



## Applying OMB's Uniform Grant Guidance to International Activities

Significant reforms are coming for government agencies, nonprofits, and higher education institutions applying for and receiving federal grants and cooperative agreements. This includes foreign public entities and international organizations that receive funding from the United States, and domestic organizations with overseas activities or projects under federal grants.

The Office of Management and Budget's (OMB) Uniform Grant Guidance (previously referred to as the Super Circular or Omni Circular) promises to increase competition for grant funds, add new administrative processes, change long-established cost principles, and impact the audits of organizations receiving federal awards.

*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (UG) applies to all grants, or incremental funding to current grants, made to nonprofits, colleges and universities, and state and local governments on or after December 26, 2014.

This white paper looks at some of the key changes for organizations that receive federal grants to fund international projects or activities.

If your organization receives federal grants that fund international projects or activities, Uniform Grant Guidance will affect your grant management procedures.

The UG eliminates duplicate language found in eight OMB circulars (A-21, A-87, A-110, A-122, A-89, A-102, A-133, and A-50) that previously applied to federal awards. Previous policies were often inconsistent across different types of entities. The OMB says it will now be able to better manage approximately \$600 billion awarded annually for grants and other financial assistance.

### Changes for organizations with international activities

#### **Foreign public entities and organizations**

Federal awarding agencies have the option to apply portions of the new UG to foreign public entities and foreign organizations receiving grants. In addition, a pass-through entity in the United States will be pushing these regulations down to its sub-recipients, and monitoring them under the UG. This includes sub-awards with foreign public entities and foreign organizations.

Foreign public entities are defined as foreign governments or entities owned (in whole or in part) or controlled by a foreign government. They can also be a public international organization entitled to privileges, exemptions, and immunities under the *International Organizations Immunities Act*.

#### **Foreign organizations are any of the following:**

- A public or private organization located in a country other than the United States that is subject to the laws of the country in which it is located, regardless of the citizenship of project staff or the place of performance.
- A private, nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public.
- A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its home country, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, or a church, synagogue, mosque, or similar entity organized primarily for religious purposes.
- An organization located in a country other than the United States not recognized as a foreign public entity.

#### **Administrative requirements**

The new guidance includes significant reforms to current administrative requirements (formerly covered by circulars A-102, A-110, and A-89). Some of the reforms may affect an organization as they relate to international activities and projects:



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**Organizational conflict of interest** Nonfederal entities must maintain conflict of interest policies to protect the integrity of procurements under federal awards and sub-awards. Under the UG, if the nonfederal entity has a parent, affiliate, or subsidiary organization (that is not a state, local government, or Indian tribe), the nonfederal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflict of interest means that, because of relationships with a parent company, affiliate, or subsidiary organization, the nonfederal entity is unable (or appears to be unable) to be impartial in conducting a procurement action involving a related organization.

Many entities are structured with a separate legal entity that operates its foreign projects. It is unclear at this time how these organizational conflict of interest rules will be applied when a recipient in the United States shares employees with its wholly controlled foreign entities.

**Procurement** The UG's expanded regulations on procurement stress that all procurement transactions must be conducted in a manner providing full and open competition. Entities must ensure that all prequalified lists of persons, firms, or products are current and include enough qualified sources to maximize open and free competition. In addition, the rules prohibit the use of

state or local geographical preferences in the evaluation of bids or proposals (except in cases where federal statutes expressly mandate or encourage geographic preference).

Entities will now be required to use one of five procurement methods outlined in Section 200.320:

- Micropurchases
- Small purchases
- Sealed bids
- Competitive proposals
- Noncompetitive proposals

In addition, entities must keep records for all procurements made under the federal award, regardless of the method chosen. This is important when acquiring goods and services for foreign activities, whether the purchase is in the United States or a foreign country, to ensure compliance with the new requirements.

**Sub-awards** When determining whether a relationship is a sub-award with a sub-recipient or a contract with a contractor (previously referred to as vendors), it is essential to look at the substance of the relationship rather than the form or terminology used in the agreement.

A sub-recipient is a nonfederal entity that receives a sub-award from a pass-through entity to carry out part of a federal program. A contractor is an entity that receives a contract for goods or services needed to carry out a project or program under a federal award.

Regulators believe that a pass-through entity might characterize its relationship as being with a contractor rather than a sub-recipient to avoid the required monitoring, allow for recovery of additional indirect costs, award “fee or profit” to contractors, and for other reasons. It is important for these relationships to be correctly categorized to avoid consequences like returning or loss of future funding.

The UG places more responsibility for the monitoring of sub-recipients on pass-through entities. This can be especially challenging, given the geographical differences and the fact that foreign sub-recipients often do not understand (or are new to) the extensive federal

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compliance requirements. Remember that prime awardees are held accountable for sub-recipient compliance.

Sub-awards must contain information (as prescribed in Section 200.331) requiring pass-through entities to evaluate the sub-recipient’s risk of noncompliance, and to monitor the sub-recipient by reviewing financial and programmatic reports, verifying that an audit is being performed if necessary, and issuing a management decision on audit findings. Additional monitoring tools (depending on the risk assessment) include providing training and technical assistance, on-site review of program operations, and arranging for agreed-upon procedures.

