Intergovernmental
Partnership

Collaboration Series

June 2013

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Essential
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tools NAFEPA
cooperation **useful** *local*
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accountabililty partnership
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About AGA's Intergovernmental Partnership

AGA established the Partnership for Intergovernmental Management and Accountability (Intergovernmental Partnership) to open the lines of communication among governments with the goal of improving performance and accountability. Comprised of high-ranking officials from the federal, state and local levels of government and higher education, the Intergovernmental Partnership is dedicated to identifying and solving some of the most vexing management and accountability issues facing governments today. AGA provides staff support to the Intergovernmental Partnership and serves as a neutral third party in fostering cooperation and communication among different levels of government.

AGA is proud to recognize our partners in this effort.

About the Partners

AGA

AGA is *the* member organization for financial professionals in government. We lead and encourage change that benefits our field and all citizens. Our networking events, professional certification, publications and ongoing education help members build their skills and advance their careers.

Association of Educational Federal Finance Administrators (AEFFA)

AEFFA is a not-for-profit organization for state-level educational finance administrators working primarily with federal funds issues.

National Association of Federal Education Program Administrators (NAFEPA)

NAFEPA has been a key organization for educators working with federal programs under the Elementary & Secondary Education Act since 1974. The organization's major functions of support, education, training, and technical assistance are achieved through publications, an annual conference, and a strong state represented board of directors. NAFEPA serves nearly 4,000 members across the nation.

National Association of State Auditors Comptrollers & Treasurers (NASACT)

NASACT is the professional organization for officials who have been elected or appointed to the offices of state auditor, state comptroller or state treasurer. For more information on NASACT visit www.nasact.org.

National Association of State Chief Information Officers (NASCIO)

NASCIO represents state chief information officers and information technology executives from the states, territories, and the District of Columbia. NASCIO fosters government excellence through quality business practices, information management, and technology policy.

National Grants Management Association (NGMA)

NGMA is a thought leader in grants management with members representing all types of grantees and federal agency grantors. NGMA offers a Certified Grants Management Specialist credential and a variety of training events including the Grants Management Body of Knowledge and other current grant topics.

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The Essential Decision Tools: Determining Fiscal and Program Requirements

Introduction

This call-to-action is designed to increase trust in government. It is based on the premise that trust in any government erodes when it places unnecessary burdens on its people. A government — whether federal, state, local or tribal — should only adopt requirements that are essential. Government requirements and information should be easily understood and a government should only collect needed information that will actually be used.

Three practical decision tools contained in this call-to-action are intended to help government officials write laws, regulations or guidance. The following tools provide a common platform and mechanism to evaluate the appropriateness and clarity of requirements, and the nature of data needed to assess programs.

- **Tool 1**: Determining Whether a Requirement Should be Included in a Law, Regulation or Guidance

- **Tool 2**: Promoting Clarity through Plain Writing

- **Tool 3**: Obtaining and Protecting Good Data

Decision Tools that Really Work

The decision tools in this call-to-action:

Meet a critical need. In the current economy, government programs are under increasing scrutiny to account for every dollar spent. This call-to-action provides a useful tool to help government officials respond to this scrutiny.

Are easy to understand and implement. This document provides a step-by-step guide for government officials to make and implement effective decisions about legislation and program policy that are based on data and sound reasoning. The steps provided are basic — stripped of government jargon, and 'doublespeak,' for which these institutions have long been criticized — and completely transparent.

Help right-size performance and accountability requirements. The decision tools will help strike a balance between accountability and flexibility, between collecting information to ensure that programs are accountable and an emerging national commitment to achieve statutory goals without imposing unnecessary burdens on the public.

Can be broadly applied. These decision tools can be used for programs at any level of government — federal, state, local or tribal. The terms and concepts are broad enough to fit almost any situation, yet are based on sound reasoning that can be effectively applied with good results.

Can be used by anyone. The absence of technical terms and acronyms in the decision tools facilitate their use by program managers, policy makers and legislators alike. For example, a legislative staffer can apply the tools to determine whether proposed draft legislation is overly prescriptive before it is passed into law. A person writing regulations can use the tools before issuing proposed data reporting requirements, or a central accounting office can use them to determine what should be included in a government accounting manual.

A Call-to-Action

This is a call to limit program requirements to the essential. It provides a 'common sense' guide to help government officials avoid unnecessary, overly burdensome or duplicative requirements. In an era of tight budgets, this call-to-action offers a concrete tool to help government officials leverage resources, increase program effectiveness and enhance accountability. Rather than examine specific statutory or regulatory content, we provide tools to help government officials make decisions that will increase program effectiveness in an era of increasingly tight resources.

A series of straightforward decision tools form the core of this call-to-action. We want to help government officials think through the implications of their decisions before a requirement is incorporated into law, regulation or guidance. The decision tools are applicable to any level of government and can be used by legislators, as well as, those writing regulations or guidance to implement laws. We want to promote greater flexibility in the administration of programs while advancing accountability for results.

All levels of government are intricately intertwined in the delivery of benefits and services to the public. States and local governments are the primary delivery mechanism for services and public assistance.[1] Federal outlays for grants to state and local governments exceeded $600 billion in fiscal year 2011,[2] and on average, almost 40 percent of the states' dollars are derived directly from the federal government.[3] Given the interdependence among governments, action by one level of government affects the other levels of government.

The decision tools contained in this call-to-action apply not only to laws and regulations, but also to guidance. Guidance includes circulars, a frequently asked questions document, or any other document issued by government to clarify a law, regulation or policy. Because guidance can result in added work and expense for organizations, the authors of this call-to-action made a conscious decision to include guidance within its scope. Guidance should not result in additional requirements; instead it should clarify provisions in laws and regulations.

The concepts included in this call-to-action are based on a 1999 perspective paper by the Office of the Inspector General (OIG), U.S. Department of Education (ED). The perspective paper and a subsequent paper developed by the ED OIG in 2007, addressed statutory decision-making related to the *Elementary and Secondary Education Act (ESEA)*. The ESEA, which funds more than 36 federal education programs, was reauthorized in 2002 through the *No Child Left Behind Act*.

