

May 13, 2015 email from U.S Department of Education Answering Uniform Grant Guidance Questions

From: Uniform Grant Guidance Implementation
<UniformGrantGuidanceImplementation@ed.gov>
Sent: Wednesday, May 13, 2015 11:39 AM
To: Sheara Krvaric; Uniform Grant Guidance Implementation

Subject: RE: Questions re: Uniform Grant Guidance

Hi Sheara,

We apologize for the delayed response to your questions. Below are answers to some of your questions. We are consulting with OMB regarding the other questions to ensure that our response is consistent with other agency's policies. We hope that these responses to your questions are helpful and we will provide you further information as soon as we have received OMB's guidance.

1. Standards for Financial Management, Inventory Management and Procurement (2 CFR §§ 200.302, 200.313 and 200.317-326)

Question: Please confirm that LEAs [local education agencies] receiving pass-through funds from their SEAs (that is, state-administered program funds such as Title I, Title II or IDEA) are required to follow the:

- Financial management rules in § 200.303(b)(1-7),
- Inventory management rules in § 200.313(c)-(e), and
- Procurement rules in § 200.318-326.

Response:

The requirements regarding financial management, equipment, and procurement apply to new awards made to local governments such as LEAs on or after December 26, 2014. The Department has established a technical assistance website on ED.gov that provides ED-specific FAQs and other helpful information which can be reached at the following address: <http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>. As noted in those FAQs, the new requirements are based on OMB Circulars A-102 and A-110, which were implemented by the Department on former parts 80 and 74, respectively. We expect to have more guidance on these transition issues in the near future – including a webcast regarding the new procurement requirements – so we recommend that you return to our technical assistance website on occasion to learn more about the latest we have available. We encourage school districts to review their procurement procedures for compliance with the new requirements and make any needed changes as soon as possible.

2. Written Allowability Procedures (2 CFR 200.302(b)(7))

Question: What information does ED expect LEAs to include in their written procedures for determining the allowability of cost?

Response:

The requirement in 2 CFR 200.302(b)(7) requires that non-Federal entities establish procedures for determining the allowability of costs, not that non-Federal entities establish a list of products and services that are allowable. We do not think any entity could establish a list of pre-determined allowable costs because one of the main considerations in the allowability determination is whether the cost serves an objective of the grant or subgrant that would fund the cost. Because each project and program is unique, a cost that might be allowable under one program would not be allowable under another program. Thus, we agree that the practice you describe as being used by most non-profit

organizations and IHEs – that they have policies that describe how the entity will determine if a cost is allowable – is the correct practice under §200.302(b)(7). The procedures do not need to be complex.

3. Standards for Documentation of Personnel Expenses (2 CFR 200.430(i))

Question A: Can ED provide examples of records that would satisfy the new standards for documenting personnel expenses in section 200.430(i) of the UGG?

Question B: Is it correct that no prior approval is needed before an SEA or LEA uses the standards set out in section 200.430(i)(1) to document personnel expenses?

Response:

Q A: The Department does not have indirect cost cognizance for any institution of higher education so we do not have any examples of systems that would meet the documentation requirements of those entities. However, we hope to have guidance in the next few months regarding substitute time and effort systems that we will post on the Department's technical assistance website.

Q B: You are correct that a State or local government does not need to get prior approval to use a time and effort system that meets the standards in §200.430(i)(1). The Department has a team that is working on outreach activities to assist grantees is developing substitute time and effort systems that meet the standards described in §200.430(i)(5), which we would expect would reduce burden on State and local governments significantly. We recommend that you return to our technical assistance website so you can see when we have posted more guidance on this subject. The website for that guidance is <http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>.

Thank you.

From: Sheara Krvaric
Sent: Monday, March 02, 2015 1:32 PM
To: Uniform Grant Guidance Implementation
Subject: Questions re: Uniform Grant Guidance

Over the last several months, a few recurring questions about the Uniform Grant Guidance (UGG) have come to us from states and school districts. While we know ED is planning to issue guidance on certain UGG topics in the next few months, the issues below are currently affecting state and local operations, so prompt clarification from ED on these issues would be very helpful. We are copying OSS and OSEP on this email because of the implications the UGG has on the programmatic uses of funds.

Thank you so much. If you have any questions please feel free to contact me.

Standards for Financial Management, Inventory Management and Procurement (2 CFR §§ 200.302, 200.313 and 200.317-326)

Question: Please confirm that LEAs receiving pass-through funds from their SEAs (that is, state-administered program funds such as Title I, Title II or IDEA) are required to follow the:

- Financial management rules in § 200.303(b)(1-7),
- Inventory management rules in § 200.313(c)-(e), and
- Procurement rules in § 200.318-326.

We ask this question because applying these rules to LEAs in state-administered programs would be a change from long-standing federal policy, particularly with regard to procurement.

