The Uniform Guidance – Five Years and Counting

By Matt Cromwell, CPA

It has been over six years since Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, more commonly known as the Uniform Guidance (UG) was released. The date of Dec. 26, 2013, will forever be seen as the day compliance took on a new meaning for recipients of federal funding.

During this time, entities have worked to establish, update and critically review internal policies and procedures to ensure compliance with the Uniform Guidance. From my clients' perspective, the amount of resources, both time and money, spent on meeting the new requirements has been staggering. Much progress has been made, but there continue to be key areas where we find that entities encounter issues. A few areas in which we continue to see issues and findings are discussed below:

Performance Reporting (UG §200.38) – Although an audit under the Uniform Guidance does not include programmatic data testing, it does focus on the performance reporting process. Entities must maintain adequate systems and controls over the programmatic reporting process. Entities must ensure that program teams: have a full and complete understanding of the reports required, have complied with submission requirements, perform programmatic reviews and present the data on the reports accurately and in compliance with the requirements of the award.

Equipment / Real Property (UG §200.13) – The Uniform Guidance requires that entities comply with requirements related to equipment and real property purchased with federal funds. The UG established specific requirements nonprofits must follow related to equipment additions (utilizing the definition of equipment in UG §200.33) and equipment disposals. In addition, if the entity has purchased equipment with federal funds, it must perform an inventory of federally purchased equipment no less than once every two years. Even if an entity has no federal equipment purchases in the past two years, but still holds material amounts of equipment purchased in the past with federal funds that have not been disposed, the nonprofit must still comply with equipment disposal requirements and perform the required inventory.

Procurement (UG §200.317-§200.326) – An inordinate amount of time has been spent in the area of procurement, including multiple revisions, delays and then additional revisions of the UG during 2018. However, the requirements to clearly and accurately document the rationale for a vendor selection remain and must include: systematic rationale for selection of the vendor; basis for selection of contract type; basis for contractor selection, including rejection reasoning; and finally the basis for price. Each procurement must have each of these four required components clearly documented to substantiate compliance. Another area that continues to pose challenges is the sole sourcing of procurements. UG §200.320 establishes a point of emphasis that has drastically reduced the ability to sole source procurements in all but the following circumstances:

- the item is only available from one source
- the public exigency or emergency is such that the delay of competition is deemed reasonable (extremely rare instances and in this case it is strongly encouraged to obtain approval from your oversight agency)
- express authorization from an agency after a written request from the federal recipient
- after solicitation of a number of sources, competition is ultimately deemed inadequate

Subrecipient monitoring (UG §200.330 – §200.331) – A few key areas continue to cause overall challenges for entities. The primary areas of emphasis continue to focus on enhanced documentation around monitoring of the subrecipients and related follow-up on any findings or issues. Often times when performing testing, we will see the entity has vast amounts of documents from the

subrecipient which address a portion of the monitoring requirement; however, the documentation will often include the latest audit report of the subrecipient which details compliance findings. However, there is no documented evidence of how the entity has increased its scrutiny and monitoring around the compliance findings reported. Additionally, we continue to see that entities are not performing the pre-award assessment as required. There are multiple proscribed steps in the Uniform Guidance on the pre-award assessment that are required to be performed at the time of each award, regardless of how many times you use a subrecipient on other awards.

Mandatory Disclosures (UG §200.113) – This section states "The Non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII - Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment." We continue to encounter instances where entities have a multitude of reasons not to disclose this within their own reporting. Unlike OMB Circular A-133, where there were thresholds of reporting such matters, under the Uniform Guidance, that de minimis reporting threshold no longer exists. Oftentimes, entities had historically considered the Form 990 fraud disclosure thresholds as a compass in this area, but clearly the two concepts have diverged with the explicit nature of UG §200.113. Secondarily, the "timely manner" concept is also widely debated. In this case, we strongly encourage timely reporting with clear guidelines from the client's general counsel.

We have also seen instances where an international nonprofit has notified the local agency mission overseas; however that notification did not reach the appropriate officials at the offices in Washington, D.C. As a result, the entity has been deemed to be in violation of this notification requirement. Entities should inform all parties of any issues subject to UG §200.113 in writing in a timely manner to clearly document the actions they have taken.

One final consideration – We continue to find instances where entities establish internal policies and procedures that are more restrictive than the UG requirements. One example we have seen on many occasions is where an entity establishes a policy that all transactions with any vendor are required to have a suspension and debarment check performed and documented. Per the UG, this is a requirement for certain covered transactions and above certain dollar thresholds. If the entity complies with the UG requirements, it will still have a finding since it did not comply with its internal policy. This applies even if the transaction may not have exceeded the UG thresholds. We strongly encourage entities to review their policies and procedures and consider the UG requirements and determine what is best for them.

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