Legislation like the ESEA and subsequent laws, regulations and federal policy have collectively placed greater emphasis on administrative flexibility and results-oriented accountability. On January 8, 2011, for example, the administration issued an Executive Order (E.O.) that called for careful analysis of regulations' costs and benefits. E.0. 13563, *Improving Regulation and Regulatory Review*, also required retrospective analysis of existing significant rules and greater coordination across agencies to simplify and harmonize redundant, inconsistent or overlapping requirements. In addition, a Presidential Memorandum issued on February

28, 2011 instructs federal agencies to identify administrative, regulatory, and legislative barriers in federally funded programs.[4]

> "Federal program require-ments over the past several decades have sometimes been onerous, and they have not always contributed to better outcomes. With input from our state, local, and tribal partners, we can, consistent with law, reduce unnecessary regulatory and administrative burdens and redirect resources to services that are essential to achieving better outcomes at lower cost."
>
> *Presidential Memorandum – Administrative Flexibility*
>
> *February 28, 2011*

About the Decision Tools

A number of decision tools to help make program requirements more 'user-friendly' were included in ED OIG's 1999 perspective paper. This call-to-action updates those decision tools and makes them applicable across government programs. We believe this will help policy makers and program administrators leverage scarce resources. Each decision tree is accompanied by background information on key decision points.

- **Tool 1**: Determining Whether a Requirement Should be Included in a Law, Regulation or Guidance
- **Tool 2**: Promoting Clarity through Plain Writing
- **Tool 3**: Obtaining and Protecting Good Data

The background information on each question explains factors that should be considered when working through the decision tool. A "Yes" or a "No" response to any question in a tool does not necessarily mean that a requirement should be dropped. Instead it means that, if the requirement is retained, careful thought should be used in structuring it to mitigate any negative impact.

Tool 1: Determining Whether a Requirement Should Be Included in a Law, Regulation or Guidance

1A) Is the requirement essential for program effectiveness or financial management integrity, or both?

This question is the foundation for the overall framework. If a requirement is not essential to program effectiveness or financial management integrity — or both — then it should be reconsidered.

Program Effectiveness

It is helpful to turn this question around and ask: if we don't include this requirement, will the program still function effectively, efficiently and with integrity? If the program cannot function effectively, efficiently or without the requirement, then keep the requirement and use the remaining questions to make sure it does not become laden with unnecessary provisions as it is developed. However, if the program will be effective without the requirement, then consider dropping the requirement.

To answer this first question, examine similar requirements or programs that may already accomplish the same objective. For example, Government Accountability Office (GAO) issued two annual reports — one in March 2011, and another in February 2012 — that identified areas where federal programs are potentially duplicative, overlapping or fragmented. The first report presented 81 opportunities to reduce potential government duplication, achieve cost savings or enhance revenue.[5] GAO's second report presented 51 additional areas where programs may be able to achieve greater efficiencies or become more effective.[6]

GAO found significant duplication among food assistance programs. In the 2011 report, GAO found that the federal government administers 18 food assistance programs through three agencies, totaling roughly $62.5 billion annually, that provide comparable benefits to similar or overlapping populations. Each program has eligibility and complex legal and administrative requirements at the federal, state and local levels. In this example, it is possible that some of the requirements, or even the programs themselves, are not essential to achieve the overall goal of increasing access to high-quality nutrition for low-income individuals.

In summary, look at programs with similar or the same goals.

Some existing requirements might be leveraged to eliminate unnecessary requirements. Even if similar requirements are warranted, coordination among the programs can do much to eliminate unnecessary administrative burden.

Financial Management Integrity

Make sure that controls to prevent and detect fraud, waste and abuse are in place. If a requirement is needed to accomplish this, then it is essential for financial integrity and should remain in place. However, it is also important to take a critical look at ways that increased flexibility can improve financial management and reduce administrative costs.

As with program effectiveness, look across existing programs and fiscal requirements when determining whether a requirement is essential for financial management integrity. Most programs must comply with the existing cross-cutting fiscal requirements in the Office of Management and Budget (OMB) circulars and other guidelines, depending on the specific program. Requirements written into individual programs should not duplicate existing

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Tool 1: Determining Whether a Requirement Should Be Included in a Law, Regulation or Guidance

circulars or other, cross-cutting requirements. For example, in response to President Barack Obama's initiative to promote administrative flexibility, the U.S. Department of Education worked with federal, state and local stakeholders to develop and issue a grant policy bulletin. The bulletin highlighted ways that program administrators can comply with OMB guidance on cost principles, while being flexible in documenting time and effort reporting.

1B) Does the requirement duplicate or overlap with other programs or requirements?

GAO's 2012 report on potentially duplicative programs found that areas of duplication, overlap and fragmentation span a range of agencies and government missions, including: education, agriculture, defense, economic development, energy, general government, health, homeland security, international affairs and social services. Reducing or eliminating duplication, overlap or fragmentation could potentially save billions of tax dollars annually and help agencies provide more efficient and effective services. For example, GAO found that the fragmented federal oversight of food safety has caused inconsistent oversight, ineffective coordination and inefficient use of resources. Fifteen federal agencies collectively administer at least 30 food-related laws.

A recent report by the Washington [state] Business Roundtable and the Washington [state] Research Council cited a study by the Small Business Administration (SBA), which concluded that regulatory

compliance costs for small businesses (those with fewer than 500 employees) are approximately $10,585 per employee, annually. The report said that these costs impede businesses' ability to invest in equipment or new employees, and that regulatory overlap is not just a problem at the federal level. It stated that:

Often, the rules overlap, conflict, or apply inconsistent standards. Consider the following:

- State and Federal Regulatory Overlap: Washington state businesses face federal and state rules that regulate the same behavior, but with different standards.
- Multiple State Agencies with Overlapping Regulations: Washington state developers are often required to get permits from multiple agencies with overlapping jurisdictions.[7]

Duplicative or overlapping regulations have an impact on the private sector, as well as, on government organizations. The example from Washington state helps put a price tag on the cost of this overlap.

1C) Is the requirement based on research and/or input from those affected by or implementing the requirement?

Too often, requirements are based on best guesses or agreements stemming from informal discussions. Intergovernmental input is especially important for federally-funded programs that are administered by states or local governments. Collaboration across governments is critical, as recognized in the previously-mentioned E.O. 13563, *Improving Regulation and Regulatory Review*.

Requirements that are not based on research or actual experience can needlessly increase the cost of implementing a program, or negatively impact the implementing organization's ability to serve clients.

