

Determining What's Allowable with Federal Funds

Tiffany Kessler, Esq.

Brustein & Manasevit, PLLC

www.bruman.com

tkessler@bruman.com

February 2019

Allowability Applicable Rules

- Program Statutes and Regulations (as applicable)
 - Every Student Succeeds Act
 - Title I, Part A Regulations
 - Individuals with Disabilities Education Act
 - IDEA, Part B Regulations
- Education Regulations
 - Education Department General Administrative Regulations (EDGAR)
 - OMB Uniform Grants Guidance (2 CFR Part 200)
- State Laws and Regulations
- Policies and Procedures

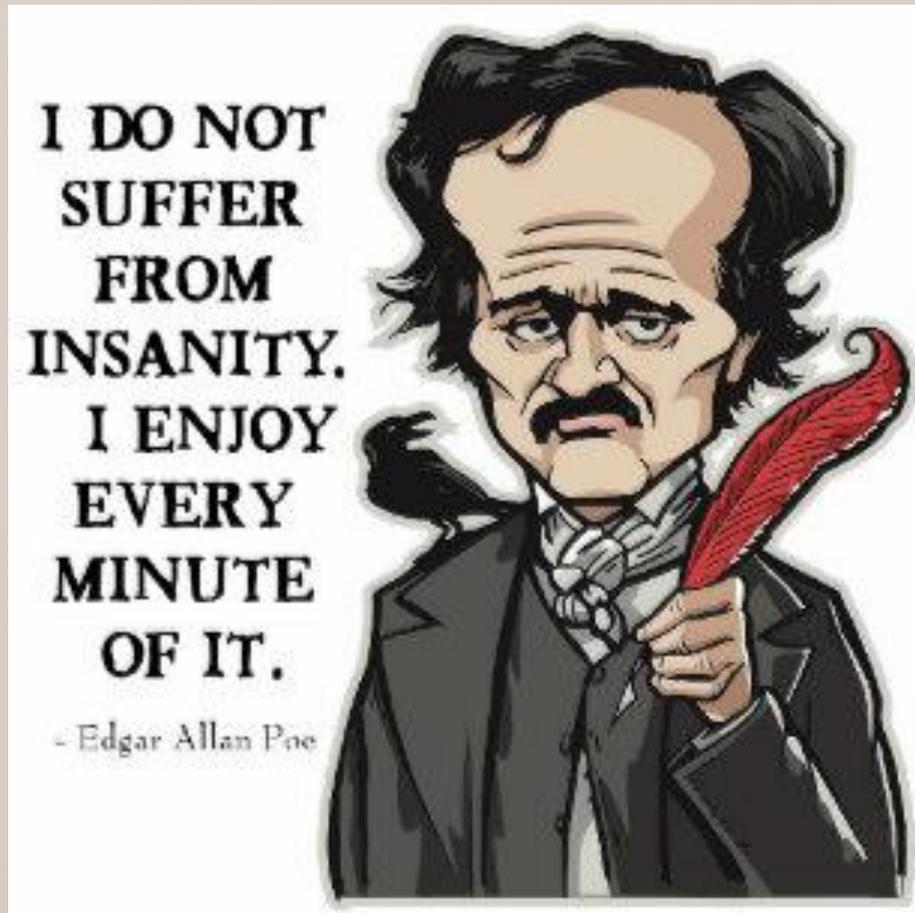




General Allowability Checklist

- ✓ The proposed cost is consistent with EDGAR
- ✓ The proposed cost allowable under the relevant Federal grant program
- ✓ The proposed cost is permitted under the Federal grant's specific fiscal rules

Is the proposed cost
consistent with
EDGAR?



Allowable Costs 76.530



- Follow CFR Part 200 Subpart E
- Prohibited Use:
 - Use of funds for religion 76.532
 - Real property and construction (unless authorized) 76.533
 - Funds can not benefit a private school 76.658
- Obligation Table 76.707
 - Funds available during carryover 76.709
 - Funds subject to current statutes, regulations 76.710

Factors Affecting Allowability of Costs 200.403

All Costs Must Be:

1. Necessary, Reasonable and Allocable
2. Conform with federal law & grant terms
3. Consistent with state and local policies
4. Consistently treated
5. In accordance with GAAP
6. Not included as match
7. Adequately documented



Reasonable 200.404

- a. Whether cost is a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award;
- b. Market Prices for comparable goods or services in the geographical area;
- c. Whether the individuals acted with prudence under the circumstances considering their responsibilities; and
- d. No significant deviation from established prices.

