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TO: All Public Offices, Agencies, Boards, and Commissions
Colleges and Universities
Community Schools
Independent Accountants

FROM: Dave Yost, Auditor of State

SUBJECT: Joint *Interim* Final Rule on Changes to Federal Programs and Single Audits – OMB’s New Uniform Guidance

On June 13, 2011, the President issued an Executive Order on delivering an efficient, effective, and accountable government. In response to this Order, the Office of Management and Budget (OMB) created the Council on Financial Assistance Reform (COFAR) to provide recommendations to OMB on policies and actions necessary to carry out this Order.

The purpose of this Bulletin is to highlight the key changes to Federal programs and single audits. AOS Bulletin 2013-006 addressed the *proposed* OMB Revisions, issued by OMB and COFAR, to Circular A-133 and Other Grant Management Requirements.

- On December 26, 2013, OMB issued their ‘final’ rule in 2 CFR Chapter II, Part 200 titled *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, also known as the Super-circular, Omni-circular, Uniform Guidance, or Grants Reform. We will refer to the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* throughout this Bulletin as the “Uniform Guidance.” **While this document was called ‘final’, there were, and still are changes being made to it.**
- COFAR issued and updated various Frequently Asked Questions (FAQs) in February, August, and November 2014, to assist entities and their auditors in implementing the Uniform Guidance.
- On December 19, 2014, OMB issued their ‘Joint Interim Final Rule’ in 2 CFR Chapter II, Part 200 which included several technical corrections that were needed to the *final* guidance issued on December 26, 2013.

- On the same date, each federal awarding agency joined together to adopt the Uniform Guidance in their respective chapters of Title 2 of the CFR. At this time, agencies could request OMB approval for exceptions to the Uniform Guidance, which OMB only approved where they were consistent with existing federal agency policy. **A listing of the exceptions granted is available on COFAR’s website.** Agencies receiving such approval have included the resulting language in their regulations contained in the *Joint Interim Final Rule*.
- This Rule was effective on December 26, 2014.
- **However, OMB included ‘interim’ in the title, as it had a 60 day comment period. OMB plans to issue another amended version of 2 CFR Chapter II, Part 200 after this comment period is up (note: which is after the effective date of December 26, 2014). As of the date of this Bulletin, another version has not been released.**

OMB's Uniform Guidance proposes a number of significant changes designed to reduce administrative burden; strengthen oversight of federal funds; and reduce the risk of fraud, waste and abuse. However, parts of it differ *significantly* from OMB’s proposed guidance described in AOS Bulletin 2013-006.

The Uniform Guidance supersedes, combines and streamlines the following eight circulars into one document:

- Administrative Requirements – A-102, A-110, A-89
- Cost Principles – A-87, A-21, A-122
- Audit Requirements – A-133 and part of A-50

It should be noted that these changes are applicable to all entities that receive ANY federal awards, even if the single audit threshold is not reached.

The Uniform Guidance in 2 CFR Chapter II, Part 200 titled *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* is structured, as follows:

Uniform Guidance Subparts & Appendices			
Subpart	Section	Description	Notes
A	200.0 - 200.99	Acronyms & Definitions	
B	200.100 - 200-113	General Provisions	
C	200.200 - 200.211	Pre-Federal Award Requirements and Contents of Federal Awards	Formerly A-102, A-110, & A-89
D	200.301 - 200.345	Post Federal Award Requirements	Formerly A-102, A-110, & and A-89
E	200.400 - 200.475	Cost Principles	Formerly A-87, A-21, & A-122

F	200.500 - 200.521	Audit Requirements	Formerly A-133, (& parts of A-50)
Appendices		Notes	
I – IX	<ul style="list-style-type: none"> The appendices retain some provisions that vary for different types of recipients (i.e. indirect cost information, cost allocation plans, etc.). As noted in Appendix IX, the existing principles located at 45 CFR 75 Appendix E remain in effect for hospitals until further notice. 		

Most information was maintained with the same guidance as it was in the old OMB Circulars (i.e. most of the Administrative Requirements were rolled into Subparts C & D, etc.), however, this did not occur in all instances. For example, the requirements for pass-through entities and subrecipient versus contractor determinations previously included in A-133, are now included in the Subpart D *Administrative Requirements*.