For example, research

> "Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among state, local and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole."
>
> *Executive Order 13563 – Improving Regulation and Regulatory Review*

conducted by the District of Columbia's Department of Human Services (DHS) revealed that a low-cost option for serving the District's homeless population is actually the best option. In remarks before OMB's Collaborative Forum on October 24, 2012, DHS Director, David Berns, said that a recent assessment of Temporary Assistance for Needy Families (TANF) recipients revealed that 36 percent (6,000 of the 17,000 TANF families) are either homeless or in insecure living situations that

leave them in danger of becoming homeless. DHS determined that it costs $50,000 a year to accommodate a family in a shelter, $45,000–$50,000 to place them in a hotel, and $15,000 a year to rent an apartment for them. Not only is it less expensive to place families in an apartment, but it enables them to better meet their own needs. Most families prefer being in an apartment, as opposed to a shelter or a hotel, and the cooking facilities in an apartment make it possible for them to stretch their Supplemental Nutritional Assistance Program (formerly Food Stamp) benefits. This example demonstrates the importance of basing decisions on research, including input by those who will be affected by implementation of the requirement.

1D) Does the requirement minimize administrative burden?

There will always be some cost or administrative burden associated with program and financial requirements, because administrators have a responsibility to oversee, track and/or report on compliance with the requirements. However, the cost of implementing a requirement should not outweigh its benefits.

For example, it may not be cost-effective to implement rigorous access controls for office supplies, whereas controls to protect the public's well-being are essential despite the cost-effectiveness or lack thereof. Further, rigorous controls on physical and digital access to electrical grids or nuclear facilities are critical. To recap, if a requirement costs more to implement than its potential benefit, then it should be reconsidered. Balancing controls with the level of risk should help reduce administrative burden while maintaining controls needed for program security, effectiveness, and financial integrity.

1E) Will compliance with the requirement be monitored?

Decision-makers and other stakeholders should expect regular feedback on how a program is performing against what was planned or expected. Requirements should be monitored on an appropriate basis, to determine the extent of compliance with or deviation from expected norms. If a requirement will not be monitored, how can its effectiveness or impact be assessed?
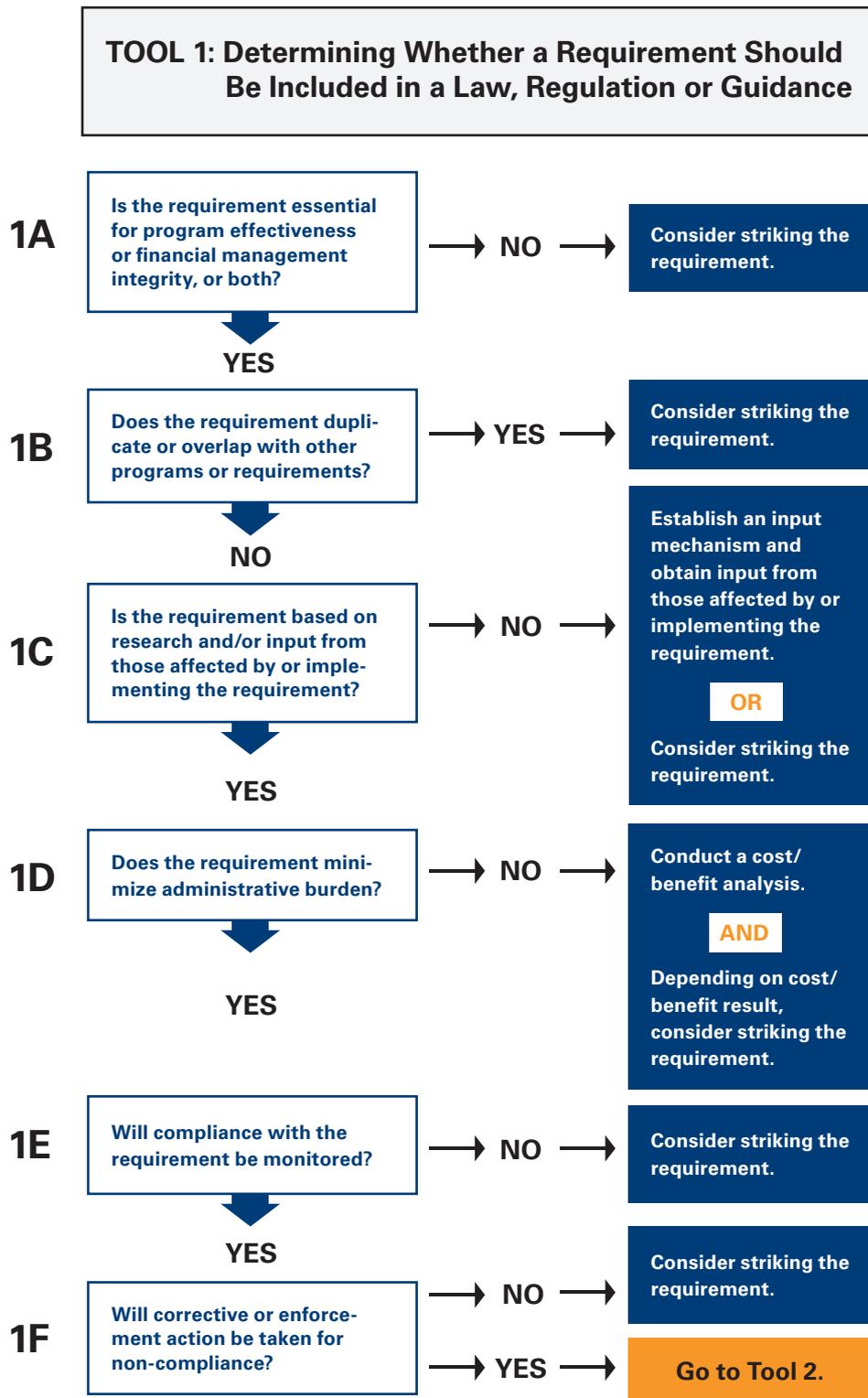
Effective monitoring involves collecting, analyzing and reporting data on inputs, activities, outputs, outcomes, impacts and external factors in a way that supports effective management. The information given to management should be important enough to warrant the time and effort involved in monitoring a requirement. If the requirement is not important enough to monitor, it is probably not important enough to include.

