

From Compliance to Performance

The Uniform Guidance and Key Legislation

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From Compliance to Performance

Learning Objectives

1. Recognize the structure of the uniform guidance and the focus on accountability.
2. Explore the federal interest to reduce risk through key legislation that affects the uniform guidance.
3. Raise awareness of key provisions in the uniform guidance that impact performance.
4. Identify steps that can be taken to transition from compliance to performance.

From Compliance to Performance

A Few Words

From Compliance to Performance

A Few Words

The uniform guidance became effective for federal agencies on Dec. 26, 2013 and for nonfederal entities on Dec. 26, 2014.

Numerous legislative actions affected, and continue to affect, the development of the uniform guidance.

From Compliance to Performance

A Few Words

The uniform guidance and these legislative actions focus on performance and accountability.

Learning Objective #1

Structure of the Uniform Guidance

L01: Structure

Two Over-Riding Priorities

- Reduce administrative burden.
- Prevent waste, fraud and abuse.

L01: Structure

Nine Objectives

- Eliminate duplicative and conflicting guidance.
- **Focus on performance over compliance.**
- Encourage efficient use of IT and shared services.
- Provide for consistent and transparent treatment of costs.

L01: Structure

Nine Objectives

- Limit allowable costs to make best use of federal resources.
- Set standard business processes for data.
- Encourage family-friendly policies.
- Strengthen oversight.
- Target audit on risk of waste, fraud and abuse.

L01: Structure

Uniform Guidance (2 CFR 200)

- 6 subparts.
- 12 appendices.

Specific information is located in multiple places.

L01: Structure

Uniform Guidance (2 CFR 200)

- Subpart A: Definitions § 200.xx's
- Subpart B: General Provisions § 200.100's
- Subpart C: Pre-Award § 200.200's
- Subpart D: Post-Award § 200.300's
- Subpart E: Cost Principles § 200.400's
- Subpart F: Audit § 200.500's

L01: Structure

Subpart A

- Definitions and acronyms.
- § 200.01 - § 200.99.
- Review Subpart A.

LO1: Structure

Here's Why

- Some definitions are new (§ 200.45 fixed amount awards)
- Some definitions were removed (§ 200.32 DUNS number).
- Some definitions raise questions (§ 200.69 nonfederal entity).

LO1: Structure

Definition of Nonfederal Entity (§200.69)

- “Nonfederal entity means a state, local government, Indian tribe, institution of higher education or nonprofit organization that carries out a federal award as a recipient or subrecipient.”
- Who/what is missing?

L01: Structure

Missing

- For-profits.
- International organizations.
- Foreign governments.
- Individuals.

An auditor would reason that the uniform guidance is not applicable to these nonfederal entities.

L01: Structure

Applicability

- Subpart B General Provisions
- Applicability (§ 200.101 (c))

Federal awarding agencies may apply Subparts A-E to for-profits, foreign public entities or foreign organizations.

What about Subpart F? What about must?

L01: Structure

Applicability

- Determine what should apply.
- Ensure compliance through the award terms and conditions/award documents.

LO1: Structure

Subpart B

- General provisions.
- § 200.100 – § 200.113.
- Applicability and exceptions.
- Flow down.
- Conflict of interest.
- Mandatory disclosures.

L01: Structure

Subpart C

- Pre-Award.
- § 200.200 – § 200.213.
- Subpart C must be read with Appendix I and Appendix XII.
- Merit review of proposals.
- Risk review of applicants.

L01: Structure

Subpart D

- Post-Award.
- § 200.300 – § 200.345.
- Pass-through provisions (§ § 200.330-.332).
- Procurement provisions (§ § 200.317-.326).
- Remedies (§ 200.338).

LO1: Structure

Subpart E

- Cost principles.
- § 200.400 – § 200.475.
- Other cost principles (45 CFR 75 for hospitals and 48 CFR 31.2 under the FAR).
- Prior written approvals (§ 200.407).
- Indirect costs (§ 200.414).

