

American Institute of Certified Public Accountants (AICPA)
Council on Governmental Relations (COGR)
National Association of College and University Business Officers (NACUBO)
National Association of State Auditors, Comptrollers and Treasurers (NASACT)

November 4, 2016

Mr. David Mader, Controller
U.S. Office of Management and Budget
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW, Room 261
Washington, DC 20502

Dear Mr. Mader:

Our organizations, representing state and local governments, colleges and universities, and auditors performing single audits, are writing to express our concerns regarding the U.S. Department of Education's (ED) announcement that it will be requiring a separate annual compliance audit of Title IV Student Aid Programs, including the Student Financial Assistance (SFA) Cluster (see related ED memorandum attached). We are also requesting that you and appropriate OMB senior-level staff participate in a meeting with stakeholders to review ED's position, as well as consider the broader implications to federal single audit policy. Finally, we ask OMB to work with ED and our community to develop clear audit guidance to ensure a consistent understanding of how the audits of these programs are to be conducted and the criteria the programs are to be audited against.

We have separately encouraged ED to accept the single audits of institutions to satisfy the program-specific audit requirements in the Higher Education Act of 1965 (HEA). The single audit concept, first passed into law in 1984, has stood the test of time and represents an efficient approach to auditing a myriad of federal programs. However, if ED believes it cannot rely on the single audit, we believe at a minimum it must follow the requirements of §200.503, *Relation to other audit requirements*, of the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (UG). Specifically, this section requires that if a federal awarding agency wants a program to be tested as major, it must make this request 180 calendar days prior to the end of the fiscal year to be audited, and the federal awarding agency must pay for the incremental cost to audit this program as major.

Background

ED issued its new policy position in a memorandum dated August 5, 2016, entitled "*Applicability of Single Audit Act Regulations to the Title IV Student Aid Programs*," citing section 487(c) of the HEA, as amended, and the implementing regulations at 34 CFR 668.23(a)(5). This memorandum's issuance has led to much confusion by institutions and their auditors and resulted in numerous hours spent by our respective organizations and members trying to understand ED's intent. Ultimately, the memorandum communicates an ED requirement for institutions to obtain a formal waiver from ED for 2016 single audits if the Title IV programs are considered low risk and would not otherwise be audited as a major program.

While in most cases we understand ED has been providing such waivers for 2016, this requirement has already added to the cost and administrative burden on all sides. The memorandum states that additional guidance will be developed in the 2017 OMB *Compliance Supplement* addressing the annual compliance audit requirement in more detail. In recent meetings, ED has communicated to us that it plans to operationalize its annual audit requirement with the issuance of the 2017 OMB *Compliance Supplement*.

Specific Concerns

Increased Cost and Administrative Burden. We believe ED's requirement for a separate annual compliance audit is in direct conflict with the underlying principles of the Single Audit Act Amendments of 1996 and the recently issued UG. Both the Act and the UG are premised on effective and efficient use of scarce audit resources by focusing on a single audit that targets higher-risk programs. The UG was specifically designed to deliver on the president's directives to reduce both improper payments and administrative burden. For ED to now interpret its regulation as requiring a separate compliance audit on its Title IV programs, including the SFA Cluster, when they may be low risk is an unjustified increase in cost and administrative burden for those non-federal entities that have a proven record of being good stewards of federal funds.

Further Legal Analysis Needed. While we recognize that ED's general counsel has approved this most recent policy determination, we believe OMB and other stakeholders need to be engaged as ED's legal opinion is not definitive. The ED memorandum states that the HEA requires an annual compliance audit of the institution's administration of the Title IV Student Aid Programs. However, this is a new interpretation of the HEA by ED, as in previous years these ED programs were treated like other federal programs in the single audit. Even ED's existing OMB *Compliance Supplement* sections recognize in various places that the SFA Cluster may not be audited as a major program.

We also believe that ED's current position could be viewed as inconsistent with section 487(c)(ii) of the HEA, as amended, which allows for a single audit of the institution to satisfy the requirement for a compliance audit with regard to any funds obtained by it under HEA. ED appears to ground the additional requirement in clause (i) of Section 487, which indicates that eligible institutions must have financial and compliance audits performed annually and overlooks the express limitation that such audits are required "except as provided in clause (ii)."

OMB has the authority to define which federal financial assistance programs qualify as major programs using a risk-based approach. Congress has long looked to OMB to coordinate the audit function to ensure that audits can be performed with reasonable frequency. When Congress added to HEA Section 487 a requirement that ED deem an institution's Single Audit Act audit to satisfy the HEA-specific audits, it imposed no requirement that the Single Audit Act consider the HEA as a major program. ED's new interpretation is in direct conflict with the Single Audit Act's foundation.

Precedent-Setting Nature of ED Position. As noted, we believe the recent ED memorandum is contrary to the single audit concept. We are also concerned that it opens the door for other federal agencies to launch their own agency-specific efforts to require one or more of their federal programs to be audited annually. We are not aware whether other federal agencies might have broad language in their program regulations similar to that in the HEA that could be used to take similar action. However, we recommend OMB work with our community to determine the risk that other agencies may wish to replicate ED's approach.

More Specific Audit Guidance Needed. There will be varying situations concerning the auditing of ED's Title IV programs. Under the UG, when a type A program is deemed high risk, it will need to be audited as a major program. In other cases, when such a program is deemed low risk, it may still need to be audited as a major program to meet the percentage of coverage requirement. There will also be cases where a state uses the UG "series of audits" approach to meet the single audit requirement for a state's university system, which will most likely cause Title IV programs to be audited more often than states that do not exercise the "series of audits" option. Any audit guidance developed needs to address all the various scenarios that may occur.