Allocable 200.405

- A cost is allocable to a Federal award or cost objective if the goods or services involved are chargeable or assignable in accordance with relative benefits received.
 - Incurred specifically for the award;
 - Benefits both award and other work and can be distributed in proportions that may be approximated using reasonable methods; and
 - Necessary to the overall operation of the entity and assignable to the award in accordance with this Part.
- Can only charge in proportion to the value received by the program
 - Example: Agency purchases a computer to use 50% on the Federal grant program and 50% on a state program – can only charge half the cost to the grant.

▶ Factors Affecting Allowability of Costs 200.403 (cont.)

- Be consistent with policies and procedures that apply uniformly to both federally- financed and other activities of the non-Federal entity.
- Be accorded consistent treatment
 - Can not charge cost as both direct and indirect
- Be determined in accordance with GAAP
- Not be included as a cost or used to meet cost sharing or matching

▶ Adequately Documented 200.403(g)

- Amount of funds under grant
- How the funds are used
- Total cost of the project
- Share of costs provided by other sources
- Records that show compliance and performance
- Other records to facilitate an effective audit (see 76.730 page 68)



Selected Items of Cost

There are 55 specific items of cost!

Starts at 200.420



Selected Items of Cost Examples

Advertising/PR 200.421

Allowable for programmatic purposes including:

- Recruitment
- Procurement of goods
- Disposal of materials
- Program outreach
- Public relations (in limited circumstances)

Alcohol 200.423

- Not allowable



Selected Items of Cost Examples (cont.)

Conferences 200.432

- Includes Meals / Conferences / Travel and Family Friendly Policies
- Allowable conference costs include rental of facilities, costs of meals and refreshments, transportation, unless restricted by the federal award
- Conference hosts must exercise discretion in ensuring costs are appropriate, necessary and managed in manner than minimizes costs to federal award
- **Meetings and Conferences USDE Guidance**

➤ Selected Items of Cost Examples (cont.)

What about food??

■ Look at the USDE Test!

- Is a working lunch necessary?
- Is the portion of the agenda to be carried out during lunch substantive and integral to the overall purpose of the conference or meeting?
- Is there a genuine time constraint that requires the working lunch?
- If a working lunch is necessary, is the cost of the working lunch reasonable?
- Have the SEA or LEA carefully documented that a working lunch is both reasonable and necessary?

Pop Quiz

May Franklin Elementary School use Title I funds to purchase light snacks and water for a parent meeting?

- a) Yes
- b) No
- c) It Depends



Pop Quiz

May Franklin Elementary School use Title I funds to purchase light snacks and water for a staff meeting?

- a) Yes
- b) No
- c) It Depends



▶ Pop Quiz

May Franklin Elementary School use Title I funds to purchase light snacks and water for a staff meeting if the meeting is all day, in the middle of the woods and its 100 degrees outside with killer mosquitoes?

- a) Yes
- b) No
- c) It Depends



Selected Items of Cost (cont.)

Pre-award Costs 200.458 / 200.209

- Those costs incurred prior to the effective date of the Federal award directly in negotiation or anticipation of the award
- Costs must be necessary for efficient and timely performance of the scope of work
- Allowable to the extent they would have been allowable if incurred after the effective date and ONLY with written approval from the Federal awarding agency.

Period of Performance 200.309

Obligation Chart 76.707

Selected Items of Cost (cont.)

Time and Effort Documentation 200.430(i)(1):

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and properly allocated;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
 - Not to exceed 100%
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting policies and practices; and
6. Support distribution among specific activities or cost objectives.

Grants Management Systems



▶ Financial Management Standards 200.302(b)

- 1) Identification of Awards
 - 2) Financial Reporting
 - 3) Accounting Records
 - 4) Internal Control
 - 5) Budget Control
 - 6) Written Cash Management Procedures
 - 7) Written Allowability Procedures
- Includes obligation requirements under EDGAR Part 75/76.

Procurement Standards 200.318

- All nonfederal entities must have documented procurement procedures which reflect applicable Federal, State, and local laws and regulations.
 - Open and Full Competition (Maximum Extent Possible)
 - Specific Thresholds for Purchasing
 - Prohibited In-State and Local Preferences
 - Contract Administration System
 - Conflict of Interest Rules
 - Mandatory Disclosures

▸ Pop Quiz

Can a district employee accept a gift from a contractor as long as it is below the micro-gratuity threshold?

