

3/15/14 Draft



**Summary of the Office of Management and Budget's Uniform Guidance for Federal Grants and its
Impact on Federal Education Programs**

Prepared for the Council of Chief State School Officers' Federal Funds Working Group

March 2014

What is OMB's Uniform Guidance for Federal Grants?

On December 26, 2013 the federal government's Office of Management and Budget (OMB) released guidance that reforms many of the rules governing federal grant programs, including grants awarded by the U.S. Department of Education. This guidance is sometimes referred to as the "omnicircular" or "supercircular".¹

OMB's new guidance streamlines requirements from eight OMB circulars² into one document, and reforms:

- The rules for managing federal funds, such as **time and effort reporting**, how to **manage property** purchased with federal funds, **financial management standards**, and **document retention** requirements.
- The **federal cost principles** that guide whether an activity can be supported with federal funds.
- The **audit rules** for federal grant programs.

By collapsing various grant-related rules into one document OMB aims to reduce duplication, decrease burden, and increase transparency. The new guidance will not be implemented by federal agencies, including the U.S. Department of Education, until **December 26, 2014**; until then, current rules and OMB Circulars apply.

Why did OMB Issue Uniform Guidance for Federal Grants?

The goal of the Uniform Guidance is to:

1. Streamline guidance for federal awards to **ease administrative burden**, and
2. Strengthen oversight of federal funds to **reduce risks of waste fraud and abuse**.³

The Uniform Guidance is part of a larger federal effort to more effectively focus federal resources on improving performance and outcomes⁴ and to make "government more accountable to the American

¹ 78 Fed. Reg. 78,590 (Dec. 26, 2013), available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>.

² The eight circulars superseded and streamlined by OMB's Uniform Guidance, include: **OMB Circular A-89**, Catalog of Federal Domestic Assistance, **OMB Circular A-102**, Grants and Cooperative Agreements With State and Local Governments (codified as part of the Education Department General Administrative Regulations (EDGAR)), **OMB Circular A-110**, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (codified as part of the EDGAR), **OMB Circular A-21**, Cost Principles for Educational Institutions, **OMB Circular A-87**, Cost Principles for State, Local and Indian Tribal Governments, **OMB Circular A-122**, Cost Principles for Non-Profit Organizations, **OMB Circular A-50**, Audit Followup, **OMB Circular A-133**, Audits of States, Local Governments and Non-Profit Organizations.

³ 78 Fed. Reg. 78,590.

people while eliminating requirements that are unnecessary and reforming those requirements that are overly burdensome.”⁵

What are the Most Significant Reforms for Federal Education Programs?

Below is an overview of some of the most significant changes in OMB’s Uniform Guidance and a description of how those changes might impact U.S. Department of Education (ED) programs.

Time and Effort Requirements

Currently, employees paid with federal funds must sign specific “time and effort” certifications detailing the time they spend on federal programs. Under the new rules:

- **Certifications are not required provided that the entity generates accurate records of the work employees perform.**⁶ Among other things, the records must be backed by systems with sufficient internal controls to ensure accuracy, and must also account for 100% of an employee’s time.⁷
- Federal agencies may approve “**substitute processes or systems**” in lieu of, or in addition to, the records described above.⁸
- Federal agencies may also “**approve alternative methods of accounting for salaries and wages based on achievement of performance outcomes**, including in approved instances where funding from multiple programs is blended to more efficiently achieve a combined outcome.”⁹

Potential Impact of Time and Effort Changes on Education Programs

OMB’s time and effort reforms have the potential to:

- **Reduce administrative burdens and related staff time** by eliminating the need to execute and maintain time and effort certifications for entities with systems that meet certain requirements.
- **Incentivize state and local education agencies to focus on building accurate HR and payroll systems** by excusing entities with robust systems from traditional time and effort certification requirements.
- **Make it easier for state and local education agencies to implement comprehensive programs with multiple funding sources** by making time and effort tracking more flexible.

⁴ 78 Fed. Reg. 78,590 (“These modifications are a key component of a larger Federal effort to more effectively focus Federal resources on improving program performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders.”)

⁵ 78 Fed. Reg. 78,591.

⁶ See § 200.430(i)(1), (2) & (8) at 78 Fed. Reg. 78,647-48.

⁷ See § 200.430(i)(1)(i-x) at 78 Fed. Reg. 78,647.

⁸ See § 200.430(i)(5) at 78 Fed. Reg. 78,648.

⁹ 78 Fed. Reg. 78,592. See also § 200.430(i)(7) at 78 Fed. Reg. 78,648.

“Specific Conditions” Option

Under current rules, states can impose conditions on a subrecipient’s grants by designating the subrecipient a “high risk” entity.

OMB’s Uniform Guidance eliminates the need to make a formal “high risk” designation. Instead, states are required to review each subrecipient’s risk level and consider whether “specific conditions” are appropriate when a subrecipient is at risk of noncompliance.¹⁰

States that wish to impose specific conditions must explain, in writing, what the conditions are, why they are necessary, when and how they will be removed, and how the subrecipient can request reconsideration of the conditions.¹¹

Potential Impact of “Specific Conditions” Option on Education Programs

The process of designating a local education agency (LEA) “high risk” in order to impose conditions on the LEA’s grant award has sometimes discouraged states from exercising this oversight authority. By removing the “high-risk” status requirement, it may be easier to exercise oversight authority narrowly tailored to each subgrantee’s specific risks.

