



Document Downloaded: Friday September 10, 2010

OMB Proposed Guidance for Reporting and Use of Information Concerning Recipient Integrity and Performance

Author: Carol Blum

Published Date: 04/20/2010

COGR

an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

1200 New York Avenue, N.W., Suite 750, Washington, D.C. 20005
(202) 289-6655/(202) 289-6698 (FAX)

BOARD OF DIRECTORS

CHAIR

ALBERT HORVATH
The Pennsylvania State University

MICHAEL AMEY
The Johns Hopkins University

JAMES BARBRET
Wayne State University

ELAINE BROCK
University of Michigan

SUSAN CAMBER
University of Washington

MICHELLE CHRISTY
Massachusetts Institute of Technology

KELVIN DROEGEMEIER
University of Oklahoma

JAMIE LEWIS KEITH
University of Florida

NATALIE KRAWITZ
University of Missouri System

CHARLES LOUIS
University of California, Riverside

JAMES R. MAPLES
University of Tennessee

CORDELL OVERBY
University of Delaware

SUSAN SEDWICK
University of Texas, Austin

JOHN SHIPLEY
University of Miami

WENDY STREITZ
University of California System

ARA TAHMASSIAN
Boston University

JAMES TRACY
University of Kentucky

MARIANNE WOODS
University of Texas,
San Antonio

DAVID WYNES
Emory University

ANTHONY DE CRAPPEO
President

April 19, 2010

Marguerite Pridgen
Office of Federal Financial Management
Office of Management and Budget

SUBJECT: Guidance for Reporting and Use of Information Concerning Recipient
Integrity and Performance: 2 CFR Subtitle A, Chapter 1, Parts 25, 27, 35, 77 and 180

Dear Ms. Pridgen:

The Council on Governmental Relations (COGR) is an association of 182 research universities and their affiliated academic medical centers and research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions. The implementation of Section 872 of the Duncan Hunter National Defense Authorization Act for FY 2009 represents a significant change in practice for the research community and, as such, raises concerns. The broad changes to 2 CFR Subtitle A included in the request for comments on the proposed guidance, changes required by Section 872 and others designed to complete changes proposed earlier attracts our attention as well.

As we acknowledged in our comment on the changes to the Federal Acquisition Regulations (FAR) implementing Section 872, COGR and its member institutions recognize the goal of the underlying statute to assure integrity and financial responsibility of federal grantees. We understand Congressional concern that grantees' performance histories should be part of the responsibility determination of awarding officials. We recognize the restraint exercised by OMB to craft guidance that generally reflects the statutory requirements. Nonetheless, there are important issues that deserve clarification and, in some cases, modification with the implementation of Section 872 and the sweeping revisions and additions to 2 CFR.

Reporting Burden

We are concerned about the additional reporting burden inherent in the implementation of Section 872 and other 2 CFR amendments. Because research institutions receive contracts and grants from more than 26 Federal agencies and multiple State organizations, it is critical that the OMB guidance and agency implementation of that guidance and the FAR requirements for reporting be the same. Critical to this coordination is the use of a single federal reporting portal for grants and contracts to streamline the process for meeting this requirement.

In a March 1, 2010, information collection clearance submission to OMB, the FAR Councils indicated that the recipient will use the Central Contractor Registration (CCR) database as the entry point for review and update of integrity and performance related information. We urge OMB and the federal grant agencies to use the same data entry system proposed by the FAR Councils. The frequency with which non-profit research institutions will need to visit the site to

affirm the accuracy of the data and review and, if appropriate, comment on information entered by a federal agency will add significantly to the burden of implementing Section 872. While the information concerning criminal, civil and administrative proceedings associated with federal and state grants and contracts for the institution is available, our understanding is that few systems exist to centrally assemble and track information of this kind. Information will need to be pulled from various sources and analyzed to determine the particular data requested before production and submission. The need to establish such systems and enter the data into the FAPIIS on an ongoing basis will significantly increase the burden to the community.

Definition of Recipient:

Currently, 2 CFR includes a definition of “recipient” at 215.2(cc) – “Recipient means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program.” We assume that the use of the word “recipient” throughout the proposed changes to 2 CFR has the meaning ascribed to it above and that requirements referring to “recipient” refer to an organization as opposed to individuals unless explicitly stated otherwise.

