

Joint Submission of Comments Regarding Reform of Federal Grant Policies

[Federal Education Group, PLLC](#)¹ and the [School Turnaround Group of Mass Insight Education](#) jointly submit these comments. Federal Education Group is a law and consulting firm that helps state departments of education, school districts, and public charter schools maximize federal funding sources, navigate federal rules, and reduce administrative burdens. The School Turnaround Group (STG) is a division of Mass Insight Education, a national nonprofit dedicated to closing the achievement gap by turning around our country's lowest performing schools. The STG partners with school districts and state education agencies to redesign the way they support their lowest-performing schools.

A. Executive Summary

We appreciate the President and OMB soliciting comments from the public about how administrative rules create roadblocks that interfere with the effective performance of federal grants. These roadblocks can be particularly problematic in federal K-12 education programs.

While the federal government's administrative rules are little known and little discussed within the K-12 education policy field, they can drive a "culture of compliance" that has a profound impact on how educational services are delivered to students.² This culture of compliance often leads practitioners to ask "Have I checked the right box?" instead of asking "How can we align resources to provide the best educational environment for students?"

We encourage OMB and the U.S. Department of Education (ED) [to remove compliance roadblocks and improve the quality of the Single Audit process](#) by:

- Clarifying the areas where federal law provides flexibility, for example clarifying the alternate test for supplanting in schoolwide program schools, in order to ensure auditors test K-12 programs appropriately;
- Ensuring single auditors know the compliance requirements of the programs they are auditing;
- Ensuring states and other pass-through entities responsible for overseeing audits understand their role;
- Providing clear guidance to school districts on the role, importance, and use of Single Audit information; and
- Providing final audit resolution information to the public in an easily accessible form.

We encourage OMB and ED [to reduce some of the administrative burdens stemming from the federal cost principles](#) by:

- Clarifying which cost principles apply to public charter schools;

¹ Federal Education Group, PLLC is submitting these comments based on our experience representing educational entities that receive federal funds. We are not submitting these comments on behalf of current or former clients.

² See <http://www.aei.org/files/2011/07/28/EDU-2011-06-g.pdf>, and: http://blogs.edweek.org/edweek/rick_hess_straight_up/2011/10/the_compliance_culture_in_education.html.

- Giving K-12 educational institutions the same flexibilities as Institutions of Higher Education (IHEs), particularly around federal “time and effort” documentation requirements; and
- Permitting the option for flat indirect cost rates.

We encourage OMB and ED to take this opportunity [to remove other administrative burdens that interfere with the effective implementation of K-12 programs](#) by:

- Clarifying federal expectations around how school districts should administer federal grants in state-administered versus direct grant programs, particularly the rules that govern the kinds of financial management, procurement, and inventory management systems districts must use; and
- Reviewing and clarifying certain “technical” rules, such as payment rules for cash advances, budget and program plan amendments, procurement rules, etc. to ensure they are minimally burdensome and make sense in the context of federal education programs.

More detailed discussion of these suggestions follows below.

B. Reforms to the Single Audit Process (Circulars A-133 and A-50)

We agree that reforming the Single Audit process is critically important to achieving the goals described in the advance notice. We propose the following reform ideas that were not specifically addressed in the notice:

- Clarifying guidance provided in ED’s Compliance Supplement particularly with regard to flexibilities available under existing law, such as the schoolwide program model;
- Strengthening training and support for single auditors on the federal compliance requirements;
- Providing training and support to pass-through entities responsible for overseeing the Single Audit process, including strengthening guidance for pass-through entities regarding audit follow-up;
- Providing clear guidance to school districts on the role, importance, and use of Single Audit information; and
- Providing final audit resolution information to the public.