- a) Yes
- b) No
- c) It Depends



Equipment Standards 200.318(a) and 200.313(c)

- All nonfederal entities must have documented procurement procedures which reflect applicable Federal, State, and local laws and regulations.
- Procedures for managing equipment must meet the following requirements:
 - Specific property records
 - Physical inventory at least every two years
 - Control system to prevent loss, damage, theft (investigation required)
 - Adequate maintenance procedures
- When equipment is no longer needed, meet Federal priorities
- Follow Federal disposition rules

Required Policies and Procedures

- Written Cash Management Procedures – UGG Sections 200.302(b)(6) and 200.305.
- Written Allowability Procedures - UGG Section 200.302(b)(7)
- Written Conflicts of Interest Policy - UGG Section 200.318(c)
- Written Procurement Procedures - UGG Section 200.319(c)
- Written Method for Conducting Technical Evaluations - UGG Section 200.320(d)(3)
- Written Travel Policy - UGG Section 200.474(b)
- Procedures for managing equipment - UGG Section 200.313(d)
- Time and Effort Policies and Procedures – Draft Cost Allocation Guide

Is the proposed cost consistent with program requirements?



Every Student Succeeds Act (ESSA) Title I, A Improving Basic Programs Operated by State and Local Educational Agencies



▶ ESSA District-level Uses of Funds

LEAs must have an approved plan (ESSA Section 1112) re: how the LEA will:

- Provide a well Rounded Program of Instruction
- Address disparities in teacher distribution
- Meet its responsibilities re: comprehensive support and improvement
- Provide effective parent and family engagement
- Coordinate and integrate services with preschool programs
- Coordinate academic and CTE content
- Support efforts to reduce the overuse of discipline practices that remove students from the classroom

▪ *(Not an exhaustive list)*

▶ Title I, A District-level Set-Asides

- District-level Administrative Costs (capped)
- Homeless Children and Youths (ALL homeless students) (ESSA Section 1113(c))
- Neglected and/or Delinquent Children (ESSA Section 1113(c))
- 1% Parent and Family Engagement
- Equitable Services for Non-public Services
- 5% Financial Incentives and Rewards (ESSA Section 1113(c)(4)) (*optional*)
- 5% Public School Choice Transportation (ESSA Section 1111(D)) (*optional*)
- District-wide Initiatives (*optional*)
- Early childhood education programs (*optional*)

▶ School Improvement

- ESSA 1003(a) School Improvement - Mandatory (7%)
- ESSA 1003A (Direct Student Services) - Optional (3%)
- School Improvement Grant (SIG) Funds (NCLB 1003(g))
 - Carryover from NCLB
- Funds are specifically for schools identified for improvement to assist with why the school was identified.
- Funds must be spent in accordance with schools' improvement plans.

Pop Quiz

Homer Middle School was just cited for having 3 doors that do not meet fire code. Since it is a Title I schoolwide school, Homer Middle wants to use its Title I funds to fix the doors. Can they?

- a) Yes
- b) No
- c) It Depends



▶ Pop Quiz

Can Smith Middle School, a targeted assistance school, use Title I funds to pay for a school counselor to provide counseling to all students?

- a) Yes
- b) No
- c) It Depends



Parent and Family Engagement Set-aside Sec. 1116(a)(3)

- The LEA shall reserve at least 1%
 - To assist schools carry out activities
 - May reserve more
- 90% must go to schools, with priority to high-need schools
- Funds must be used to meet specific parent and family engagement activities
 - Mandatory parent notices (right to know letters, non-qualified letters, opt-out, etc.)
 - LEA and school parent and family engagement policies
 - Food is generally allowable is reasonable (small, snacks, etc.)

9. Parental Involvement

Smith Elementary wants to send its parent coordinator to a parental involvement training. Are the costs associated with registration fees, travel, conference expenses, and other related fees allowable under Title I?