This affirmation of the applicability of Section 872 and other parts of 2 CFR is important particularly as it is used in the new Part 35, Subpart A. Subpart A – Recipient Qualification Matters – addresses the awarding official’s steps to qualify a recipient for an award, including the new requirements of Section 872. Section 35.125 addresses additional procedures – significantly beyond the Section 872 requirements – including the option of a pre-award credit report or audit in an effort to identify whether the recipient is delinquent on a debt to a federal agency. The guidance directs the awarding official to delay an award until the recipient makes payment.

We strongly support the definition of “recipient” as meaning the organization for the purposes of reporting in FAPIIS and the responsibility determination. We can only report on the criminal, civil or administrative proceeding related to the performance of a federal or state grant for the institution itself.

Clarifications

Public Access

In the Supplementary Information included with the proposed guidance, OMB limits access to the FAPIIS database to “Federal Government officials” and the entity for its specific information. We recommend that OMB include a statement in the guidance that addresses questions related to Freedom of Information Act (FOIA) requests. We recommend that the information included in the database not be subject to FOIA.

In discussing public access questions in the final FAR rule, the FAR Councils assert “the Councils do not believe that Congress intended for [the FAPIIS] database to be accessible by the public.” Nonetheless, the Councils leave the question of accessibility to be determined on a case-by-case basis under the specific agency’s FOIA procedures. If OMB chooses to resolve the question of public access by limiting, as opposed to denying, access, we recommend that OMB insert a similar limiting statement in the guidance both for the sake of consistency and to ensure that each request is reviewed under the federal agencies’ FOIA procedures.

Reporting Under State Grants and Contracts

We recommend OMB clarify that the requirement to report on civil, criminal or administrative proceeding related to a State grant does not include appropriations to universities and colleges by the State for the basic operation or support of the institution or where a specific contract or grant is not entered into with the State.

We note with interest the FAR Council’s deferral of the reporting of State-level contract data for a “later phase” of FAPIIS development. As a consequence, the FAR clause at 52.209-7(c)(1) limits the proceedings that must be reported to those in connection with “the award to or performance of a Federal contract or grant.” The OMB guidance, on the other hand, requires reporting about “each proceeding that is connected with the

award or performance of a grant, cooperative agreement, or procurement contract from either the Federal Government or a State.” We recognize that the statute calls for reporting on proceedings related to the performance of a contract or grant with a State government “to the maximum extent practical.” We would argue that until the FAPIIS database design is complete, it is not practical for recipients to report on state-level grants at this time. In order to ensure consistency across the federal government and all funding mechanisms, we urge OMB and the federal agencies to defer the collection of state-level grant information until FAPIIS is designed to accommodate that reporting.

Incorporation of OMB Memorandums:

We appreciate the incorporation into new Subparts of 2 CFR of the OMB memorandum concerning the government wide standard format for program announcements and the policy on posting of program announcements and synopses. We note with interest the incorporation of the requirement for recipients and first-tier subrecipients to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain current registration in the federal government’s Central Contractor Registration (CCR) system and strongly endorse these requirements.

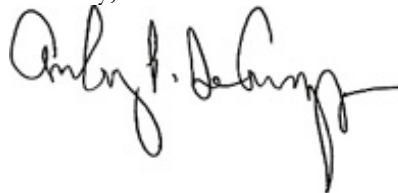
Future FAPIIS Development

We read with concern the questions under consideration by the FAR Councils concerning expanding the information covered by FAPIIS. In the Background and Overview of the Final Rule, the FAR Councils state they “will explore the feasibility of collecting local government information.” Such a collection goes well beyond the statutory requirements. For colleges and universities, reporting on transactions with local governments including items like water and sewage access, waste collections and police and fire protection, etc., involves reporting at a level of operational detail that will not be useful in making a responsibility determination for a federal grant or contract. We urge OMB not to support this effort.

In addition, the FAR Councils are considering expanding the scope to include all violations of the law, not those related to the performance of a federal or state contract or grant. Section 872 of the Duncan Hunter National Defense Authorization Act for FY 2009 does not provide the authority to require a different level of reporting. We question the usefulness of this information. Reporting on the resolution of disputes with vendors and other entities and individuals will flood a system that we understand is intended to assist the federal government in determining the performance quality of a particular applicant. We urge OMB not to support this effort.

We appreciate the opportunity to offer comment on the guidance.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony P. DeCrappeo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Anthony P. DeCrappeo
President