Effective Dates

- Federal Agencies were required to adopt the guidance and implement the requirements to be effective by December 26, 2014. This occurred in the Joint Interim Final Rule Published on December 19, 2014.
- Non-Federal Entities:
 - Administrative Requirements & Cost Principles
 - The Uniform Guidance applies to ***new awards*** and to ***additional funding of existing awards*** (funding increments) made after December 26, 2014.
 - Audit Requirements
 - The Uniform Guidance will be effective for fiscal years beginning on or after December 26, 2014 (i.e., 1/1/15 – 12/31/15, 7/1/15 – 6/30/16, etc.). The Uniform Guidance does not permit early implementation of the audit requirements.
 - In other words, the Uniform Guidance Administrative Requirements & Cost Principles apply to new federal awards and additional funding of existing awards; however, the A-133 audit requirements will still be in effect, for fiscal years ending before December 26, 2015. **In addition, entities with multiple federal awards with different funding periods will likely have some awards that fall under the old Administrative Requirements and Cost Principles, and other federal awards that fall under the new Uniform Guidance. This situation could potentially occur for several years in the case of multi-year grants that were issued prior to December 26, 2014.**
- Clarifications made in COFAR’s FAQs and/or the Joint Interim Final Rule:
 - Procurement Standards - The federal government is allowing a grace period of one full fiscal year after the effective date for non-Federal entities to comply with the new procurement standards.
 - Indirect Cost Rates - Existing negotiated indirect cost rates will remain in place until they are due to be re-negotiated.
 - Subawards - For Federal awards made prior to December 26, 2014, where some subawards will be made prior to December 26, 2014, and others will be made

after that date – the effective date of the Uniform Guidance is the same as the effective date of the federal award from which the subaward was made. **The requirements for a subaward, no matter when made, flow from the requirements of the original Federal award from the Federal awarding agency.**

▪ For example:

- If the U.S. Department of Education awards a new \$1 million grant to the Ohio Department of Education (ODE) on December 1, 2014; and
- ODE subsequently awards \$500,000 to local school districts on December 23, 2014 and awards the remaining \$500,000 to local school districts on December 28, 2014; then
- All of the local schools receiving the subawards will be following the old Administrative Requirements and Cost Principles because the Federal agency awarded the new grant prior to December 26, 2014. The local schools and their auditors will not know the date the Federal agency awarded the grant to ODE and therefore, which guidance the grant falls under unless ODE provides that information to them.

It is therefore imperative (and required) that pass-through agencies include information in federal award documents indicating which guidance the award falls under (Uniform Guidance, or old OMB Circulars). Taking this a step further, for audit, **non-federal entities** will be required to **identify the transactions** that fall under each grant, and the guidance applicable to that grant (Uniform Guidance, or old OMB Circulars).

- Incremental Funding – The new guidance will apply to new Federal awards made after December 26, 2014 **and, if** a Federal awarding agency considers its incremental funding actions to be opportunities to change terms and conditions on previously made awards, the new guidance will apply to that Federal awarding agency’s incremental funding actions also.

Overview of Significant Changes

The Uniform Guidance is lengthy; however, the following highlight some of the key revisions:

Definitions & General Provisions (Subparts A & B)

- Contractors - Previously A-133 compared subrecipients versus vendors; the term contractor now replaces the term vendor. However, no matter what term the award uses, the substance of the relationship is more important than the form of the agreement in determining whether there is a subrecipient versus contractor relationship.
- PII – The Uniform Guidance now defines the terms Personally Identifiable Information (PII) and Protected Personally Identifiable Information.
- Program Income - A definition for Program Income is now included, as it was not previously defined in grant guidance.