Fixed-price sub-awards may now be used with sub-recipients. With these awards, payments are based on meeting requirements that are specified in the project scope, and accountability is based on performance and results. The federal award amount is negotiated using the cost principles (or other pricing information) as a guide, and there is no review of the actual costs incurred in performance of the award. These sub-awards can only be used if the total cost is under \$150,000 and the prime awardee receives prior written approval from the awarding agency.

#### **Allowable costs**

The new guidance includes significant reforms to cost principles (formerly circulars A-21, A-87, and A-122).

**Administrative and clerical salaries** Administrative costs can be charged directly when there is prior approval and the costs are specifically allocated to one award. Administrative and clerical staff salaries are normally treated as indirect costs, but direct charging may be appropriate if:

- The services are integral to a project or activity
- Individuals involved can be specifically identified with the project or activity
- Costs are explicitly included in the budget or have prior written approval of the awarding agency
- The costs are not also recovered as indirect costs

Just because foreign activity may require administrative assistance does not mean those costs can automatically be directly charged. It is important to document the amount of administrative and clerical time spent on the project.

**Severance payments to foreign nationals** Severance payments to foreign nationals employed by a nonfederal entity outside the United States are only allowed if they are necessary for the performance of federal programs and are approved by the federal awarding agency. The



prohibition applies if the amount of the payment exceeds the customary or prevailing practices for the U.S.-based nonfederal entity, or if severance payments are due to the termination of the foreign national as a result of the closing of, or curtailment of, activities by the nonfederal entity in that country.

Foreign law and custom may provide severance payments to foreign nationals employed abroad on international projects, or employees are paid when a project ends, or organizations may have foreign human resources policies that conflict with the UG. These customs and policies need to be reviewed. Severance paid out under them may not be allowed.

**Exchange rates** Fluctuating exchange rates can complicate international activities. Transactions may cause awardees to end up with more or less foreign currency and expenses than expected. Award, drawdown, wire transfer, expenditures, and invoice dates are among the variables that can affect the final exchange rate.

The UG allows cost increases based on fluctuations in the exchange rates, subject to the availability of funding, and need prior approval by the federal awarding agency. Prior approval is not required every time the exchange rate changes and a federal award is charged. Approval of exchange rate fluctuations is required only when the change results in the need for additional federal funding, or the increased costs results in the need to significantly reduce the scope of the project.

**Housing allowances and personal living expenses** Foreign employees and expatriates living abroad may receive a competitive benefit package and allowance for living expenses. These may include a housing allowance, cost-of-living adjustments, education allowance, phone and automobile allowance, and travel and relocation benefits. Because each individual's situation is different, it is challenging to consistently apply a single policy in these situations.

The UG says that the cost of goods and services for personal use are not allowed, and that costs of housing, housing allowances, and personal living expenses are only allowed as direct costs (if approved in advance by the federal awarding agency) regardless of whether it is reported as taxable income to employees.

**Security costs** International projects and activities may include aid or other support to developing countries or in conflict zones where additional security precautions are required. The UG says that "necessary and reasonable" expenses incurred for routine security to protect facilities, personnel, and work products are allowed. These costs may include:



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- Wages and uniforms of personnel engaged in security activities
- Equipment
- Barriers
- Protective (non-military) gear, devices, and equipment
- Contractual security services
- Consultants

These costs should be determined when reviewing the foreign country's condition and must be justified to the federal awarding agency. If security is used to protect multiple activities, an allocation methodology should be developed to accurately charge the costs.

**Relocation costs** Expenses for relocating an employee to a foreign country may be included in a recruitment package. The UG separates relocation costs into different categories and defines them as costs incurred due to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee, or upon recruitment of a new employee. Relocation costs are allowed if the move is for the benefit of the employer, that reimbursement to the employee is in accordance with an established written policy, consistently followed by the employer, and that the reimbursement does not exceed the employee's actual or estimated expenses. If an employee resigns within the 12 months, the costs must be credited to the award.

**Value-added taxes** Foreign taxes charged for the purchase of goods or services that a nonfederal entity is legally required to pay in-country are allowable expenses under federal awards. These are often consumption taxes levied on products, materials, and services that are purchased in many foreign countries. Foreign tax refunds or applicable credits under federal awards refer to receipts, or reduction of expenditures, that offset or reduce expenses to federal awards as direct or indirect costs. These refunds or costs must be credited to the federal awarding agency either as costs or cash refunds.

While the UG states that these are allowable, it is important to review grant agreements and other awarding agency policy statements on allowability. For example, the National Institutes of Health's Grants Policy Statement Section 16.6 currently says that value-added taxes are not allowed under foreign grants and domestic grants with foreign components. In addition, tax exemptions are often available to nonprofits, but claiming them requires a great deal of time and effort.

### **How we can help**

CliftonLarsonAllen professionals have burrowed deep into the international accounting and compliance aspects of Uniform Grant Guidance to find the issues that concern you most, and developed methods for implementing change. Among the resources available is a [Uniform Grant Guidance Checklist](#) to help you plan the implementation of UG in your organization.

No matter how the new rules effect you, we can help you find solutions for your needs. Our team of professionals is available to provide guidance and tools tailored to your organization's unique situation, and to assist with navigating the complex financial, compliance, and tax requirements in the United States and other countries.

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