

OMB Final Guidance on Grant Reform Release December 26, 2013

Background

Culminating two years of hard work and the input of many, the Office of Management and Budget released grant reform guidance, which combines 8 OMB Circulars into one document placed in 2 C.F.R. Parts 220, 225, 215, and 230. From the beginning, the goal has been to streamline guidance for federal awards easing administrative burdens, increasing the efficiency and effectiveness of federal awards, while also strengthening the oversight of federal funds to reduce the risks of waste, fraud, and abuse.

This massive undertaking is in part a response to Executive Orders 13563, 13520, and other Presidential Directives and is not intended to impose major changes, but instead to combine the existing Circulars for simplicity, clarity, and consistency. The circulars most applicable to charitable nonprofits that were included in this effort are the A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; A-122 Cost, Principles for Nonprofit Organizations; and the A-133 Audits of States, Local Governments and Non-Profit Organizations (Single Audit). Great efforts were taken to make these and the other five circulars (A-21, A-86, A-87, A-89, A-102) consistent with one another in terms of definitions and requirements wherever possible. These guidelines apply to discretionary awards, therefore certain provisions may not be applicable to all block grants and entitlement funds.

Federal agencies are currently developing new processes and procedures over the next six months, for implementation by December 26, 2014. However, with the exclusion of the single audit changes, pass-through entities may begin implementation prior to this at their discretion.

Why It Matters to Nonprofits

The new OMB Uniform Guidance not only applies to nonprofits receiving federal grants directly, but also to nonprofits that receive federal grant funds indirectly through grants and contracts with state and local governments as well as other pass-through entities. In fact, these subrecipients, who may not even be aware that they are receiving federal grant dollars, are likely to be most affected by the changes.

The new reforms will help nonprofit organizations receive at least partial reimbursement of their indirect costs from states, local governments, and other pass-through entities for services they perform under federal awards. As a result of the changes, nonprofits would be under less pressure to raise additional funds to subsidize governments, and charities without government funding would see less competition for scarce philanthropic dollars. Reimbursement for indirect costs will also provide nonprofits an opportunity to address infrastructure needs, which will allow them to be more effective and efficient.

Additionally, applications and reporting are streamlined to provide more consistency across various federal agencies. Furthermore, the Guidance calls for risk assessments to determine the amount of federal oversight of federal funds on a per organization basis. Subrecipients will also encounter new reporting and documentation requirements.

Change Highlights

Although there are numerous changes, those most pertinent to charitable nonprofits include the following:

**Indirect Cost Reimbursement:**

* Pass-through entities (most frequently states) will be required to pay nonprofit subrecipients their approved federal indirect cost rate if they have one. Those without an approved federal rate, may opt to either negotiate a rate in accordance with federal guidelines, or receive a minimum rate of 10 percent of its modified total direct costs (MTDC).
* All federal agencies must utilize a nonprofit’s existing approved federally negotiated rate rather than negotiating its own separate rate with the nonprofit, except in certain limited circumstances. Those nonprofits that have never had an approved federal indirect cost rate may choose to use a de minimis rate of 10 percent of MTDCs indefinitely. Nonprofits with an approved federal rate have the option to extend this rate for up to four years on a one-time basis.

**Cost Principles**

* It is not possible to create a list of what costs are direct and indirect because many times it depends on the circumstances. However, modifications and clarifications in categorizing costs as direct, indirect, or allowable have been made:
  + Computing devices may now be reported as supplies and therefore may be a direct cost depending upon usage, if under $5,000.
  + Administrative and clerical personnel with program related responsibilities may be included in direct costs, proportionally.
  + Advertising for personnel or for program outreach are now allowable costs.
  + Certain other costs that would normally be considered indirect, such as unusually high utility consumption due to program operations, may be treated direct costs.

**Administrative Requirements**

* Announcements for applications of funding are to be posted for at least 60 calendar days if at all possible, but no less than 30 calendar days, except in exigent circumstances.
* A pre-determined framework to evaluate a nonprofit’s level of risk if awarded funds for both recipients and subrecipients will be developed and implemented to determine reporting and monitoring requirements based on the level of risk assessed.
* To begin streamlining and standardizing processes, federal agencies may only use application forms and information approved by OMB. OMB has stated that they will only approve additional information requests on a limited basis.
* The time frame in which awards must be closed out is increased from 180 days to one year after receiving final reports.
* The period in which a federal agency or pass-through may disallow a cost is reduced to three years to coincide with the timeframe required that records be retained.
* Strongly suggests internal controls be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
* Requires nonprofits follow procurement standards when using federal funds, but provides for micro-purchases of $3,000 or less to be exempt.

**Audit Requirements**

* The threshold for having a single audit (previously referred to as an A-133 audit) is increased from $500,000 to $750,000.
* Federal agencies will be required to appoint a specific “Senior Accountable Official” to work with recipients on resolving audit findings through cooperative means.

Pending Concerns

With an undertaking as large and complex as this, while a tremendous step forward, not all is perfect. Some items may result in unintended consequences and may create unexpected problems. In order to minimize these as much as possible, COFAR is continuing to work with nonprofits to identify and address these matters in advance and on an ongoing basis. While clarifications are still needed for several issues, those most pertinent to nonprofits already identified include the following:

* The new Uniform Guidance changes the term vendor to contractor to distinguish them from subrecipients. The new language inadvertently eliminates a pass-through entities’ discretion in determining whether to contract with a nonprofit to provide services or utilize grants. Although this clarifies things at the federal level, it has the opposite effect for states and other pass-throughs who have traditionally used federal grant funds to contract with nonprofits to provide community services. Furthermore, from the nonprofit’s perspective, the change is inconsistent with GAAP. It will cause confusion and potentially cause significant problems for nonprofits in their accounting procedures if contracts for community service are no longer allowable.

