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UNDERSTANDING PHA OBLIGATIONS UNDER THE NEW
UNIFORM RULE ON ADMINISTRATIVE REQUIREMENTS,
COST PRINCIPLES AND AUDITS: WHAT'S NEW AND
WHAT'S NOT

INTRODUCTION



BACKGROUND

On December 26, 2013, the Office of Management and Budget (OMB) issued guidance to federal agencies in Title 2 of the Code of Federal Regulations

- Developed by the Council on Financial Assistance Reform (COFAR) and OMB
- Goal: Part of a larger federal effort to improve performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders
- Consolidated three types of requirements: uniform administrative requirements, cost principles and audit requirements for Federal awards
- Method: consolidates OMB Circulars, including A-87, A-102, A-110, A-122 and A-133 into regulations at Part 200 that apply to most federal agencies



BACKGROUND, CONT'D

On December 19, 2014, federal agencies adopted the guidance as requirements for their own programs

Consequence for PHAs: Removes 24 CFR Part 85 ("Part 85") and Part 84 (non-profits) and replaces them with 2 CFR Part 200 ("Part 200") via 2 CFR 2400.101 (HUD programs)



EFFECTIVE DATES

Effective date for HUD other federal agencies - December 26, 2013

Effective date for PHAs and other grant recipients - December 26, 2014

Federal awards made before December 26, 2014

1. Generally: still subject to Parts 84 or 85 (as applicable), or as otherwise provided by the award
2. Where the award states that the award will be subject to regulations "as may be amended," the award is subject to Part 200
3. CDBG and HOME grant agreements typically incorporate the regulations "as now in effect and as may be amended from time to time" and so HUD has said that Part 200 applies these grants immediately



EFFECTIVE DATES, CONT'D

Federal awards made after December 26, 2014

1. Generally: Federal awards made on or after December 26, 2014, are governed by Part 200. HUD has said that this includes formula awards
2. Incremental funding: If new funding increment is considered a change to the award's terms/conditions, Part 200 applies to the first increment issued after December 26, 2014
 - a) For incremental funding that's subject to Part 200, non-federal entities may segregate or otherwise track old funds and new funds. Alternatively, they may continue to apply the Federal award flexibilities to funding awarded under the old rules.
 - b) Where terms/conditions of incremental funding award are modified after December 26, 2014, HUD may apply Part 200 to the entire Federal award that is uncommitted or unobligated as of the first increment received after December 26, 2014.
3. Subawards: Effective date is the same as the date of the award from HUD
4. Audit requirements apply to audits of fiscal years beginning after Dec 26, 2014
5. **PHAs, non-profits and all other non-federal entities have a one-year grace period to implement procurement requirements, just need to provide for this in procurement policy. 2 CFR 200.110**



EFFECTIVE DATES, CONT'D

HUD implementation still unclear

- a) Example: HUD signed a grant agreement on December 23, 2014 requiring nonprofit to continue following OMB circulars until HUD "implements 2 CFR Part 200" for the governing program
- b) Capital Funds: Follow Part 200 for first Capital Fund ACC Amendment after effective date
- c) Operating funds: No contract is typically signed at annual renewal. So, Part 200 is arguably not applicable until HUD asks PHA to sign an amendment to the Consolidated ACC Amendment.



ORGANIZATION

Part 200 has seven basic subparts:

- A. Definitions
- B. General Provisions
- C. Pre-Federal Award Requirements and Contents
- D. Post-Federal Award Requirements
- E. Cost Principles
- F. Audit Requirements
- G. Appendices



SUBPART A: DEFINITIONS AND KEY TERMS

Non-federal entity

- State, local government, Indian tribe, institution of higher education, or nonprofit that is the recipient or subrecipient

Pass-through entity

- Non-federal entity that provides a subaward to a subrecipient

Subrecipient

- Non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program

Contractor

- Entity that receives a "contract", which does not include Federal awards or sub-awards. Must examine the nature of the relationship rather than what the agreement is called



