

Uniform Grant Guidance and Its Impact on ED Programs

Presented at the NAFEPA Spring Conference
March 22, 2015

Sheara Krvaric
Federal Education Group, PLLC
www.fededgroup.com

OMB's Uniform Grant Guidance

What Is It?

- Culmination of multi-year effort to reform federal administrative and grant management rules
- Includes:
 - Administrative rules for federal grant programs (A-89, **A-102/EDGAR**, A-110)
 - Federal cost principles (A-21, **A-87**, A-122)
 - Single audit requirements (A-50, A-133)
- Rules are now located in one part of the Code of Federal Regulations, instead of separate circulars

Application of OMB's Rules to ED Programs

- The Uniform Grant Guidance applies generally to ED grant programs, both:
 - State administered grants (e.g. Title I, Title II, IDEA)
 - Direct grants (e.g. i3, GEAR UP)
- Replaces key parts of EDGAR, specifically Part 80

When Does it Take Affect?

- Applies to new awards after 12/26/2014
 - For most ED grants that means grants beginning on 7/1/15
 - Will apply to any carryover from the 14-15 grants starting 10/1/15
- Applies to any direct grants that are continued/extended after 12/26/14

Why Did OMB Change Its Rules?

- OMB's goals:
 - Ease administrative burdens to focus on performance
 - Strengthen oversight to prevent fraud, waste and abuse

“These modifications are 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.”

Navigating the Grant Management Rules that Apply to ED Programs

- Most of EDGAR still applies:
 - <http://www.ecfr.gov/cgi-bin/text-idx?SID=dff729ca1af18a6d215319cf18fc7d1a&tpl=/ecfrbrowse/Title34/34subtitleA.tpl>
- 2 CFR part 200 (Uniform Grant Guidance):
 - http://www.ecfr.gov/cgi-bin/text-idx?SID=970bb27ba3f45c209bf993a4e2e16b6c&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- 2 CFR part 3474 (ED-specific changes to the Uniform Grant Guidance)
 - http://www.ecfr.gov/cgi-bin/text-idx?SID=970bb27ba3f45c209bf993a4e2e16b6c&tpl=/ecfrbrowse/Title02/2cfr3474_main_02.tpl

EDGAR After the Uniform Grant Guidance

- Part 74 – no longer in effect, superseded by UGG
- **Part 75 – still applies, covers direct grants**
- **Part 76 – still applies, covers state-administered grants**
- **Part 77 – still applies, contains definitions**
- (Part 79 – still applies, but applies to ED)
- Part 80 – no longer in effect, superseded by UGG
- **Part 81 – still applies, covers ED enforcement**

Other Parts of EDGAR

- Part 82 – lobbying restrictions
- Part 84 – drug free workplace
- (Part 85 –removed from EDGAR a while ago, covered suspension and debarment, rules that now reside in 2 CFR part 3485: <http://www.ecfr.gov/cgi-bin/text-idx?SID=970bb27ba3f45c209bf993a4e2e16b6c&node=pt2.1.3485&rgn=div5>)
- Part 86 – drug and alcohol abuse prevention
- Part 97 – protection of human subjects
- Part 98 – student rights in research
- Part 99 - FERPA

Navigating the Uniform Grant Guidance

- The Uniform Grant Guidance is now located in 2 CFR part 200
- Two ED-specific caveats to the Uniform Grant Guidance are located in 2 CFR part 3474
 - ED limited the circumstances under which OMB can, by itself, waive Uniform Grant rules in ED programs
 - ED retained the option to designate entities ‘high-risk’ when imposing specific conditions on a grant

New 2 CFR Part 200

- Subpart A—Acronyms and Definitions (§§ 200.0 - 200.99)
- Subpart B—General Provisions (§§ 200.100 - 200.113)
- Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards (§§ 200.200 – 200.212)

New 2 CFR Part 200 (cont.)

