



Audit Defenses and CAROL Strategies

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Virtual Spring Forum 2022

Planning for Uninterrupted Crises



Agenda

- OIG Quality Control Reviews
- Audit Defense Strategies
- Cooperative Audit Resolution



OIG Audit Quality Reports

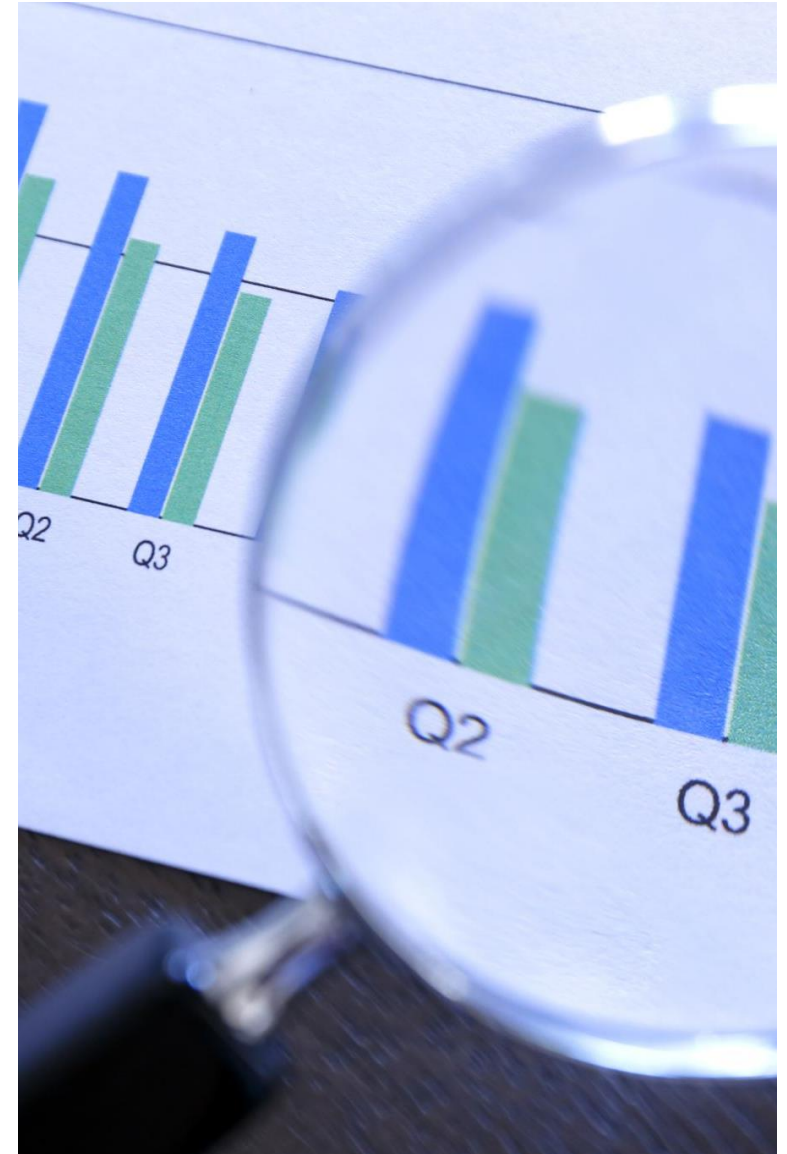
U.S. Department of Education Office of Inspector
General Semiannual Report to Congress No. 83,
April 1, 2021, through September 30, 2021





OIG Quality Control Review

- “To help assess the quality of the thousands of [single] audits performed each year, we conduct quality control reviews of a sample of audits.”
 - Pass
 - Pass with deficiencies (audit documentation contains quality deficiencies to be corrected for future audits)
 - Fail (audit documentation contains deficiencies that affect the reliability of the audit results; documentation does not support the opinions contained in the report)





OIG Quality Control Review Findings

- 15 reviews; 11 accountants or agencies
- 4 (27%) were Pass
- 5 (33%) were Pass with deficiencies
- 6 (40%) were Fail



OIG Quality Control Review (cont.)

- When a quality control review receives a rating of Fail, the independent public accountant or audit organization must resolve the deficiencies identified.
- If the independent public accountant or audit organization does not adequately resolve the deficiencies, we may find the audit report is not reliable and **we will recommend the report be rejected.**
- During this reporting period, we made two recommendations to the Department to reject audit reports.



OIG Quality Control Review (cont.)

“We referred two independent public accountants to the American Institute of Certified Public Accountants and also referred one of these independent public accountants to their State Boards of Accountancy **for possible disciplinary action**. We made these referrals due to the independent public accountants’ **unacceptable audit work**.