Further, monitoring multiple organizations that are implementing requirements can, over time, yield a 'complete picture' about implementation and may identify important trends. Whereas data derived from monitoring an individual grantee can identify areas where the specific grantee is experiencing difficulty, monitoring data in the aggregate and over time indicates whether the law, regulation or guidance is achieving its intended outcome. In other words, monitoring programs over time can yield patterns of compliance that can be extremely helpful when laws are being reauthorized.

1F) Will corrective or enforcement action be taken for non-compliance?

If no action will be taken for non-compliance with a requirement, the requirement is probably not needed. Failure to enforce a requirement could stem from a number of economic or practical considerations. Budgets for enforcement may have been cut or an increase in the number of requirements may hinder enforcement. Unclear language in the requirement itself could also hamper enforcement. If it is unlikely that the requirement will be enforced, it is important to verify that the provision is actually needed.

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Tool 1: Determining Whether a Requirement Should Be Included in a Law, Regulation or Guidance

TOOL 1: Determining Whether a Requirement Should Be Included in a Law, Regulation or Guidance

1A — Is the requirement essential for program effectiveness or financial management integrity, or both? → **NO** → Consider striking the requirement.

YES

1B — Does the requirement duplicate or overlap with other programs or requirements? → **YES** → Consider striking the requirement.

NO

1C — Is the requirement based on research and/or input from those affected by or implementing the requirement? → **NO** → Establish an input mechanism and obtain input from those affected by or implementing the requirement.

OR

Consider striking the requirement.

YES

1D — Does the requirement minimize administrative burden? → **NO** → Conduct a cost/benefit analysis.

AND

Depending on cost/benefit result, consider striking the requirement.

YES

1E — Will compliance with the requirement be monitored? → **NO** → Consider striking the requirement.

YES

1F — Will corrective or enforcement action be taken for non-compliance? → **NO** → Consider striking the requirement.

→ **YES** → **Go to Tool 2.**

Tool 2: Promoting Clarity through Plain Writing

No one technique defines plain writing. However, PlainLanguage.gov explains that it is defined by results — it is easy to read, understand and use. The website explains that plain language (also called plain English or plain writing) is communication your audience will understand the first time they read or hear it. Admittedly, language that is plain to one set of readers may not be plain to others. Written material is in plain language if your audience can:

- find what they need;
- understand what they find; and
- use what they find to meet their needs.

Efforts to achieve plain writing in government laws, regulations and guidance began in the mid-1990s. President Bill Clinton issued a number of executive orders or memoranda requiring agencies to write in plain language. Several statutes have also directed agencies to write certain types of documents in plain language. In 2004, an interagency task force working on behalf of OMB called for federal websites to be written in plain language.

Most recently, President Barack Obama signed the *Plain Writing Act of 2010* into law on October 13, 2010. The law requires that federal agencies use "clear government communication that the public can understand and use." Guidelines for implementing the act were issued in March 2011 and updated in May 2011. The law, guidelines and other resources are contained

> Plain Writing Act of 2010:
>
> "The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use."

in a website required by the act.

Tool 2 identifies two key decisions associated with using plain writing:

2A) Will the requirement need extensive guidance to implement?

Extensive guidance is frequently needed to explain laws. For example, it is important to understand the difference between an employee and an independent contractor when complying with a variety of laws, including the *Family and Medical Leave Act* (entitling workers to unpaid leave under certain circumstances), the *Fair Labor Standards Act* (establishing a minimum wage), and the *Worker Adjustment and Retraining Act* (providing for advance notice in the event of plant closings and mass layoffs). Both the Internal Revenue Service (IRS) and state revenue departments have issued extensive guidance on the definition of 'independent contractor.' The IRS' guidance includes forms and instructions for paying independent contractors.[8] California's Division of Labor Standards Enforcement's website states that, "There is no set definition of the term 'independent contractor' and as such, one must look to the interpretations of the courts and enforcement agencies to decide if in a particular situation a worker is an employee or independent contractor."[9] The state's website indicates that, since different laws may be involved in a situation such as a termination of employment, it is possible that the same individual may be considered an employee under one law and an independent contractor under another law. Because the statutes are unclear, it can be difficult to determine whether a person is an employee or an independent contractor — even with extensive guidance.

2B) Can the requirement be understood without consulting a legal or financial expert?