1. Clarifying guidance provided in ED’s Compliance Supplement particularly with regard to flexibilities available under existing law, such as the schoolwide program model

PROBLEM: Auditors and grantees rely on the explanations of compliance requirements contained in the Compliance Supplement to understand the standards that apply to federal K-12 programs. Auditors and grantees often apply the wrong standards or fail to access existing flexibilities granted under federal law when the Compliance Supplement language is silent or confusing. This can inadvertently work against federal policy goals.

For example, under the federal Title I program, schools that meet certain criteria may operate a schoolwide program model, which is an important tool for turning around low-performing schools and implementing whole school reforms. Yet, as detailed in a paper jointly commissioned by the Center for American Progress and the American Enterprise Institute, very few schoolwide schools take full advantage of the flexibilities available under the schoolwide model.³ In large part this is because of confusion over Title I’s “supplement not supplant” requirement described in the Compliance Supplement.

³ http://www.americanprogress.org/issues/2012/03/pdf/title_supplement_not_supplant.pdf

According to the Compliance Supplement, auditors normally should test for supplanting using three presumptions. These presumptions are not in the Title I statute; rather they were placed in the Compliance Supplement in order to provide guidance to auditors. The schoolwide program model, however, has a different “supplement, not supplant” test under the Title I law. Yet, because the Compliance Supplement does not contain specific instruction to auditors on how to apply the alternate schoolwide test for supplanting, many auditors continue to incorrectly apply the three presumptions in the schoolwide setting. Explicit clarification in the Compliance Supplement regarding the fact that there is a different test for supplanting for schoolwide program schools, and how to apply this different test, would have an enormous impact on how schools construct and deliver whole school reforms supported with Title I funds.

SOLUTION: In order to raise the quality of Single Audits, and to help prevent confusion among auditors and grantees, the Compliance Supplement should be clarified, particularly with regard to flexibilities available under federal law and schoolwide programs.

2. Strengthening training and support for single auditors on federal compliance requirements

PROBLEM: We have encountered many incorrect Single Audit findings that auditors issued because they did not understand the federal compliance requirements and applied the wrong rules or standards. To prevent these types of incorrect findings, grant recipients must spend a significant amount of time and resources walking auditors through the federal requirements, specifically through the law, regulations, non-regulatory guidance, and in some cases U.S. Department of Education (ED) letters that apply to an audited program. Grant recipients that do not have the resources to do this intensive instruction of auditors are at far greater risk for incorrect findings in their final audits. The U.S. Government Accountability Office (GAO) has also recognized that there is a “serious shortfall in the quality of Single Audits.”⁴

This is problematic because:

- The Single Audit process is not meaningful if audit findings are based on misunderstandings of the rules. This is particularly true since federal agencies rely on Single Audits for a variety of reasons, including determining improper payments.⁵
- Incorrect findings by single auditors lead to recipients undertaking unnecessary corrective actions which are meaningless at best, and counter-productive to actual compliance and federal policy goals at worst.

SOLUTION: More intensive training opportunities for auditors, including in-person trainings, additional written guidance, and improved clarity of the A-133 compliance supplement itself (as proposed above).

3. Providing training and support to pass-through entities responsible for overseeing the Single Audit process, including strengthening guidance for pass-through entities regarding audit follow-up

⁴ *Single Audit Quality: Actions Needed to Address Persistent Audit Quality Problems:*

<http://www.gao.gov/new.items/d08213t.pdf>

⁵ *U.S. Department of Education’s Compliance with the Improper Payments Elimination and Recovery Act of 2010 for Fiscal Year 2011:* <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2012/a03m0001.pdf>

PROBLEM: Pass-through entities in state-administered programs (such as the federal Title I and IDEA programs) can be unclear as to what their responsibilities are regarding Single Audit follow-up, which can lead to either too much or too little oversight by the state.

SOLUTION: The same types of strengthened support and training suggested for Single Auditors above could be offered to pass-through entities responsible for Single Audit oversight and resolution.