*Update: OMB has indicated that it was not their intention to prevent states from continuing to contract with nonprofits when using federal grant funds and will issue a statement via the FAQs to clarify this.*

* The intent of the indirect cost requirement is to provide nonprofits with additional funds to help offset facilities and administration costs. However, just like nonprofits, governments are also struggling with limited resources. Cost shifting resulting in a net zero gain for nonprofits is extremely likely. Some mechanism to ensure states adhere to the spirit of the requirement, not just the letter of it is needed.

*Update: OMB has asked that we help to develop a mechanism to notify them and the appropriate federal agencies when/if this occurs so that it can be addressed immediately. Additionally, OMB intends to track this as one of its metrics for determining whether the changes are effective.*

* Neither states nor many nonprofits are currently equipped to negotiate indirect cost rates. There is a good deal of training needed for both. Additionally, many states may not have the human resource capacity to handle this additional requirement.

*Update: The National Council of Nonprofits has a workgroup that is developing a common curriculum that State Associations can use to provide education and training for its members and other nonprofits in the state rather than having each state use their time to develop their own. It is hoped that State Associations will not only be able to generate some revenue by providing the training, but also attract new nonprofit members.*

*The issue of states having the personnel with the time and experience to negotiate indirect cost rates has been raised with OMB, but there has been no response to this concern to date.*

* The effective date of the new OMB Guidance was December 26, 2013, with an implementation date of December 26, 2014. However, the actual regulations that will accompany it have not yet been developed and approved, leaving many details uncertain. This does not take into account that many states have laws and rules that reference the various OMB Circulars, which cease to exist and/or tie audit requirements to the A-133. They will need time to be revised.

*Update: OMB has noted that there will be another comment period for the new regulations released on December 26, 2014 before they become final. Unfortunately, the issue with regard to timing is not something they see as a concern, despite our attempts to raise it with them. We have been told by some states that they are aware of the new OMB Guidance, but have not been officially notified of any changes and therefore are not doing anything to prepare for the implementation until they do. On the opposite end of the spectrum, Illinois has already passed legislation that attempts to align state grant and contracting practices with those of the federal government to reduce duplication of efforts on the part of nonprofits.*

* The description in the new OMB Guidance for “fixed amount awards” appears to be the same as what many states refer to as Purchase of Service (POS) contracts. However, the OMB Guidance caps fixed amount awards at $150,000 and requires states to get prior approval to use this form of agreement with a nonprofit. If in fact fixed amount awards and POS contracts are the same thing, this will create a major problem since this is the predominant method many states use in purchasing human services from nonprofits.

*Update: OMB was unaware of the extensive use of POS contracts and their likeness to fixed amount awards. We are currently working with them to see if states interpret these as the same type of agreement so that corrections can be made if needed in the OMB Guidance.*

What State Associations Can Do

* Use as a tool to reach out to more nonprofits in your state to alert them to how they can obtain indirect cost reimbursements.
* Use as an advocacy tool to engage state and local government in collaborating to create implementation plans.
* Use as an advocacy tool to engage state government in collaborating to address broader contracting issues.
* Provide trainings for nonprofits on
* Identifying indirect/administrative costs
* Accurately calculating and reporting indirect costs
* Developing indirect cost rates
* Negotiating contracts
* Strengthening Internal Controls
* Maintaining appropriate records/formats
* Establishing required procurement policies and procedures
* Educate and encourage foundations to understand the importance of covering administrative costs.
* Share resources with one another—what trainings are already being provided on administrative/indirect costs? What resources already exist that can be shared?

What Nonprofits Can Do

* Work with your State Association of Nonprofits to develop a comprehensive plan to address implementation and capacity building concerns.
* Provide your State Association detailed information about other contracting issues and how they impact your organization.
* Be accurate and open about your real administrative/overhead and indirect costs.

What Foundations Can Do

* Recognize that like governments, they often do not adequately cover administrative and overhead costs in their grants to nonprofits and therefore limit the effective use of their own dollars.
* Insist that grantees accurately report their real administrative costs so that they can be included in grants.
* Advocate for governments to cover indirect costs so that foundations are not expected to subsidize the cost of services purchased by governments. This would free up foundation funds to be used toward the foundation’s priorities.
* Provide more general operating grants to allow nonprofits to strengthen their infrastructures so they can be more efficient and effective.

Additional Resources

* [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](https://s3.amazonaws.com/public-inspection.federalregister.gov/2013-30465.pdf)
* [Reform of Federal Policies Relating to Grants and Cooperative Agreements: Cost Principles and Administrative Requirements](http://www.whitehouse.gov/omb/grants_docs)
* [National Council of Nonprofit Comments](https://www.councilofnonprofits.org/sites/default/files/National%20Council%20Comments%20on%20OMB%20Federal%20Grantmaking%20ANPG%204-30-2012.pdf) to the White House Office of Management and Budget Advance Notice of Proposed Guidance on Grant Reform, April 30, 2012.
* [President Obama’s FY2014 Budget: The Issues for Nonprofits](http://www.nonprofitquarterly.org/policysocial-context/22155-president-obama-s-fy2014-budget-the-issues-for-nonprofits.html),” by Rick Cohen, *Nonprofit Quarterly,* April 18, 2013 explaining the significance of the proposed reforms.
* View [OMB Uniform Grant Guidance Webcast 12-20-13](http://www.youtube.com/watch?v=xBmjulDwDWk&feature=youtu.be)