LO1: Structure

Subpart F

- Audit requirements.
- § 200.500 – § 200.521.
- Federal agency provisions.
- Auditee provisions.
- Auditor provisions.

L01: Structure

Appendices

- Appendix I: Pre-Award program announcement.
- Appendix II: List of national policy requirements.
- Appendix III-VII: Indirect costs.

Based on type of nonfederal entity.

L01: Structure

Appendices

- Appendix VIII: Very large nonprofits (exception).
- Appendix IX: Hospital cost principles (exception).
- Appendix X: SF-SAC.
- Appendix XI: Compliance Supplement.
- Appendix XII: Integrity and Performance.

L01: Structure

Cost Principles

- Three sets of cost principles:
 - Subpart E (2 CFR 200).
 - App. IX Hospital cost principles (45 CFR 75).
 - FAR (48 CFR 31.2) for contracts under grants.

Based on type of nonfederal entity.

L01: Structure

Specific Information in Multiple Places

- Pre-Award.
 - Subpart C (§ 200.200's).
 - Appendix I.

L01: Structure

Specific Information in Multiple Places

- Indirect costs:
 - Subpart A Definitions (§ 200.56, § 200.57).
 - Subpart E Cost principles (§ 200.414).
 - Appendices III-VII.

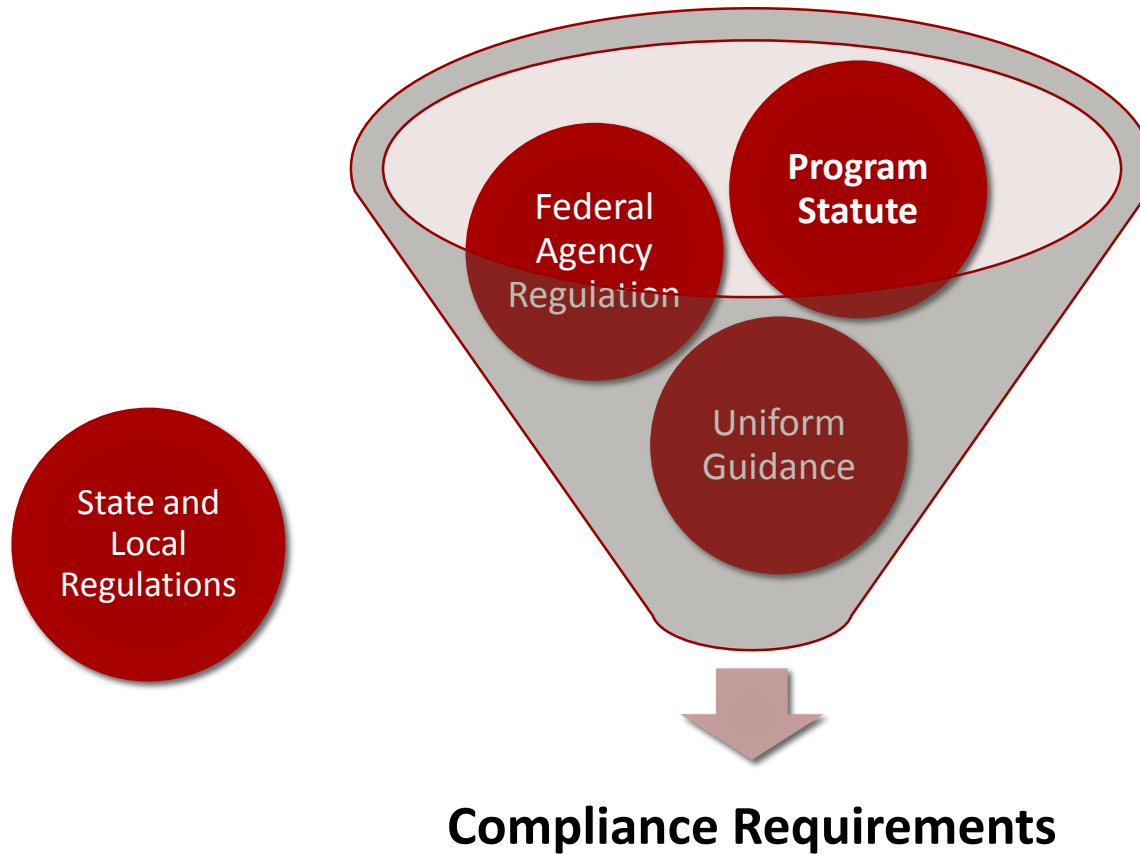
Based on type of nonfederal entity.