Separate executive orders issued by President Bill Clinton emphasized the need for plain writing. E.O. 12866, *Regulatory Planning and Review*, stated that regulations must be "simple and easy to understand, with the goal 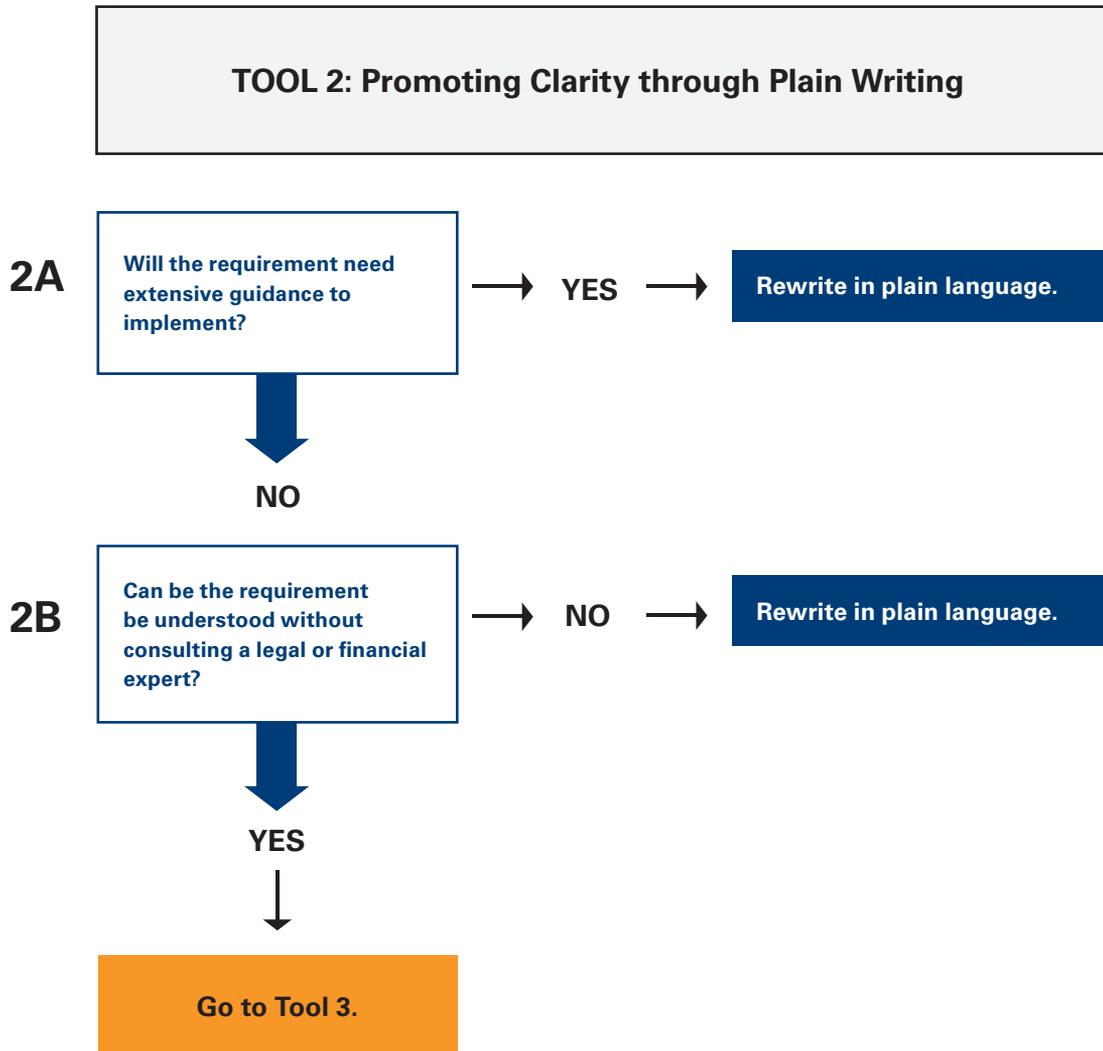of minimizing uncertainty and litigation" E.O. 12988, *Civil Justice Reform*, stated that each proposed law must specify "in clear language" its effect on preemption, retroactivity, burden of proof and other matters.

These executive orders highlight the importance of writing requirements in a way that can be understood without consulting a legal or financial expert.

In conclusion, the significant amount of guidance and legal advice available highlights and reinforces the need for requirements to be written in plain language.

TOOL 2: Promoting Clarity through Plain Writing

2A | Will the requirement need extensive guidance to implement? | → YES → | Rewrite in plain language.

NO

2B | Can be the requirement be understood without consulting a legal or financial expert? | → NO → | Rewrite in plain language.

YES

Go to Tool 3.

Tool 3: Obtaining and Protecting Good Data

Data is powerful and it's getting more powerful. Data can be standardized, analyzed and scrutinized. It can reveal trends and patterns. It can help us manage programs, prevent and detect fraud and even make predictions about future program needs and challenges. But, because of its increasing power, data can also be dangerous; especially if it is inaccurate, unreliable or incomplete. Data can also be dangerous if security is breached and it falls into the wrong hands. For example, data collected to determine program eligibility, to identify taxpayers or to target assistance can be used to steal sensitive financial information and identities.[10]

This call-to-action is a roadmap for obtaining good data — meaning that it is accurate, reliable and complete. It also calls for government officials to ensure that the data collected is protected from intrusions.

Governments at all levels collect massive amounts of information. OMB estimates that despite concerted efforts to reduce burdens, the public spent an estimated 8.8 billion hours in FY 2010 responding to federal information collections.[11]

While similar estimates are not available for data collected by state and local governments,

an August 2012 issue brief by the National Association of State Chief Information Officers (NASCIO) stated, "The volume and velocity of data creation is at all time high — and is accelerating. State government is a veritable data engine creating vast amounts of data from a vast number of sources. That data is being used to comply with regulations; uncover fraud, waste and abuse; and ultimately improve the lives of citizens."[12]

As governments increase the pace of data collection, it is critical for the data to be accurate, reliable and complete, that it serve a useful purpose, and that the investment in time and technology, has a worthwhile return on investment. This is a call for governments to ensure that the data they collect:

- is **needed**;
- will be **used**;
- has **integrity**; and
- is **secure**.

This call-to-action only addresses structured data, which is *identifiable* and organized in a structure, as opposed to unstructured data, which has no identifiable structure.[13] Structured data includes relational databases and spreadsheets where data resides in fixed fields or spreadsheets. With unstructured data, like email, word processing,

blogs and PDF files, the data does not reside in fixed locations.[14]

3A) Has the need for the data been clearly identified, and is the data necessary and appropriate to meet that need?

Before collecting data, make sure it is needed. Also, make sure that someone else is not already collecting it, that it answers specific questions, and that the cost of collecting the data is justified by the need. Is the data necessary to answer a critical policy, performance, compliance or accountability question? If not, the data may not be needed.

Avoid Duplication

Care should be taken to minimize the collection of duplicate data. Data collected by one government agency or one level of government may be able to assist other agencies or governments serve clients, monitor fraud, identify nationwide trends or perform other functions. Taxpayers have already paid for the data to be collected, regardless of who initially collected it.

For example, in a report released in November 2012, GAO found that multiple federal agencies provide services at the same geographic locations and may independently collect

similar geospatial information about those locations.[15] GAO found that similar geospatial data — information linked to specific geographic locations — is collected by multiple agencies to help in decision making and to support many functions, including national security, law enforcement, health care, environmental protection and natural resource conservation. Among the many activities that can depend on critical analysis of geospatial information are maintaining roads and other critical transportation infrastructure and quickly responding to natural disasters, such as floods, hurricanes, and fires.[16] These critical functions may be performed more efficiently if agencies are able to integrate and share data.

Considerable thought has been given to some options for eliminating barriers to data-sharing and integration. In a 2011 statement, NASCIO recommended the adoption of the National Information Exchange Model (NIEM) for enabling collaborative information exchanges across governments. It states that, "There are situations where information sharing can occur through granting appropriate system access. Where that is not an option, data must be packaged, transmitted and received. NIEM provides the process and the tools for planning and implementing such exchanges."[17] NASCIO also points out that integration is not just about sharing data. It is about sharing information to achieve common business purposes across disparate entities. The technology that provides the bridge for information-sharing to take place is but one piece of the puzzle, and is usually the easiest part. NASCIO publications and research are available online.

