 3. To authorize a subgrantee to make subgrants
- Grantees are responsible for monitoring subgrantees consistent with 2 CFR 200.332
- If subgranting is not allowed; may contract, as needed for supplies, equipment, and other services.

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Subrecipient and Contractor Determinations – 200.331

- An entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor.
- The Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier; however, the Federal agency is responsible for monitoring the pass-through entity's oversight of first-tier subrecipients.
  - A subaward is for the purpose of carrying out a portion of the Federal award and creates a Federal financial assistance relationship with a subrecipient.
  - A contract is for the purpose of obtaining goods and services for the recipient's or subrecipient's use and creates a procurement relationship with a contractor.

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Subrecipient and Contractor Determinations – 200.331 (cont.)

- Pass-through entity is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor
  - The pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. The substance of the relationship is more important than the form of the agreement.
  - All of the characteristics listed below may not be present in all cases, and some characteristics from both categories may be present at the same time. No single factor or any combination of factors is necessarily determinative.

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Requirements for Pass-Through Entities – 200.332

- Confirm in SAM.gov that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds
- Ensure all subawards have required information in 200.332(b)
  - Federal award identification information
  - All requirements of the subaward
  - Any additional requirements PTE imposes on subrecipient
  - Indirect cost rate
  - Requirement that subrecipient permits PTE and auditors access to records
  - Closeout terms and conditions

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Requirements for Pass-Through Entities – 200.332 (cont.)

- If appropriate, based on risk assessment, consider implementing specific conditions (see 200.208)
  - Examples of specific conditions, withholding authority to proceed to next phase until receipt of evidence of acceptable performance, additional monitoring or reporting, 3rd party technical assistance requirements, additional prior approvals, etc.
- Monitor activities of subrecipient
  - PTE responsible for monitoring overall performance of a subrecipient to ensure goals and objectives of the subaward are achieved.
  - Must include reviewing financial and performance reports, ensuring corrective action, issuing management decisions, resolving audit findings related to subaward.

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Revision of Budget/Program Plans – 200.308

- Must report deviations from budget or project scope or objective and request prior approvals from Federal awarding agencies or pass through entities for budget and program plan revisions
- The Federal awarding agency or pass-through entity must review the request for budget or program plan revision and **should** notify the recipient or subrecipient whether the revisions have been approved within 30 days of receipt of the request.
- The Federal agency or pass-through entity must inform the recipient or subrecipient in writing when a decision can be expected if more than 30 days is required for a review.

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Revision of Budget/Program Plans – 200.308 (cont.)

Prior approval must be requested for:

1. Change in scope of objective/project/program
2. Change in key personnel (including employees and contractors) that are identified by name or position in the federal award
3. Disengagement from project for 3+ months or 25% reduction in time by approved project director or principal investigator
4. Inclusion of costs that require prior approval, unless waived.
5. The transfer of funds budgeted for participant support costs to other budget categories
6. Subaward activities not proposed in the application and approved in award (not applicable to change in subrecipients). Does not apply to procurement
7. Changes to cost-sharing amount
8. Need arises for additional federal funds for project
9. Transferring funds between construction and non-construction
10. A no-cost extension