In addition, during this reporting period, we received information from a State Board of Accountancy regarding disciplinary actions taken against an independent public accountant as a result of a previous referral. The independent public accountant was **fined and ordered to take additional ethics training.**”



OIG Quality Control Review - Historical Findings





Takeaway

Respond carefully at each level

- Problems are always easier to resolve at the earliest level
- The auditor is not always right!

ED or the SEA can:

- Accept finding as is
- Accept finding but reduce or eliminate liability
- Reject finding



Takeaway - Opportunities to respond



Exit Conference



Draft Audit Report



Final Audit Report



Final determination (ED, State
Agency)



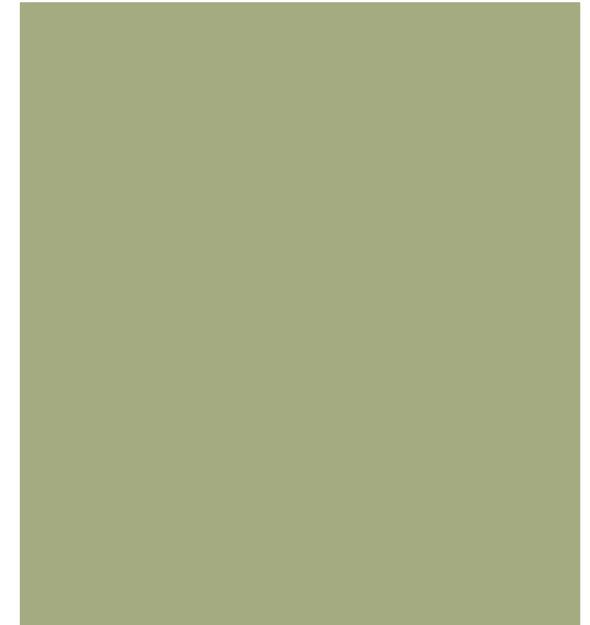
Question

True or false. It is better to respond to a potential audit finding early in the process.

- A. True
- B. False



Audit Defense Strategies





Audit Defense Strategies

Accept, even if
wrong

Accept, even if
available
defenses

Concentrate on
the wrong issue

Dispute the
finding

Self-assessment
and correction,
or plan for
correction



Common Defenses

Statute of limitations

Harm to the federal interest

Equitable offset



Statute of Limitations

- No recipient under an applicable program shall be liable to return funds which were expended in a manner not authorized by law more than 5 years before the recipient received written notice of a preliminary departmental decision.
 - 20 USC 1234a(k); 34 CFR 81.31(c)
- For purposes of measuring the statute of limitations, funds are “expended” as of the date of obligation.
 - Appeal of the State of Michigan, Docket No. 8(272)88, 6 (September 14, 1989)



What if GEPA doesn't apply?

34 CFR 81.2 excludes:

- Higher Education Act
- Impact Aid

Potentially excluded:

- IDEA State Maintenance of Financial Support (MFS)
 - Pending ED Secretary decision whether GEPA applies to eligibility determinations



Other Potential Statutes of Limitation?

For findings related to the Uniform Guidance

- 2 CFR 200.345: “The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.”

For fines or penalties

- 28 U.S.C. § 2462: “Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued”
- *Lincoln University*, U.S. Dept. of Educ. No 13-68-SF (Sept. 13, 2016)



Harm to the Federal Interest - 34 CFR 81.32 and Appendix

“A recipient that made an unallowable expenditure or otherwise failed to account properly for funds shall return an amount that is proportional to the extent of the harm its violation caused to an identifiable Federal interest associated with the program”



ALJ Decisions - Reconstruction

Application of the New York
State Department of
Education, No. 90-70-R (April
21, 1994)

After-the-fact affidavits and
other pertinent
documentation are
admissible as evidence

Consolidated Appeals of the
Florida Department of
Education, Nos. 29(293)88 &
33(297)88 (June 26, 1990)

Accepted affidavits
completed by supervisors
years later as credible and
useful evidence



Equitable Offset

In effect, an equitable offset permits the substitution of any costs paid under the grant that are subsequently disallowed with otherwise allowable expenditures paid by the grantee, and thereby reduces or eliminates a liability due to ED.



Equitable Offset - New Test?

Georgia - OHA Decision No. 12-35-R

- Scope and pervasiveness of underlying issue
- Whether the violation was intentional or an honest mistake
- The efforts by the appellant to mitigate the harm



The Future of Equitable Offset

- ED has almost unfettered discretion. Get agreement up front, before pursuing.