L01: Structure

Other Compliance Requirements

- Federal agency regulation.
- Program statute/public law.
- State/local regulations.

L01: Structure



L01: Structure

What Takes Precedence?

- Program statute/public law (US Code).
- Federal agency regulation (CFR).
- Uniform guidance (CFR).

Generally follow most restrictive provision.

Learning Objective #2

Federal Interest in Risk – History of Legislation

L02: History of Legislation

Single Audit Act of 1984

- PL 98-502
- Consolidate and streamline audits.
- Circular A-133.
- Summary audit report format.
- Electronic reports to federal audit clearinghouse.

L02: History of Legislation

1999: FFAMIA

- Federal Financial Assistance Management Improvement Act.
- PL 106-107.
- Created a digital platform, Grants.gov.
- “To improve the effectiveness and performance of federal financial assistance programs.

L02: History of Legislation

2006: FFATA

- Federal Funding Accountability and Transparency Act.
- PL 109-282.
- USAspending.gov
- Recipients, subrecipients report awards
- All nonfederal entities register in SAM.gov

L01: Legislation and Funding

2009: ARRA

- American Recovery and Reinvestment Act.
- PL 111-5.
- Recovery.gov.
- Recovery Operations Center (data analytics).
- Fraud-Risk Score Card.
- Investigations and recovery of funds.
- Where is the data analytics center?

L02: History of Legislation

2009: Duncan Hunter, Section 872

- Duncan Hunter National Defense Authorization Act
- PL 110-417.
- FAPIIS.gov.
- Pre-award risk assessments for federal contracts.

