



Fall Forum 2021

Stimulus Funds and UGG, and You and Me, So Happy (Back) Together

# Federal Grants Management Oversight

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## Debunking The Myths

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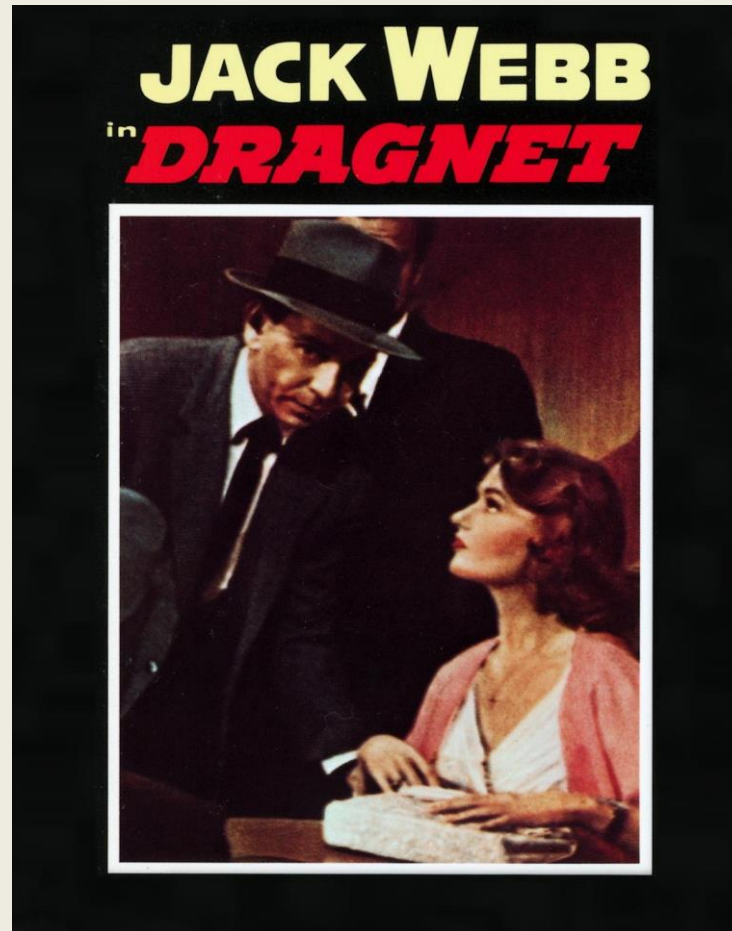
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# ‘Just the Facts Ma’am’

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Dragnet Sgt. Joe Friday





# Myth #1

# Audit $\neq$ Monitoring



# Audit



- Single Audit
- Federal Audit
- Limited Engagement



# Generally Accepted Government Auditing Standards (GAGAS)

## Yellow Book

- Outlines requirements for Audit Reports, Professional Qualifications for Auditors, and Quality Control

## Monitoring

- Federal Program Monitors
- Pass-through Agency Monitors

2 CFR 200. 332 (d)

2 CFR 200. 206





# Myth #2

**An audit is more invasive  
than monitoring**

**(hint: take a peek at a vocational  
rehabilitation (OSERS)  
monitoring report)**



# **Program monitors know the programs, auditors do not**

(Monitors know where the skeletons are buried)



## Who would you prefer to have a beer with:

- a) Federal auditors
- b) Single auditors
- c) Federal program monitors
- d) Pass-through monitors

**Answer: None**





# ED Does Not Use Same Monitoring Protocols for All Programs

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## The Brustein Assessment of How Challenging Federal Monitoring Is:

1. Risk Management Service
2. Vocational Rehabilitation
3. Special Education
4. ESEA
5. Adult Education
6. Higher Education (Not Institutional Program Reviews)
7. CTE





# Myth #3

**Only an audit can constitute  
the basis for recovery of  
funds**



**“An authorized departmental official may base a decision to require a recipient to return funds upon an audit report, an investigative report, a monitoring report, or any other evidence.”**



**34 CFR 81.30 (b)**



**ED issued this EDGAR regulation in response to 5<sup>th</sup>  
Circuit U.S. Court of Appeals Decision in  
“Tangipahoa”**



