

The OMB's Proposed Changes to Uniform Guidance

By John D'Amico

Uniform Guidance is an authoritative set of rules and requirements for federal awards for both nonfederal recipients (i.e., state and local governments; nonprofits, including institutes of higher education; American Indian tribes), and auditors who perform single audits. Uniform Guidance, which became effective on December 26, 2014, is codified in Title 2 of the Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

Uniform Guidance is required to be reviewed every five years in accordance with 2 CFR 200.109. Accordingly, the Office of Management and Budget (OMB) issued the following proposed changes to the Uniform Guidance in a Federal Register (FR) notice of Proposed Guidance, *Guidance for Grants and Agreements*. The proposed changes address the impact of the president's management agenda on the Uniform Guidance, align the Uniform Guidance with other authoritative source requirements, and clarify requirements regarding areas of misinterpretation. This article provides a summary and explanation of the proposed changes.

Background

The Trump administration established the Results-Oriented Accountability for Grants Cross-Agency Priority Goal (Grants CAP Goal) in the president's management agenda (PMA), which takes action on the long-held Republican position that the federal government has become overly bureaucratic and imposes too many regulatory requirements. Although the administration maintains that some regulations serve important public purposes, it holds that many others are either outdated, duplicative, or unnecessary and impose costly burdens, pre-

cipitating the proposed changes to the Uniform Guidance.

Most of the regulations in the Uniform Guidance are decades old and were previously included in OMB Circulars. The administrative requirements for auditees were in OMB A-110 for nonprofits and OMB A-102 for state and local governments. The cost principles were in OMB A-122 for nonprofits, OMB A-21 for institutes of higher education, and OMB A-87 for state and local governments. The auditor's requirements were previously in OMB A-133. All of these federal regulations are now included in subparts of the Uniform Guidance.

The OMB also issues an annual compliance supplement that auditors must use to plan and perform their single audits. The supplement includes the audit objectives and suggested audit procedures for numerous federal award programs, as well as audit programs written by individual federal agencies for most of the more popular programs. The supplement also provides guidance on internal controls over compliance and suggested generic audit objectives and procedures for the other federal award programs that are not included in the supplement.

The administrative requirements and cost principles included in 2 CFR 200, subparts D and E, are grouped into 12 specific compliance requirements: activities allowed or unallowed; allowable costs; cash management; eligibility; equipment and real property management; matching, level of effort, and earmarking; period of performance; procurement, suspension, and debarment program income; reporting; subrecipient monitoring; and special tests and provisions.

Besides the proposed changes to Uniform Guidance described below, the OMB has also made changes to the August 2019 supplement. The changes mandate that for each federal program included in the 2019 supplement, each federal agency must select only up to six of the 12 compliance requirements that will be subject to audit; furthermore, activities allowed or unallowed and allowable costs will be considered one compliance requirement. For federal award programs that are not included in the supplement, all 12 compliance requirements are subject to audit. Of course, auditees must comply with all compliance requirements that are applicable to their federal award programs, regardless of whether their auditors will be testing them.



Prior to the Uniform Guidance, revising the regulations was inconvenient for OMB. For example, OMB A-133 was issued in 1990, revised in 1997, and then revised just once more in 2007 before being superseded by Uniform Guidance in 2014. It is now much easier for the OMB to revise Uniform Guidance by simply revising the specific regulations in the subparts.

Changes to the Procurement Standards

The federal procurement standards that nonfederal entities must use to procure goods and services are now in effect and are included in 2 CFR 200.317–200.326. These standards set the following new thresholds to procure goods and services:

- The micropurchase method is for procurements where the aggregate dollar amount does not exceed \$3,500.
- The small purchase method is for procurements that exceed the micropurchase amount, but do not exceed the simplified acquisition threshold of \$150,000.
- For procurements exceeding the simplified acquisition threshold, the organization must use one of the following procurement methods: sealed bid, competitive proposal, or sole source.

The intent of this guidance was to alleviate the burden associated with the Uniform Guidance procurement standards, enabling recipients to make purchases below the micropurchase threshold without soliciting price or rate quotations if the nonfederal entity considers the price to be reasonable.

Several statutes have increased the procurement thresholds, including the National Defense Acquisition Authorization Act (NDAA), which raised the micropurchase threshold to \$10,000 and the simplified acquisition threshold to \$250,000, resulting in the issuance of OMB M-18-18 in 2018. This memo outlined the process for institutions of higher education, related or affiliated

nonprofit entities, nonprofit research organizations, and independent research institutes to request a higher micropurchase threshold from the relevant federal awarding agency.

The OMB is now proposing changes to 2 CFR 200.319 and 200.320 that incorporate the guidance available in OMB M-18-18. These changes would increase the micropurchase threshold to \$10,000 and the simplified acquisition threshold to \$250,000 for all nonfederal entities and extend the flexibility to request a higher micropurchase threshold to all nonfederal entities.

Timing of Audit Quality Project

2 CFR 200.513 requires a governmentwide audit project to determine the quality of single audits by providing a statistically reliable estimate of the extent to which they conform to applicable requirements, standards, and procedures, and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards, and procedures indicated by the results of the project. This must be performed once every six years beginning in 2018, and the results must be made public. The last governmentwide audit quality project was issued in June 2007 by the President's Council on Integrity and Efficiency.

The OMB is proposing changes to 2 CFR 200.513 that would modify the specifics of the required governmentwide audit quality project. The proposal would revise the date of the audits to be reviewed to audits submitted in 2021, as well as provide that the governmentwide project can rely on the current and ongoing quality control review work performed by agencies while still requiring a statistically reliable estimate of the extent to which single audits conform to applicable requirements.

De Minimis Indirect Cost Rate

The 10% de minimis indirect cost rate currently can only be used by nonfederal entities that have never received a negotiated rate. The proposal would allow the use of the de minimis indirect cost rate by all nonfederal entities, except state and local governments and American Indian tribes. No documentation is required to provide proof of costs that are covered under the de minimis indirect cost rate.

Definition and Terminology Changes

There are numerous proposed changes to terminology throughout the proposal, which OMB states are intended to standardize terms to support efforts under the PMA Grants CAP goal. For example, the definitions for the Catalog of Federal Domestic Assistance (CFDA) and CFDA Program Title will be removed and replaced with the Assistance Listing and Assistance Listing Program Title.

Alignment with Statutory and Other Requirements

The proposal would also revise the Uniform Guidance to address newer statutory and other types of requirements. For example, revisions would be related to the NDAA, the Never Contract with the Enemy Act, and the Federal Funding Accountability and Transparency Act (as amended by the Digital Accountability and Transparency Act). Changes are also proposed in certain areas to focus on PMA initiatives and other administration priorities.

Next Steps

The OMB is accepting comments on their proposed changes and therefore may revise them before they are finalized. Once the changes are approved, they will be included in a subsequent Compliance Supplement. □

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