In the past, ED took the position that LEAs should follow state and local financial management, inventory management, and procurement rules in state-administered programs. This was reflected in several different ED guidance documents, and based on OMB policy. (See Preamble to the 1988 A-102 Common Rule, 53 Fed. Reg. 8036 regarding “flow-down” funds.)

The UGG appears to end OMB’s prior policy, but it would be helpful to confirm this.

One-Year Grace Period for Procurement Rules (2 CFR § 200.110)

Question: Are LEAs eligible for the one-year grace period on the UGG’s procurement rules?

The UGG offers a one-year grace period before its new procurement rules take effect; however, there is a disconnect within the UGG about who this applies to.

- The UGG’s preamble says the grace period applies to nonprofit organizations and institutions of higher education (IHEs). (79 Fed. Reg. 75872)
- The UGG’s actual regulatory text, however, makes the grace period available more broadly to “non-Federal entities.” This would appear to include LEAs. (2 CFR 200.110(a), see also 79 Fed. Reg. 75873)

ED’s FAQs on the UGG implies the grace period is only available to IHEs and nonprofits, not to LEAs. (See Q&A 10, <http://www2.ed.gov/policy/fund/guid/uniform-guidance/ed-faqs.pdf>, accessed on February 24, 2015)

As indicated above, applying the UGG’s procurement rules to LEAs in state-administered programs will be a significant change for many LEAs since it is a departure from prior Federal policy. Therefore, many LEAs will need the one-year grace period to come into compliance with UGG requirements.

Currently, many LEAs follow (and are legally required to follow) state and local procurement laws when purchasing goods or services, even those purchased with federal funds. State and local procurement rules establish their own methods of procurement and their own procurement thresholds, which may be different from the UGG’s. State and local procurement rules may also offer certain exceptions that are not available under the UGG. For example, some state/local procurement rules do not require LEAs to competitively bid for certain types of professional services, an exception that may not be consistent with the UGG, depending on the circumstances.

In addition, many state/local procurement rules do not require LEAs to negotiate profit levels. This requirement will be a significant change for many LEAs – particularly in the context of large professional development contracts, and curriculum and technology purchases, where the overall price is negotiated, but profit is typically not negotiated separately. This change will require thoughtful consideration, and likely additional guidance about ED’s expectations for how this should be accomplished in the education sector.

LEAs will need time to assess how the UGG rules differ from their state or local rules, and what changes LEAs might need to make to come into compliance with both the UGG and their state/local rules. It appears the regulatory text supports this additional time (extending the grace period to “non-Federal entities” under 2 CFR 200.110(a)), but confirmation of this would be helpful.

Written Allowability Procedures (2 CFR 200.302(b)(7))

Question: What information does ED expect LEAs to include in their written procedures for determining the allowability of cost?

The UGG now requires non-Federal entities to develop, as part of their financial management systems, “written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.”

This requirement comes from former OMB Circular A-110, the set of rules that applied to nonprofits and IHEs. It is our understanding that under the prior rules such organizations described how they would determine if a cost was allowable – that is, the process for reviewing costs to ensure they are allowable – but nonprofits and IHEs typically did not develop a list describing what specific activities are allowable under a given federal program, in part because allowability determination are often fact-specific.

Many in the field are confused about what this requirement means, and have the impression it requires them to develop a list of specific activities that can be supported with each federal funding source. We do not believe a static list of approved costs is what the UGG requires, and are concerned this interpretation would artificially restrict the use of funds and also hinder coordination across federal programs.

Clarification of ED’s interpretation of this requirement would be enormously helpful to alleviate confusion.

Standards for Documentation of Personnel Expenses (2 CFR 200.430(i))

Question 1: Can ED provide examples of records that would satisfy the new standards for documenting personnel expenses in section 200.430(i) of the UGG?

Question 2: Is it correct that no prior approval is needed before an SEA or LEA uses the standards set out in section 200.430(i)(1) to document personnel expenses?

The UGG requires non-federal entities to base salaries and wages on “records that accurately reflect the work performed.” These records must meet certain criteria, and if they do, then no additional documentation is needed (such as semi-annual certifications or personnel activity reports (PARs)).

It is our understanding these standards are based largely on former OMB Circular A-21, which applied to IHEs. Are there examples of compliant IHE records that could help inform K-12 entities?

Also, ED’s FAQs, specifically Q&A 22 and 23, discuss obtaining ED’s approval for “alternative” or “new” ways of tracking time and effort. (See <http://www2.ed.gov/policy/fund/guid/uniform-guidance/ed-faqs.pdf>, accessed February 24, 2015) We believe FAQs 22 and 23 mean that prior approval is required only for requests for substitute systems and processes as discussed in 200.430(i)(5), and does not apply to the process described in 200.430(i)(1). Is this understanding correct?

Sheara Krvaric
Federal Education Group, PLLC
888 16th St, NW Suite 800
Washington, DC 20006
WEBSITE: www.fededgroup.com
TWITTER: www.twitter.com/fededgroup