Similarly, a 2012 AGA report recommended that federally-funded programs implemented at the state or local level should be reviewed to determine whether a collaborative arrangement might be developed for using data analytics across government.[18]

Ensure that Data is Meaningful

It is also critical to ensure that the data is actually meaningful and responsive to the underlying question. For example, the mental well-being of veterans was at stake in the case of recent Veterans Health Administration (VHA) data reports. VHA policy requires that all first-time patients referred to or requesting mental health services receive an initial evaluation within 24 hours and a more comprehensive diagnostic and treatment planning evaluation within 14 days. However, the method used to calculate the elapsed days until treatment only counted the days from the time the mental health provider *scheduled* the appointment until when the appointment occurred. It should have calculated the elapsed days from the date of the referral. Using the VHA calculation, the VHA met its 95 percent success rate in FY 2011. However, using the same data, the VHA Office of Inspector General (OIG) selected a statistical sample of completed evaluations to determine the actual starting and ending points of the elapsed day calculation. The OIG's analysis projected that VHA provided only 49 percent of their evaluations within 14 days. This demonstrates how using inappropriate data definitions can lead to erroneous conclusions about the success or failure of a program or service.[19]

Ensure that Benefits Outweigh Costs

Collecting, storing and securing data is costly. It is important for agencies to understand these costs and weigh them against the benefits derived from the data. Part of this cost-benefit analysis should entail looking at alternative sources of data. Identifying alternative data sources also helps reduce the duplication of data and improves data sharing and integration across disparate

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Tool 3: Obtaining and Protecting Good Data

entities. While it is difficult to oversee multiple agencies' data investments, conducting a thorough cost-benefit analysis, including exploring existing data sources, is an important tool in obtaining needed data.

3B) Will the required data be used by decision makers?

Data should only be collected if it will be used. Verify that any data collected will be used by decision makers to assess program effectiveness and financial integrity.

If data is not being used, find out why. There may be a legitimate reason why it is not being used, which may lead managers to stop collecting the data. If it is determined that specific data will not be used, then consider dropping the requirement. Collecting data involves a cost for the provider and for the entity receiving it. The National Federation of Independent Business estimates that for firms with less than 20 employees, the cost of tax compliance per employee is $1,584. The total tax compliance cost for businesses is over $95 billion per year.[20] Data can be a powerful tool for assessing needs, managing programs and conducting program oversight, but data that is not used or analyzed in some fashion is of little or no value to those providing or collecting it.

3C) Are controls in place to ensure that the data is accurate, reliable and complete?

To be of use to decision-makers, data must be accurate, reliable and complete. There must be controls in place to ensure that reported data is reliable and there must be

consequences for those that report inaccurate or incomplete data. As data becomes more important to monitoring the performance of government programs and making policy decisions, the risk associated with using bad data increases.

Recent events show that the higher the stakes, the more tempting it is to falsify data and circumvent internal controls. Under the *No Child Left Behind (NCLB) Act*, for example, states and local districts are required to use data from standardized tests to evaluate student progress and to make decisions about individual schools and districts identified as being in "needs improvement" status. A "needs improvement" designation could have significant results, including the firing or reassignment of teachers and administrators, school closings, and the provision of millions of dollars for supplemental educational services. According to a Georgia Bureau of Investigation report that was released by Governor Nathan Deal in July 2011, 178 teachers and principals in the Atlanta Public Schools (APS) cheated on state-administered standardized tests required by NCLB.[21] Governor Deal concluded that, "When test results are falsified and students who have not mastered the necessary material are promoted, our students are harmed, parents lose sight of their child's true progress, and taxpayers are cheated."[22] The *Atlanta-Journal Constitution*, which broke the story in 2009, posits that, "Poor testing oversight is often the result of education officials ignoring what no one wants to see."[23] When the stakes are high, the integrity of data is especially important.

Experience under the NCLB

also highlights the importance of establishing consistency across the criteria and definitions used for gathering data. The NCLB requires each state to establish criteria for designating schools that are "persistently dangerous." According to one official in the security industry, the persistently dangerous designation " is the Scarlet Letter of the education community."[24] This designation can have significant effects on local economies because residents don't want to send their children to these schools, thus driving down property values in the area. Because of this, individual states can loosen their definition to avoid having their schools designated as "persistently dangerous." Kenneth S. Trump, President of National School Safety and Security Services, explained that the law allows parents to transfer students if schools are determined to be "persistently dangerous," so inconsistent definitions mean that some students are not allowed to transfer out of schools that may be, in fact persistently dangerous, but are not designated as such.[25]

As noted in some of these examples, unreliable data can result from poor controls, inconsistent data definitions and even fraud. It is critical that controls are put in place before unreliable data leads to bad decisions, or before public funds are lost to fraud, waste or abuse. More information about these risks and red flags for fraud is contained in AGA's Fraud Prevention ToolKit.

One way to promote data integrity is for management to assert that adequate controls exist over the reporting process and that the reported data is accurate, reliable and complete and, if not, that management fully

discloses any deficiencies or plans for corrective action. Given the harm that bad data can cause, program officials should attest to the accuracy of the data they report. Inherent in the process of attestation is that the data is not only accurate, reliable and complete, but that it is also verifiable and measureable. These additional attributes are critical in the event that independent auditor verification is also requested or required.

There are a number of precedents for attestation. The *American Recovery and Reinvestment Act of 2009* required states to attest that they met eligibility requirements for an enhanced Medicaid matching rate. Under the *Affordable Care Act*, the chief executive officer (CEO) and the chief financial officer (CFO), along with two back-up attesters must attest to the accuracy and completeness of the Medical Loss Ratio (MLR) data.

Further, with the enactment of the *Sarbanes-Oxley Act in 2002*, private sector CEOs and CFOs are required to certify the veracity and fairness of reported financial information and, under the False Claims Act, the individual that certifies the data is held responsible if the data is misrepresented for personal gain. Subsequently, with the revisions to the OMB Circular A-123, *Management's Responsibility for Internal Control*, in 2004, federal agency heads and CFOs are required to provide reasonable assurance over internal controls over operations, compliance and financial reporting.