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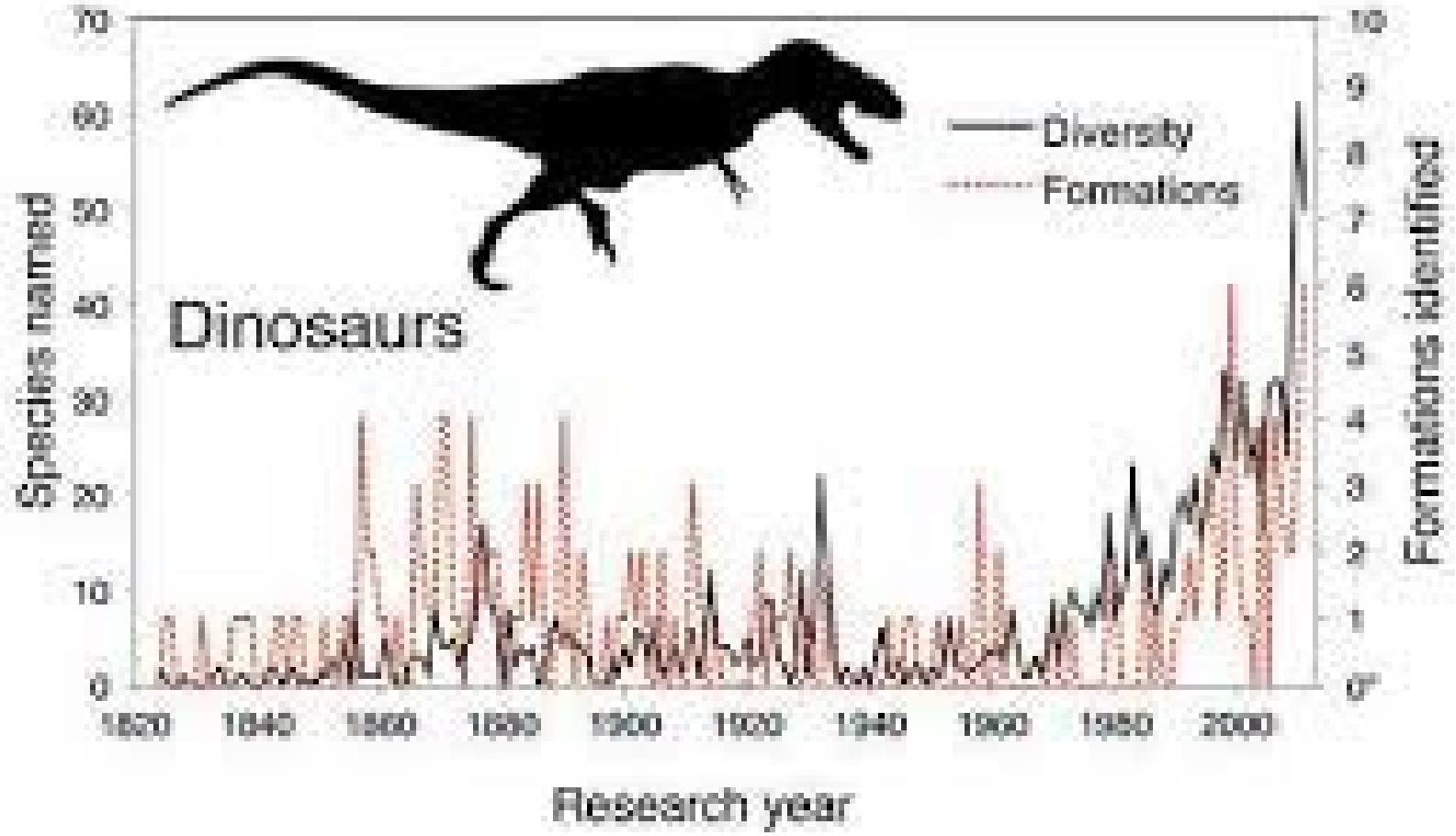

10. Record Keeping

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Methods of Collection, Transmission and Storage of Information – 200.336

- When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award information in an open file, non-licensed, and machine-readable formats.
- Recipient or subrecipient may substitute electronic versions of original paper records through duplication or other forms of electronic conversion, provided that the procedures are subject to quality control reviews.
  - Quality control reviews must ensure that electronic conversion procedures provide reasonable safeguards against alteration of records and assurance that records remain in a format readable by a computer system.

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Access to Records- 200.337

- The Federal agency, or pass-through entity, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to any records of the subrecipient or recipient pertinent to the Federal award to perform audits, execute site visits, or for any other official use.
- This right also includes timely and reasonable access to the recipient's and subrecipient's personnel for the purpose of interview and discussion related to such documents or the Federal award in general.

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Required Written Policies

- **Conflicts of Interest Policy – 200.318(c)**
- **Accounting Policies – 200.306(h)(2)(i); 200.400; 200.430(i)**
- **Compensation Policies – 200.430(a)**
- **Fringe Benefits Policies – 200.431**
- **Employee Health and Welfare Policies – 200.437**
- **Travel Reimbursement Policy – 200.475(a)**

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Required Written Procedures

- **Real property sales procedures – 200.311(c)(2)**
- **Time & Effort Procedures – ED Cost Allocation Guide**
- **Written Allowability Procedures – 200.302(b)(7); 200.403(c)**
- **Written Cash Management Procedures – 200.302(b)(6) and 200.305**
- **Written Procurement Procedures – 200.318(a), 200.319(d), and 200.320**
- **Procedures for Managing Equipment – 200.313(d)**
- **Participant support cost classification - 200.456**
- **Record conversion quality control - 200.336**

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Suggested Written Policies and Procedures

