Uniform Grant Guidance / The Digital Accountability Transparency Act

Florida Grant Consortium Workgroup
Presented 02/16/2017 Building 4 Winewood Office Complex
Why?
Reduce the risk of waste, fraud, and abuse?

- $600 billion grant awards each year
- $100 billion improper payments per year
- OMB seeks to reduce the risk of fraud and abuse through better performance
Part I – A Little History and Context – PLUS What Has Changed Recently

Congress’s Way to Get There – Recent Legislative History

• 1999 Federal Financial Assistance Management Improvement Act (FFAMIA) (eGrants Initiative)
• 2006 Federal Funding Accountability and Transparency Act (FFATA)
• 2008 Federal Awardee Performance and Integrity Information System (FAPIIS)
• 2009 Duncan Hunter – Federally Awarded Contracts
• 2013 Uniform Grant Guidance
• 2014 Digital Accountability and Transparency Act (DATA Act)
• 2015 Final Rule Duncan Hunter – Now includes “grants”
Part I – A Little History and Context – PLUS What Has Changed Recently

Accountability and Transparency

2006 FFATA

- Federal Awardee Performance and Integrity System
- P.L. 109-282
- Website: USASpending.gov
- Recipients and first-tier subrecipient report awards over $25,000
- All nonfederal entities register

Issue: no interoperability between USASpending.gov and other Federal systems
Part I – A Little History and Context – PLUS What Has Changed Recently

Contractor Performance and Transparency

2008 Federal Awardee Performance and Integrity Information System (FAPIIS)

• P.L. 109-282
• Website: USASpending.gov
• Recipients and first-tier subrecipient report awards over $25,000
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Part I – A Little History and Context – PLUS What Has Changed Recently
Grant Accountability Reform

2013 Uniform Grant Guidance (UGG)

- 2 CFR Part 200, 300; DHHS Programs 45 CFR 75
- Combine eight prior OMB Circulars
- Establish new requirements
- Intent to remove administrative barriers
- Intent is to prevent waste, fraud, and abuse
- Intent to lower applicant and recipient risk
- Revised July 30, 2015 for FAPIIS
Part I – A Little History and Context – PLUS What Has Changed Recently

Data Management

2014 Digital Accountability and Transparency Act DATA Act

- P.L. 113-101
- All Federal Funding
- Expand FFATA and USAspending.gov
- Improve data information collections
- Detect, prevent, and recover improper payments
- Treasury Department with OMB
- Recovery Operations Center (ROC) or data analytics center like an ROC
- All nonfederal entities register that are recipients
- Goes into effect 2017

Issue: no interoperability between USASpending.gov and other Federal systems
Part I – Duncan Hunter and the Final Guidance 2
CFR 200; 45 CFR 75

Now – Duncan Hunter Section 872/FAPIIS
  • Updates to the uniform guidance
  • *Federal Register Notices 07/22/2015; 07/30/2015*
  • FAPIIS expanded from just contracts to now include “grants”

Three Thresholds
  • $150,000 – pre-award review - Federal
  • $500,000 – FAPIIS included in grant award agreements - Federal
  • $10 million – *nonfederal entities* must self-report (self-disclosures)
Part I – Duncan Hunter and the Final Guidance 2
CFR 200; 45 CFR 75

Three Thresholds

• $10 million – pre-award and post-award
  • Appendix XII – an applicant or recipient must submit mandatory disclosures (§ 200.113) to SAM.gov, FAPIIS.gov, data retained for five years, definitions of integrity data
  • Note: - best practices would indicate that applicants and recipients meeting the $10 million threshold should communicate with their attorneys before making mandatory disclosures (self-reporting) to Federal agencies.
  • Meaning: For pass-through entities, checks should be made. Business process needs to be developed.
Part I – Duncan Hunter and the Final Guidance 2
CFR 200; 45 CFR 75


- Impacts of Section 872 on the Uniform Guidance and self-reporting
  - Uniform Grant Guidance revised
    - FAPIIS now for grants, cooperative agreements
    - Risk provisions revised
    - Integrity provisions added – where?
    - Final structure of the Uniform Grant Guidance
Duncan Hunter 872 and FAPIIS – What we did not know, *until now!*

- In general, there will be increased scrutiny for nonfederal entities from now and into the future going forward. Federal agencies are going to have increased requirements in this regard.
- We are going to need to stay tuned and develop a business process to ensure information flow both ways.

