

March 23, 2020

To: Office of Management and Budget (OMB)

Subject: Response to Uniform Guidance for Grants and Agreements

To Whom It May Concern,

We are a coalition of non-profit organizations, current and former executives from federal, state, and local government, and other leaders committed to building the capacity of federal, state, local, and tribal governments and nonprofit community-serving organizations to use data, evidence, and innovation to improve the impact, equity, and cost-effectiveness of government investments. Many of us focus on programs and strategies that promote economic mobility of vulnerable populations. We appreciate the opportunity to comment on OMB's proposed revisions to Title 2 of the Code of Federal Regulations: OMB Guidance for Grants and Agreements. We also note this is a unique moment in time for the proposed revisions to inform new anticipated funding flows through upcoming stimulus or other legislative packages to address the COVID-19 crisis. We emphasize the importance of incentivizing and encouraging federal, state and local governments, and non-profits to apply evidence to decision making to ensure that communities get the services that will work best for them, especially in times of crisis.

We applaud the administration's proposed regulatory changes that aim to strengthen results-oriented accountability for grants in ways that complement the Foundations for Evidence-Based Policymaking Act. It is an unfortunate reality that for many grantees, including some with whom we work, the compliance burden of the federal grants management requirements present a barrier to using federal funds in a cost-effective, equitable, and innovative manner that achieves results for the individuals and communities they serve. We believe that significant innovation and responsible risk management can occur without changes in statute, if federal, state, local, and tribal partners work together to co-create new accountability approaches that are consistent with statutory intent while strengthening the government's focus on outcomes and data-informed decision-making.

In the current proposed revisions to OMB's grants regulations we are particularly pleased to see new and amended provisions that:

- Require federal agencies to issue clear program objectives and indicators against which applications will be assessed and to use a merit-based review process to select grantees. (Section 200.202 and 200.205)
- Encourage agencies to use the "Exceptions" provision to support innovative program designs that apply a risk-based, data-driven framework to reduce compliance burden while holding them accountable for strong performance. (Section 200.102); and
- Clarify that program evaluation costs are an allowable cost that may be treated as a direct cost in a grantee's budget. (Section 200.413)

These changes – *if implemented in conjunction with other federal executive actions managed by different parts of OMB and federal agencies* – could improve grantee capacity to shift resources from low-value to higher-value activities that improve outcomes for individuals and families, particularly those with the highest need. For example, we believe the Federal Data Strategy’s actions to improve cross-program data-sharing should be developed in coordination with state, local, and tribal governments that administer federal programs. (Some of the most important data assets for federal programs are held by other levels of government, not by federal agencies, and state and local agencies are eager for federal assistance on how to share data while protecting privacy.) In addition, we believe that improvements with a high return on investment can be made to state and local data and analytics capacity for the full range of human services programs if OMB and federal agencies coordinated their financial incentives and modernized the Advanced Planning Document review process for approving major state data system investments.

We believe the proposed rules would have greater impact on grantee performance if they incorporated the following additional changes.

1. **Broaden the list of allowable activities to include capacity-building functions.**

Problem: Many grantees believe, or have been told by federal staff, that grant funds may not be used for key activities that would help grantees improve program results. These activities include strategic planning and cross-program coordination, data infrastructure, analytics, evaluation, and staff training (even though section 200.472 makes training an allowable cost.) When grantees fail to invest in these essential capacities, they perpetuate inefficiencies and ineffective practices that impede performance.

Recommendation: Under “General Provisions for Selected Items of Cost” (sections 200.420 through 200.475), the Uniform Guidance should include explicit authority for grantees to invest in performance improvement and evidence building activities including:

- Strategic planning and cross-program coordination to improve effectiveness and efficiency and leverage other federal and non-federal data and funding streams;
- Data and technology infrastructure that can support the existing grant and be re-used for future grant activities;
- Data analytics and evaluation to identify issues, measure performance and assess the comparative effectiveness of alternative approaches;
- Staff training to strengthen employee capacity to leverage data and analytics as a way to continually revise and improve services and programs; and
- Advisory services to help grantees comply with legal requirements while also taking advantage of promising innovations, waivers, data-sharing and other flexibilities to improve program performance and align it to local contexts and needs.

2. **Clarify that the performance improvement and evidence building activities above can be financed as a direct or an indirect program cost.**

Problem: Many grantees believe that capacity-building activities such as those above can only be funded as an indirect cost, limiting the level of investment that may be needed to achieve better program performance.

Recommendation: Section 200.413, Direct Costs, should be clarified to add that performance improvement and evidence building activities, including planning and program coordination, data technology, analytics, staff training, and advisory services may be financed as a direct cost. This would build upon the clarification the proposed rule includes for evaluation costs.

3. **Clarify that grant funds that finance services may be used for outcome-based contracts.**

Problem: Many grantees that could improve their impact through the use of outcome-based contracts believe the federal government must provide explicit new authority in governing statutes, regulations, or guidance. This perception has stalled progress by state, local, and tribal jurisdictions that are ready to shift from contracts that pay for activities to contracts that tie a portion of funding to outcomes, which incentivize outcome-focused innovation, equitable results, and better measurement.