- Conflict of Interest - Federal awarding agencies must establish conflict of interest policies for their federal awards; and non-Federal entities must disclose in writing, any potential conflict of interest to the Federal awarding agency (or pass-through entity) in accordance with the federal awarding agencies policy.
- Mandatory Disclosures – Non-Federal entities must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Administrative Requirements (Subparts C & D)

- Notice of Funding Opportunities – The Uniform Guidance contains a standard format to announce funding opportunities in Appendix I.
- Applicant Risk – Federal agencies are required to consider risk posed by each applicant, prior to making an award, such as financial stability, quality of management systems, and prior performance.
- Internal Controls – The Guidance requires non-Federal entities to have effective internal controls over federal awards and mentions two best practices: *U.S. Government Accountability Office (GAO) Green Book*, and *Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control Framework*. While the internal control section is more explicit in the Uniform Guidance, and the **overall focus is on a strong internal control system over federal awards**, there is no requirement that non-Federal entities utilize one of these documents. OMB identified these two documents to alert entities to best practices. COSO revised their Internal Control Framework in 2013; and in September 2014 GAO released their revised Green Book.
- Subrecipient Monitoring – While subrecipient monitoring requirements are substantially unchanged, the Uniform Guidance does make them more explicit. For example, all pass-through entities must evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring. **In addition, section 200.331 contains a list of the specific information that must be included in all subawards.**
- Supplies – Computing devices less than \$5,000 are now included as ‘supplies’; but, when charging as a direct cost, they must be essential and allocable, but not solely dedicated, to the performance of the Federal award.
- Procurement – States continue to follow the same policies and procedures they use for procurements from their non-Federal funds. The new procurement standards for all other non-Federal entities adopt the majority of the language in Circular A-102, so **this section will affect entities formerly subject to Circular A-110¹ more significantly**. One new item added to this section is micro-purchases – for acquisitions of supplies or services where the aggregate amount does not exceed \$3,000. Also, note the grace period for implementation of this guidance is one full fiscal year after the effective date for non-Federal entities, as previously discussed above.

¹ OMB Circular A-110 applies to Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

Cost Principles (Subpart E)

- Time & Effort – **The Uniform Guidance made significant changes to time and effort requirements.** This area is now principles based, not rules based, and it requires judgment. The Uniform Guidance requires entities to comply with a stringent framework of internal control objectives and requirements for documenting personnel expenses; however, it gives entities the ability to implement the internal control systems and business processes that best fit their needs. It requires that charges to Federal awards for salaries and wages must be based on records that accurately reflect the actual work performed. Entities should note this section permits the Federal government to require personnel activity reports, including prescribed certifications, or equivalent documentation for non-Federal entities where the records do not meet the standards described in this section.
- Direct Costs – The Guidance clarifies that entities may treat salaries of administrative and clerical staff as direct costs under certain circumstances.
- Indirect Costs – **This is another area of significant change.** It requires federal agencies to accept a non-Federal entity’s negotiated indirect cost rate; however, as noted above, existing negotiated indirect cost rates will remain in place until they are due to be re-negotiated. In addition, the Uniform Guidance allows any non-Federal entity that has a current federally negotiated indirect cost rate to apply for a one-time extension of the rates in that agreement for a period of up to four years. If an extension is granted, the non-Federal entity may not request a rate review until the extension period ends. At the end of the four year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request. The Uniform Guidance further provides for a de minimis indirect cost rate of 10% of modified total direct costs for entities that have never had a negotiated indirect cost rate; however, this de minimis rate is not available to entities who receive more than \$35 million in direct Federal funding. COFAR clarified in their FAQs that entities will not be forced to establish an indirect cost rate if they feel it is not necessary; and it is not permissible for pass-through entities to force or entice a proposed subrecipient, without a negotiated rate, to accept less than the de minimis rate. The Uniform Guidance also states that equipment and other capital expenditures are unallowable as indirect costs.
- Prior Approval – The Uniform Guidance provides a list of circumstances under which entities need to seek prior approval from the Federal awarding agency.
- Family-Friendly Policies – Non-Federal entities are encouraged to consider updating their travel and other affected local policies and procedures, to now be family-friendly. For example, the section on travel costs now provides that temporary dependent care costs above and beyond regular dependent care that result directly from travel to conferences and meets specified standards are allowable, if local policies are consistent with such. In addition, the Guidance clarifies that any such changes to travel policies must be for entity-wide travel (not just travel related to federal awards).
- Compensation/Fringe Benefits – The Guidance clarifies that mass severance pay-outs require federal agency or Cognizant agency approval; and that excessive severance pay is unallowable.

Audit Requirements (Subpart F) – Note: This section includes relevant information for auditors and entities.