3D) Are there consequences for providing inaccurate, unreliable or incomplete data?

If a requirement is not important enough to be enforced, it is not important enough to be included. As stated above, data is likely to be accurate if management is held accountable for the data they transmit upstream. It is important to demonstrate that there will be consequences for the transmission of inaccurate, unreliable or incomplete data.

For example, in December 2012, the Princeton Review was required to pay the federal government up to $10 million after admitting that it billed for and obtained government funds for hours of tutoring to underprivileged students that it never in fact provided. A civil complaint filed by Preet Bharara, the U.S. Attorney in Manhattan, stated that employees falsified the records were under pressure by their supervisors to maintain high daily student attendance. In a statement announcing the settlement, Bharara said, "Sadly, the fraud here happened on a massive scale — through the repeated and systematic subversion of the goals of a federal program intended to provide essential tutoring services to children to give them a chance to succeed academically."[26] When the goals of a program are systematically subverted and children are denied essential services as a result, those with enforcement authority need clear recourse, like the ability to levy fines.

Consequences are particularly important when citizens' well-being is at stake. In 1996, the president of an environmental

> "Sadly, the fraud here happened on a massive scale — through the repeated and systematic subversion of the goals of a federal program intended to provide essential tutoring services to children to give them a chance to succeed academically."
>
> *Preet Bharara, United States Attorney, Manhattan Regarding the Falsification of Records on Tutoring*

testing laboratory based in Jacksonville, Florida was sentenced to one year in prison and an $18,000 fine for providing false laboratory data to the Environmental Protection Agency (EPA). The EPA then based their assessments of water quality in north Florida on those bogus tests. This case was the first in Florida where an environmental testing laboratory was charged with providing falsified data to the EPA, but it is also part of an increasing trend nationwide. "False water quality assessments undermine our ability to protect the public health and the environment and we will fight this alarming trend, swiftly and sternly," said Lois J. Schiffer, then Assistant Attorney General in charge of the Environment and Natural Resources Division.[27]

3E) Is the data secure?

The importance of data security cannot be overstated. Government data must be protected because it contains particularly sensitive information. If government data is accessed unlawfully, serious

consequences can result. National security can be compromised or taxpayers' identities stolen. Because governments can mandate that individuals and corporations provide them with sensitive data, they have a commensurate responsibility to make sure that the data is secure. A data breach is a violation of public trust, making it critical for public officials to think about data security when developing laws and regulations.

Rapid7, a vulnerability management and penetration testing company, recently announced that an analysis of government data breaches revealed 268 incidents from January 1, 2009 to May 31, 2012. These breaches exposed more than 94 million records containing personally identifiable information (PII). In what it termed, "a skyrocketing rise in the number of records exposed each year," Rapid7 reported a tripling of the number of records exposed from 2010 to 2011.[28] "Government infrastructure has come under attack from cyberespionage, hacktivism and insider threats. Combine that with a staggering number of cases involving human error, and it's clear that the government sector is facing a persistent challenge when it comes to protecting our critical infrastructures, intellectual property, economic data, employee records and other sensitive information," said Marcus Carey, security researcher at *Rapid7*.

To strengthen the nation's response to cyber security threats, President Obama issued an Executive Order on February 13, 2013 entitled "Improving Critical Infrastructure Cybersecurity."[29]

"The cyber threat to critical infrastructure continues to grow and represents one of the most serious national security challenges we must confront. The national and economic security of the United States depends on the reliable functioning of the Nation's critical infrastructure in the face of such threats."

Executive Order Issued on February 13, 2013
Improving Critical Infrastructure Cybersecurity

The E.O. is designed to strengthen the cybersecurity of critical infrastructure by increasing information sharing and by jointly developing and implementing a framework of cyber security practices with industry. It also requires federal agencies to produce unclassified reports of threats to U.S. companies and requires the reports to be shared in a timely manner. In addition, the National Institute of Standards and Technology (NIST) is directed to lead the development of a framework of cybersecurity practices to reduce cyber risks to critical infrastructure.
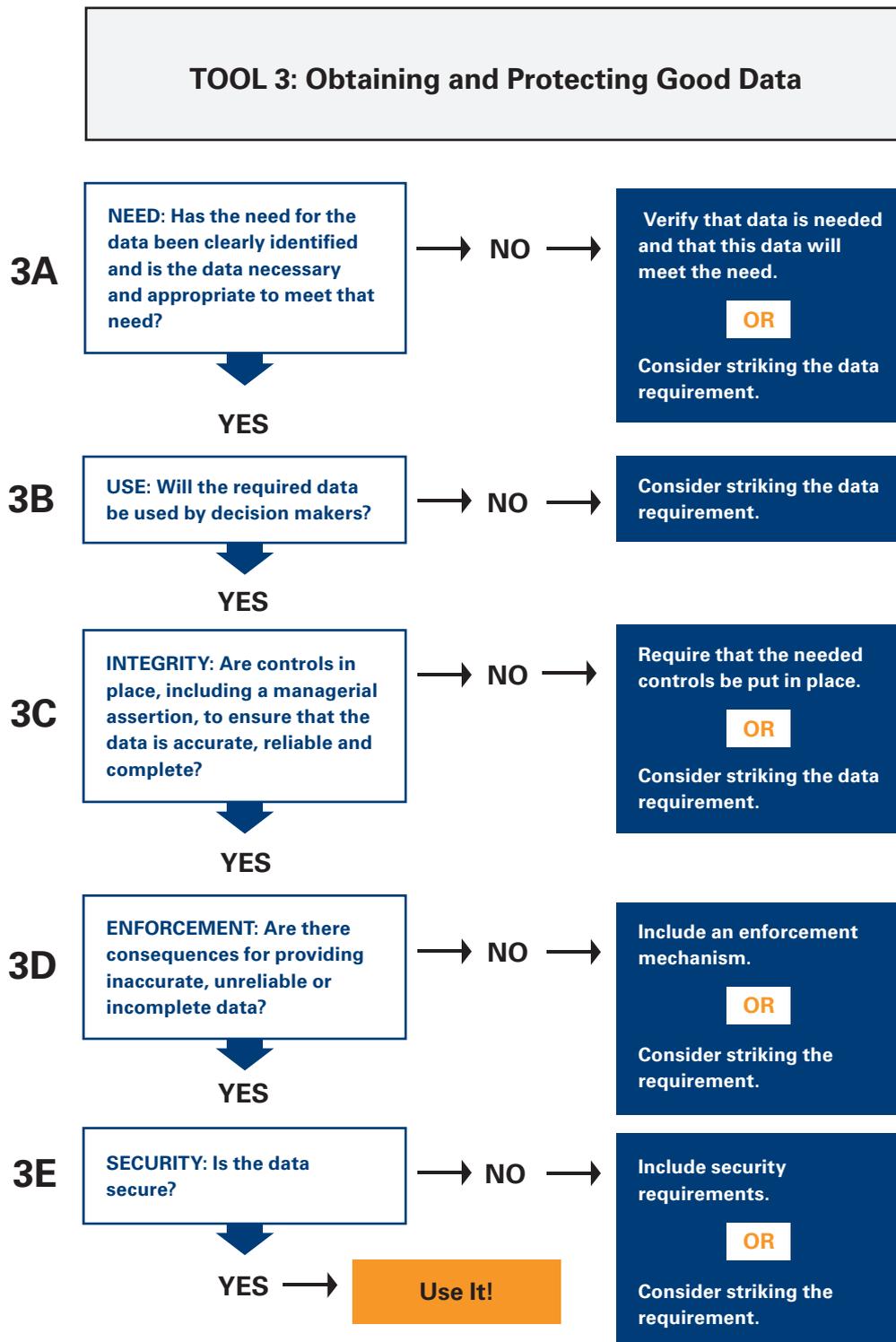
A recent incident in South Carolina highlights the seriousness of the cyber threat. On October 26, 2012, the South Carolina Department of Revenue announced that approximately 3.6 million social security numbers and 387,000 credit and debit card numbers were exposed in a cyber-attack.[30] In response, the State of South Carolina hired *Mandiant*, a Virginia-based, company that provides advanced threat