For example, it appears a state could require, through specific conditions, a school district to obtain technical assistance if the district repeatedly fails to meet its annual objectives for student performance.¹² Or, the state might require a closer review of the district’s grant spending to ensure its activities are necessary and reasonable for meeting program goals.¹³ Ultimately, the extent to which states can use the “specific conditions” authority discussed in OMB’s Uniform Guidance will depend on how ED interprets this option.

Additionally, in light of OMB’s goals of reducing burdens and fostering performance, it would make sense to craft special conditions carefully, and narrowly, to avoid unnecessary barriers for subrecipients.

Subrecipient Monitoring Requirements

States are responsible for monitoring subgrantee compliance with federal rules.¹⁴

Currently, federal law requires states to “manage the day-to-day operations of . . . subgrant activities,” but does not describe how the state should do so.

OMB’s Uniform Guidance clarifies the scope of this monitoring responsibility. Now, states must evaluate each subrecipient’s risk of noncompliance and monitor the subrecipient accordingly.

¹⁰ See § 200.331(c) at 78 Fed. Reg. 78,623, referring to § 200.207 at 78,623.

¹¹ See § 200.207(b) at 78 Fed. Reg. 78,623.

¹² See § 200.207(a)(5) at 78 Fed. Reg. 78,623.

¹³ See § 200.207(a)(6) at 78 Fed. Reg. 78,623.

¹⁴ See § 200.331(d) at 78 Fed. Reg. 78,636. This is consistent with current rules in 34 CFR § 80.40.

The new rules make clear that monitoring can encompass a range of activities such as training, technical assistance, reporting, and on-site reviews.

Potential Impact of Subrecipient Monitoring Changes on Education Programs

Traditionally, most states have interpreted “monitoring” to mean a standalone process through which the state conducts a back-end compliance review of an LEA’s federal programs. Under the new rules, OMB makes clear “monitoring” activities can happen throughout the grant cycle, and states have substantial discretion to oversee different aspects of federal program implementation through different processes.

OMB’s approach also discourages “one-size-fits-all” monitoring systems. Instead, states have the flexibility to tailor their monitoring processes to each entity’s level of risk. This may help reduce burden at both the state and local level.

Audit Findings and Audit Resolution Requirements

OMB’s Uniform Guidance makes a number of changes to the “single audit” requirements, including:

- Raising the threshold for who is required to obtain an audit from \$500,000 to \$750,000¹⁵ (narrowing the entities that have to obtain a single audit)
- Raising the threshold for questioned cost from \$10,000 to \$25,000¹⁶ (narrowing the instances when auditors have to report questioned costs)

OMB also requires federal agencies to use cooperative audit resolution mechanisms to resolve audit findings.¹⁷ This is consistent with other changes OMB made to focus more on long-term solutions to noncompliance rather than punitive sanctions.¹⁸

Potential Impact on Audit Findings and Audit Resolution Changes to Education Programs

The audit changes are designed to focus audit resources on the issues that cause the most risk for federal programs. This may be an opportunity for states to reorient their own oversight and enforcement efforts in a manner consistent with their policy objectives.

Other Changes

There are other important changes contained in the Uniform Guidance, including, but not limited to changes regarding:

¹⁵ See § 200.501 at 78 Fed. Reg. 78,662.

¹⁶ See § 200.516 at 78 Fed. Reg. 78,669.

¹⁷ See § 200.513(c) at 78 Fed. Reg. 78,667.

¹⁸ See e.g. § 200.338 at 78 Fed. Reg. 78,637 (requiring federal and pass-through agencies to consider whether noncompliance can be resolved through grant conditions before taking more serious enforcement actions).

- Internal control requirements (throughout the guidance document, the new rules require entities to comply with a “stringent framework of internal control objectives and requirements”¹⁹)
- Indirect cost requirements
- Requirements to safeguard personally identifiable information
- New clarifications regarding when computing devices can be classified as supplies or equipment
- Procurement requirements
- Document retention requirements

What are the next steps in the process?

While OMB’s guidance holds the promise of flexibility, its impact on federal education programs will ultimately depend on how the U.S. Department of Education (ED) interprets, codifies, and enforces the new rules.

ED must develop regulations to implement OMB’s reforms, and while OMB directed federal agencies to draft regulations consistent with OMB’s policy goals, ED is primarily responsible for determining how the new rules will apply to education programs. ED is expected to submit draft regulations to OMB by June 26, 2014; and ED is expected to implement the regulations on December 26, 2014.²⁰ It is still unclear when the public will have an opportunity to comment on the draft regulations before they are finalized.

The impact of OMB’s guidance on federal education programs will also depend, in part, on state and local education agencies. OMB’s guidance represents a shift in how OMB approaches federal grant programs. This likely will require state and local agencies to rethink and take action with regard to their own systems, policies, and procedures to ensure they can take advantage of available federal flexibilities.

¹⁹ 78 Fed. Reg. 78,602.

²⁰ See § 200.110 at 78 Fed. Reg. 78,621; see also U.S. Department of Education, “Communication for ED employees and grantees on Uniform Guidance” at <http://www2.ed.gov/about/offices/list/ocfo/uniform-guidance.doc>, and ED blog post at: <http://www.ed.gov/edblogs/ovae/2014/03/07/the-omb-super-circular-is-now-the-omni-circular/>.