

Update on the Uniform Guidance

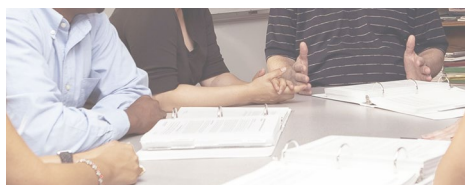
*By Christopher Logue, Esq.
October 2015*

In September 2015 the Office of Management and Budget (OMB) and the Council on Financial Assistance Reform (COFAR) issued two important updates to the Uniform Guidance. First, OMB published “correcting amendments” to the Uniform Guidance. While most of the changes are technical in nature, OMB appears to have made a few more substantive revisions. The correcting amendments were published in the Federal Register at 80 F.R. 54407, and can be viewed on the [Federal Register website here](#) or in [PDF format here](#). Second, COFAR updated its Frequently Asked Questions (FAQ) about the Uniform Guidance. COFAR originally created the FAQ to provide information on implementation of the Uniform Guidance and the recent update contains 25 new questions and several amended questions. The updated FAQ can be viewed on [COFAR’s website](#).

While most of OMB’s “correcting amendments” to the Uniform Guidance are technical in nature, OMB appears to have made a handful of notable substantive amendments. First, OMB has added language extending the optional grace period for adoption of the procurement standards from one fiscal year after December 26, 2014, to two years.¹ Community Action Agencies (CAAs) and other Community Service Block Grant Act (CSBG) network organizations choosing to delay implementation of the Uniform Guidance procurement standards must document this decision in their internal procurement policies.

OMB also clarified its interpretation of the applicability of the Uniform Guidance to recipients of CSBG funds. By the terms of the Uniform Guidance, block grants such as CSBG and the Low-Income Home Energy Assistance Program (LIHEAP) are only subject to the following provisions:

- Audit requirements in Subpart F (which apply to all federal awards);
- Rules on distinguishing between subrecipients and contractors, requirements for pass-through entities, and fixed amount awards in Sections 200.330 – 200.332 of Subpart D; and
- The requirement to provide public notice of federal financial assistance programs in Section 200.202 in Subpart C.²



Unless a federal authorizing statute for a block grant requires compliance with additional sections/subparts and/or a state chooses to voluntarily incorporate by reference additional sections/subparts in its rules and/or agreements, the above Uniform Guidance provisions are all that will apply to a block grant.

The language of the federal CSBG Act expands the application of the Uniform Guidance beyond those provisions referenced above by requiring states to ensure that the “cost and accounting standards of the Office of

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Management and Budget” apply to recipients of CSBG funds.³ Prior to the Uniform Guidance, it was unclear if the federal CSBG Act provision was referring only to the federal cost principles (formerly OMB Circular A-122

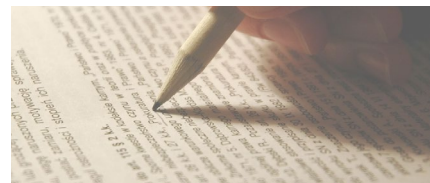
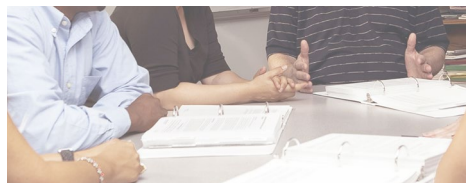
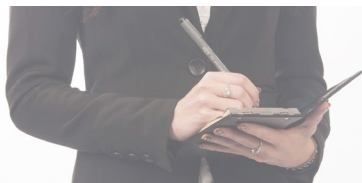
for nonprofit CAAs and OMB Circular A-87 for public CAAs) or if it also included the uniform administrative requirements (formerly OMB Circular A-110 for nonprofit CAAs and OMB Circular A-102 or the Common Rule for public CAAs). **OMB’s correcting amendments clarify that the CSBG Act provision is referring only to Subpart E—Cost Principles of the Uniform Guidance and *not* to the uniform administrative requirements.** This means unless a state incorporates by reference additional Uniform Guidance provisions in the CSBG agreement with the CAA and/or in the state CSBG statutes and regulations, if any

exist, the only Uniform Guidance provisions that will apply to CSBG funds are:

- Cost principles in Subpart E;
- Audit requirements in Subpart F;
- Rules on distinguishing between subrecipients and contractors, requirements for pass-through entities, and fixed amount awards in Sections 200.330 – 200.332 of Subpart D; and
- The requirement to provide public notice of federal financial assistance programs in Section 200.202 in Subpart C.

With respect to the other federal block grants a CAA receives, the CAA should check the notices of award and/or its grant agreement with the pass-through entity to determine what, if any, Uniform Guidance provisions apply to those funds in addition to the ones listed above that apply to all block grants.

Last, the correcting amendments state that the COFAR FAQ will be referenced as additional guidance in the 2015 issuance of Appendix XI to Part 200—Compliance Supplement for the Single Audit. This could signal OMB’s intention to give the FAQ the authority of the regulations by incorporating them by reference in the Appendix. However, because the legal authority of the FAQ is not entirely clear, when seeking guidance on a particular issue or question raised by the Uniform Guidance, CAAs should not rely solely on the COFAR FAQ. As the introduction to the FAQ states, in the case of any discrepancy between the FAQ and the Uniform Guidance itself, the Uniform Guidance governs.



COFAR's updated FAQ incorporates OMB's corrective amendments and also addresses some new issues. Highlights of the new FAQ include:

- An example of the now two-year grace period for non-federal entities to comply with the Uniform Guidance procurement standards. For example, a CAA with a fiscal year start of July 1 is not required to comply with the procurement standards in the Uniform Guidance until the fiscal year beginning July 1, 2017. *See FAQ .110-6.*
- A CAA's federal cognizant agency for indirect costs must be willing to negotiate an indirect cost rate with the CAA, even if that agency itself does not accept indirect cost rates. *See FAQ .19-1.* For example, if a CAA receives awards from multiple federal agencies, some of which accept indirect cost rates and some that do not, including the CAA's cognizant agency for indirect costs, the CAA is allowed to negotiate an indirect cost rate with its cognizant agency for use with the other federal agencies that accept indirect cost rates.
- For CAAs required to conduct a Single Audit, COFAR clarifies that some audit costs not directly related to the Single Audit, such as the costs of internal audit functions, are allowable under the Uniform Guidance. *See FAQ .425-1 through .425-5.*
- The FAQ clarifies when a CAA may apply for a one-time extension of its federally negotiated indirect cost rate. *See FAQ .414-7.*
- COFAR provides clarification on the timing of adoption of a federally negotiated indirect cost rate when a CAA had been previously using the 10 percent de minimis rate. *See FAQ .414-10.*

CAPLAW has created a separate document containing only the new and amended questions, which can be viewed [here](#). For more general information regarding the requirements and implementation of the Uniform Guidance, see CAPLAW's [2014 Special Edition Update](#).

Endnotes

¹ 2 C.F.R. § 200.110

² 2 C.F.R. § 200.101(d)

³ See 42 U.S.C. § 9916(a)(1)(B)