“A fool and his money get a lot of publicity.”  Al Bernstein
Part I – Duncan Hunter and the Final Guidance 2 CFR 200; 45 CFR 75

Feb 2012: Advance Notice of Proposed Guidance (public comment phase)

Dec 2013: Final Uniform Guidance

2014 DATA Act / Implemented in FFY 2017

2015: Final Duncan Hunter Law – FAPIIS Checking to include grant awards not just contracts from Federal entities
Part II – Uniform Grant Guidance
2 CFR 200; 45 CFR 75

• The streamlining was a key component of a larger Federal effort to more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders – *Performance and Compliance (Not Always a Hard Number)*

• Developed by a working group of the Council on Financial Assistance Reform (COFAR) and Federal Office of Management and Budget (OMB)
Part II – Uniform Grant Guidance
2 CFR 200; 45 CFR 75

Key Things to Know

Throughout 2 CFR 200 you will find the words “should” and “must”

Must – *Means Required*
Should – *indicates best practice?*

Important Terms

Pass-through Entity – An entity receiving a Federal award who also passes awards to other nonfederal entities
Subaward – A award of Federal funds in a recipient *(Subrecipient §200.93)* relationship from another nonfederal entity
Nonfederal entity – any entity other than a Federal entity receiving and responsible for the terms and conditions of a Federal award
# Part II – Uniform Grant Guidance

2 CFR 200; 45 CFR 75

## UGG Structure

<table>
<thead>
<tr>
<th>Guidance</th>
<th>UGG Sections</th>
<th>Applicable OMB Circular</th>
<th>UGG Statute Section Crosswalk</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Administrative Requirements</strong></td>
<td>A-102 Grants and Cooperative Agreements with State and Local Governments</td>
<td>200.00-200.99</td>
<td>Subpart A – Definitions 200.00-200.99</td>
</tr>
<tr>
<td></td>
<td>A-110 Uniform Administration Requirements for Grants and Other Agreements with Higher Education, Hospitals and Non-Profit Organizations</td>
<td>200.100-200.113</td>
<td>Subpart B – General Provisions 200.100-200.113</td>
</tr>
<tr>
<td></td>
<td>A-89 Catalog of Federal Domestic Assistance</td>
<td>200.200-200.211</td>
<td>Subpart C – Pre-Award (Federal) 200.200-200.211</td>
</tr>
<tr>
<td><strong>Cost Principles</strong></td>
<td>A-21 Cost Principles for Education Institutions</td>
<td>200.300-200.345</td>
<td>Subpart D – Post-Award (After Federal Award) 200.300-200.345</td>
</tr>
<tr>
<td></td>
<td>A-87 Cost Principles for State, Local and Indian Tribal Governments</td>
<td></td>
<td>Appendix I, II, VIII, X</td>
</tr>
<tr>
<td></td>
<td>A-122 Cost Principles for Non-Profit Organizations</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Audit Requirements</strong></td>
<td>A-133 Audits of States, Local Governments and Non-Profit Organizations</td>
<td></td>
<td>Subpart F – Single Audit Appendix XI, XII</td>
</tr>
<tr>
<td></td>
<td>A-50 Audit Follow-Up</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2 CF 200 Uniform Grant Guidance and 11 Appendicies

[2/14/2017]
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

• Subpart A – Overview of Federal Funding System
• Subpart B – Subrecipients vs. Contractors (Vendors)
• Subpart C – Procurements Under Financial Assistance Awards
• Subpart D – Subawards:
  • Preliminary Considerations
  • Making the Award
  • Structuring the Award
  • Administering the Award
  • Closing the Award
  • Fixed Price Awards
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart A – Overview of Federal Funding System
Basic Federal Funding Universe - Where Are You?...We Will Walk You Through
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart A – Overview of Federal Funding System
Tier 1: The Federal Agency Decision
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart A – Overview of Federal Funding System

