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OMB'S UNIFORM GRANT IMPLEMENTATION GUIDANCE

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OVERVIEW

On December 26, 2013, the Office of Management and Budget (OMB) issued its Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (Uniform Guidance, or UG) that combined eight OMB Circulars into one comprehensive, uniform set of regulations. The UG became effective for all new federal awards and incremental funding of existing awards after December 26, 2014.

To help you identify those areas that most affect your organization, we have compiled a list of the changes in the UG that affect many organizations, along with recommendations for practical steps to begin your implementation.

SINGLE AUDIT PLANNING UPDATE

The Uniform Guidance (UG) has modified various thresholds and percentages that auditors use to determine the need for a single audit, which programs are major programs and adequate coverage amounts as follows:

- **Audit Threshold** – Planning the single audit requires several essential steps. The first one is to determine if a single audit is even required. The established single audit threshold under Circular A-133 was \$500,000 of total federal expenditures in a fiscal year; in other words, states, local governments, and non-profit organizations that expended more than \$500,000 in federal dollars in any one year needed to engage an independent auditor to audit the spending of those dollars. The new Uniform Guidance raises that threshold to \$750,000. For many entities, the increase will have little impact, and a single audit will continue to be required. However, for smaller or lower funded entities, it could mean that a single audit will not be required to be completed.
- **Type A Programs** – Once it is determined that the single audit is required, the auditor turns to program selection. Several changes were included in the UG. The first change is raising the cutoff for a Type A program to \$750,000 from the \$300,000 threshold amount for a Type A program used in A-133. Type A programs are the first programs the auditor must evaluate when selecting which federal programs they will test. If total federal expenditures exceed \$25 million, a tiered formula is used to raise the Type A threshold further.
- **Auditor Coverage** – Once the Type A and B programs are selected, the auditor must determine if sufficient coverage is achieved. Under A-133, 50 percent of the total federal program expenditures needed to be covered for “regular” auditees and 25 percent of expenditures for Low Risk Auditees. The UG changes those coverage percentages to 40 and 20 percent, respectively. If the selection process failed to gain the required coverage, then the auditor must select an additional program(s) to attain the coverage.
- **Low Risk Auditee** – A few of the requirements to become a Low Risk Auditee have changed. The benefit of being a low risk auditee is the lower coverage requirements for testing federal programs, as mentioned in the previous paragraph. An entity qualifies as a low risk auditee if, for each of the previous two years, the entity had:
 - An unmodified opinion on the GAAP based financial statements or the financial statements were audited using a basis of accounting **required** by state law. **It has been determined that the Kansas Regulatory Basis of Accounting is not required by state law. Therefore, any financial statements using the Kansas Regulatory Basis of Accounting will not be considered low risk.**
 - An unmodified opinion on the Schedule of Expenditures of Federal Awards (“SEFA”)
 - No financial statement or federal award material weaknesses
 - An unmodified opinion on federal program compliance
 - No questioned costs exceeding 5 percent of federal program expenditures
 - Timely filing with the Federal Single Audit Clearinghouse
 - No going concern opinion
- **Findings** – Known or likely questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program will be reported. The prior threshold was \$10,000 under A-133, so this change may result in fewer findings being reported.

CONFLICT OF INTEREST REQUIREMENTS

The Uniform Guidance describes mandatory conflict of interest language each non-Federal entity must have. This conflict of interest guidance was expanded to include a provision for organizational conflict of interest. This expansion will require non-Federal entities to have strong policies preventing organizational conflicts of interest, which will be used to protect the integrity of procurements under federal awards and subawards. In general, two types of conflict of interest policies must be maintained by the nonfederal entity:

1. Employee Conflict of Interest – The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. The grants reform includes the following provisions:

"No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-federal entity."

2. Organizational Conflict of Interest – **This is a new requirement!** If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state government, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving the related organization.

The Uniform Guidance also indicates that a non-Federal entity must disclose in writing any potential conflict of interest to the federal awarding agency or pass-through entity in accordance with applicable federal awarding policy.

PROCUREMENT REVISIONS

Procurement regulations under the Uniform Guidance may be more restrictive than what some organizations are accustomed to. There is a grace period of implementation of the updated procurement standards, and for calendar year end 2015 and fiscal years ending in 2016, you may elect to adopt the Uniform Guidance or continue to follow the old regulations. You must document your election and ensure your policy is in compliance with the rules elected.

Some of the general standards over procurement include:

- Every non-federal entity receiving federal awards must have documented procurement procedures that reflect federal law, Uniform Guidance standards, and any state regulations.
- Entities should focus on the most economical solution during the procurement process, and must avoid using federal funds for the acquisition of unnecessary items. Organizations are encouraged to consider the use of shared services and intergovernmental agreements to foster greater economy and efficiency.
- Written conflict-of-interest policies are required. No employee or agent of the entity may participate in the selection, award, or administration of a contract funded by federal grant dollars if he or she has an actual or apparent conflict of interest.
- The organization must document the procurement steps and activities required to be completed. This includes the basis for the type of procurement, contract type, and the basis for the contractor selection and price.
- Ultimately, the recipient of federal awards must maintain an appropriate level of oversight to ensure that contractors perform in accordance with the terms of their contract.
- An organization must maintain records to sufficiently detail the history of procurement. At a minimum, this includes: the rationale for the method of procurement, selection of the contract type, contractor selection or rejection, and basis for the contract price.

