



The UGG In Action: Fraud Risks and Reporting Requirements Under Federal Grants

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November 17, 2015

Agenda

- Learning Objectives
- Uniform Grant Guidance
- Understanding Mandatory Disclosures
- Reporting Under the Uniform Guidance
- Internal Controls and Risk Mitigation
- Questions and Answers

Learning Objectives

- Describe when disclosures to the federal government regarding ethical violations are required
- Identify changes to federal regulations with respect to reporting requirements resulting from adoption of the Omni Circular
- Discuss and identify internal controls over ethical matters, reporting, and practical approaches to implementation

Uniform Grant Guidance Overview

Uniform Grants Guidance (UGG)

- Codified within Title 2, Part 200 of the Code of Federal Regulations (CFR)
- Also referred to as the Super Circular or the Omni Circular.
- What was/were the Government's goal(s) with adopting the UGG?
 - Reduction of unnecessary regulatory and administrative burdens
 - Streamline guidance for Federal awards to ease administrative burden
 - Strengthen oversight over Federal funds to reduce risks of waste, fraud, and abuse.
 - Reduce improper payments.

Uniform Grants Guidance (UGG)

- When did the requirements become effective?
 - The Guidance is effective for non-Federal entities with fiscal years beginning on or after December 26, 2014, with respect to audits.
 - Applies to funding received on or after December 26, 2014 (no retroactive component).
 - There is a one-year grace period for implementation of procurement changes per the interim final rule.
 - Grace period is for 2 CFR Parts 200.317 through 200.326
 - At the recipient's discretion.
 - Recipient must specify in written procedures that the recipient will continue to comply with OMB Circulars A-110 or A-102 for one additional fiscal year.

Uniform Grant Guidance (UGG)

- Some key items that have changed...
 - Established one, uniform set of guidance for the management of Federal awards by consolidating EIGHT previous circulars.
 - Increased the Single Audit threshold to \$750,000
 - Provides for a de minimus indirect cost rate of 10 percent of MTDC for those organizations who have not previously had a NICRA.
 - Established requirements for mandatory disclosures with respect to certain criminal acts pertinent to Federal awards.
 - Established an increased focus on performance measurement
 - Encourages the use of fixed amount subawards and implements a progress/deliverable-based payment approach.
 - Expectations for internal controls, including conduct of monitoring compliance.

Uniform Grant Guidance (UGG)

- The concept of “Should vs. Must” and its role in UGG application
 - Must
 - The word “must” is used throughout part 200 to indicate requirements
 - Should
 - The word “should” is used to indicate best practices or recommended approaches that the COFAR wanted non-Federal entities to be aware of, but not necessarily required to comply with.
 - This is slightly different from the auditor’s traditional stance on “should vs. must”.

Polling Question 1

- What is the micro-purchase threshold amount?
 - A. \$2,500
 - B. \$3,000
 - C. \$25,000
 - D. \$150,000

Understanding Mandatory Disclosures

Mandatory Disclosures

- Codified in 2 CFR Section 200.113
 - 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.

Fraud, Bribery and Gratuities

- What do these key terms mean?
 - Bribery: Act of giving money, goods, or other forms in exchange for an alteration on their behavior.
 - Gratuities: The provision of a gift, entertainment, or other favor with an expectation of favorable treatment under a Federal award.
 - Fraud: “Any *intentional* act, or series of acts, that is designed to *deceive* or *mislead* others and that *has an impact or potential impact on an organization’s financial statements*.” – AICPA EDP Fraud Review Task Force

Thinking Outside of the Criminal Realm

- There are additional risks in addition to those that carry criminal penalties and that require disclosure.
- False Claims Act
 - Provides for penalties if one knows of or should have known matters that contributed to false claims
 - Civil penalties range from \$5,500 to \$11,000 per claim and up to three times the amount of the government's damages
- Improper Payments
 - Payments that should not have been made or that were made in incorrect amounts; and
 - Payments that are inadequately supported, that are made to an ineligible party, or are for ineligible goods or services (not all inclusive).

Polling Question 2

- Does your organization provide mandatory ethics and fraud training on an annual or semi-annual basis?
 - A. Yes
 - B. No
 - C. Not Sure

Identifying Risks

- Consider such issues and risks encountered in the Federal grants and contracts space:
 - Application of the micro-purchase and competitive procurement requirements;
 - Potential double-dipping when using the de minimis indirect cost rate;
 - Inadequate documentation to support completion of milestones under fixed amount subawards; and
 - Improperly identifying or calculating modified total direct costs.

Example False Claims Act Violations

- Procurement Fraud and Truth in Negotiations
 - In 2013, the U.S. Department of Justice secured more than \$887 million in settlements and judgments based on allegations of false claims and corruption involving government contracts.
 - This included a \$664 million judgment against a certain Federal contractor for making false statements to the Air Force in negotiating the price of a contract for fighter jets.
- Procurement Fraud
 - A large supplier of water, sewer, fire protection, and storm drain products is set to repay \$5 million to the Federal Government.
 - The repayment is the result of the entity's using a disabled veteran's business enterprise as a pass-through, which violates the spirit of the applicable Federal financial assistance regulations.
- It is important to understand the risks and types of errors made by others in order to a) mitigate the risks and b) know the types of items that may result in a matter that must be disclosed.