POSSIBLE PROBLEM: If OMB adopts its current reform proposal to have Single Audit work concentrate on higher-dollar, higher-risk awards, pass-through entities may feel responsible to “fill in the gap” by increasing their monitoring of lower-dollar, lower-risk awards that are no longer audited if the federal government does not clearly indicate otherwise. This would undermine OMB’s burden reduction goals, and shift concentration away from where the risks to federal funds are greatest.

SOLUTION: It is important for the federal government to articulate clearly in written guidance what responsibilities pass-through entities have once Single Audit work starts to concentrate on higher-dollar, higher-risk awards.

4. *Providing clear guidance to school districts on the role, importance, and use of Single Audit information*

PROBLEM: School districts often do not challenge incorrect Single Audit findings because they have limited time and resources, and they are not aware that Single Audit information is placed in public databases and relied upon for activities like calculating Improper Payment information. Further, because recipients of federal education grants face numerous oversight activities, including annual Single Audits, federal and state monitoring reviews, and possible Office of Inspector General (OIG) and GAO audits, it can be difficult to know what role each oversight entity plays, and how the audit or monitoring information will ultimately be used. Therefore, many school districts do not place significant emphasis on challenging incorrect Single Audit findings. As a result, the Single Audit finding data can be inaccurate.

SOLUTION: If OMB or ED would clearly articulate the importance and role of the Single Audit in plain language guidance, it might help to encourage school districts to take a more active role in defending against improper or inaccurate Single Audit findings. Ultimately, this might lead to more meaningful Single Audit information.

5. *Providing final audit resolution information to the public*

PROBLEM: While Single Audit report information (and the results of other audits, such as OIG reports) is currently available online to the public, information about how these audits are ultimately resolved is not. Many audit findings are not sustained, or do not result in repayment; however, this resolution information is not typically available to the public.

SOLUTION: Providing final resolution information to the public would give greater transparency to the audit process.

C. Cost Principles

1. *Consolidating Cost Principles into a Single Document*

We support OMB's proposal to consolidate the federal cost principles into a single document. This could increase transparency by making it clearer which rules apply in which circumstances. We recommend OMB take this opportunity to address three important issues:

- Clarifying that public charter schools should follow the same cost principles that apply to traditional public schools;
- Ensuring K-12 educational institutions have the same access to flexibility IHEs, especially around "time and effort" requirements; and
- Providing K-12 educational institutions the same flexibility as IHEs to define cost objectives that meet their unique circumstances.

a. Clarifying Which Cost Principles Apply to Public Charter Schools

PROBLEM: Currently, there is confusion over whether public charter schools are covered by OMB Circular A-87 because they operate as public schools or by OMB Circular A-122 because of their non-profit tax status. This confusion affects not only public charter schools, but the state educational agencies tasked with monitoring charter schools in state-administered programs. Resolving this issue is important because many of the rules in Circular A-122 do not make sense when applied to public charter schools. Further, some of the flexibilities available to public schools under OMB Circular A-87 are not available under A-122.

From our perspective, OMB Circular A-87 is the appropriate set of cost principles to apply to public charter schools. This is because federal law treats public charter schools as either local educational agencies (LEAs) or as public schools that are part of an LEA. Thus, unlike other educational non-profits (such as private schools), public charter schools are eligible for the major federal formula dollars awarded to LEAs (such as Title I or IDEA). Because LEAs are subject to OMB Circular A-87, and because public charter schools are only eligible to participate in the major federal formula programs given their LEA/public school status, it makes most sense to apply A-87 to public charter schools.

SOLUTION: When the cost principles are consolidated, we encourage OMB to clarify that public charter schools are governed by the rules that apply to state, local and tribal governments whenever there is variation between those rules and the rules for non-profits.

b. Give K-12 Educational Institutions the Same Access to Flexibility as IHEs, Particularly Around "Time and Effort" Requirements

PROBLEM: Currently, state, school district and public school employees paid with federal funds must keep either semi-annual certifications or personnel activity reports to document the amount of time they spend on federal programs under A-87's requirements. These time and effort requirements are burdensome and can inhibit innovation in K-12 programs.⁶

SOLUTION: We recommend OMB consider extending the flexibilities currently available to IHEs to K-12 institutions as well.