Federal Grant and Cooperative Agreement

(31 USC §§ 6301-6308)

Government Expenditures

Procurement
If Product or Service for Gov’t Use

Assistance
If Support or Stimulation of Activity

Grant
If Little or no Government Involvement

Cooperative Agreement
If Substantial Government Involvement
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart A – Overview of Federal Funding System
Basic Regulatory Regime Driven By Federal Agency Choice - *Federal Assistance Awards (Grants)*

We will touch on procurement contracts again with respect to “flow down” but we are here to talk grants (our relationship with you).
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart A – Overview of Federal Funding System

US Constitution

- Federal Grant and Cooperative Agreement Act
- Authorization Act
- Appropriations Act
- Cross-Cutting Statutes – 41 USC 470

Statutes

- General Grant Regs – 2 CFR 200; 45 CFR 75
- Program Specific Regs
- Cross-Cutting Regs – e.g., 2 CFR Part 180

Regulations

- Agency Wide – e.g. HHS Grants Policy
- Program Specific – e.g., Policies, Manuals

Guidance
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart A – Overview of Federal Funding System
Tier 2: Recipient Expending the Financial Assistance Award
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart B – Subrecipients vs. Contractors (Vendors)

Subrecipient / Contractor Distinction - § 200.330

• Uniform Guidance provides specific guidance (this is an improvement over the old circulars)

• Subrecipient:
  • Purpose: “carrying out a portion of the Federal award” not simply providing goods or services for the benefit of the pass-through.”
  • Characteristics:
    • Performance measured against objectives of the Federal program
    • Responsibility for programmatic decision making
    • Required to adhere to Federal program requirements
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart B – Subrecipients vs. Contractors (Vendors)

Subrecipient / Contractor Distinction - § 200.330

• Contractor (Vendor)

• Subrecipient:
  • Purpose: “obtaining goods or services for the nonfederal entity’s own use.”
  • Characteristics:
    • Provides goods and services within normal business operations
    • Provider provides same goods or services to many different purchasers, normally in a competitive environment
    • Provides goods and services that are ancillary to the operation of the Federal program
    • Not subject to the requirements of the Federal program as a result of the agreement
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart B – Subrecipients vs. Contractors (Vendors)

Subrecipient / Contractor Distinction - § 200.330

- The highlighted is key on close calls.
- Also, NFE is empowered to characterize the relationship the way you reasonably see it:
  - In particular, whether your agreement (i) delegates responsibility for the programmatic decision making and (ii) makes the “Sub” subject to the requirements of the Federal program.
  - The Uniform Guidance provides, “All of the characteristics listed above may not be present in all cases, and the PTE must use judgment in classifying each agreement as a subaward or a procurement contract.” § 200.330 (c).

Remember: It is not want you call it – a subaward may be called a contract. It is about the substance of the relationship – how you structure it. 2 CFR 200.92 (Subaward Definition.)
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities
Subpart C – Procurements Under Financial Assistance Awards

• CONTRACTS UNDER AWARDS – Recipient subsequently implementing a contract under a subaward relationship.
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart C – Procurements Under Financial Assistance Awards

The Regulatory Focus is “FORMATION” – *The process of entering into the Contract* – 2 CFR §§ 200.317-200.326

- There is a general requirement that “[NFEs] must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts . . .” § 200.318(b).

- BUT THE FOCUS in the Uniform Guidance is on the procedures used to enter into the contract.

- Goal is that financial assistance recipient acquires property or service that is most advantageous to the program, with price and other factors considered.

  - There are a lot in the procurement standards. Focus is going to be on:

    1. Applicability
    2. Competitive Procedures
    3. Sole Source Restrictions
    4. Documentation
    5. Conflict of Interest
    6. Required Contract Terms
Applicability

• Procurement Standard apply to procurements of “property or services” when the resulting contract will be paid for with Federal funds - § 200.317
  • “Property” is defined under the Uniform Guidance as “real property or personal property.”.

