Agency Regulations on Uniform Grant Guidance:
Best Practices for Avoiding Improper Payments
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The Uniform Grants Guidance – Adopted by Federal Agencies

- Education  2 CFR 3474
- HHS  2 CFR 300.1
- Agriculture  2 CFR 400.1
- Labor  2 CFR 2900.4
- Energy  2 CFR 910.120

- All with some mostly minor modifications
Most Significant Changes

- Shift from focus on Compliance to focus on PERFORMANCE!!!
  - Auditors (A-133 + Federal OIG) and Monitors (Federal and State Pass Through) must look more to “outcomes” than to “process”
  - The uniform grant guidance adds significant flexibility to way grantees / subgrantees can adopt their own processes
Most Significant Changes (cont.)

- The uniform grant guidance has a **MAJOR** emphasis on “strengthening accountability” by improving policies that protect against waste, fraud and abuse

- Significant emphasis on agency improper payments responsibilities
Background on Improper Payments

• 2002 Improper Payments Information Act (IPIA) initial framework:
  • Identify
  • Measure
  • Prevent
  • Report

• 2002 Recovery Audit Act
  • Agencies awarding over $500 million in contracts:
  • Programs to recover overpayments
Background on Improper Payments

- 2010 Improper Payments Elimination and Recovery Audit Act (IPERA):
  - Replace and consolidate IPIA and Recovery Act
  - Retain core elements
  - Requires
    - Improvement in estimation procedures
    - Improper payment reduction plans
    - Expands reporting
- 2012 Improper Payments Elimination and Recovery Improvement Act
  - Improve estimation process
  - Do Not Pay Initiative
Background on Improper Payments

• Executive Order 13520, Nov. 25, 2009
  • Intensify efforts to eliminate payment error, waste, fraud and abuse

• Background
  • Federal agencies to tailor methodologies to identify and measure improper payment where most likely to occur

- Exceeded $115 Billion in FY 2011
- May be even higher as certain agencies (especially DOD) unreliable data
• 3 Most Common Causes
  • Failure to:
    • Verify recipient reported information
    • Ensure payments are for proper purposes
    • Have required documentation
Department of Education Compliance with Improper Payments and Recovery Act of 2010

• FY 2013 OIG Audit Report
  • Found General Compliance:
    • Recommendations for Improvement:
      • Improve estimation of improper payment rate for student aid programs
      • Improve reporting of improper payments
      • Improve efforts to establish meaningful reduction targets
• Office of Inspector General – May 2015
• October 2013 – September 30, 2014
• ED did not reduce improper payment rate in Direct Loan Program
Government Accountability Office

• Government wide estimates and reduction strategies
• July 2014 Report
  • FY 2013 → 105.8 billion
  • 84 programs → 18 agencies
• March 2015 Report
  • Improper payments FY14: 124.7 billion
  • Increase of 19 billion from FY13
  • 124 programs – 22 services
  • Numerous courses: including payments to deceased persons
Department of Agriculture

- Food Nutrition Service
- November 2007 Report (SY 05-06)
  - Erroneous certification of students 935 million
  - Other operational errors 860 million
Federal agencies
- Inability to determine full extent
- Inability to reduce
- Use of estimation techniques statistically valid
Improper Payment – Definition 200.53

- Payment should not have been made
- Incorrect amount
- Ineligible
  - Party
  - Goods
  - Service
- Duplicate
- Good or service not received
- Does not account for
  - Credit
  - Discount
- Lack of documentation
• New: Official authorized to legally bind the non-federal entity must certify on annual and final fiscal reports or vouchers requesting payment:
  • “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete and accurate and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. 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.”
New: Non federal entity **must disclose in writing** in timely manner to federal agency or pass-through all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting federal award.
• **New:** All non federal entities must establish conflict of interest policies, and disclose in writing any potential conflict to federal awarding agency in accordance with applicable Federal awarding agency policy.
Cooperative Audit Resolution 200.25

• Approach includes
  • Agency leadership clear message:
  • Continued failure to correct conditions identified in audits
    • “Likely to cause” improper payments, fraud waste or abuse:
      • Unacceptable
Bad Debts 200.426 - 200.428

• Related costs of collection (including legal) for uncollectable debts → unallowable –
  • But: cost of recovery of improper payments allowable
  • Direct or Indirect
  • Amounts collected may be used by non federal entity
Federal Agency Responsibilities 200.513

• Work with OMB
• Ensure compliance supplement focuses auditor to test requirements:
  • Most likely to cause improper payments, fraud waste, abuse or findings resulting in sanctions
Federal Agency Responsibilities

• Use single audits to reduce improper payments
Payment Should Not Have Been Made
New: Period of Performance 200.309

• May charge to the Federal award only allowable costs incurred during the period of performance.
  • Stated in grant award notice.