Specifically, Circular A-21 gives IHEs discretion to select among several different methods for verifying time and effort. This allows an IHE to develop systems that reflect the IHE's unique circumstances, capabilities and needs.

⁶ http://blogs.edweek.org/edweek/rick_hess_straight_up/2011/10/time_and_effort_takes_too_much_time_and_effort.html

Many of the methods available to IHEs would make sense for K-12 institutions. For example, IHE employees that are assigned to a specific task have the option to verify they worked on that task once a year, as opposed to every six months or monthly as required in K-12. This option could make sense for classroom teachers or other school-based staff whose job responsibilities do not vary substantially during the school year. It would also have the benefit of incentivizing K-12 institutions to focus on improving the core systems they need to spend federal funds responsibly, such as payroll and HR systems, since this option is only available to institutions whose systems have certain internal controls articulated in Circular A-21.

c. Give K-12 Educational Institutions the Same Flexibility as IHEs to Define Cost Objectives that Meet their Unique Circumstances

PROBLEM: Circular A-21 recognizes that distinguishing between cost objectives is harder to do in academic settings; this applies equally to K-12 institutions. One of the biggest challenges in time and effort requirements in K-12 settings has been a lack of clarity over what constitutes a cost objective. For example, there is confusion over how to track effort:

- In schoolwide programs;
- On administrative versus programmatic activities; and
- When the effort could be charged to several different funding sources.

SOLUTION: Clarifying the definition of a cost objective, and providing specific guidance for K-12 programs, would go a long way to reducing burden and freeing up funds to meet program objectives. Where there are similar disconnects – i.e., flexibilities that are available to IHEs that are not available to K-12 institutions – we recommend OMB consider offering those flexibilities to K-12 institutions as well.

2. *Permitting Flat Rates for Indirect Cost Recovery*

PROBLEM: In our experience, many recipients – especially subrecipients – do not have the technical expertise to negotiate an indirect cost rate on their own. Thus, they either forgo indirect cost recovery or invest substantial resources in getting outside assistance to develop a rate.

SOLUTION: We support OMB’s proposal to give recipients the option of accepting a flat rate or negotiating a rate. Even some recipients that have the expertise to develop their own rate find the process burdensome, thus they may choose to accept a flat rate in lieu of the complex rate negotiation process.

If OMB adopts this change, we recommend subrecipients be permitted the same option. For example, in K-12 programs school districts must negotiate an indirect cost rate with their state educational agencies (SEA). Allowing SEAs to approve flat rates would reduce burden at both the state and district levels.

While there are many benefits to a flat rate, recipients that wish to negotiate their own rates should be permitted to continue to do so. If the purpose of indirect cost recovery is to compensate recipients for the added expense of operating federal programs, then recipients should have the option to present those costs to the federal government and negotiate a fair recovery.

D. Consolidating Administrative Requirements

We support OMB’s proposal to consolidate the administrative requirements in OMB Circulars A-102 and A-110 into a uniform set of administrative requirements for all grant recipients. Many of the requirements in the two

Circulars already overlap, and having one set of rules could increase transparency and reduce confusion over which standards apply.

We recommend OMB take this opportunity to:

- Clarify the administrative requirements that apply to school districts; and
- Review the administrative requirements in A-102 to ensure they are meaningful and reflect the way states and districts do business.

1. Clarify the Administrative Requirements that Apply to School Districts

PROBLEM: It is unclear which federal standards regarding financial management, procurement, and inventory management apply to school districts. This issue is important because school districts often face unwarranted audit or monitoring findings as a result of the wrong standards being applied, which causes districts to spend resources modifying their systems to meet standards that are not legally required, and worse, are not more meaningful in protecting against fraud, waste and abuse.