SUBPART B: GENERAL PROVISIONS/EXCEPTIONS

Part 200 establishes uniform administrative requirements, cost principles, and audit requirements for all types of non-Federal entities, including non-profits

- HUD may also apply this to for-profit recipients

Exceptions: HUD cannot make exceptions to Part 200 requirements, unless:

- Requirement based on Federal statute, regulation, or Executive Order,
 - HUD example: Disposition requirements under Section 18 of 1937 Act supersede the disposition requirements at 200.211(c)
- OMB allows exceptions for classes of Federal awards or non-Federal entities (rare)
- HUD can make exceptions on a case-by-case basis if not otherwise prohibited by Part 200 or other laws



HUD can impose additional requirements only with OMB approval if can't meet the exceptions described above

No exceptions to audit requirements

SUBPART C: PRE-AWARD REQUIREMENTS

- Mostly applies to HUD rather than PHAs
- Award instrument must be a grant agreement, cooperative agreement or federal contract, although may use different names (ACC, etc.)
- Fixed amount awards are permissible



SUBPART D: POST-AWARD REQUIREMENTS (GENERALLY)

Covers standards for

- financial and program management
- property and procurement standards
- performance and financial monitoring and reporting
- subrecipient monitoring and management
- record retention and access
- remedies for noncompliance
- provisions of the Federal Funding and Accountability Transparency Act (FFATA)
- closeout

HUD has already announced that

- Some exceptions will be published as a regulation
 - Program-specific requirements, such as Section 18 for public housing, will continue to apply



POST-AWARD REQUIREMENTS, CONT'D

Internal Controls

- Mostly similar to A-133 audit requirements

Performance Measurement

- Recipients must relate financial data to performance accomplishments, and must also provide cost information to demonstrate cost effective practices.

Payment

- Obligation to minimize the time elapsed between agencies' advance payments of funds to the non-Federal entity and the entity's disbursement of funds for direct program or project costs

Interest Earned on Federal Advances

- Non-Federal entities must maintain advance Federal payments in interest-bearing accounts (some exceptions)

Program Income

- Encourages recipients to earn income to offset program costs. Many HUD programs have more specific or different requirements

Property Standards

- When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from HUD that provides for: 1) retention of title after compensation to HUD, 2) sale of the property and compensation to HUD, or 3) transfer of title to HUD or a third party approved or designated by HUD.

Budget Revisions

- Recipients must obtain Federal agency approvals for budget and program or project scope revisions



PROCUREMENT

Generally consistent with 24 CFR part 85 but applies to all non-federal entities

For governmental recipients, the regulations have not substantially changed

- *Micro-purchases* - Threshold is \$3,000 except for contracts that would trigger Davis Bacon, in which case the limit remains \$2,000
- *Small Purchase Procedures* - Contracts not exceeding the Simplified Acquisition Threshold (currently \$150,000)
- *Sealed Bids* - PHAs must publicly advertise
- *Competitive Proposals*
- *Non-Competitive Proposals* -clarifies when solicitation of a proposal from only one source may be used

Required Contract provisions

- Listed in Appendix II of Part 200



PROCUREMENT: CONFLICTS OF INTEREST

Written Standard of Conduct

- PHAs with a parent, affiliate or subsidiary that is not a state or local government must maintain written standards of conduct covering organizational conflict of interest.

Organizational Conflict of Interest

- Because of relationships with a parent, affiliate, or subsidiary, the PHA is unable or appears to be unable to be impartial in conducting a procurement action involving such entity

Practically

- Applies to PHAs with nonprofits, for profits (including general partners or managing members of a tax credit owner)
- No issues with Instrumentalities
- Creates problems for Affiliates
- For now, protected by PIH Notice 2007-15 for mixed-finance

Reference: 200.318(c)



BONDING REQUIREMENTS

Same as Part 85

Construction contracts exceeding the Simplified Acquisition Threshold must include

- A bid guarantee equal to five percent of the bid price;
- A performance bond on the part of the contractor for 100 percent of the contract price AND
- A payment bond on the part of the contractor for 100 percent of the contract price.

