

Government Contracts with Nonprofits: Update

03.06.18 | Linda J. Rosenthal, JD



Back in March 2015, we alerted nonprofits with government contracts about a development that should interest them.

It was a story with snooze-inducing buzzwords: “overhead,” “reasonable indirect costs,” and “cost allocation rules.” In *New Year, New Accounting Rule: But Don’t Sleep Through This One*, we explained that the Office of Management and Budget (OMB) had issued new rules called *OMB Uniform Guidance* for much better reimbursement of nonprofit agencies performing services for community beneficiaries.

The U.S. government is the original source of an enormous amount of money that is disbursed to the states and local governments so the latter can, in turn, award their own grants and contracts to grantee-charities. Because of this flow-through mechanism, the problem of underpayment appears “in government awards at all levels and around the nation.”

The new federal rule became effective for all contracts entered into after December 26, 2014, that include federal dollars as part of the funding. As of that date, all government entities that select nonprofits to deliver services must reimburse them for the “reasonable indirect costs” – sometimes called “overhead” or “administrative” costs – they incur.

These new OMB rules were hailed as “a signature accomplishment of the ... National Council of Nonprofits” and a “... a major victory for people who depend on nonprofits every day.”

Even the Controller of the Office of Management and Budget “waxed poetic about the *OMB Uniform Guidance*: “[T]his historic reform will transform the landscape [for government grants and contracts]. . . for generations to come.”

But, even when federal government officials first launched the OMB Uniform Guidance Rules, they included a specific caution to nonprofits; namely, that these charities “may encounter resistance from federal, state, or local employees, or other opposition based on lack of knowledge or understanding of these new rules.” The advice: “Be proactive in enforcing these new rights....”

Government Contracts Changes: L.A. Takes Lead

A year later, in *Los Angeles Leads the Way Implementing New OMB Grant Rules*, we reported some good news about this program. The nation's county with the largest population and the most nonprofits became the first jurisdiction in the United States to endorse and implement these new rules.

Supervisor Hilda Solis, formerly U.S. Secretary of Labor, had spearheaded this resolution through the Los Angeles County Board of Supervisors. She explained that, by ensuring that the government covers "...the full and reasonable cost for [nonprofit-provided] services," L.A. County can significantly help their "nonprofit partners better serve their constituents and fulfill their important and irreplaceable missions."

On March 3, 2016, the LA County Chief Executive Officer released an "official report" about successful steps to implement the new OMB Uniform Guidance.

OMB Uniform Guidance Survey

It hasn't been all good news, though. During the fall of 2017, the National Council of Nonprofits sponsored a nationwide OMB Uniform Guidance Implementation Survey. Nonprofits with government grants and contracts were asked to answer questions about "how well the federal grants reforms from the Office of Management and Budget are being implemented." State and county agencies were also surveyed.

In late November 2017, NCN reported early results: "There were 'disappointing, but not particularly surprising, shortcomings' by the government response."

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Government agencies and nonprofits alike reported ... that the most frequent change they've noted since the implementation of the OMB Uniform Guidance is increased monitoring, a result that runs counter of the reform goal of shifting the focus from compliance to outcomes.

In addition, fewer than 20% of government agencies and nonprofits reported seeing changes in the reimbursement practices for indirect costs. That's a significant problem, of course, since the mandate was for "governments at all levels" to "pay nonprofits for some or all of their indirect costs."

Also, "there is a great deal of inconsistency –

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across government agencies in how they reimburse nonprofits for indirect costs. Even those claiming that they follow the Uniform Guidance do not appear to be interpreting the rules correctly. One common government policy is to pay a nonprofit's federal indirect cost rate if one exists or the '10 percent de minimis.' However, only nonprofits that have never negotiated a rate with a government agency (not just a federally approved indirect cost rate) are eligible for the de minimis rate.

These results suggest “...that more education at both the government and nonprofit levels is needed.”

Conclusion

The policy of the *OMB Uniform Guidance* is a significant benefit to the nonprofit sector, but only if government entities implement them aggressively and train their officials and employees to carry them out evenly and in accordance with the purposes and mandate of this program.