Uniform Guidance Revisions
Top Ten +
Updates for Grants to States

The Office of Management and Budget (OMB) revised the Uniform Guidance for grants (2 C.F.R. part 200) on August 13, 2020. This was the first major updating of the Uniform Guidance since 2014. While all grantees should become familiar with the changes, we wanted to highlight some of those which directly impact State Library Administrative Agencies (SLAAs) in their capacity as States and as pass-through entities (PTEs).

1. Effective Date:

- The full suite of changes became effective November 12, 2020. They will apply to all new Grants to States awards issued after that date, including the FY2021 awards.

2. Reporting (2 C.F.R. §§ 200.329 and 200.328):

- **Final Performance Reports (2 C.F.R. § 200.329(c)(1)):**
  - Must be submitted by the State to IMLS no later than **120** calendar days (previously 90 days) after the period of performance end date. For **new** IMLS awards, the new final report due date is **January 30**, with Grants to States reports submitted through the State Program Report (SPR) system.
  - Subrecipients must submit theirs to the State (as PTE) no later than 90 days after the period of performance end date (this has not changed).
- **Annual (Interim) Reports (2 C.F.R. §§ 200.328 and 200.329(c)(1)):**
  - Annual (interim) reports submitted by the non-Federal entity and/or PTE are due no later than 90 calendar days (this has not changed) after the reporting period.

3. Procurement:

- **New provisions for procurements by States (2 C.F.R. § 200.317):**

  - When procuring property and services under an award, a State will continue to follow the same policies and procedures it uses for procurement from its non-Federal funds. A State must now **also** comply with **§§ 200.321 (contracting with small and minority businesses, women's business enterprises, and labor surplus area firms) and 200.322 (domestic preferences for procurements)**; and continue to comply with § 200.323 (procurement of recovered materials).

- **New provisions for all other non-Federal entities, including subrecipients of a State:**

  As OMB explains in the Aug. 13, 2020 Federal Register notice for the Uniform Guidance revisions, the following changes were made to 2 C.F.R § 200.320 (methods of procurement):

  - The procurement types are now grouped into three categories:

    (1) Informal (micro-purchase, small purchase);
    (2) Formal (sealed bids, proposals); and
    (3) Non-Competitive (sole source).

  - The micro-purchase threshold is raised from $3,500 to $10,000.

    - Micro-purchase thresholds higher than $10,000 are based on certain conditions that include a requirement to maintain records for threshold up to $50,000 and a formal approval process by the Fed. Govt. for threshold above $50,000.

    - More specifically, for Grants to States: (i) the subrecipient may self-certify an increase of the micro-purchase threshold up to $50,000 (based on certain requirements); (2) micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. (for details, see 2 C.F.R § 200.320(a)(1)(iii) and (iv)).

  - The simplified acquisition threshold is raised from $150,000 to $250,000.

4. Domestic Preferences:

- **A new provision has been added (2 C.F.R. § 200.322 – Domestic preferences for procurements):**
  - As appropriate and to the extent consistent with law, the non-Federal entity (now including SLAAs, see 2 C.F.R. § 200.317 procurement, above) should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.
  - The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under the award. (See Appendix II to 2 C.F.R. part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards).
  - This requirement does not set a dollar threshold (i.e., below which it would not apply); it states that domestic preference should be used as appropriate and to "to the greatest extent practicable."

5. Prohibited Telecommunications and Video Surveillance:

- **A new provision has been added (2 C.F.R. § 200.216), which:**
  - Prohibits recipients and subrecipients from using grant funds to: obtain equipment, services, or systems that uses telecommunications equipment produced by Huawei Telecommunications Company or ZTE Corporation (or any of their subsidiaries or affiliates).
  - Also prohibited are video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any of their subsidiaries or affiliates).
  - Also prohibited are telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense believes to be an entity connected to the government of a covered foreign country.
- A corresponding new provision has been added (2 C.F.R. § 200.417) to clarify that telecommunications and video surveillance costs associated with 2 C.F.R. § 200.216 (above) are unallowable.

- The prohibition is effective on all expenditures charged to Federal awards (including **existing** Federal awards) as of Aug. 13, 2020.

- A compilation of prohibited telecommunications and video surveillance equipment and services entities may be found in the System for Award Management excluded parties list.

- For additional information, please also see the FAQs at: https://www.cfo.gov/wp-content/uploads/2021/Sec.%20889%20of%202019%20NDAA_FAQ_20201124.pdf

6. Cost Principles:

- **Pre-Award costs:**

  - Pre-award costs are those incurred prior to the effective date of the award or subaward (2 C.F.R. § 200.458).

  - Pre-award costs require written approval of IMLS (2 C.F.R. § 200.458).

  - If charged to the award, the pre-award costs must be charged to the "initial budget period" (this is new) (2 C.F.R. § 200.458).

    Note: The Uniform Guidance revisions (2 C.F.R. § 200.1) added the following definition of "budget period":

    > "*Budget period* means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded…"

    While the above definition is new, on a practical level there is only one budget period for Grants to States awards (for example, IMLS FY2021 awards have a budget period of October 1, 2020 through September 30, 2022).

  - Please note that IMLS is not providing a blanket waiver to allow pre-award costs; pre-award costs still require written approval of IMLS.

- **Compensation – fringe benefits (pension plan costs):**

  - As stated in 2 C.F.R. § 200.431:

"(g) Pension plan costs. Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

...