- Single Audit Threshold - **The single audit threshold increased from \$500,000 to \$750,000.** However, as noted above, the Uniform Guidance is not permitting early implementation. Pass-through entities should consider whether their level of oversight is appropriate for entities which will no longer be receiving a single audit.
- Low-Risk Auditee Status – The Guidance added one new criterion that states if the auditor reported a going concern in one of the prior two audit periods, then the entity does not qualify as a low-risk auditee. Also, one of the criteria was modified. It now requires **in order to qualify as a low-risk auditee, the auditor’s opinions on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor’s in-relation-to opinion on the Schedule of Expenditures of Federal Awards (SEFA) in the prior two audit periods, must be unmodified.**
 - Ohio Administrative Code 117-2-03 (B) states that all counties, cities and school districts, including educational service centers, and community schools shall file annual financial reports which are prepared using GAAP. **Meaning that auditors can only consider these entity types for low-risk auditee status for single audit purposes if they have audited GAAP financial statements in the prior two audit periods. Presenting financial statements on an OCBOA basis would also preclude these entities from being designated as low risk.**
 - Ohio Administrative Code 117-2-03 (A)(2) states that public offices that use the Uniform Accounting Network (UAN) may file their annual financial reports in accordance with the guidelines established by the UAN. Ohio Administrative Code 117-2-03 (C) states that all other local public offices who do not prepare the annual reports using GAAP shall file their annual financial reports on the forms provided by the AOS. **We interpret these sections to mean that since there is no requirement in Ohio law prohibiting these entities from presenting GAAP statements for audit, auditors can only consider these entity types for low-risk auditee status for single audit purposes if they have audited GAAP financial statements in the prior two audit periods. Presenting financial statements on a regulatory cash, OCBOA cash or OCBOA modified cash basis would also preclude these entity types from being designated as low risk.**
- Percentage of Coverage Rule – Currently, auditors are required to audit 50% of total Federal awards expended for not low-risk auditees; this is decreasing to 40%. In addition, auditors are currently required to audit 25% of total Federal awards expended for low-risk auditees; this is decreasing to 20%.
- Type A/B Program Threshold – For entities with Federal expenditures up to \$25 million, the threshold to determine Type A/B programs is increasing from \$300,000 to \$750,000 (note this is now the same as the single audit threshold). For entities with Federal expenditures over \$25 million there is a calculation to determine the Type A/B threshold.

- Type A Program Risk Analysis – The inherent risk of the program, prior significant deficiencies, and prior questioned costs of 5% or less of total program expenditures, no longer have an impact on the risk assessment of Type A programs.
- Type B Program Risk Analysis – Previously there were two options to risk assess Type B programs under A-133; there are no longer two options. Under the Uniform Guidance, auditors perform risk assessments on Type B programs until they identify high-risk Type B programs up to at least one-fourth of the number of low-risk Type A programs. In addition, risk assessment of Type B programs is not required for programs that do not exceed 25% of the Type A threshold.
- Loans & Loan Guarantees – Modified cluster guidance now states that for the purpose of excluding large loan programs for the revised Type A threshold calculation, a program is only considered to be a Federal “loan program” if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. In addition, loan and loan guarantees are now required to identify loan balances outstanding at the end of the audit period in the Schedule of Expenditures of Federal Awards (SEFA) footnotes; this is in addition to including the total federal awards expended for loan or loan guarantees on the SEFA.
- SEFA and footnotes – The SEFA footnotes are now required to include a statement regarding whether or not the non-Federal entity elected to use the 10% de minimis cost rate. Additionally the SEFA is now required to include the total amount provided to subrecipients from each Federal program; previously this was only required “to the extent practical.” Also, the SEFA is required to provide the total for each cluster of programs.
- Questioned Cost Threshold – The questioned cost threshold increased from \$10,000 to \$25,000.
- Audit Findings – The Uniform Guidance now requires identification of whether an audit finding is a repeat from the immediately prior audit, and if so, the prior year audit finding number. The Uniform Guidance also requires that finding numbers must be in the format prescribed by the Data Collection Form (i.e. 2014-001) – this requirement went into effect on January 2, 2015 for all fiscal year end 2014 and later audit submissions. Additionally, the Guidance states that audit findings *should* indicate whether sampling was a statistically valid sample.
- Auditor Selection – For non-Federal entities, if an auditor prepares an auditee’s indirect cost proposal or cost allocation plan (CAP), that same auditor may not be hired to perform its single audit if the auditee’s indirect costs recovered during the prior year exceeded \$1 million.
- Corrective Action Plan & Summary Schedule of Prior Audit Findings – These must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.
- Protected Personally Identifiable Information – Auditees and auditors must ensure that their respective parts of the reporting package do not include Protected PII. The definition of Protected PII is available in Section 200.82. The Uniform Guidance includes a provision for PII that the law requires disclosure for. We believe any entity in Ohio which has a Finding for Recovery in its audit report falls under this provision,

