

insights

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Grant and cooperative-agreement recipients: Are your procurement standards compliant yet?

Local governments, Native American tribes, institutions of higher education, or non-profit organizations (including health care organizations) that receive grants or cooperative agreements (or part of either type of Federal award) must ensure their procurement standards are compliant, or on their way to being compliant, with Federal requirements and should know exactly how the recent Office of Management and Budget (OMB) extension for compliance may affect them.

As part of the Uniform Grant Guidance published in 2013, the Federal Government required entities that receive Federal awards, such as grants and cooperative agreements, to comply with new, strict procurement standards governing the entities' purchases of goods or services. *See* 2 Code of Federal Regulations (CFR) 200.317 through 200.326. Depending on which agency awarded the grant or cooperative agreement, those entities and any of their subrecipients must either already be in compliance or be working to be in compliance by December 26, 2017 – *seven months from now*. Because of this looming deadline, grant or cooperative-agreement recipients and subrecipients should examine their procurement policies and procedures and the applicable regulations to determine whether they are in compliance and, if not, what they need to do before December 26.

The procurement standards

The [Uniform Grant Guidance \(also dubbed the "Super Circular"\)](#) sets forth uniform administrative requirements for most agencies and their awardees, but some agencies have adopted slightly modified versions of the guidance. In particular, the U.S. Department of Health and Human Services (HHS) adopted [similar requirements, found at 45 CFR Part 75](#), for its components.

The Super Circular's procurement standards apply to local governments, Indian tribes, institutions of higher education, or non-profit organizations that carry out Federal awards (Non-Federal Entities). In both 2 CFR Part 200 and 45 CFR Part 75, the procurement standards are more rigorous than in prior iterations of the regulations. For instance, under the prior procurement standards, recipients simply had to "be alert to organizational conflicts of interest." *See* 2 CFR 215.43; 45 CFR 2543.43 (2012). Now, they must maintain "written standards of conduct covering organizational conflicts of interest." *See* 2 CFR 200.318; 45 CFR 75.327. That is a big difference and certainly not an isolated example highlighting the need for enhanced compliance.

The extension for compliance

The Government had originally given recipients/subrecipients until December 26, 2015, to bring their procurement policies and procedures into compliance with the Uniform Grant Guidance's standards. *See* 2 CFR 200.110 (2015). OMB later extended the deadline for compliance with the 2 CFR Part 200 procurement standards to December 26, 2016. *See* 80 Fed. Reg. 54,408 (Sep. 10, 2015). Four months later, HHS extended the deadline for compliance with its procurement standards. *See* 81 Fed. Reg. 3004 (Jan. 20, 2016). On May 17, 2017, [OMB issued an additional extension](#), pushing the deadline for compliance with the 2 CFR Part 200 procurement standards to December 26, 2017. HHS has not followed suit.

Thus, the extension applies only to recipients and subrecipients of Federal awards governed by the Super Circular at 2 CFR Part 200. Additionally, the regulation requires that any entity that takes advantage of the extension continue to follow the prior procurement standards and document its decision to follow them in its internal procurement policies.

What should you do?

Any Federal award recipient or subrecipient that intends to delay adoption and implementation of the more rigorous procurement standards should ensure that (i) it can delay such adoption and implementation under the applicable



regulations; (ii) it continues to comply with prior procurement standards; and (iii) it has adequately documented its decision. Nonetheless, these entities should ensure that they are taking the steps necessary to have their procurement policies and procedures compliant by the December 26 deadline.

Entities that are new to grants or cooperative agreements should take note of these new, more rigorous procurement standards. Their program/technical staff should work with in-house counsel to review the applicable regulations and procurement obligations to develop compliant policies and procedures. When drafting these policies and procedures, entities should rely on the current regulations, with a view toward future adaptability of new program requirements, rules, and regulations. Entities also must be careful to avoid using samples or guidance based on outdated regulations, circulars, or agency information when modifying their current procurement policies and procedures.

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