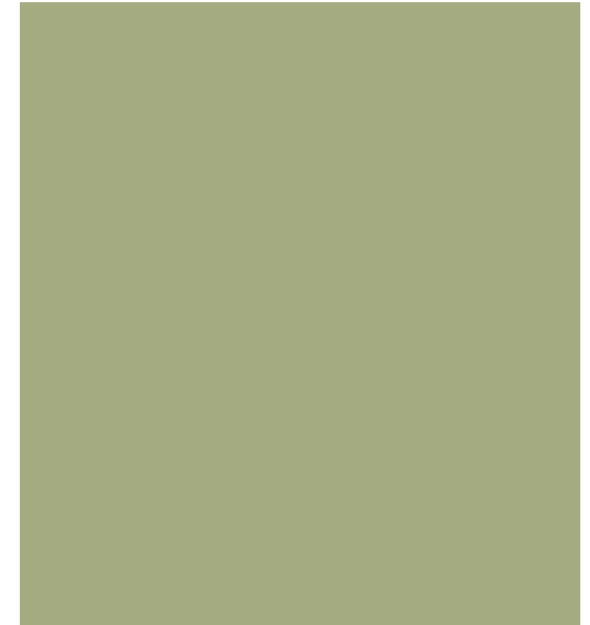
Question

Which of the following is NOT a factor in whether a grantee is eligible for equitable offset?

- A. Scope and pervasiveness of underlying issue
- B. How long ago the violation occurred
- C. Whether the violation was intentional or an honest mistake
- D. The efforts to mitigate the harm



Cooperative Audit Resolution





Cooperative Audit Resolution and Oversight Initiative (CAROI)

Developed with ED and pilot states

Adopted by ED as standard audit resolution

Uniform Guidance applied it to all agencies in 2014



Why engage in CAROI?

“appropriate relief for past noncompliance when audits show prompt corrective action occurred”

Forgiveness of questioned costs?



Flexibility to Address Questioned Costs:



Consider information that was not available or presented to auditors during audit.



Consider, if appropriate, equitable offset, where allowable costs are allowed to substitute for unallowable costs.



Accept, if appropriate, alternative documentation that can substitute for missing records. As a general matter, such documentation must be prepared by individuals that have direct knowledge of the underlying facts and rely on credible contemporaneous records.



Basic principles of CAROI implementation (2 CFR 200.1)

- Audit and follow up that promotes prompt corrective action
- Improve communication
- Foster collaboration
- Promote trust
- Develop federal - nonfederal agency understanding



Appropriateness of CAROI

- What about high-risk programs or subrecipients? What about a prior history of noncompliance?
 - Need a willingness to engage, communicate collaboratively, and identify the root causes of noncompliance
- BUT, the U.S. Department of Education has taken the position that CAROI cannot be used when the findings are a result of intentional or fraudulent conduct.



Typical Issues for CAROI

1. Internal control weaknesses such as inadequate or missing policies and procedures;
 2. Inadequate documentation of personnel costs;
 3. Unallowable or inadequately documented non-personnel costs;
 4. Improper inventory control or procurement systems;
 5. Inadequate oversight or documentation of federal program requirements or federal program eligibility.
- *This is not an exhaustive list, however, and CAROI can be adapted to resolve many other audit or oversight findings, even isolated findings across a subrecipient.



Examples of CAROI Activities

- Identify technical assistance activities to address the identified challenges.
- Identify a process for monitoring the implementation of the grant beyond standard processes and the roles of relevant staff.
- Discuss identified compliance concerns, determine root causes, and develop an appropriate resolution.
- Determine whether issues or processes can be generalized across grantees. For example, are compliance issues grantee-specific or inherent to the federal program?



CAROI Agreements

Scope agreement:

- The issues to be resolved;
- Identification of documentation for review;
- Potential for recovery of funds;
- Timelines for reporting negotiated results; and
- Approval process for corrective action plans.

Resolution agreement:

- Acceptance of proposed corrective action plans;
- Amount of funds to be recovered, if applicable;
- Consequences of noncompliance with the agreement;
- The process to revise the agreement;
- Measures for accountability, including implementation timelines; and
- Required monitoring or technical assistance, if appropriate.



Question

True or false. CAROI may include the forgiveness of questioned costs.

- A. True
- B. False



How to implement CAROI

1. Engage internal stakeholders
2. Develop CAROI policies and procedures
3. Communicate with external stakeholders
4. Implement and iterate



CAROI Resources

Successfully Implementing Cooperative Audit Resolution (2016)

- <https://www.agacgfm.org/Intergov/More-Tools/Successfully-Implementing-Cooperative-Audit-Resolu.aspx>

Cooperative Audit Resolution and Oversight Initiative (CAROI) Guide (2010)

- <https://www.agacgfm.org/Intergov/More-Tools/Cooperative-Audit-Resolution-and-Oversight-Initiat.aspx>



Questions?



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