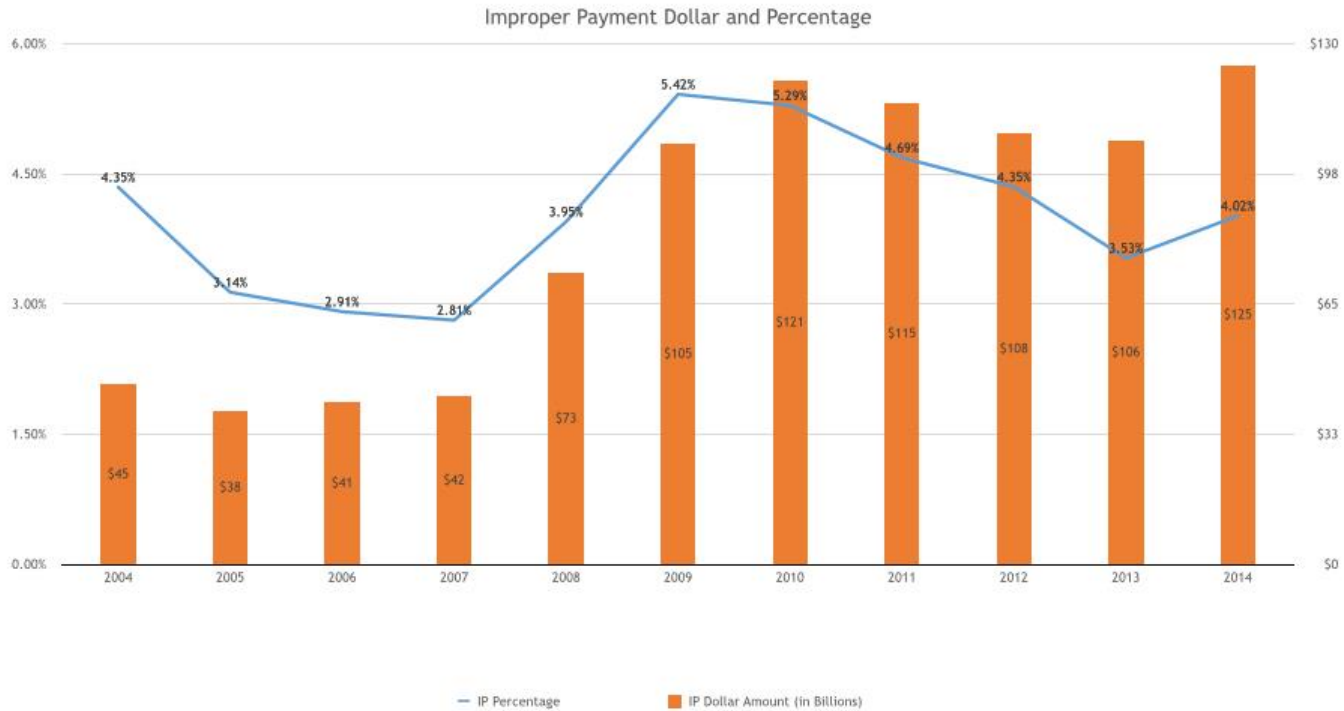
L02: History of Legislation

2010: IPERA

- Improper Payments Elimination and Recovery Act.
- PL 111-204.
- Paymentaccuracy.gov.
- Reduce improper payments by \$50B in 2012.
- Federal agencies held accountable for funds.

L02: History of Legislation

Paymentaccuracy.gov



L02: History of Legislation

Agency	Payment Recapture Audits		Overpayments Recaptured Outside of Payment Recaptures	
	Amount Identified	Amount Recovered	Amount Identified	Amount Recovered
Department of Agriculture	\$0.6M	\$0.7M	\$300.5M	\$234.5M
Department of Commerce	\$0.0M	\$0.0M	\$9.4M	\$7.2M
Department of Defense-- Military	\$6.5M	\$2.0M	\$513.2M	\$462.6M
Department of Education	\$74.4M	\$33.8M	\$0.0M	\$0.0M

L02: History of Legislation

2011: COFAR

- Council on Financial Assistance Reform.
- M-12-01.
- Best practices for federal financial assistance.
- Worked with OMB to develop uniform guidance.

L02: History of Legislation

2012: IPERIA

- Improper Payments Elimination and Recovery Improvement Act.
- PL 112-248.
- OMB to set annual targets for federal agencies.
- Federal agencies must report high risk programs.
- Federal agencies disclose to OIG actions and plans to recover funds.

L02: History of Legislation

2013-2014: Uniform Guidance

- 2 CFR 200.
- Combined eight prior OMB circulars.
- Effective for federal agencies Dec. 26, 2013.
- Effective for nonfederal entities Dec. 26, 2014.
- Updated as legislation is enacted.

L02: History of Legislation

2014: DATA Act

- Digital Accountability and Transparency Act.
- PL 113-101.
- Pilot stage until May 2018.
- To expand upon FFATA.
- To detect and prevent waste, fraud and abuse.
- To improve USAspending.gov.
- To standardize data elements.

L02: History of Legislation

2015: Duncan Hunter Amended

- FAPIIS.gov to merge with SAM.gov.
- Expanded requirements from federal contracts to federal grants.
- Proposals can be denied due to risk, applicant considered not qualified for federal funds.
- Uniform guidance was amended Sept. 2015.

L02: History of Legislation

2016: GONE Act

- Grants Oversight New Efficiency Act.
- PL 114-117.
- Improve closeout process.
- Federal agencies to report annually to OIG.
 - List all grants.
 - List 30 oldest grants.
 - Provide plan to close out oldest grants.

L02: History of Legislation

Funding Trends

(Authorization and Appropriation)

- \$600B annually in federal awards.
- \$100B annually in improper payments.
 - \$180M to 20,000 individuals who were dead.
 - \$230M to 14,000 fugitives or jailed felons.

L02: History of Legislation

GAO Closeout Report 2011

- \$794M unspent funds in expired grant accounts.
- Another \$126M unspent in automated payment systems.
 - \$111M unspent 5 years.
 - \$9.5M unspent 10 years.
 - \$595M attributed to 8,260 HHS grants.
- 28,000 expired accounts with zero balances.