# Myth #4

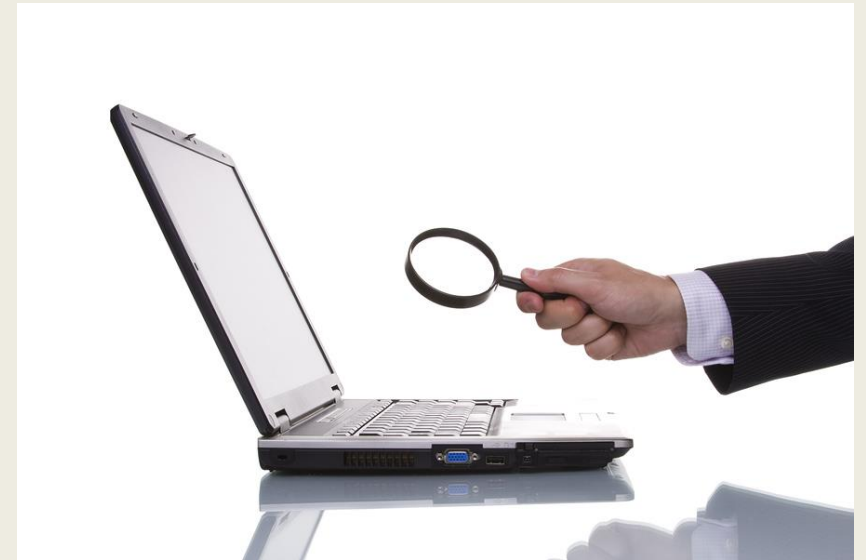
**OIG Audit  $\neq$  OIG Investigation**



# OIG Investigation

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- Typically, criminal in nature
- No prior notice
- No due process
- No opportunity for rebuttal





# Roadmap for OIG Investigation: Call Your Attorney





# Myth #5

# Audit $\neq$ Political Tool





**“While 541 school districts are struggling to find normalcy during a Pandemic, the Governor’s attack on public education couldn’t be worse timing....”**

**Oklahoma State Superintendent  
Joy Hofmeister**



# Myth #6

**There is no incentive  
in reporting fraud**



**Federal False Claims Act (FCA), known as  
“Lincoln’s Law,” allows whistleblowers to sue  
persons or entity’s defrauding government +  
recover damages on government’s behalf**

**31 USC 3729**



# Presenting a false claim for payment or approval

**31 USC 3729 (1)(A)**



# Making or using a false record or statement that is material to a false claim



**31 USC 3729 (a)(1)(B)**



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# Conspiring to violate the FCA

31 USC 3729 (a)(1)(C)

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# Failing to return government property

31 USC 3729 (a)(1)(D)



**Making or delivering a receipt of government property without completely knowing that the information in it is true**

**31 USC 3729 (a)(1)(E)**



**A key feature of the FCA is “Qui Tam” (or whistleblower) under which an individual with knowledge of the fraud may file suit under seal on behalf of the U.S., and recover monetary damages + protection from reprisal or retaliation**





# Myth #7

**Undocumented or  
unallowable costs result in  
full recovery by ED**



**Recipient shall return funds proportionate to the  
extent of the harm the violation causes to an  
identifiable federal interest**

**34 CFR 81.32 (a)(1)**



# An identifiable federal interest includes

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1. Serving only eligible beneficiaries
2. Providing only authorized services
3. Complying with fiscal conditions, MOE, set-asides, comparability, supplanting
4. Preserving integrity of planning, application, recordkeeping, + reporting requirements
5. Maintaining accountability for use of funds

**34 CFR 81.32 (a)(2)**



# Myth #8

**OMB has shifted the balance from compliance in favor of performance**



**Preambles to the 2014 UGG and 2020 revisions  
repeatedly state that the focus is on “performance”  
to demonstrate results**



# Agencies should “alleviate” compliance requirements





**Has anyone shared the news with:**

1. Auditors

2. Federal Program Managers

3. Pass-Through Program Managers





**“Compliance” will keep you out of  
the news, out of fund recovery, and  
out of jail!!**





# Myth #9

**An adverse audit means  
recovery of funds**



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# Audit reports are only recommendations to management.

## Options:

a) Sustain

b) Reject

c) Request More Information





# Always Consider Cooperative Audit Resolution

2 CFR 200.1

2 CFR 200.513 (c)(3)

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**Call Bruman Team**

(202) 965-3652



# Myth #10

**Program Guidance  $\neq$  Safe Harbor**



# **Imposition of Requirements on Recipients**

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**Agencies may impose legally binding requirements on recipients only through the notice and public comment process through an approved agency process, including statutes or regulations**

**2 CFR 200.105 (b)**



# What other guidance is legally binding?

## The ninety-day letter

**34 CFR 81.33**



**A recipient is not required to return funds that are attributable to mitigating circumstances.**

**34 CFR 81.33 (a)**



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