detection and response solutions, to help secure the system, install new equipment and software and institute tighter controls on access. The state also provided one year of credit monitoring and identity protection to those affected. In its 2012 annual threat report, which is based on hundreds of advanced threat investigations, Mandiant reported that only six percent of organizations detect advanced attackers via internal methods and that the typical advanced attack goes unnoticed for more than a year.[31] South Carolina's experience highlights the importance of investing in controls before a system is breached. Government officials can avoid remediation costs by considering the need for controls when system requirements are being developed.

Conclusion

The organizations and individuals who worked on this call-to-action volunteered their time because they understand the importance of instilling trust in government by avoiding unnecessary, overly burdensome or duplicative requirements. The call-to-action is intended for use by anyone who drafts laws, regulations or guidance at any level of government. In an era of tight budgets, it is important to leverage resources and to promote flexibility without compromising accountability. It is our hope that, because this call-to-action was developed by a broad cross-section of organizations and individuals, it can be used as an independent, informed reference in limiting requirements to those that are essential.

TOOL 3: Obtaining and Protecting Good Data

3A — **NEED: Has the need for the data been clearly identified and is the data necessary and appropriate to meet that need?** → **NO** → Verify that data is needed and that this data will meet the need.

OR

Consider striking the data requirement.

↓ **YES**

3B — **USE: Will the required data be used by decision makers?** → **NO** → Consider striking the data requirement.

↓ **YES**

3C — **INTEGRITY: Are controls in place, including a managerial assertion, to ensure that the data is accurate, reliable and complete?** → **NO** → Require that the needed controls be put in place.

OR

Consider striking the data requirement.

↓ **YES**

3D — **ENFORCEMENT: Are there consequences for providing inaccurate, unreliable or incomplete data?** → **NO** → Include an enforcement mechanism.

OR

Consider striking the requirement.

↓ **YES**

3E — **SECURITY: Is the data secure?** → **NO** → Include security requirements.

OR

Consider striking the requirement.

↓ **YES** → **Use It!**

Acknowledgements

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Because of the breath of this undertaking, AGA sought the involvement of associations and individuals who play a key role in developing and implementing a broad cross section of government requirements.

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Foundation for this Call-to-Action

This call-to-action is an expansion of a perspective paper that the ED OIG prepared in preparation for the 1999 Elementary and Secondary Education Act (ESEA) reauthorization. This work was updated for another perspectives paper in 2007 in preparation for the next scheduled reauthorization. It is designed to build on decision tools that were included in the paper to make programs more "user-friendly." This call-to-action also expands the decision tools so that they are applicable to a variety of programs at the federal, state and local levels of government.

A central purpose of the reauthorized ESEA was to introduce greater flexibility in the administration of programs in return for increased accountability for results. The ED OIG's analysis of the ESEA's implementation was an effort to determine how the law could be made even more "user friendly" in its implementation by state and local educational agencies. The analysis was based in part on a review of comments from state auditors relating to the reauthorization of the ESEA, including the assertion made by a number of state auditors that greater clarity should be provided for certain program and financial provisions, and increased flexibility should be introduced in the implementation of other provisions in the pending reauthorization.

Based on these studies and other information, the ED OIG concluded that, with the movement toward administrative flexibility and results-oriented accountability, there should be a reduction in the number of compliance requirements for each program area. For the remaining essential requirements, the office said that the performance of compliance monitoring coupled with appropriate technical assistance and enforcement measures is critical.

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Other Tools & Resources

Risk Assessment Monitoring ToolKit
Provides states with a method of assessing sub-recipient risk across federal granting authorities.

Financial and Administrative Monitoring ToolKit
Assists state agencies establish sub-recipient monitoring programs. For use with the Risk Assessment Monitoring Tool.

Fraud Prevention ToolKit
Helps officials at any level of government detect, combat and prevent fraud.

Cooperative Audit Resolution and Oversight Initiative
Helps identify the underlying cause of audit and oversight findings and empowers the people who know programs best to chart a course for program improvement.

Candidate Assessment ToolKit for Grants Managers
Will help government mangers assess candidates for grants management positions and will also serve as a self-assessment tool for individuals.

Making Better Decisions: Leveraging Government Resources in Challenging Financial Times
Will feature a number of decision trees for use by officials at all levels of government in developing laws, regulations or guidance in a manner that enhances the likelihood of successful program performance and oversight.

Visit www.agacgfm.org/tools

Endnotes

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