because Ohio Revised Code Sections 117.28 and 9.24 requires disclosure of this information.

- Report Submission – Audit reports will be publicly available on the Federal Audit Clearinghouse (FAC) website. In addition, federal agencies, pass-through entities, and others interested in obtaining single audit reports, must obtain such by accessing the FAC website, rather than requesting it from the non-Federal entity. The Uniform Guidance further clarified that if the due date for a single audit falls on a Saturday, Sunday, or Federal legal holiday, the reporting package is due the next business day.

Other Guidance

- Use of “must” and “should” in the Uniform Guidance – Under auditing standards the term “should” normally means “must”. However, COFAR noted in a FAQ that a *requirement* is designated by the use of the word “must”; and the word “should” is used to indicate a *best practice or a recommended approach* for non-Federal entities to be aware of, but not necessarily required to comply with. Several technical corrections were made related to the use of the words “must” and “should” in the Joint Interim Final Rule.
- Single Audit Report Format - Appendix X refers to the Data Collection Form requirements which are available on the FAC website. Beginning January 2, 2015, all fiscal year end 2014 and later audit submissions were required to be unlocked, unencrypted, and in a text-searchable pdf format. The FAC recently added a new pdf validator to ‘test upload’ audit reports prior to the actual upload to determine whether the file will pass the unlocked/unencrypted requirements.
- Compliance Supplement Modifications - A COFAR recommendation suggested additional public outreach before making substantial changes to the OMB Compliance Supplement; they are currently in the process of such. However, significant changes should be expected in the 2015 version.

What to Do Now

- Ensure an appropriate understanding of the effective dates.
- Review the details of 2 CFR Chapter II, Part 200 that are applicable to your entity / entity types you audit.
 - **To assist with this, AOS has recorded a webinar and made it available to the public at <https://ohioauditor.gov/trainings/default.html>.**
- Review COFAR’s FAQs related to the Uniform Guidance.
- Review OMB’s text comparisons of the old versus new guidance.
- Develop a plan to become compliant. Focus on areas of most significance first (time & effort, indirect costs, procurement, internal control, subrecipient monitoring, etc.).
- If the Low Risk Auditee Status changes will affect your entity, determine whether your entity will change to a GAAP reporting format.
- Begin a process to update local policies and regulations on federal grants and internal controls.

Links to Documents/Websites Mentioned Throughout This Bulletin

- *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* - http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
 - Note: The information at this link will be updated as changes are made to the Uniform Guidance.
- *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* - <http://www.gpo.gov/fdsys/pkg/FR-2014-12-19/pdf/2014-28697.pdf>
 - Note: This link contains a listing of each federal agency’s respective chapter of Title 2 of the CFR where the Uniform Guidance was adopted.
- COFAR FAQs, webinars, and a listing of federal agency exceptions approved to the Uniform Guidance - <https://cfo.gov/cofar/>
- OMB text comparisons of old versus new guidance - http://www.whitehouse.gov/omb/grants_docs
- GAO’s Green Book on internal controls - <http://www.gao.gov/greenbook/overview>
- COSO’s internal control framework - <http://www.coso.org/guidance.htm>
- OMB Compliance Supplement - http://www.whitehouse.gov/omb/financial_fin_single_audit/
- Federal Audit Clearinghouse - <https://harvester.census.gov/facweb/>

Entities and their auditors should carefully read the full text of the Uniform Guidance as there are too many changes and details to fully describe in this Bulletin.

For any questions regarding the information in this Bulletin, please contact the Center for Audit Excellence staff of the State Auditor’s Office at (800) 282-0370 or e-mail FACCR@ohioauditor.gov.



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