- a) Yes
- b) No
- c) It Depends



ESSA Title II, A Preparing, Training, and Recruiting High- Quality Teachers, Principals, or Other School Leaders



▶ Title II, A Allowable Uses of Funds

- Establish or expand teacher/principal preparation academies (State-level, up to 2%);
- Reform teacher/principal certification, license, tenure systems (State);
- Improve teacher and school leader residencies;
- Develop/improve educator evaluation and support systems;
- Support efforts to train teachers on appropriate use of student data;
- Develop initiatives to recruit, hire, and retain effective teachers;
- Reduce class size; etc.
- Must follow Supplement Not Supplant (non-Federal funds)

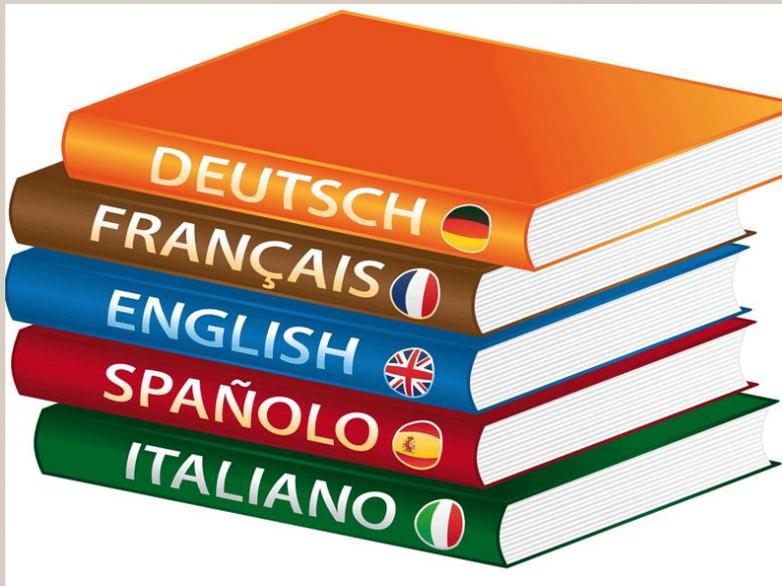
Pop Quiz

May the LEA use Title II, A funds for advertising in media such as newspapers, radio and television for available teaching positions?

- a) Yes
- b) No
- c) It Depends



ESSA Title III, A Language Instruction For English Learners and Immigrant Students



▶ Title III, A Allowable Uses of Funds

- **Required** local uses of funds:
 - Effective language instruction educational programs that demonstrate effectiveness in increasing:
 - English language proficiency
 - Student academic achievement;
 - Provide effective PD to teachers to improve instruction of ELs;
 - Implement activities to enhance/supplement language instruction programs for ELs, including parent, family, and community engagement

▶ Title III, A Allowable Uses of Funds

- ***Permissible*** uses:
 - Family literacy services;
 - Community participation programs;
 - Parent outreach and training to ELs and their families;
 - Offering courses designed to help ELs achieve success in postsecondary education;
 - Identifying, acquiring, and upgrading curricula, instructional materials, educational software, and assessment procedures; etc.
- Must follow Supplement Not Supplant (Federal and non-Federal funds)

ESSA Title IV, A Student Support and Academic Enrichment Grants



Student Support and Academic Enrichment Grants Title IV, A

LEA may spend up to 2% on administration

- **If LEA's allocation is \$30,000 or more:**
 - LEA must conduct a needs assessment; and spend:
 - At least 20% on “well-rounded educational opportunities”;
 - At least 20% on “safe and healthy students” activities; and
 - Some portion on the effective use of technology (no more than 15% on technology infrastructure)
- **If the LEA's allocation is below \$30,000:**
 - No needs assessment required; and
 - No percentage requirement for spending (except 15% technology cap applies).
- Funds may be spent on all schools - all students!
- Must follow Supplement Not Supplant (non-Federal funds)

▶ Title IV-A Well-Rounded Educational Opportunities

- Improving access to foreign language instruction, arts, and music education;
- Supporting college and career counseling;
- Providing programming to improve instruction and student engagement in STEM;
- Promoting access to accelerated learning, like AP, IB, dual enrollment, etc.;
- Strengthening instruction in American history, civics, economics, geography, government education, and environmental education;
- And more!

▶ Title IV-A Safe and Healthy Students

- Promoting community and parent involvement in schools;
- Providing school-based mental health services and counseling;
- Promoting supportive school climates to reduce the use of exclusionary discipline and promoting supportive school discipline; Establishing or improving dropout prevention;
- Supporting re-entry programs and transition services for justice-involved youth;
- Implementing programs that support a healthy, active lifestyle;
- And more!

▶ Title IV-A Effective Use of Technology

- Supporting high-quality professional development for educators to personalize learning and improve academic achievement;
- Building technological capacity and infrastructure;
- Carrying out innovative blended learning projects;
- Providing students in rural and underserved areas with resources to benefit from high-quality digital learning opportunities;
- Delivering specialized or rigorous academic courses and curricula using technology;
- And more!

