This Just In: OMB Revises Uniform Guidance for FAPIIS

Karen Norris, Managing Editor
A Targeted Webinar of Importance
September 1, 2015
This Just In: FAPIIS

Learning Objectives

• Understand federal intent to reduce waste, fraud and abuse.
• Raise awareness about integrity reviews.
• Understand the Duncan Hunter Act Section 872 and FAPIIS.
• Recognize the impact of Section 872 on the uniform grant guidance.
A Few Words
The Uniform Guidance
The uniform guidance became effective for federal agencies on Dec. 26, 2013, and a year later for nonfederal entities on Dec. 26, 2014.
Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards merged eight previously separate OMB grant circulars into what is commonly referred to as the uniform guidance,

...but now, other legislation is affecting the uniform guidance
Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Summary

To deliver on the promise of a 21st-Century government that is more efficient, effective and transparent, the Office of Management and Budget (OMB) is streamlining the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. 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. This guidance provides a governmentwide framework for grants management which will be complemented by additional efforts to strengthen program outcomes through innovative and effective use of grant-making models, performance metrics, and evaluation. This reform of OMB guidance will reduce administrative burden for non-Federal entities receiving Federal awards while reducing the risk of waste, fraud and abuse.

This final guidance supersedes and streamlines requirements from OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in OMB guidances); Circulars A-89, A-102, and A-133; and the
Because of a new final rule relating to Section 872 of the Duncan Hunter Act, OMB made revisions to the uniform guidance.
This target webinar highlights the key issues relating to those revisions, and how they affect nonfederal entities.
Learning Objective #1
Federal interest in waste, fraud and abuse.
LO1: Waste, Fraud and Abuse

Federal Register Notice – Uniform Guidance

AGENCY: Executive Office of the President, Office of Management and Budget (OMB).

ACTION: Final Guidance.

SUMMARY:
• Government that is more efficient, effective and transparent.
• Guidance to reduce waste, fraud and abuse.
Why Reduce Waste, Fraud and Abuse?

- $600 billion grant awards each year
- $100 billion improper payments each year

Unacceptable.

Waste, fraud and abuse associated with applicant and recipient risk, integrity.
LO1: Waste, Fraud and Abuse

Accountability and Performance

- Federal agencies must be accountable through performance
- Nonfederal entities must be accountable through performance
- OMB seeks to reduce waste, fraud and abuse through better performance
  - Pre-award
  - Post-award
Grant Reform

Applicants Need Updated Policies With a Focus on Performance

Newsletter: LOCAL/STATE FUNDING REPORT
Published: April 15, 2014 at 08:00:03 EDT

Due to the fundamental shift toward performance over compliance in the Office of Management and Budget’s uniform grant guidance, grant recipients and applicants are encouraged to develop new internal controls and policies during the coming months that mirror the requirements in the guidance.

Although internal controls and written policies are more often associated with post-award, the uniform grant guidance creates several new requirements that impact proposal writing and budget development, as well as an overall focus on performance.
Learning Objective #2
Risk and Integrity
LO2: Risk and Integrity

Recent Legislation

- 2006 FFATA
- 2008 FAPIIS
- 2009 Duncan Hunter
- 2009 ARRA
- 2013 Uniform grant guidance
- 2014 DATA Act
- 2015 Final Rule Duncan Hunter
Accountability and Transparency

- **2006: FFATA**
  - Federal Funding Accountability and Transparency Act
  - Pub. L. 109-282
  - Website: USAspending.gov
  - Recipients, subrecipients report awards over $25,000
  - All nonfederal entities register in SAM.gov
  - **Issue:** no interoperability between USAspending.gov and federal financial systems
LO2: Risk and Integrity

Contractor Performance and Integrity

- 2008: FAPIIS
  - Federal Awardee Performance and Integrity System
  - Pub. L. 110-417
  - Website: FAPIIS.gov
  - Contractors report awards over $500,000
  - Repository of integrity and business ethics data
  - Tracks convictions, suspensions, criminal and civil
Grant Performance, Data Analytics

- 2009 ARRA, Recovery Board and ROC
  - American Recovery and Reinvestment Act
  - Pub. L. 111-5
  - Stimulus package to address economic downturn
  - *Recovery Operations Center (ROC)*
  - Analytical support for IGs and law enforcement
  - Fraud-risk scorecard
  - Mathematical models for detection
  - Historical data and patterns
  - Sunset 9/30/13
LO2: Risk and Integrity

High Risk Leads To Waste, Fraud and Abuse

- 2013: Uniform Guidance
  - 2 C.F.R. Part 200
  - Combined eight prior OMB circulars
  - Established new requirements
  - Reduce administrative burden
  - Reduce waste, fraud and abuse
  - Lower applicant and recipient risk
LO2: Risk and Integrity