- **Record Retention**
- **Audit Resolution**
- **For the pass-through entity: Subrecipient monitoring (per compliance supplement)**
- **Program Specific Requirements**

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Audits and Investigations

School Fiscal Services Director Embezzles $16.7m

- Wrote checks with initials, then deposited in personal bank accounts
- Forged bank statements
- Federal law enforcement seized $7.7 in personal property (57 luxury bags; 8 bottles of $2k tequila; BMW; home; jewelry, shoes, etc.)
- Sentenced to 70 months prison; restitution of $16.7 million

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Linn-Mar Community School District ESSER Audit

- Reviewed 20 expenditures; determined all were allowable
- District did not comply with competitive procurement process or documentation requirements for 6 of 15 non-personnel costs
  - $27,841 for library mgmt. license; no price or rate quotations
    - District: Recurring expense; contract entered into 10 years ago
    - OIG: Need to maintain "history" of procurement
  - Remaining 5 expenditures (ed tech and materials, PD, and needs assessment), argued "single source" but no justification documentation to support
- Recommendation: Support the reasonableness of the 6 expenditures without competitive procurement ($228k), and if not, "require appropriate corrective actions"
- Recommendation: Require training on federal procurement requirements

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Southeast Polk Community School District ESSER Audit

- Reviewed 20 expenditures; determined all were allowable (counselor salaries, cleaning supplies, textbooks and air conditioning equipment)
- District did not comply with competitive procurement process or documentation requirements for 1 of 15 non-personnel costs
  - $62,000 for school bus air conditioners (purchase was part of a larger purchase of buses and related items, totaling $834,000)
    - OIG: Because total cost exceeded $250k, needed to conduct a formal bid process (even though only $62k charged to federal funds)
    - District: received three vendor bids, approval from state. Selected the vendor, then used "specification sheet" to serve as contract
    - OIG: Asked for signed specification sheet; District could not locate
- Recommendation: Require training on federal procurement requirements; "without a contract stipulating the terms and conditions of the award, [District] might not be able to adequately monitor vendor performance or ensure it receives what it paid for in terms of cost, quality and timeliness"

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Des Moines Independent Community School District ESSER Audit

- Reviewed 20 expenditures; 17 allowable, 2 unallowable, 1 unsupported
- 2 unallowable costs, totaling $164,580 for advertising and public relations costs solely to promote the LEA
  - OIG: While certain advertising and public relations costs are allowable, the purpose here was to generally promote the LEA; did not reference coronavirus pandemic, impact on students, absenteeism, etc.
- 1 unsupported cost, $33,326 payment on a $666,527 expenditure for HVAC upgrade
  - OIG: District was reimbursed the $33,326 for this payment, but held it as a retainage fee and withheld it from the vendor; no proof of payment until the review (18 months later) – creates Cash Management issue.

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Des Moines Independent Community School District ESSER Audit (cont.)

- Recommendations:
- 1. Return the $164,580 for unallowable advertising, **or reallocate the funds to other allowable costs**
- 2. Provide support of payment to the HVAC upgrades ($33,326), return the funds, or reallocate to other allowable costs
- 3. Calculate the interest earned (actual or imputed) on any ESSER grant funds that were retained (withheld) and not immediately paid to vendors, and return interest exceeding $500
- 4. Ensure that LEA officials responsible for making or reviewing and approving purchases have training on federal rules and regulations related to grants admin, allowability, documentation and cash management
- **Iowa/Des Moines Response**: Reallocated the unallowable costs spent on LEA advertising and public relations ($164k) and HVAC portion ($59k) to payroll costs for virtual instruction and cleaning supplies and materials
  - OIG: Should look at FY 21 and FY 22 to see if any unallowable costs for advertising charged, and correct accordingly

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Lower Kuskokwim School District ESSER Audit

- All 20 reviewed expenditures were allowable
  - Looked at indirect costs; ipad, educational software, construction costs; equipment, internet service, travel reimbursement, training and payroll
- OIG: Costs were connected to the coronavirus pandemic, authorized uses of ESSER funds, and reasonable and necessary and otherwise permissible under the UGG. In addition, the district complied with federal procurement requirements.