***Note that the Capital Fund rule has different requirements**



REPORTING AND RECORDS

Record Retention

- Still generally required to retain records for three years

Remedies for Non-Compliance

- Permits HUD (and PHAs) to try to remedy noncompliance through additional conditions on the Federal award (or subaward)

Forms

- HUD may only require performance and financial reporting on OMB-approved reporting forms

Closeout:

- OMB believes that the revised closeout requirements will be clearer because the timeframes are based on "period of performance" which must be stated in the Federal award

Post-Closeout Adjustments:

- The adjustment to the Federal award amount based on an audit or other review after closeout must be made within the record retention period



SUBPART E: COST PRINCIPLES

Cost Principles: Generally unchanged.

- *Profit*: non-Federal entities may not earn any profit resulting from the Federal financial assistance unless explicitly authorized by the terms of the Federal award). This is not new, but is receiving new emphasis from HUD.
- *Direct/Indirect Costs*: mostly unchanged from prior OMB cost principles



SUBPART F: AUDIT REQUIREMENTS

- Increased audit threshold (increased from \$500,000 to \$750,000)
- Public availability: Copies must be available for public inspection and submitted to the Federal Audit Clearinghouse
- Transition guidance: Revised audit requirements apply to audits of fiscal years that start December 26, 2014 or later



SUBPART D

REQUIREMENTS FOR PAYMENT



PAYMENT REQUIREMENTS UNDER PART 85

24 CFR § 85.21

"(b) Basic standard

- Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) Advances

- Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee...

(e) Working capital advances

- If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash on a working capital advance basis . . . The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements."



COMPARING PART 200 TEXT TO PREVIOUS OMB CIRCULARS TO DEMONSTRATE SIMILARITIES

OMB Circular A-110, Subpart C

Sec. 22(b). "Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: (1) written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and (2) financial management systems that meet the standards for fund control and accountability as established in Section [.21]."

2 CFR § 200.305

Sec. 1. "The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part."



COMPARING PART 200 TEXT TO PREVIOUS OMB CIRCULARS TO DEMONSTRATE SIMILARITIES

OMB Circular A-110, Subpart C

2 CFR § 200.305

Sec. 22(b) Continued.

"Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project."

Sec. 1 Continued.

"Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project."



COMPARING PART 200 TEXT TO PREVIOUS OMB CIRCULARS TO DEMONSTRATE SIMILARITIES

OMB Circular A-87, Attachment C

Sec. G(2). "Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable.

A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases."

2 CFR Part 200, Appendix V

Sec. G(2). "Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable.

A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases."

PAYMENT PROVISIONS CONSISTENT WITH EXISTING HUD GUIDANCE



PIH 2011-67, IMPLEMENTATION OF NEW CASH MANAGEMENT REQUIREMENTS FOR THE HOUSING CHOICE VOUCHER PROGRAM (DEC. 9, 2011)

Implementing Return to HUD-Held Program Reserves; Guidance on New Cash Management Requirements for HAP Payments

- Notice follows language in 2012 Appropriations Act's Conference Report, which states that conferees expect HUD to follow Treasury's cash management rules for tenant based rental assistance account
 - Beginning in January 2012, HUD distributes funds to PHAs monthly, based on most recent needs assessment to 1) mitigate accrual of excess funds at the PHA level and 2) comply with cash management requirements
 - Revives pre-FY2005 policy that requires HUD holds program reserves, leaving HAP funds obligated, but undisbursed at HUD level, rather than held by PHAs



PHF-FINANCE ACCOUNTING BRIEF #19

Revenue Recognition for Housing Assistance Payments and Administrative Fees for the Housing Choice Voucher Program (June 2013)

Providing Additional Guidance for Implementation of PIH-2011-67 Re: Cash Management Controls in Section 8 Programs

"Advances to a recipient organization will be limited to the minimum amounts necessary for immediate disbursement needs and will be timed to be in accord only with the actual immediate cash requirements of the recipient organization in carrying out the purpose of an approved program or project.