Reporting Under the Uniform Guidance

Financial and Performance Reporting

- Financial and performance reporting remain mechanisms for use in monitoring Federal awards.
- Recipients and subrecipients are responsible for monitoring programs for compliance and performance expectations, including conducting subrecipient monitoring procedures.
- Federal agencies must use OMB-approved data elements.
 - Non-Federal entity must submit reports as often as required but no less frequently than annually and no more frequently than quarterly
 - Exceptions – Unusual Circumstances
 - Annual Reports due 90 calendar days after reporting period
 - Quarterly Reports due 30 calendar days after reporting period

Financial and Performance Reporting

- Performance reports must contain:
 - Comparison of accomplishments to objectives
 - The reason goals were not met
 - Other information that is appropriate
- Construction performance reports
 - Only when necessary above inspections and certification of percentage of completion.
- Significant Developments
 - Must notify the Government as soon as a condition is known
 - Problems, delays, adverse conditions materially impacting performance and objectives
 - Favorable Developments
- Federal agency may waive any part of reporting if not needed.

Focus on Performance

- There are no significant changes to the reporting frequencies or content. However, there is a focus on performance.
- Performance measurement requirements and expectations in Section 200.301 are altogether new.
 - Federal awarding agencies must require recipients to relate financial data to performance accomplishments.
 - When applicable, recipients must provide cost information to demonstrate cost effective practices.
 - Recipient performance should be measured in a way that will help the Federal agency and other non-Federal entities to improve outcomes and results.
 - Federal agencies should provide recipients with clear performance goals, indicators, and milestones.

Fixed Amount Subawards

- The inclusion of fixed amount subawards and related detailed discussion illustrates the focus on performance.
- With prior approval from the Federal awarding agency, a pass through entity may provide subawards based on fixed amounts up to the simplified acquisition threshold, provided that the subawards meet the requirements for fixed amount awards.
- Payments are based on performance.
- If performance requirements are not met, then the award amount must be adjusted.

Where is the risk?

- We see a number of issues in practice that result in risk of noncompliance, including:
 - Lack of source data to replicate financial and non-financial information;
 - Noncompliance within the reporting requirements specified in the grant and contract agreements;
 - Late report submissions;
 - Misunderstandings pertaining to reporting requirements/data elements; and
 - Mathematical errors: the numbers don't foot!
- The focus on performance also increases the relative importance of project management activities and monitoring both subrecipient and contractor performance.

Internal Controls and Risk Mitigation

Ask Yourself, “What can I do?”

- Prevention is better than a cure!
- Mandatory Disclosures
 - Standardize and formalize a training plan so that individuals understand red flags;
 - Consider revising subaward agreements to include expectations to vendors and subrecipients regarding the disclosure requirements and ethical expectations;
 - Ensure the reporting line for tips is operating as planned; and
 - Consider periodic re-certifications of the code of conduct and business ethics.

Ask Yourself, “What can I do?”

- Reporting
 - Communicating reporting requirements;
 - Segregation of duties in reporting and identifying the appropriate reviewers;
 - Maintain contemporaneous supporting documentation; and
 - Establish or otherwise formalize a project management function, including standard procedures to:
 - Identify procedures for tying financial data to outcomes;
 - Develop meaningful performance measures for purposes of tracking, monitoring, and reporting on both subrecipient and contractor performance;
 - Respond to implementation risks and needs for corrective action.

Polling Question 3

- How does your organization collect data from sub-recipients and consolidate it for programmatic reporting purposes?
 - A. We collect information via email.
 - B. We use Excel (or other similar spreadsheet software) and manually consolidate the data.
 - C. We use a software tool that collects the raw data and consolidates it for us.
 - D. None of the above
 - E. I think the answer is 42

Ask Yourself, “What can I do?”

- Consider the automation of reporting and data collection.
 - Establish metrics and standard inquiries
 - Automate data collection and aggregation of information
 - Automate generation of dashboards
 - Incorporate data into the required reporting format



Ask Yourself, “What can I do?”

- **Procedures**
 - Assess whether your organization's existing policies and procedures align with the requirements of the UGG.
 - Identify where a modification to existing procedures will be sufficient vs. full re-engineering.
- **Internal monitoring of organizational compliance**
 - This is now an expectation based on the financial management system requirements in the UGG;
 - Consider using a risk-based approach to identifying programs and key controls that should be monitored; and
 - Maximize the use of internal audit and compliance departments.

Polling Question 4

- Does your organization currently use an internal audit department, compliance department, or other similar group to monitor compliance and internal controls?
 - A. Yes
 - B. No
 - C. Not Sure

Questions

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