- Same result for Matanuska-Susitna Borough School District
- Same result for Anchorage School District

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Equitable Services

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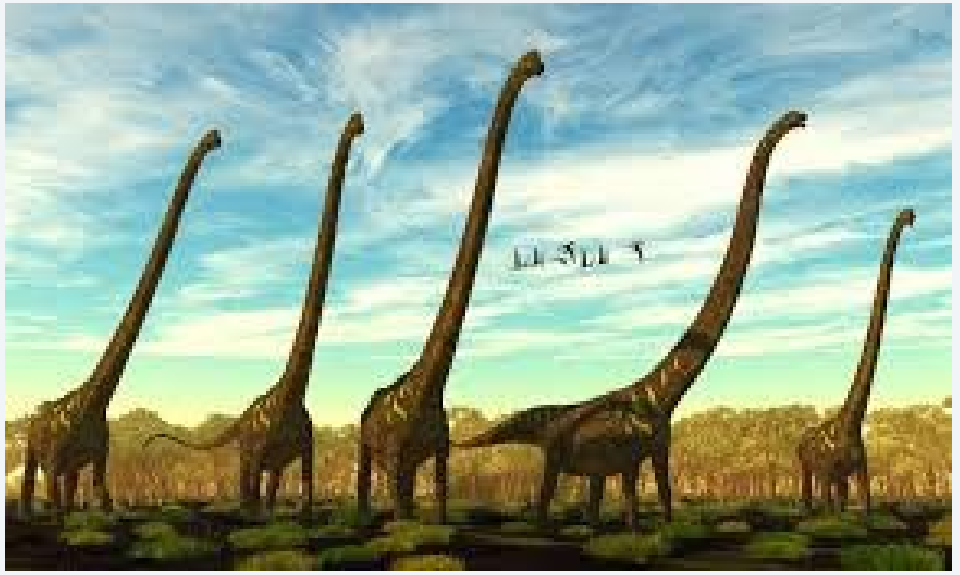
Equitable Services – the basics

Two Equitable Services programs under ESEA

- Title I-A → Section 1117

- Title VIII → Section 8501
  - Applies to…
    - Title I-C
    - Title II-A
    - Title III-A
    - Title IV-A
    - Title IV-B
    - Title IV-F (Project SERV)



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Equitable Services – the basics

- LEAs must calculate the "proportional share" of funding for equitable services under each covered program

- ***Calculation for Title I different from the programs covered under Title VIII

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Equitable Services – The Basics

- If covered program has eligibility/participation restrictions (e.g. Title III-A for ELs), then also applies to equitable services
- All services and benefits provided must be "secular, neutral, nonideological"
- LEA must maintain control of funds!
  - Share of funds for private schools is used to provide services and benefits
    - Funds are never distributed to the private schools

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Equitable services – the basics

- Consultation, consultation, consultation!

- LEAs must consult with private schools in an ongoing, meaningful, and timely manner

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Equitable Services consultation

- LEA must initiate contact annually
  - May choose to send “intent to participate” form
- LEA may set reasonable timelines (e.g. for intent to participate)
- Must include early discussions to prepare for school year AND be ongoing throughout school year
- Maintain documentation!

Always goal of reaching agreement

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Equitable Services Consultation Topics

- Children's needs and how they are identified
- What services
- How, where, by whom services to be provided
- Size and scope of program
- Data to ID students
- How and when LEA makes decisions
- Services to be provided directly or through third party (and If LEA disagrees on use of third-party contract - reasons in writing)
- School by school or pooling
- Time of day for provision of services
- Coordination with other programs

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Equitable Services Consultation Topics

- Administrative costs of providing equitable services
- Indirect costs
- Services and activities for teachers of participating private school students
- Family engagement activities
- Any funds available for carryover
- Transferring funds from Title II, Part A or Title IV, Part A into Title I, Part A