- **Subpart D—Post Federal Award Requirements**
 - STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT (§§ 200.300-200.309)
 - PROPERTY STANDARDS (§§ 200.310 – 200.316)
 - PROCUREMENT STANDARDS (§§ 200.317 – 200.326)
 - PERFORMANCE AND FINANCIAL MONITORING AND REPORTING (§§ 200.327 – 200.329)
 - SUBRECIPIENT MONITORING AND MANAGEMENT (§§ 200.330 – 200.332)
 - RECORD RETENTION AND ACCESS (§§ 200.333 – 200.337)
 - REMEDIES FOR NONCOMPLIANCE (§§ 200.338 – 200.342)
 - CLOSEOUT (§ 200.343)
 - POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES (§ 200.344)
 - COLLECTION OF AMOUNTS DUE (§ 200.345)

New 2 CFR Part 200 (cont.)

- **Subpart E – Cost Principles**

- GENERAL PROVISIONS (§§200.400- 200.401)
- BASIC CONSIDERATIONS (§§200.402-200.411)
- DIRECT AND INDIRECT (F&A) COSTS (§§200.412-200.415)
- SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES (§§200.416 – 200.417)
- SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION (§§200.418 – 200.419)
- GENERAL PROVISIONS FOR SELECTED ITEMS OF COST (§§200.420 – 200.475)

- **Subpart F – Audit Requirements**

Overview of Key Changes

- While there are important changes, many of the core grants management principles remain the same
- Highlighted areas of change/clarification to cover today:
 - Internal control requirements
 - Written procedures to support financial management systems
 - Procurement
 - Cost principles
 - Time and effort
 - Audit thresholds
 - Role of “pass-through” entity (i.e. SEA) in oversight

Internal Controls

(2 CFR §§ 200.303, 200.61, 200.62)

- Grantees and subgrantees have always been expected to have “internal controls” over federal funds
- Now internal control expectations are specifically addressed in Uniform Grant Guidance

Internal Control: Basic Requirement (2 CFR § 200.303)

- Recipients of federal funds must:
 - Take steps to, with reasonable assurance, manage federal funds in compliance with federal rules and grant conditions
 - Comply with federal rules and grant conditions
 - Evaluate and monitor their own compliance
 - Take prompt action to address noncompliance when identified
 - Take reasonable measures to safeguard protected personally identifiable information

What is an Internal Control?

(2 CFR §§ 200.61, 200.62)

- It's not any one thing, rather it's a **process** designed to provide **reasonable assurance** that:
 - Transactions are properly recorded and accounted for in order to:
 - Prepare reliable financial reports
 - Maintain accountability over assets
 - Demonstrate compliance with federal rules and grant conditions
 - Transactions comply with:
 - Federal laws and grant conditions that could have a direct and material effect on a federal program
 - Any other rules identified in the Compliance Supplement
 - Funds, property and other assets are safeguarded against loss (including unauthorized use or disposition)

Who Designs Internal Controls?

- The recipient:
 - COFAR FAQs: “Non-Federal entities and their auditors will need to exercise judgment in determining the most appropriate and cost effective internal control in a given environment or circumstance to provide reasonable assurance for compliance with Federal program requirements.”
- Standards to help guide recipients design effective controls:
 - “Standards for Internal Control in the Federal Government” (Green Book) issued by the Comptroller General
 - “Internal Control Framework” issued by the Committee on Sponsoring Organizations (COSO)
 - Appendix XI, Compliance Supplement Part 6 Internal Control

Written Procedures to Support Financial Management Systems

(2 CFR § 200.303)

- Consistent with past law, recipients of federal funds must use financial management systems that:
 - Identify all federal funds received and spent (including CFDA information, federal award number and year, name of federal agency and name of pass-through entity)
 - Provide accurate, current, and complete financial data to satisfy federal reporting requirements
 - Identify the source and application of funds, supported by source documentation (including obligations, unobligated balances, assets, expenditures, income and interest)
 - Provide effective control and accountability over federal funds
 - Compare expenditures with budget amounts

Financial Management (cont.)