The timing and amount of cash advances will be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs and proportionate share of any allowable indirect costs."



WRAP UP



NEXT STEPS

- HUD will notify recipients through program regulations, grants or cooperative agreements, or other guidance, which subparts are applicable to specific programs
- HUD is identifying handbooks and notices that need to be revised
- HUD will publish new regulations for its programs to implement/modify the Part 200 requirements and will indicate which parts of Part 200 are not applicable
- "HUD recognizes that there may be uncertainty pending publication of the conforming program regulations. The provisions of 2 CFR part 200 apply, consistent with the exceptions given to the HUD program for requirements which are detailed in the 2013 edition of the Code of Federal Regulations in 2 CFR parts 215, 220, 225, and 230, 24 CFR parts 84 and 85, and OMB Circulars."



APPENDICES TO REVIEW

Appendix II: Required Contract Provisions

- Required contract provisions for all contracts made by a non-Federal entity under a Federal award

Appendix V: Central Service Cost Allocation

- Process for state and local governments to identify and assign central service costs to benefitted activities on a reasonable and consistent basis

Appendix VII: Indirect Cost Proposals

- Provides guidance to state and local governments and Indian tribes on developing, submitting and documenting indirect cost rate proposals



QUICK REFERENCE CHART TO CHANGES

Source of most language is OMB Circular A-110 (corresponding to 24 CFR Part 84), Uniform Requirements For Hospitals, Higher Education, And Nonprofits

Part or Section	Document Serving as Basis
Subpart A – Purpose & Scope	Adapted from A-110; combines definitions from administrative requirements, cost principles, audit circulars.
Subpart B – General Provisions	Adapted from A-110
Subpart C – Pre-Award Requirements	Adapted from A-110; topics mostly internal to HUD
Subpart D – Post- Federal Award Requirements.	Adapted from A-102 except for the following, taken from A-87/Part 85 : (1) performance measurement; (2) program income; (3) allowable costs; (4) real property; (5) equipment; (6) procurement (except includes A-110 requirement for a code of conduct); and (7) record retention.
Subpart E – Cost principles	Policy changes adapted from A-21; otherwise merges A-21 with A-87 and A-122
Subpart F – Audit Requirements.	Adapted from A-133

QUICK REFERENCE TO SOURCES

Circular Cost Principles: the former

- A-21: Educational Institutions
- A-87: State, Local and Indian Tribal Governments
- A-122: Non-Profit Organizations

Circular Uniform Requirements: the former

- A-102: State and Local Governments (basis for Part 85)
- A-110: Higher Education, Hospitals, and Nonprofits (basis for Part 84)
- A-133: Audits of States, Local Governments and Non-Profit Organizations



ADDITIONAL MATERIALS

2 CFR Part 200

HUD Notice SD-2015-01 (February 26,2015) regarding transition to 2 CFR part 200

Frequently Asked Questions

- <https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf>

Crosswalk between old and new regulations

- <http://www.whitehouse.gov/sites/default/files/omb/fedreg/2013/uniform-guidancecrosswalk-from-predominate-source-in-existing-guidance.pdf>

Blackline – previous guidance applicable to PHAs v. Part 200

- <http://hdli.org/noteworthy/201503.Redline.Comparison.pdf>

Procurement side by side – Part 85.36 v. Part 200

- <http://hdli.org/noteworthy/201503.OMB.Procurement.pdf>

Outline from the 2015 General Counsel Forum

- <http://hdli.org/noteworthy/201503.GCF.Procurement.Materials.pdf>



RENO & CAVANAUGH PLLC

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CONTACT INFORMATION

Julie McGovern, jmcgovern@renocavanaugh.com

(202) 349-2472

Laura Schwarz, lschwarz@renocavanaugh.com

(202) 349-2474

Courtney Hunter, chunter@renocavanaugh.com

(202) 349-2676