Data Management

- 2014: DATA Act
  - Digital Accountability and Transparency Act
  - Pub. L. 113-101
  - All federal funding
  - Expand FFATA
  - Improve data information collections
  - Detect, share and remedy
  - Treasury Department with OMB
  - ROC or a data analytics center like the ROC
LO2: Risk and Integrity

http://grants.complianceexpert.com/
Learning Objective #3
Final Rule Section 872 Duncan Hunter and FAPIIS
LO3: Section 872


• Pub. L. 110-417
• Federal Register notice 4/22/10
• Federal Register notice 7/22/15
• Federal Register notice 7/30/15
LO3: Section 872


• Section 872 designated FAPIIS as a web portal
• Improve federal ability to evaluate contractors
  o Pre-award decisions
  o Post-award performance
“FAPIIS is designed to improve the government’s ability to evaluate the business ethics and expected performance quality of prospective contractors and protect the government from awarding contracts to contractors that are not responsible sources.”

(Pre-award)
“Improved inter-agency access to these assessments will motivate better performance and reduce the likelihood that taxpayer resources will go to contractors with poor track records in meeting the government’s requirements in an efficient and effective manner.”

(Post-award)
LO3: Section 872

Business Ethics and Integrity

• Contract terminations for default or cause
• Agency defective pricing determinations
• Administrative agreements to resolve a suspension or debarment
• Contractor self-reporting of criminal convictions, civil liability, and adverse administrative actions (mandatory disclosures).
Federal Register 7/22/15

- Final Rule – Section 872 Hunter Duncan
- **Expands requirements from the contract community to the grant community**
- Federal agencies and nonfederal entities must use FAPIIS
- FAPIIS migrates to SAM.gov
- Effective Jan. 1, 2016
Federal Register 7/30/15

- Final Rule – Section 872 Hunter Duncan
- Correction
  - Effective immediately 7/30/15
  - Applicable 1/1/16
- C.F.R. and uniform guidance updated
- FAPIIS migrates to SAM.gov by 1/1/16
Learning Objective #4
Impact – Updates to Uniform Guidance
LO4: Impact

Uniform Guidance Revised

- FAPIIS now for grants, cooperative agreements
- Risk provisions revised
- Integrity provisions added
LO4: Impact

Pre-Award Merit Reviews (§ 200.204)

• No change
• About the proposal
  o Scoring
  o Award decisions for the proposed program
  o A denial based on merit is simply a denial
  o No FAPIIS for merit reviews
LO4: Impact

Pre-Award Risk Reviews (§ 200.205)

• Changed

• About the applicant (not the proposal)
  o Financial stability
  o History of performance
  o Audit reports and correction of findings
  o Award decision based on risk of applicant
  o Must include SAM.gov/FAPIIS for risk reviews
LO4: Impact

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Add a Search Term: risk assessments

Use Advanced Term? Yes No

YOUR SEARCH

Risk assessment 1.3
(Critical Topics In Grants Management)

Risk assessment is another element of the control environment.

In assessing risk

May 15, 2014

Applicants Now Face Risk Assessments
(Grants Development News)

205), requiring federal agencies to assess the level of risk an
applicant may pose to the federal agency.
LO4: Impact

Pre-Award Integrity Reviews (§ 200.212)

- New
- About the applicant
  - Business ethics
  - Criminal proceedings
  - Civil proceedings
  - Administrative proceedings
- Must include SAM.gov/FAPIIS for integrity reviews
- A denial based on risk, integrity or both makes the applicant “not qualified” for federal funds
- Determination retained in FAPIIS five years
LO4: Impact

Pre-Award Risk (Appendix I)

• Changed
• About the proposal and applicant
  ○ Pre-award merit and risk reviews
  ○ Must include integrity reviews
  ○ Must include SAM.gov/FAPIIS review
LO4: Impact

Post-Award Integrity (New Appendix XII)

• Nonfederal entities submit mandatory disclosures
• Mandatory disclosures include proceedings
• Proceedings include:
  o Criminal
  o Civil (fault, fine)
  o Administrative (fault, fine, penalty, appeals board)
LO4: Impact

Developing News

• Nonfederal entities under increased scrutiny
• Federal agencies face increased responsibility

*How will it play out?*

*Be prepared.*
For More Information On FAPIIS

• Join us on Oct. 8th, 2015 for OMB Revises Uniform Guidance: Understanding the New FAPIIS Regulations

• http://www.thompsoninteractive.com/site/index.jsp?cat=GRANT
Under the Uniform Grant Guidance

• § 200.472 Training and Education Costs, the cost of training and education provided for employee development may be charged to your grant programs;

• § 200.454(b) Memberships, Subscriptions and Professional Activity Costs, the cost of periodicals and subscriptions for professional development may be charged to your grant programs;

• Check your grant budgets, accounting offices or federal program offices to confirm!
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