- Two new requirements for written procedures:
 - Written procedures on cash management
 - Written procedures for determining the allowability of costs
 - This is based on a requirement that has existed for non-profits and higher education
 - Typically, policies describe how organization determines if costs are allowable, not what costs are allowable

Rethinking Use of Funds Approaches

- Federal grants can often support a wider range of activities than is commonly known
- Title I is often limited to reading and math
 - But can support many subjects like science, social studies, art
- Title II is often limited to out-of-classroom professional development or class size reduction
 - But can support many human capital initiatives such as job-embedded supports and teacher advancement
- IDEA, Part B is often limited to discrete IEP services
 - But can support comprehensive initiatives like UDL and screening and progress monitoring instruments

Common “Missed Opportunities”

- Restrictions that limit the schoolwide model
- Failure to explore the full range of permissible Title II activities
- Underutilizing the “coordinated early intervening services” set-aside under IDEA, Part B

Schoolwide Opportunities

- At the **school level schoolwide program schools** may use Title I to support any reasonable activity:
 - To upgrade the school's educational program,
 - Consistent with the school's needs, and
 - Consistent with the schoolwide plan

This is true whether the school/LEA consolidates funds or not

Use of Funds Options in Schoolwide Schools

- Examples of permissible uses of Title I in a schoolwide program school:
 - Upgrade the curriculum for the entire school
 - Implement an early warning system
 - Extend the school day or school year
 - Reorganize class schedules to increase teacher planning time
 - Revamp the school's discipline process
 - Hire additional teachers
 - Reorganize classes to promote personalized learning
 - Implement career academies
 - Implement school safety programs

Common Restrictions on the Schoolwide Model

- Requiring schools to maintain a list of struggling students and/or requiring Title I services to be targeted only to struggling students
 - Statute permits schools to serve all students (e.g. whole school PBIS system)
- Requiring schools to focus only on whole school interventions that touch every student
 - Statute permits schools to focus on specific needs (e.g. 9th grade academy)
- Relying on traditional supplanting tests
 - Statute calls for an alternative supplemental funds test

Title II Opportunities

- ED pushing for more effective Title II spending
- ED's "wish list"
 - Meaningful needs assessments based on educator surveys and evaluation results, classroom observations, student mastery of standards, professional learning communities and performance tasks, etc.
 - Closer link between needs assessment and spending
 - Professional development that:
 - Supports college- and career-ready standards
 - Is evidence-based and is intended to have a substantial, measurable, and positive impact
 - Is based on input from teachers and principals

Current Title II Spending

(from ED survey)

Activity	Districts allocating Title II, Part A funds, %
Hiring highly qualified teachers to reduce class size	46.7
Professional development activities for principals and superintendents	29.0
Professional development activities for teachers and paraprofessionals	64.2
Initiatives that promote professional growth and reward quality teaching	19.9
Programs to recruit and retain highly qualified personnel	13.9
Teacher testing in academic areas	7.6
Private school professional development activities	23.2
Tenure reform	0.3
Administrative expenditures	35.1
Combined with other Federal program funds under the Rural Education Achievement Program (REAP)	6.5
Transferred to another title through ESEA funding transferability provisions	7.7

Permissible Title II Activities

- Recruiting/retaining teachers, principals, and in some cases school counselors, school social workers, and school psychologists
- Financial incentives for teachers in shortage areas
- Financial incentives for teachers or principals with a record of success in helping low-achieving students/schools
- Professional development for teachers, including job-embedded supports
- Professional development for principals and superintendents
- Teacher mentoring programs
- Induction supports for new teachers or principals
- Tenure reform
- Merit pay
- Teacher advancement initiatives
- Class size reduction