The Uniform Guidance also requires full and open competition. Contractors who assist in drafting specifications for requests for proposals (RFP) must be excluded from competing for those opportunities. In addition, RFP specifications cannot have unreasonable requirements that are meant to limit competition. Also, procurements must be conducted in a manner that prohibits the use of geographical preferences in the evaluation of proposals, except in certain cases where federal law explicitly requires or encourages geographic preference or when contracting for architectural and engineering services, provided that specifying geographic location leaves an appropriate number of qualified firms.

The Uniform Guidance outlines five methods of procurement that **must be documented in the non-Federal entity's procurement policy**:

- **Micro-purchases:** Purchases where the aggregate dollar amount does not exceed \$3,000 (or \$2,000 if the procurement is construction and subject to Davis-Bacon). When practical, the entity should distribute micro-purchases equitably among qualified suppliers. No competitive quotes are required if management determines that the price is reasonable.
- **Small purchases:** Includes purchases up to the Simplified Acquisition threshold, which is currently \$150,000. Informal purchasing procedures are acceptable, but price or rate quotes must be obtained from an adequate number of sources.
- **Sealed bids:** Used for purchases over the Simplified Acquisition Threshold, which is currently \$150,000. Under this purchase method, formal solicitation is required, and the fixed price (lump sum or unit price) is awarded to the responsible bidder who conformed to all material terms and is the lowest in price. This method is the most common procurement method for construction contracts.
- **Competitive proposals:** Used for purchases over the Simplified Acquisition Threshold, which is currently \$150,000. This procurement method requires formal solicitation, fixed-price or cost-reimbursement contracts, and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors.
- **Noncompetitive proposals:** Also known as sole-source procurement, this may be appropriate only when specific criteria are met. Examples include when an item is available only from one source, when a public emergency does not allow for the time of the competitive proposal process, when the federal awarding agency authorizes, or, after a number of attempts at a competitive process, the competition is deemed inadequate.

COMPENSATION – PERSONAL SERVICES

This section has been modified and now focuses more on stringent internal controls surrounding compensation costs instead of on specific procedures that must be followed in tracking and allocating the costs (commonly referred to as “time and effort reporting”). For instance, no **specific** “certification” of time records is required, and the UG recognizes advances in technology that may result in electronic employee time records incorporated as part of the payroll system.

Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

1. Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
2. Be incorporated into the official records of the non-Federal entity;
3. **Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities;**
4. Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity’s written policy;
5. Comply with the established accounting policies and practices of the non-Federal entity;
6. **Support the distribution of the employee’s salary or wages among specific activities or cost objectives if the employee works on more than one Federal award;** a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity;

Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

- a. The system for establishing the estimates produces reasonable approximations of the activity actually performed;
- b. Significant changes in the corresponding work activity (as defined by the non-Federal entity’s written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and
- c. The non-Federal entity’s system of internal controls includes processes to review after-the-fact interim charges made to Federal awards based on budget estimates. All necessary adjustments must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

SUBRECIPIENT MONITORING

Pass-through entities are required to evaluate the subrecipient's risk and determine appropriate monitoring activities based on that risk assessment. This section also specifies both mandatory and optional subrecipient monitoring obligations. In addition, audit reports from subrecipients are now expected to be obtained by the pass-through entity from the Federal Audit Clearinghouse instead of requesting the audit reports from the subrecipient.

All pass-through entities must:

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and, if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

1. Federal Award Identification.
 - i. Subrecipient name (which must match registered name in DUNS);
 - ii. Subrecipient's DUNS number;
 - iii. Federal Award Identification Number (FAIN);
 - iv. Federal Award Date;
 - v. Subaward Period of Performance Start and End Date;
 - vi. Amount of Federal Funds Obligated by this action;
 - vii. Total Amount of Federal Funds Obligated to the subrecipient;
 - viii. Total Amount of the Federal Award;
 - ix. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - x. Name of Federal awarding agency, pass-through entity, and contact information for awarding official,
 - xi. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
 - xii. Identification of whether the award is R&D; and
 - xiii. Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414 Indirect (F&A) costs).
2. All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.
3. Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
4. An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (b) of this part.
5. A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section

Pass-through entity monitoring of the subrecipient must include:

1. Reviewing financial and programmatic reports required by the pass-through entity.
2. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
3. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required.

The following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

1. Providing subrecipients with training and technical assistance on program-related matters;
2. Performing on-site reviews of the subrecipient's program operations;
3. Arranging for agreed-upon-procedures engagements as described in § 200.425 Audit services.

The pass-through entity should verify that every subrecipient is audited when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501 Audit requirements.

The pass-through entity should also consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records. The pass-through entity should consider taking enforcement action against noncompliant subrecipients.