The ED memorandum is unclear about the approach the auditor is to use to test the ED programs when they would not otherwise be required to be tested as part of the single audit. Without clarifying guidance, we are concerned that auditors may mistakenly replace other "required major programs" with the ED programs. The ED memorandum also mentions using other Office of Inspector General (OIG) audit guides to perform the required audit, which, in our view, is not appropriate since those OIG guides relate

to for-profit entities that are subject to different rules. Therefore, any audit guidance issued should also specify what ED criteria the auditor would be auditing the Title IV programs against.

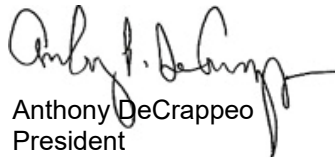
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In closing, we are pleased that ED continues to review this matter and is gathering feedback from stakeholder groups, including a “listening session” that it held on September 13, 2016. However, we urge OMB to use its regulatory “gatekeeper” responsibilities to (1) ensure ED’s implementing regulations meet the legislative intent of Congress to have a single audit of the institution satisfy the audit requirement; (2) confirm ED is upholding the goals of the president’s directives to streamline guidance for federal awards to ease administrative burden; (3) ensure ED complies with the required regulatory process (which includes the notification period mentioned above and the requirement to pay for the additional work) should it wish to deviate from the UG; and (4) clearly address the auditor’s responsibilities when a Title IV ED program would not otherwise need to be audited as a major program.

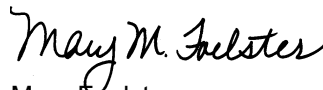
Our associations request a meeting with you, appropriate OMB senior-level staff, and ED to review next steps. As we expect this topic to be addressed in the 2017 OMB *Compliance Supplement*, we propose that this meeting take place in a timely manner so as not to interfere with its development.

Thank you for your attention to this matter. We look forward to working with OMB and ED to ensure appropriate resolution.

Sincerely,



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Karen Lee, Chief, Office of Federal Financial Management, U.S. Office of Management and Budget
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Posted Date: August 5, 2016

Author: Robin Minor, Chief Compliance Officer, Federal Student Aid

Subject: Applicability of Single Audit Act Regulations to the Title IV Student Aid Programs

The Department has received questions concerning audit requirements for institutions that are covered by the Single Audit Act (Single Audits) when it has been determined, pursuant to Single Audit Act regulations that no Single Audit of the Title IV student assistance programs needs to be conducted because the program did not meet the “high-risk” threshold of those regulations. The questions are the result of the Single Audit Act regulatory provisions that were published in the *Federal Register* on December 26, 2013 (see *Federal Register* Vol 78, No 248, pages 78590–78691).

Single Audit Act Regulations

Pursuant to language included at 2 CFR 200.518(c)(1) of the December 26, 2013 Single Audit Act regulations (effective for non-Federal entities with fiscal years beginning on or after December 26, 2014), if certain conditions are met, the Single Audit need only be conducted every three years and not annually. Generally those conditions relate to (1) whether, for the entity subject to the audit, there has been a determination that its participation triggers the “major program” provision of 2 CFR 200.518 (related to the total dollar amount), and (2) whether the auditor has identified the major program as a low-risk program (see 2 CFR 200.518(c)). In summary, a low risk program exists when it had been audited as a major program in at least one of the two most recent audit periods and the program did not have any “internal control deficiencies which were identified as material weaknesses”.

Higher Education Act Provisions:

Section 487(c) of the Higher Education Act of 1965, as amended (the HEA) requires each Title IV participating institution to submit to the Department a financial audit and a compliance audit **“on at least an annual basis”** [emphasis added]. This statutory provision provides that the audit requirements can be met by submission of either an audit conducted under the Title IV Audit Guide issued by the Department’s Office of the Inspector General (OIG) or, if the institution is eligible, by submission of the results of an audit of the institution conducted under the Single Audit Act (Single Audit).

The Title IV implementing regulations at 34 CFR 668.23(a)(5) state that the institution “. . . **must at least annually** [emphasis added] have an independent auditor conduct a compliance audit of its administration of that program [one or

more of the Title IV student assistance programs] and an audit of the institution's general purpose financial statements". As does the statute, the regulation further provides, that the Secretary considers the compliance audit and audited financial statement submission requirements to be satisfied by an audit of the institution conducted in accordance with the audit guides developed by and available from the Department's Office of the Inspector General (OIG) or under the Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* [now the OMB Compliance Supplement]), whichever is applicable to the entity.

Issue:

Whether, for an institution covered by the Single Audit Act and 2 CFR 200, the HEA audit requirements are satisfied for a year in which, pursuant to the December 26, 2013 Single Audit Act regulations, no compliance audit of the institution is performed because the institution's participation in the Title IV HEA programs has been determined to be "low-risk" and therefore need only be audited once every three years.

Resolution:

It is clear that the provisions of both the HEA and the implementing regulations require annual submissions of not only the institution's audited financial statements but also of the compliance audit of the institution's administration of the Title IV student aid programs. Therefore, an institution may meet this annual submission requirement by submitting annual audited financial statements and a compliance audit of the institution that were prepared either in accordance with the OIG audit guides or in accordance with the Single Audit Act requirements. In either case, the compliance audit must be submitted annually. Therefore, a submission prepared under the Single Audit Act requirements that does not include a compliance audit does not meet the HEA audit requirement.

The Department continues to review issues related to the frequency of audit submissions and plans to include additional guidance in the 2017 Compliance Supplement applicable to audits of fiscal years beginning after June 30, 2016. Until further guidance is issued, institutions may continue to provide Single Audit submissions that were prepared using the standards in place prior to the Single Audit Act regulatory change referenced above. In addition, any institution that has already had an auditor prepare a Single Audit under the new OMB guidance referenced above, with a determination that the Title IV programs were low risk, should contact their respective School Participation Division.