L02: History of Legislation

GAO Closeout Report 2015

- \$994M unspent funds in expired grant accounts.
- Expired accounts with 0 balances.
 - 28,000 reduced to 5,906.
 - 359 of 5,906 were from 2011 report, others new.
 - Bank fees for expired accounts totaled \$29,000.

GONE Act enacted 2016.

L02: History of Legislation

Findings

- Federal funds are not being expended as intended/awarded.
 - Unacceptable levels of improper payments.
 - Unacceptable levels of unspent funds.
 - Unacceptable levels of waste, fraud and abuse.
 - Indicators of high risk.

Learning Objective #3

Key Provisions for Program and Financial Performance

L03: Key Provisions

Mandatory Disclosures (§ 200.113)

- Nonfederal entities must disclose in writing any fraud, bribery or gratuity violations.
- Best practice – nonfederal entities that conduct fundraising as a standard business practice may want to consider a written gift policy to avoid appearance of gratuity violations.

L03: Key Provisions

Standard Data Elements (§ 200.203, App. I)

- Six standard data elements in notices of funding opportunities.

L03: Key Provisions

Merit Review of Proposals (§ 200.204)

- Federal agencies must design and execute a merit review of proposals.

L03: Key Provisions

Pre-Award Review of Risk (§ 200.205)

- Federal agencies to review risks of applicants prior to making an award for competitive and formula grants.
- Federal agencies must comply with guidelines on suspension and debarment.
- Federal agencies must comply with guidelines on integrity and business ethics.

L03: Key Provisions

Risk Review of Applicant (§ 200.205)

- Federal agencies must have a framework for evaluating the risks posed by applicants before making an award.
 - Financial stability.
 - Quality of management system.
 - History of performance.
 - Audit reports.
 - Applicant ability to implement program.

L03: Key Provisions

Specific Conditions (§ 200.207)

- If awarding to a recipient with elevated risk, federal agencies must impose specific conditions to mitigate deficiencies.
- Once deficiency is corrected, federal agencies must amend award agreement to remove the specific condition(s) and lower the risk assessment.

L03: Key Provisions

Standard Awards (§ 200.210, § 200.331)

- Federal agencies and pass-through entities must include standard elements in award agreements.
- Awards must include intended performance outcomes and a timeline for accomplishment.

L03: Key Provisions

Determinations (§ 200.212)

- Federal agencies must conduct an integrity review of applicants:
 - Make a determination.
 - Review and/or post in FAPIIS, as appropriate.
 - Data retained in FAPIIS for five years.
- An applicant denied an award based on risk and/or integrity is determined “not qualified” for federal funds.

L03: Key Provisions

IRD, Inc. Determination

- International Relief and Development (IRD), Inc.
 - USAID contractor.
 - Awarded \$2.25B in contracts 2007-2013.
 - USAID reported IRD in FAPIIS Jan. 26, 2015 for serious misconduct.
- IRD filed suit against USAID.

L03: Key Provisions

IRD Determination

- USAID withdrew the determination.
- IRD refused to withdraw the law suit citing irreparable harm to IRD's reputation due to the posting.

L03: Key Provisions

Making Determinations (§200.212)

- If a federal agency discovers a compliance deficiency, irregularity or misconduct, review the matter (possibly under attorney/client privilege).
- Where appropriate, address the deficiency.
- Determine whether the deficiency should trigger a reporting obligation in FAPIIS.
- Report, as appropriate.

L03: Key Provisions

Financial Data (§ 200.301)

- Nonfederal entities must relate financial data to performance accomplishments.
- Reporting should reflect programmatic and financial progress.

L03: Key Provisions

Internal Control (§ 200.303)

- Nonfederal entities must have written policies and procedures as part of a system of internal control.
- Nonfederal entities must provide “reasonable assurance” for proper stewardship of federal funds.