• EXCEPTION: States are permitted to use their own procurement procedures. Local governments (counties and municipalities) are required to follow the Procurement Standards. Result is rules very similar to those applicable under A-102..

• EXCEPTION: When the contract will be paid out of an indirect cost pool, the Procurement Standards do not apply. COFAR FAQ .320-5 (Sep. 2015).
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart C – Procurements Under Financial Assistance Awards

Competition Procedures - § 200.320

• $3500 and below (micro purchases):
  • No detailed procedural requirements. Must document your costs. § 200.403(g).
  • Must spread around the purchases. § 200.320(a).

• $150,000 and below (small purchases):
  • Informal method
  • Price quotes from “an adequate number of qualified sources.”
    • Usually three (3) will be an adequate number. (compare FAR 13.104(b))
    • Note: this is a lot like the prior A-110 standard.
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities
Subpart C – Procurements Under Financial Assistance Awards

Competition Procedures - § 200.320

• **Above $150,000:**
  • Formal Competition.
  • Must publicize request for proposals and evaluation factors.
  • Must solicit proposals from “an adequate number of qualified sources . . .”
  • Must have “written method for conducting technical evaluations . . . and for selecting recipients.” *(e.g., a source selection plan).*
Sole Source

• Sole Source only permitted when:
  • Item available only from one source
  • Public Emergency
  • Expressly authorized by agency or PTE
  • “After solicitation of a number of sources, competition is determined inadequate.” 2 CFR § 200.320(f).

• If purchase by Sole Source, must evaluate profit separately. 2 CFR § 200.232(b).

• Must document your justification (remember the broad/enhanced documentation requirements above).
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart C – Procurements Under Financial Assistance Awards

Documentation - § 200.318(I)

“The [NFE] must maintain records sufficient to detail the history of [the] procurement. These records will include, but are not necessarily limited to the following:

1. rationale for the method of procurement,
2. selection of contract type,
3. contractor selection or rejection,
4. and the basis for the contract price.”

No longer limited to contracts over the small purchase threshold. (You may remember that was the rule in the A-110 at ¶ __.46).
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart C – Procurements Under Financial Assistance Awards

“Standard” Conflict of Interest - § 200.318(c)(1)

• Written Standards of Conduct
• No employee, officer, or agent may participate in selection of contractor if he or she has a Conflict of Interest
• Conflict of Interest arises if person or immediate family member has potential for financial gain

• What do you do: Mitigate the conflict
  • Screen the person from the particular procurement action.
  • If he or she is a Board member, he or she should recuse himself or herself from debate and vote.
“Standard” Conflict of Interest - § 200.318(c)(2)

“If the NFE has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the [NFE] 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 [NFE] is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.”
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart C – Procurements Under Financial Assistance Awards

Gifts and Gratuities- § 200.318(c)(1)

Officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

An organization’s written Standards of Conduct may provide an exception for gifts or gratuities of de minimis value (e.g., $10).

• The “cup of coffee” exception.
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Learning Objectives:

• Understand the extent to which requirements set forth in the Uniform Guidance “flow down”

• Distinguish between the roles and responsibilities during both the pre- and post-award phase

• Understand PTE responsibilities during both the pre and post-award phases of a Subaward transaction

• Understand PTE accountability and risk assessments

• Understand core concepts of effective monitoring strategies

• Identify strategies for dealing with management issues of Subrecipients
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards
Subpart D – Subawards

Preliminary Considerations

• All of the terms and conditions **“Flow Down”** – § 200.101 (b)(1) *Applicability to different types of Federal awards.* The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in Subpart D—Post Federal Award Requirements of this part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.
Subpart D – Subawards

Preliminary Considerations

- Making the Award – § 200.101

- This is NOT a procurement – no competition requirement.