OMB deleted: ~~(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.~~

OMB added: (3) Except for State and Local Governments, the cost assigned to each fiscal year should be determined in accordance with GAAP.

..."

- OMB notes in the Aug. 13, 2020 Federal Register notice for the Uniform Guidance revisions that 2 C.F.R. § 200.431 is being revised "to allow states to conform with Generally Accepted Accounting Principles (GAAP), specifically Governmental Accounting Standards Board (GASB) Statement 68, and to continue to claim pension costs that are both actual and funded. OMB has made this revision because GASB issued Statement 68, *Accounting and Financial Reporting for Pensions* which amends GASB Statement 27 and allows non-Federal entities (NFE) to claim only estimated pension costs in their financial statements. OMB's revision will allow non-Federal entities to continue to claim pension costs that are both actual and funded."

7. Requirements for pass-through entities (PTE) (2 C.F.R. § 200.332):

Indirect Cost Rates (IDC) (200.332(a)(4)(i)):

- Each subaward must include an approved federally recognized IDC rate negotiated between the subrecipient and the Fed. Govt. If no approved rate exists, the PTE must determine the appropriate rate in collaboration with the subrecipient, which is either:

  (a) The negotiated IDC rate between the PTE and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient;

  (b) The de minimis IDC rate (see 200.414(f)).

  The PTE must not require use of a de minimis IDC rate if the subrecipient has a federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with 200.405(d).

- As stated in 2 C.F.R. § 200.414(h):

  "The federally negotiated indirect rate, distribution base, and rate type for a non-Federal entity (except for the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) must be available publicly on an OMB-designated Federal website."

  OMB notes in the Aug. 13, 2020 Federal Register notice for the Uniform Guidance revisions that there were comments about who is responsible for making sure this information is publicly posted. OMB indicates that it recognizes this concern and that the responsibility of the Fed. Govt will be "communicated appropriately." Stay tuned.

- **Audit findings (200.332(d)(4)):**

  - The PTE is responsible for resolving audit findings **specifically related** to the subaward and not responsible for resolving cross-cutting findings.

8. Closeout (2 C.F.R. § 200.344):

- The recipient (SLAA) must submit, no later than **120** calendar days (previously 90 days) after the end date of the period of performance, all financial, performance, and other reports. A subrecipient must submit to the PTE, no later than **90** calendar days after the end date of the period of performance, all financial, performance, and other reports. The Federal awarding agency or PTE may approve extensions when requested and justified by the non-Federal entity, as applicable.

- Unless the Federal awarding agency or PTE authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days (previously 90 days) after the end date of the period of performance.

- If the non-Federal entity does not submit all reports, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.

- If the non-Federal entity does not submit all reports within one year of the period of performance end date, the Federal awarding agency must report the non-Federal entity's material failure to

comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS).

The following changes related to the Uniform Guidance (2 C.F.R. part 200) were also made:

9. Unique Entity Identifier (UEI) and System for Award Management (SAM):

   - **Recipient requirements of subrecipients. The following is new:**

> **2 C.F.R. § 25.300 Requirement for recipients to ensure subrecipients have a unique entity identifier.**
>
> (a) A recipient may not make a subaward to a subrecipient unless that subrecipient has obtained and provided to the recipient a unique entity identifier. Subrecipients are not required to complete full SAM registration to obtain a unique entity identifier.
>
> (b) A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient has obtained a unique entity identifier as described in paragraph (a) of this section.

10. Reporting Subaward and Executive Compensation Info. (2 C.F.R. part 170):

   - **Increased threshold for reporting by recipients:**

OMB has raised the reporting threshold for subawards that equal or exceed $30,000 (previously had been $25,000):

> "Reporting of first-tier subawards…[Y]ou [recipient] must report each action that equals or exceeds $30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency…" (Appendix A to Part 170 – Award Term).

11. Never Contract with the Enemy

   - **In order to implement Never Contract with the Enemy, OMB has:**

- Added a new Part 183 to 2 C.F.R.
- Added § 200.215 to 2 C.F.R., which reads:

> **2 C.F.R. § 200.215 Never contract with the enemy.**
>
> Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed $50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

- **It is unlikely that these provisions would impact the Grants to States program, but we wanted you to be aware of them. As OMB explains in the Aug. 13, 2020 Federal Register notice:**

> To meet statutory requirements, OMB is adding part 183 to 2 CFR to implement Never Contract with the Enemy, consistent with the fact that the law applies to only a small number of grants and cooperative agreements. Never Contract with the Enemy applies only to grants and cooperative agreements that exceed $50,000, are performed outside the United States, including U.S. territories, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

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Resources:

The above "Top Ten +" is not intended to be legal advice but to serve as a general reference to some of the revisions that may impact SLAAs in their capacity as States and pass-through entities. If you wish to learn more, the following may be useful:

The online version of the Uniform Guidance (see 2 C.F.R. part 200):
https://www.ecfr.gov/cgi-bin/ECFR?page=browse

The Aug. 13, 2020 Federal Register Notice formally announcing the revisions:
https://www.federalregister.gov/documents/2020/08/13/2020-17468/guidance-for-grants-and-agreements

The February 22, 2021 Federal Register Notice with correcting amendments to the Aug. 13, 2020 Federal Register Notice:
2021-02969.pdf (govinfo.gov)

Please also note that all materials that were previously available on Performance.gov have moved to CFO.gov. This includes tools and resources related to the Uniform Guidance, FAQs, and other items.

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