IDEA, Part B Opportunity: Coordinated Early Intervening Services

- Option to set-aside up to 15% of IDEA, Part B grant to provide services to non-disabled students struggling to succeed in the general education environment
 - Set-aside is mandatory in certain circumstances
- Underutilized tool to support struggling students
 - Less than 15% of LEAs exercise this option (*National Assessment of IDEA Overview, 2011*)

Procurement

(2 CFR §§ 200.318 – 200.326)

- Potentially an area of big change, but clarification still needed
- Previously, federal government (generally) deferred to state/local procurement law
- Now, LEAs must follow Uniform Grant Guidance as well

Procurement: General Standards

(2 CFR § 200.318)

- Must maintain oversight to ensure contractors perform in accordance with terms conditions of contract/PO
- Must maintain written standards of conduct covering:
 - Conflicts of interest
 - Performance of employees engaged in the selection, award, and administration of contracts
- Must avoid acquisition of unnecessary or duplicative items

General Procurement Standards (cont.)

- Must award contracts only to responsible contractors with ability to perform successfully
- Must maintain records sufficient to detail the procurement history
- Encouraged to reduce costs where feasible by:
 - Entering into intergovernmental/inter-entity agreements for common or shared goods or services
 - Using federal excess/surplus property if feasible
- “Time and materials” contract only if other contract types aren’t appropriate and the amount is capped

Procurement: Competition

(2 CFR § 200.319)

- Consistent with past law, default is full and open competition
- Uncompetitive practices include:
 - Placing unreasonable requirements on firms in order to qualify to do business
 - Requiring unnecessary experience and excessive bonding
 - Noncompetitive pricing practices between firms
 - Noncompetitive contracts to consultants on retainers
 - Organizational conflict of interest
 - Specifying only a brand name
 - Arbitrary action in the procurement process
- Limits on geographic preferences
- Limits on prequalified lists

Written Procurement Procedures

(2 CFR § 200.319(c))

- Must have written procedures for procurement transactions that ensure solicitations:
 - Incorporate a clear and accurate description of technical requirements
 - Identify all requirements offerors must fulfill and all other factors to be used in evaluating bids/proposals

Methods of Procurement

(2 CFR § 200.320)

- **Micro-purchases (less than \$3,000)**
 - Can be awarded without soliciting competitive quotes if the price is reasonable
- **Small purchase procedures (less than \$150,000)**
 - Obtain price or rate quotes from an adequate number of qualified sources
- **Sealed bids**
 - Solicit bids and award firm fixed price contract
- **Competitive proposals**
 - Solicit RFP and award either fixed price or reimbursement contract

Methods of Procurement (cont.)

- Noncompetitive proposals: soliciting a proposal from one source is ok if:
 - The item is only available from one source
 - There is a public emergency
 - The federal awarding or pass-through authorizes in response to written request
 - No adequate competition after soliciting a number of sources

Cost Principles

(2 CFR, Part 200, Subpart E)

- For the most part, core principles have stayed the same
- New “policy guide”
 - Recipients are responsible for efficient and effective administration of federal awards through sound management practices
 - Recipients are responsible for administering federal awards consistent with program objectives and grant conditions
 - Recipients have the primary responsibility for employing whatever organization and management techniques may be necessary to administer federal funds based on their unique combination of staff, facilities and experience
 - Applying federal cost principles should not require significant changes to internal accounting policies and practices

Cost Principles (cont.)

- Uniform Grant Guidance continues to require that costs charged to federal funds be **necessary and reasonable**
- This is an important lever for focusing on performance – questions to consider:
 - Is it clear how the proposed cost relates to a valid educational (or administrative) decision?
 - Will the cost advance the purpose of program?
 - Do schools know how to use the item or position? Do they have the capacity to use it? Can staff explain how the item will advance the program?
 - Would the public understand the cost?
 - Are there data/research/best practices that justify the cost?