- Federal Agencies must identify and evaluate potential Awardees in a certain manner:
  - Public notice with certain prescribed information (2 CFR §§200.202, 200.203)
  - Must use a “merit review process” (2 CFR §200.204)
  - Must check SAM (2 CFR §200.205)
  - Reporting certain decision not to make awards in FAPIIS (2 CFR §200.212)

- PTEs are NOT specifically required to do these things
  - 2 CFR §200.101(b)(1) (see language highlighted in yellow above)
  - 80 Fed. Reg. 43307 (Acknowledging PTEs are not specifically required to check SAM in implementing FAPIIS).
Subpart D – Subawards

Preliminary Considerations

- Making the Award: Selecting a Subrecipient What Should You Do?
- If you are a State or Local Government, follow your applicable administrative statutes, regulations, and policies.
  - Nondiscrimination
  - State Administrative Procedure Act
- Ensure potential Subrecipient is not debarred or suspended. 2 CFR Part 180 (Nonprocurement Suspension and Debarment).
  - Note – Though not specifically required, use SAM for this.
- Evaluate the Risk Posed by the Subrecipient.
  - Recipient will be held accountable for many acts of noncompliance on the part of the Subrecipient.
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Preliminary Considerations

• Making the Award: Obligation to Mitigate Risk

• “The [NFE] must . . . establish and maintain effective internal control over the Federal award that provides reasonable assurance that the [NFE] is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. . . .” 2 CFR §200.303 (Internal Controls).

• PTEs must “[e]valuate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining . . . appropriate subrecipient monitoring . . .” 2 CFR §200.331 (Requirements for PTEs).
Subpart D – Subawards

Preliminary Considerations

Risk Evaluation Considerations

- PTEs have flexibility, but consider the Federal Agency evaluation factors at 2 CFR§200.205(c):
  - Financial Stability
  - Quality of management systems
  - History of performance
  - Audit reports (soon to be detailed info online at https://harvester.census.gov/facweb/Default.aspx)
    - Note: Most of FAPIIS info will be publicly available too (2 CFR §200.211(b)).

- Applicant’s ability to effectively implement requirements imposed on NFEs (redundant with above).

- Similar considerations listed at 2 CFR §200.331(b)
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Preliminary Considerations

Structuring the Award

- **PTE Perspective:**
  - Accomplish the purpose of the federal award
  - Mitigate risk of Subrecipient causing compliance failure that affects PTE’s award (e.g., disallowance, specific award conditions, etc.)

- **Subrecipient Perspective:**
  - Acquire funding
  - Comply with Terms and Conditions of the subaward
  - Minimize administrative burden
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Preliminary Considerations

Clarity in Core Terms

- That it is a subaward under a federal program
- Performance expectations
  - Purpose of award
  - Reporting requirements
  - Any performance metrics
  - Major ancillary compliance requirements (e.g., no transactions with suspended or debarred entities)
- Payment right
  - The nature of allowable and unallowable costs
  - Payment schedule and terms (e.g., advance payment)
  - Audit and reconciliation requirements / closeout
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Preliminary Considerations Specifically Required Terms and Conditions § 200.331

All pass-through entities must:

(a) 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 the name associated with its unique entity identifier);
   ii. Subrecipient’s unique entity identifier;
   iii. Federal Award Identification Number (FAIN);
   iv. Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;
   v. Subaward Period of Performance Start and End Date;
   vi. Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
   vii. Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;
   viii. Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
   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 of the Pass-through entity;
   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).
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Specifically Required Terms and Conditions § 200.331

- Restatement of unique and important program requirements, such as:
  a. Eligibility requirements for beneficiary services under the program
  b. Administrative cost caps in the federal program
  c. Cost Sharing/Matching requirements
- Restatement of compliance assurance measures, such as:
  a. Audits and Reconciliation
  b. Access to records and personnel
  c. Disallowance mechanism
  d. Termination (and Suspension)
- Reference to less unique, but nonetheless important, terms and conditions of award (e.g., financial management, internal controls, property use and disposition, prior approvals, cost principles, etc.).
- Additional financial and programmatic reporting requirements.
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Preliminary Considerations Specifically Required Terms and Conditions § 200.331

(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;

What This Does NOT Mean: Deviation from terms of “prime” award in any way the PTE wants.