Pop Quiz

Marlboro Middle School has been paying for a digital learning program with its local funds. The school now wants to use those funds on other initiatives. Can the school use Title IV, A funds?

- a) Yes
- b) No
- c) It Depends



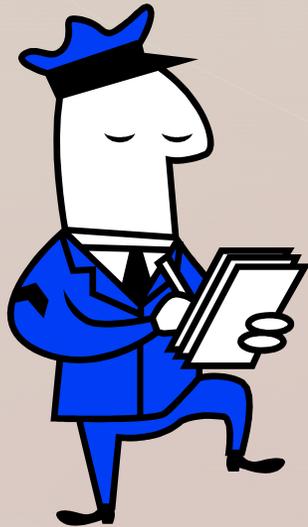
ESSA Title IV, B 21st Century Community Learning Centers



▶ Student Support and Academic Enrichment Grants Title IV, A

- Competitive Award
- Funds must be used on after-school activities.
- Funds may be spent on all schools - all students but must be aligned with grant application and award.
- Must follow Supplement Not Supplant (Federal, State and local funds)

Is the proposed cost consistent with program specific fiscal rules?



Examples:

- ✓ Supplement Not Supplant
- ✓ Comparability
- ✓ Maintenance of Effort

▶ ESSA SNS

Standard: Federal funds must be used to supplement and in no case supplant state, and local resources

Title I, A SNS

Sec. 1118(b)(1)-(2)

Test: The LEA shall demonstrate that the methodology used to allocate State and local funds to Title I schools ensures that the school receives all the State and local funds it would otherwise receive if it were not receiving Title I funds.

- **The presumptions of supplanting do not apply to Title I, A at the school-level!**

ESSA Title I, A SNS Sec. 1118(b)

Methodology 2 Part Test!

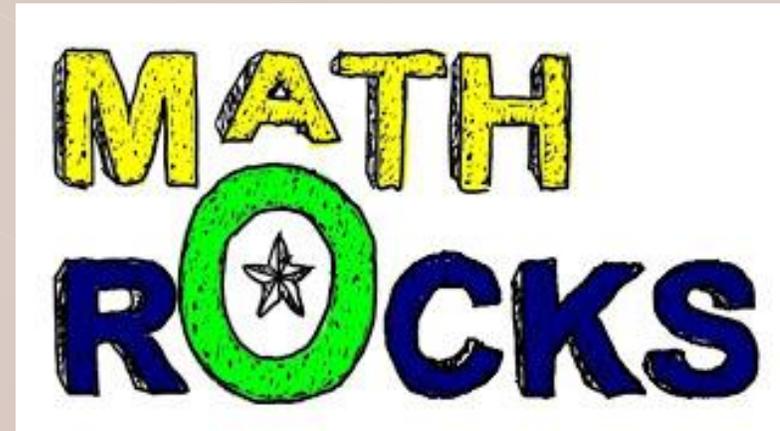
- School-level expenditures
 - Methodology for allocating funds – if neutral with regard to Title I status, then schools are in fact meeting supplement not supplant.
- District-level expenditures
 - Districtwide initiatives must be expended in a way that ensures all applicable schools receive the same amount of state/local funding on a neutral basis with respect to Title I status.



Pop Quiz

Robertsville Elementary School, a schoolwide school, paid for a math enrichment software program last year using State funds. This year the school wants to use its Title I funds to pay for the program. Can they?

- a) Yes
- b) No
- c) It Depends



▶ Pop Quiz

Last year, an LEA implemented a Title I district-wide summer camp initiative for its Title I schools only. It was so successful that this year they will continue the program but expand it to include the non-Title I schools using state funds. Can they?

- a) Yes
- b) No
- c) It Depends



ESSA's SNS Tests

All Other ESSA Titles

2 CFR 200, Subpart F Compliance Supp.

Auditors presume supplanting occurs if federal funds were used to provide services

1. Required to be made available under other federal, state, or local laws
2. Provided with non-federal funds in prior year
- ~~3. Provided services to Title I schools and the same services were provided to non-Title I schools.~~

➤ Presumption Rebutted! (sometimes)

- If SEA or LEA demonstrates it would not have provided services if the federal funds were not available.
- NO non-federal resources available this year!





~ Legal Disclaimer ~

This presentation is intended solely to provide general information and does not constitute legal advice. Attendance at the presentation or later review of these printed materials does not create an attorney-client relationship with Brustein & Manasevit. You should not take any action based upon any information in this presentation without first consulting legal counsel familiar with your particular circumstances.