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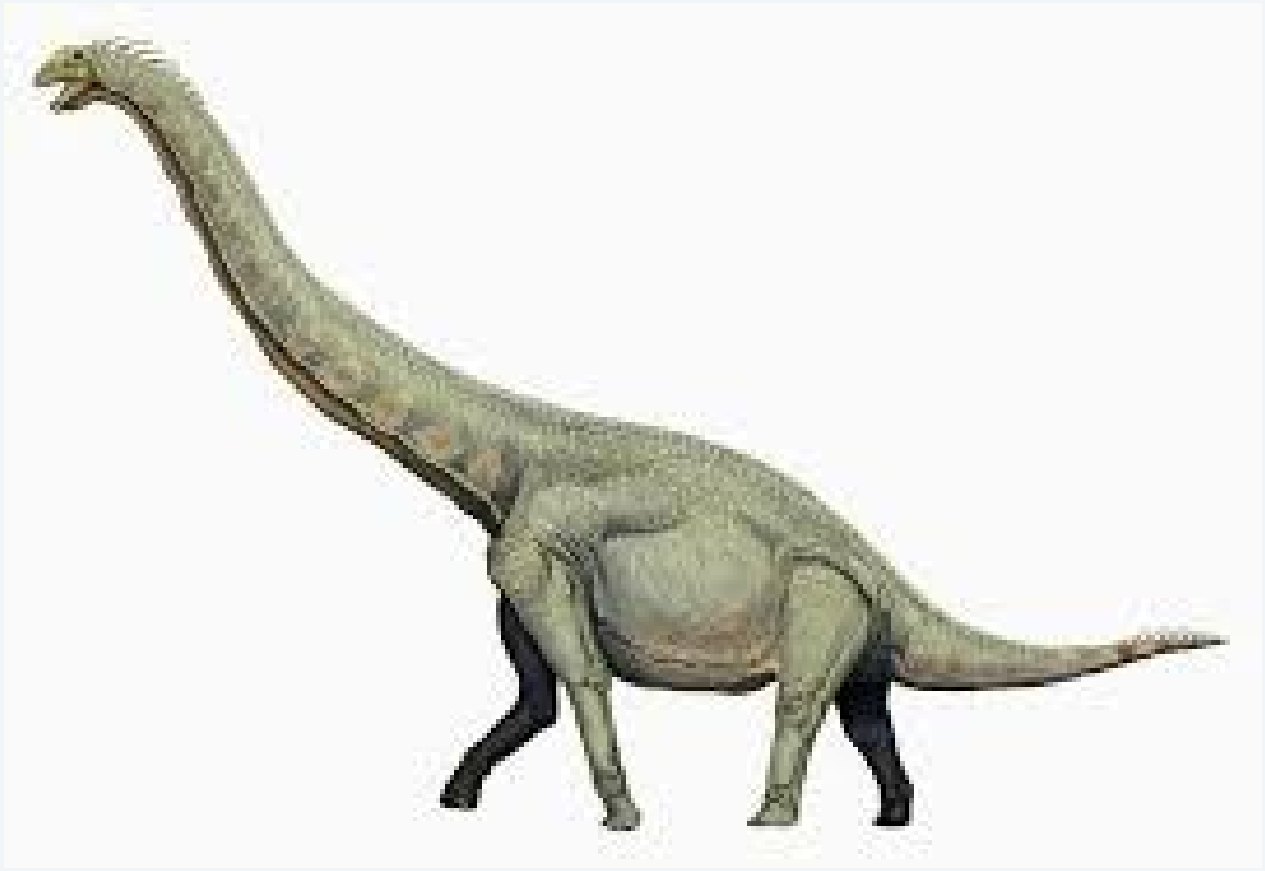
Title I-A Equitable Services



Title I equitable services calculation

Proportionate Share Formula (ESSA Section 1117(a)(4)):

1. Determine the number of children from low-income families residing in each Title I participating attendance area who attend public and private schools
2. Figure out the proportion of those children in private schools
3. Apply the private school proportion to the LEA's total Title I allocation to determine the equitable services proportionate share

Include funds transferred into Title I

Must occur before any required reservations

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Title I equitable services calculation

How does the LEA determine low-income students attending private schools?

1. The same measure of poverty used to count public school children (Free and Reduced-Price Lunch, etc.)
2. Comparable poverty data from a survey
3. Comparable poverty data from a different source
4. Proportionality
5. An equated measure

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Title I equitable services calculation

Data source must be discussed during timely and meaningful consultation!!

> "LEA cannot conclude that a survey is the best source of poverty data without at least consulting about other sources that may exist." –Title I ES Guidance

BUT LEA has the final authority to decide which method it will use

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Provision of Services

LEA must establish “multiple, educationally related, objective criteria” to determine which students are eligible for Title I-A services within the overall eligible group

→ Services should be targeted to students with greatest need

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Provision of Services - Pooling

- Options for providing services:
  - School-by-school
  - Pooling within an LEA
    - LEA must establish criteria (in consultation) to determine students with greatest educational need to receive services
  - Pooling across LEAs
    - Same criteria as pooling within an LEA
- Must be discussed and agreed to in consultation!!