Why:
2 CFR § 200.102(a) – Exceptions must be approved by OMB, and will be permitted only in unusual circumstances.

More restrictive requirements should be based on good faith determination that they are necessary for PTE’s compliance with its obligations under the “prime” award.

Though it is not clear anyone is looking out for the Subrecipients in this regard.
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Preliminary Considerations Administering the Award

- 2 CFR §200.331(b):
  - “Evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:
    - Subrecipient’s prior experience with similar awards (past performance)
      - Results of prior audits
      - New personnel or systems
      - Direct federal monitoring on concurrent direct federal awards

- 2 CFR §200.331(d) – then “monitor” to extent “necessary”
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Preliminary Considerations Administering the Award Monitoring §200.331

- 2 CFR § 200.331(d):
  - “Monitor” to extent “necessary” – must include:
    - Financial and Performance Reports
    - Follow-up on all deficiencies identified through audits, site visits, etc.
    - Issuing management decision on audit findings (i.e., do your job in audit review)

- 2 CFR § 200.331(e):
  - Also may find useful:
    - Training and Technical assistance
    - On-site reviews
    - “Agreed Upon Procedures” audit services

- 2 CFR § 200.331(c):
  - Consider (when making award) specific award conditions
Part III: Pass-Throughs and Subrecipients / Roles and Responsibilities

Subpart D – Subawards

Preliminary Considerations PTE Is Accountable §200.331

• PTE is accountable for proper use and management of federal funds by Subrecipient
  • 2 CFR § 200.331(f) Verify Subrecipient audited in accordance with Subpart F if exceeds threshold ($750,000)

• 2 CFR § 200.331(g)
  • Consider whether what Subrecipient did requires adjustment to PTE’s own records.

• 2 CFR § 200.331(h)
  • Consider taking enforcement action as described in 2 CFR § 200.338 (Remedies for noncompliance)
  • Make sure you incorporate these in your Subaward Agreement.
Uniform Grant Guidance

• Awards received prior to Dec. 26, 2014 are governed by the prior OMB circulars.
• Awards received on or after Dec. 26, 2014 are governed by the uniform guidance.

First, audits under the uniform guidance begin for fiscal years starting on or after Dec. 26, 2014.

• Audits for fiscal year July 1, 2014 – June 30, 2015 are governed under prior OMB circular A-133.
• Audits for fiscal year July 1, 2015 – June 30, 2016 will be governed under Subpart F of the uniform guidance.
• Individual awards will be tested under A-133 or Subpart F depending on the award date (before or after Dec. 26, 2014).
Part IV: Indirect Costs and Direct Costs

Uniform Grant Guidance

• Acceptance of Rate (§200.414(c)(1))
  • Federal agencies and pass-through entities must accept a nonfederal entity’s approved negotiated rate unless there is a program statute or approved agency regulation otherwise.
  • Reduces the ability of federal agencies and pass-through entities to restrict or deny indirect costs.

Pass-through Entities (§200.331)

• Pass-through entities must accept a subrecipient’s federally approved negotiated rate, or if there is no rate:
  • Negotiate a rate or
  • Allow the 10 percent de minimis rate to eligible subrecipients

Waived or Unrecovered Indirect Costs (§200.306(c))

• Once a negotiated indirect cost rate is approved, nonfederal entities may elect to waive indirect costs •Waive some or all indirect costs
• May apply waived indirect costs to cost sharing requirement with prior written approval
Uniform Grant Guidance

**De Minimis (Flat Rate) of 10 Percent (§200.414(f))**

- A nonfederal entity that has never received a negotiated indirect cost rate, except for those nonfederal entities described in Appendix VII, may elect to charge a *de minimis* rate of 10 percent of modified total direct costs (MTDC) which may be used indefinitely.

- Costs must be consistently charged as either indirect or direct costs, but may not be double-charged.