Circular A-102 contains rules that govern three systems critical to program delivery – financial management, procurement, and inventory management. The rules governing these systems are divided into two sections. The first sets out rules for states and requires them to operate systems that comply with state laws and procedures. The second sets out rules for “all other grantees and subgrantees” and requires them to operate systems that comply with detailed requirements in Circular A-102.

Under long-standing administrative policy due to language in the preamble of the A-102 Common Rule, school districts are treated differently under A-102 depending on whether they are operating a state-administered program (like Title I) or a direct grant program (like the Investing in Innovation (I3) program).

In “state-administered programs” – where a district receives federal education funds through its state educational agency – districts are considered to be part of the state. Thus, when implementing the three systems listed above they can follow state laws and procedures, not the more detailed rules established in Circular A-102. In direct grants – where a district receives federal education funds directly from ED – districts are not considered to be part of the state. Therefore, they must follow the detailed rules established in Circular A-102.

This distinction leads to two problems. First, there is no written guidance that explains all of this clearly, and ED has not been consistent in which standards it applies to school districts. When the standards are unclear it is difficult for districts to know how to proceed. Therefore districts, or their auditors and oversight entities, often apply the most restrictive rules, which can divert resources away from program implementation.

Second, a district that receives both state-administered and direct grants is, in theory, governed by both sets of rules. For example, in a state-administered grant, the district would follow state rules, while in a direct grant it would follow the specific rules in A-102. It does not make sense for the district to follow two different standards since it will use the same financial management, procurement and inventory management systems to manage both grants. If the standards conflict, the district is vulnerable to a costly audit finding, depending on which standards the auditor applies.

SOLUTION: Clarify which federal standards for financial management, procurement, and inventory management apply to school districts receiving federal grants.

Review A-102 Administrative Requirements to Ensure they are Meaningful

PROBLEM: The administrative requirements in OMB Circular A-102 get little attention but have a significant impact on federal K-12 programs, often in unintended ways.

SOLUTION: Clarifying the administrative requirements below would help reduce burden, and ensure funds are directed towards program outcomes, not administrative operations. We also recommend that OMB encourage federal agencies to develop guidance on A-102 administrative rules for their grant recipients. It would be particularly valuable to have guidance explaining how these administrative rules interact with federal K-12 education programs.

For example, we recommend OMB consider:

- Clarifying the payment rules, especially for cash advances. There is much confusion over how long school districts and other subrecipients may keep advanced funds on hand before disbursement. The rules should realistically reflect subrecipient operations and the need for reliable cash flow to administer federal programs.
- Clarifying the rules on program plan/budget amendments to ensure an appropriate balance between allowing for needed amendments and appropriate oversight to ensure such amendments are reasonable. For example, some grantees severely limit their subgrantee's ability to amend program plans/budgets (sometimes allowing amendments as little as once a year). While we recognize that reviewing amendments requires grantee resources, subgrantees should have the flexibility to revise their projects as needed to address changes that impact program delivery.
- Rethinking the procurement standards to ensure they reflect real-world business operations. For example, certain goods are readily available in the open market where prices can be easily compared (e.g. office supplies, computers), thus complex bidding procedures may not be required for these types of goods regardless of their value. Similarly, many states and districts take advantage of open contracts to buy in bulk. The procurement rules should be sufficiently flexible to permit these types of procurement arrangements.
- Promoting due process by ensuring subgrantees that face enforcement action have meaningful opportunities to access a neutral arbiter. These due process procedures should reflect the unique complexities in pass-through programs, where an enforcement action taken by a federal agency against a grantee could affect a subgrantee. Subgrantees should have an opportunity to be heard in such circumstances.

We thank you for this opportunity to submit comments. If you have any questions, please send them to Melissa Junge or Sheara Krvaric at info@fededgroup.com.