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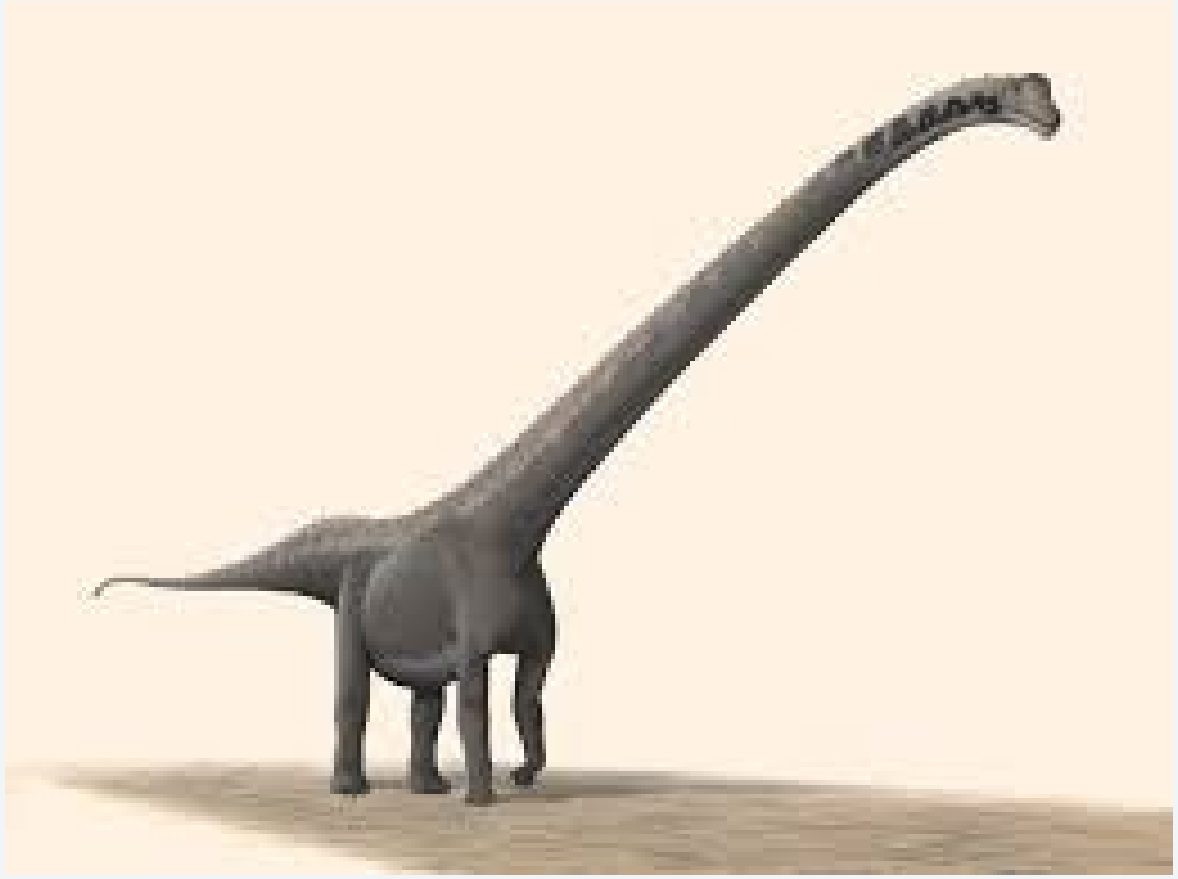
Title VIII equitable services



Title VIII Equitable Services Calculation

Different from Title I calculation!

- Based on where student ***attends*** private school, not where the student lives
- Eligible children = children and educators in nonprofit private elementary and secondary schools in the LEA's service area
  - If program has participation restrictions (e.g. Title III-A for ELs), then also applies to equitable services

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Title VIII Equitable Services Calculation

- Based on data from prior year
  - Use same year data for public and private numbers
- Use only the number of children or eligible children in private schools that ***wish to participate***
- Not the total number of private school children in the LEA

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Title VIII Equitable Services Calculation

How are administrative costs calculated?

- LEA reserves admin costs (including indirect) from program's total allocation (off the top) before the LEA determines allocation for public and private school children and educators
    - Admin reservation covers costs of both public and private school components

Different from Title I ES!

- Proportional share calculated BEFORE any reservations

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Title VII Equitable Services

- What requirements/options are the same as under Title I??
  - Consultation
    - Must be ongoing, timely, and meaningful
    - Must include all required topics
    - Maintain documentation
  - Pooling options

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