- New written local policy would be a best practice.
Part IV: Indirect Costs and Direct Costs

Uniform Grant Guidance

Certification (§200.415)

• To assure that expenditures are proper.
• Signed by an official who is authorized to legally bind the nonfederal entity:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate...I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).”
The List

- One nice feature of the Uniform Guidance, is that many of the Prior Approval Requirements are added in List Form (notably in Subpart E) at §200.407(a):

| (a) §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5); |
| (b) §200.306 Cost sharing or matching; |
| (c) §200.307 Program income; |
| (d) §200.308 Revision of budget and program plans; |
| (e) §200.311 Real property; |
| (f) §200.313 Equipment; |
| (g) §200.332 Fixed amount subawards; |
| (h) §200.413 Direct costs, paragraph (c); |
| (i) §200.430 Compensation—personal services, paragraph (h); |
| (j) §200.431 Compensation—fringe benefits; |
| (k) §200.438 Entertainment costs; |
| (l) §200.439 Equipment and other capital expenditures; |

(1) Prior Approval required to acquire (or improve) with federal funds.
   - (i) Approved Budget
   - (ii) Subsequent Specific Approval

(2) Prior Approval for disposition: Agency Instructions:
   - (i) Keep and pay out fed share
   - (ii) Transfer to Agency and receive non-fed share
   - (iii) Transfer to 3rd Party (chosen by Agency) and receive non-fed share.
Part V: Allowable Costs / Time & Effort Reporting
Subpart B – Prior Approvals Matter from an Allowability Standpoint

The List

Generally not allowable. Cost of housing may be with prior approval.

Allowable only to the extent would have been allowable if incurred after award, and only if obtain prior approval.

(m) §200.440 Exchange rates;
(n) §200.441 Fines, penalties, damages and other settlements;
(o) §200.442 Fund raising and investment management costs;
(p) §200.445 Goods or services for personal use;
(q) §200.447 Insurance and indemnification;
(r) §200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
(s) §200.455 Organization costs;
(t) §200.456 Participant support costs;
(u) §200.458 Pre-award costs;
(v) §200.462 Rearrangement and reconversion costs;
(w) §200.467 Selling and marketing costs;
(x) §200.470 Taxes (including Value Added Tax); and
(y) §200.474 Travel costs.

Includes: Incorporation fees, organizers or management consultants, attorneys, accountants, investment counselors (whether or not employees) in connection with establishment or reorganization of organization. Unallowable unless obtain prior approval.
DATA Act – Where are we now?

Pilot Focus - Federal Grants Track

OMB has engaged HHS to execute the grants-specific portion of the pilot. As the largest grant-issuing agency and owner of Grants.gov and the Payment Management System, HHS is uniquely positioned to provide tactical leadership for the grants pilot, which includes:

• Testing and analysis for consolidating the Federal Financial Reporting process
• Testing and analysis for consolidating SF-SAC and SEFA reporting
• Developing and testing the Common Data Elements Repository Library (C-DER Library) for financial assistance data
• Increasing access to information about the grants lifecycle through the Learn Grants page on grants.gov
UGG / DATA Act Final Thoughts on Transparency and “Flow Down: - Which also means up!

- Federal Agency
- State Agency
  - Prime Subrecipient / Pass-Through Entity

Provider 1
- Subrecipient / Subaward

Provider 2
- Subrecipient / Subaward

Provider 3
- Subrecipient / Subaward AND
- Pass - Through Entity

Provider 4
- Subrecipient / Subaward

Requirements Flow Down

UGG Covers:
- Federal Agency Requirements
- Pass-Through Preaward Requirements
- Ongoing Reporting and Performance Monitoring
- Audit

FFATA Stops Here

DATA Act – Eventually DHHS is the Pilot Entity for Grants

2/14/2017
Uniform Grant Guidance / The Digital Accountability Transparency Act - Resources

- **Council on Financial Assistance Reform (COFAR):**
  Resources about 2 CFR Part 200, including COFAR issued Q&As


- **Technical corrections & Agencies’ implementing regulations – 79 Federal Register 75867 (Dec. 19, 2014):**
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