Time and Effort

(2 CFR § 200.430)

- Potentially an area of significant change, but clarification still needed
- Time certifications (semi-annual and PARs) are no longer required if an entity has records that accurately reflect the work performed and meet the following requirements:
 - Are supported by a system of internal controls that provide reasonable assurance of accuracy
 - Are incorporated into the entity's official records
 - Reasonably reflect the employee's total activity
 - Encompass all activities the employee works on
 - Comply with the entity's established policies and practices
 - Support the distribution of wages among activities or cost objectives

Time and Effort (cont.)

- Records may reflect time in percentages
 - (Although entities must still comply with any DOL requirements to track employee hours)
- Entities may use budget estimates as an interim accounting tool if:
 - The estimates are reasonable approximations of work performed
 - Estimates are adjusted when there are significant changes in the employee's work
 - Charges are adjusted as needed (no timeline specified)

Time and Effort (cont.)

- State and local governments are eligible for substitute processes or systems in place of, or in addition to, the records described on slide 38
- For example:
 - Random moment sampling
 - Rolling time studies
 - Case counts
 - Other quantifiable measures of work performed

Time and Effort (cont.)

- **Special flexibility for braided/blended projects**
 - Non-federal entities may submit performance plans to incorporate funds from multiple federal awards and account for their combined use based on performance-oriented metrics
 - Must be approved by the appropriate federal agency
 - The federal agency must get a waiver from OMB

Single Audit Thresholds

(2 CFR Part 200, Subpart F)

- New threshold for obtaining an audit is \$750,000
- New threshold for reporting questioned costs is \$25,000
- Federal agencies required to engage in cooperative audit resolution

Role of SEA in Oversight

(2 CFR § 200.331)

- In state-administered programs, SEA acts as a “pass-through” entity
- Pass-through entities must:
 - Issue subaward notices that include certain information
 - Evaluate each subrecipient’s risk of noncompliance – risk factors may include:
 - Prior experience with grant program(s)
 - Previous audits
 - New personnel or substantially changed systems
 - Federal monitoring results
 - Consider imposing **specific conditions** on the subrecipient’s grant if appropriate
 - **Monitor** subrecipients to ensure compliance and performance

Oversight and Monitoring (cont.)

- Pass-through entities must (cont.)
 - Issue management decisions for single audit findings
 - Verify every subrecipient obtains a single audit
 - Consider whether the pass-through must adjust its own record in light of subrecipient audit or monitoring
 - Consider taking enforcement actions to address noncompliance

Oversight (cont.)

- Monitoring must include:
 - Reviewing financial and program reports
 - Ensuring subrecipients take corrective actions when the pass-through identifies a deficiency
- Monitoring activities must be tailored to the subrecipient's level of risk
- Monitoring activities may include:
 - Training and technical assistance
 - On-site reviews
 - Agreed-upon procedures engagements (mini-audits)

Oversight (cont.)

- Specific conditions located at § 200.207
 - Pass-throughs are no longer required to put a subrecipient on high-risk to impose conditions on the subrecipient's grant, but ED retained the option to use the term high risk
 - Now may impose conditions if:
 - There are concerns about the subrecipient's financial stability, management systems or past history of performance
 - There is a history of noncompliance
 - There is a history of failure to meet performance goals
 - The subrecipient is not otherwise responsible
 - Conditions can include technical assistance, additional prior approvals, or extra reporting and monitoring
 - Must be in writing, and must be subject to reconsideration

Omniscircular Resources

- 2 CFR Part 200: http://www.ecfr.gov/cgi-bin/text-idx?SID=1800b6f1fa208824de1219ba6399a7ef&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- ED technical assistance documents: <http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>
- Prior draft of Uniform Grant Guidance (with helpful background): <http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>
- OMB technical assistance documents: http://www.whitehouse.gov/omb/grants_docs

Disclaimer

This presentation is intended solely to provide general information and does not constitute legal advice. Attendance at the presentation or later review of these printed materials does not create an attorney-client relationship with Federal Education Group, PLLC. You should not take any action based upon any information in this presentation without first consulting legal counsel familiar with your particular circumstances.