• Includes any costs prior to the award as permitted by the Federal awarding agency (similar to pre-award cost authority).
Cost Principles: “Factors Affecting Allowability of Costs” 200.403

All Costs Must Be:

1. Necessary, Reasonable and Allocable
2. Conform to federal law & grant terms
3. Consistent with state and local policies
4. Consistently treated
5. In accordance with GAAP
6. Not included as match – in other federal programs
7. Net of applicable credits (moved to 200.406)
8. Adequately documented
Salaries of administrative and clerical staff should be treated as “indirect” unless all of the following are met:

1. Such services are integral to the activity
2. Individuals can be specifically identified with the activity
3. Such costs are explicitly included in the budget
4. Costs not also recovered as indirect
Selected Items of Cost Examples

- Advertising/PR 200.421 (Clarified)
  - Allowable for programmatic purposes including:
    - Recruitment
    - Procurement of goods
    - Disposal of materials
    - Program outreach
    - Public relations (in limited circumstances)

- Alcohol 200.423
  - Not allowable
• **Conferences 200.432 (Changed)**
  - Prior Rule: Generally allowable
  - Includes Meals / Conferences / Travel and Family Friendly Policies
  - Allowable conference costs include rental of facilities, costs of meals and refreshments, transportation, unless restricted by the federal award
  - Costs related to identifying, but not providing, locally available dependent-care resources
    - But 200.474 “travel” allows costs for “above and beyond regular dependent care”
  - Conference hosts must exercise discretion in ensuring costs are appropriate, necessary and managed in manner than minimizes costs to federal award
Incorrect Amount / Duplicate Payment
Ineligible Party

• Debarment / Suspension (Appendix II)
  • Contract award may not be made to excluded individual (debarred or suspended)
    (must check excluded party list)
Terms of Grant Program
Goods

• Terms of Grant Program
• Selected Items of Cost
  • Alcohol
• Example:
• General curriculum Materials
Services

• Eligible beneficiaries terms of grant program
• Selected items of cost
  • Entertainment
Medicare

• Deceased individual
IDEA

Example:

• Regular educational services
Credit or Discount 200.406

- Purchase discounts
- Rebates
- Allowances
- Credited as cost reduction or award received
- Failure: Improper payment
• All costs must be adequately documented
New Risk management Requirements for Pass-Throughs
• Pass-through must evaluate each subrecipient’s risk of non compliance (federal statute / regulations / terms of award) for purpose of monitoring
Risk Factors:
1. Subrecipient’s prior experience with the grant program
2. Results of previous audits
3. New personnel or substantially changed systems
4. Results of federal monitoring
• Pass-through may impose conditions on subgrant based on risk assessment:
  1. Shift to reimbursement
  2. Withhold payments until evidence of acceptable performance
  3. Require more reporting
  4. Require additional monitoring
  5. Require additional technical or management assistance
  6. Establish additional prior approvals

• Similar to High Risk Designation

  34 CFR 80.12
200.331

- Pass-through must monitor its subrecipients to assure compliance and performance goals are achieved.
200.331

- Monitoring must include:
  1. Review financial and programmatic reports
  2. Ensure corrective action
  3. Issue a “management decision” on audit findings if the award is from the pass-through
Internal Controls 200.303

• Must:
  • Establish and maintain effective internal controls
  • Reasonable assurance federal award in compliance with:
    • Statutes
    • Regulations
    • Terms of award
  • Prompt action – non compliance
Questions?

• To ask a question, please press *1 on your touchtone phone.
• If you are using a speaker phone, please lift the receiver and then press *1.
• If you would like to withdraw your question, press *1.
Follow-Up Questions

If you have any remaining questions after the conclusion of today’s webinar please do not hesitate to get in touch.

Ask our webinar producer: mbarnes@columbiabooks.com

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