L03: Key Provisions

Procurement (§ § 200.317-.326)

- Nonfederal entities must have written procurement policies and procedures.
- Nonfederal entities must ensure full and open competition and eliminate unfair competitive advantage.
- Contractors that develop or draft specifications on bids or proposals cannot compete.

L03: Key Provisions

Performance and Data (§ 200.328)

- Performance reports must use OMB-approved government-wide standard information collections.

L03: Key Provisions

Pass-through Monitoring (§ 200.331)

- Pass-through entities must monitor subrecipients and correct deficiencies.
- Pass-through entities must reassess risk after progress reports.
- Best practice to assess pre-award risk.

L03: Key Provisions

Data (§ 200.335)

- Recipients to use open and machine-readable formats for data collections.

L03: Key Provisions

Remedies (§ 200.338)

- Remedies for noncompliance:
 - Temporarily withhold payments.
 - Disallow costs.
 - Partially or wholly suspend or terminate award.
 - Suspension or debarment.
 - More...

L03: Key Provisions

Closeout (§ 200.343)

- Federal agencies and pass-through entities must complete all closeout actions no later than one year after receipt of all required final reports.

L03: Key Provisions

Closeout Does Not Affect (§ 200.344)

- The right of the federal agency to audit and disallow costs during the record retention period.
- The obligation of the nonfederal entity to repay funds.

L03: Key Provisions

Payment Documentation (§ 200.403)

- Documentation must support payment for expenses to ensure they are allowable, allocable, necessary and reasonable.
 - Receipts.
 - Purchase orders.
 - Invoices.
 - Time records.

L03: Key Provisions

Prior Written Approvals (§ 200.407)

- Nonfederal entities must seek prior approval from the federal awarding agency under 22 circumstances listed in the provision.

L03: Key Provisions

Selected Items of Cost (§ § 200.420-.475)

- Nonfederal entities must comply with 55 items of cost to determine allowability.

L03: Key Provisions

Audit (§ 200.513)

- Federal agencies to create a single audit accountable official:
 - To provide oversight of audits.
 - To reduce improper payments, waste, fraud, abuse.
 - To improve federal outcomes.

L03: Key Provisions

Audit Findings (§ 200.513)

- Awarding agencies must reduce the number of outstanding audit findings.
 - Senior accountable official.
 - Cooperative audit resolution.

L03: Key Provisions

Audit Metrics (§ 200.513)

- Awarding agencies must implement audit-risk metrics.
 - Timeliness of report submissions.
 - Number of audits without auditor opinion on major programs.
 - Number of repeat findings.

L03: Key Provisions

Integrity (Appendix XII)

- Nonfederal entities to submit mandatory disclosures, over \$10M in awards:
 - Civil proceedings (fault, fine).
 - Criminal proceedings.
 - Administrative proceedings (fault, fine, penalty, appeals board).

Learning Objective #4

Steps To Take

L04: Steps To Take

Know Your Risk Rating (§200.205)

- Self-assess.
- Review award documents.
- Work with awarding agency.

L04: Steps To Take

Know Your Technology (§200.335)

- Open machine-readable formats.
- 57 data elements defined in DATA Act.
- Check the DATA Act pilot site at www.fedspendingtransparency.github.io.

Does your current system have the capacity?

L04: Steps To Take

Know Your Items of Cost (§200.420-.475)

- Understand what is allowable/unallowable.
- Note any new items of cost.
- Add new items of cost to local chart of accounts.

L04: Steps To Take

Know Prior Written Approvals (§200.407)

- Understand what costs require prior written approval.
- Review list.
- Provide training to program managers.

L04: Steps To Take

Align Procurement with Uniform Guidance

- Review procurement provisions (§ 200.317-.326)
- Note what has changed.
- Update local procurement policy as needed.
- Provide training to program managers.

L04: Steps To Take

Update Policies and Procedures

- What's the same.
- What's new (family-friendly policies).
- What has changed (procurement).
- Provide training.

L04: Steps To Take

Correct Open Audit Findings (§200.513)

- Avoid recurring findings.
- Learn about cooperative audit resolution.

From Compliance to Performance

Additional Q&A?

From Compliance to Performance

Contact Information



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