Recommendation: The grants regulations should include a new section on “Outcome-based Contracting,” that:

- Clarifies that grant funds may be used for outcome-based contracts unless prohibited or inconsistent with existing statutes and regulations.
- Clarifies that unless prohibited or inconsistent with existing statutes and regulations, state and local grantees may retain federal grant dollars designated to be paid based on measurable outcomes until outcomes are measured, based on the terms of the outcomes-based contracts developed by the state or local entity, even if this requires state or local grantees to retain grant dollars for a longer than normal project period.
- Cross-references technical assistance resources that the federal government has now, or could develop, to assist grantees and non-profit providers in adopting more effective contracting approaches that focus on outcomes.

This new section could potentially be added under “General Provisions for Selected Items of Cost,” potentially as a new section 200.476.

4. **Strengthen the “Exceptions” section to encourage use of waivers to improve performance and new outcome-focused accountability approaches.**

Problem: Since 2014, the Uniform Guidance has included a provision allowing waivers from traditional grants accountability requirements for innovative program designs that promote cost-effectiveness, build evidence, and encourage cross-program collaboration. Unfortunately, the waiver authority has never been used and few federal program agencies or grantees are aware of its existence.

Recommendation: Expand Section 200.102, Exceptions, to provide concrete examples of exceptions and waivers that would improve cost-effectiveness or evidence-based approaches,

and create more effective accountability approaches that shift the focus from compliance to outcomes. Potential examples would include:

- Waivers of newly proposed requirements in section 200.328, “Monitoring and reporting program performance”, which would require grantees to only report “OMB-approved government-wide data elements available through the OMB designated standards lead.” This requirement, though important for creating a government-wide set of shared data, could inadvertently stifle innovation in program performance metrics that forward-leaning state and local governments, communities and their research partners might develop. Pilots of alternative data metrics could help government agencies and community-based organizations identify improved measures and high-quality, third-party data sources that would enhance learning and improvement.
- Waivers of detailed, program-specific reporting requirements for grantees that adopt outcome-focused approaches to blending and braiding funds from multiple programs to improve outcomes for vulnerable populations. This type of waiver would facilitate:
 - (1) the adoption of innovative contracting approaches that braid funding from multiple funding streams to incentivize improved outcomes. One such example is a three-part payment model advanced by top health researchers to assist individuals with mental health problems enroll in and receive evidence-based services that lead to improved outcomes, which could be financed by combining Medicaid, mental health, and social services grant funding. See: <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.201400076>.
 - (2) innovative cross-program service delivery that may not involve outcomes contracting. For example, Rhode Island’s Health Equity Zones use braided funding to enable communities to combine funding to address social determinants of health for at-risk populations supported by separate federal programs (e.g., nutrition, transportation, housing and employment). Federal agencies could also use administrative waivers to broaden the use of cross-program collaborations that function much like the current Performance Partnership Pilots for Disconnected Youth initiative (“P3”). While P3 is authorized by Congress, similar innovations could be implemented in other program areas using administrative waivers.
- Waivers of compliance-focused reporting for grantees that demonstrate they use data, analytics, and evaluation to routinely monitor and evaluate performance, target services to those most in need, test alternative strategies to learn what works best, and share data and findings with the public to promote transparency and community engagement.

5. Encourage grantees to braid funding (for direct and indirect costs) from multiple programs when doing so would increase a grantee’s efficiency and cost-effectiveness in advancing desired, positive program outcomes.

Problem: When grantees operate programs in disconnected silos, especially when serving the same people and places, it perpetuates inefficiencies, creates frustrating inconsistencies in the field, and impedes cross-program innovations that could significantly increase the return on investment for taxpayers. While braiding is currently allowable in many instances, many

grantees fail to adopt this approach based on a fear of audit findings about improper or undocumented expenses.

Recommendation: Include explicit language in multiple parts of the Uniform Guidance, including in Appendix V (State/Local Government-wide Central Services Cost Allocation Plans), to encourage grantees to braid funding when this would increase a grantee's efficiency and cost-effectiveness in achieving programmatic outcomes. The Uniform Guidance should cross-reference technical assistance resources, such as easy-to-use cost allocation tools to help grantees to braid funding while meeting auditing and accountability requirements.

6. **Hold federal agencies responsible for shifting the focus of grantees and auditors from compliance to outcomes.**

Problem: There is significant confusion among grantees about what flexibility exists and that confusion is exacerbated by inconsistent interpretations by federal auditors. For example, as noted above, different regional offices provide different opinions about whether grantees can invest program funds in building data capacity. Fixing this problem will require a concerted, coordinated push by OMB and federal agencies to clarify flexibilities in the guidance, to encourage grantees to use those flexibilities, and to make sure that auditors are helping – rather than impeding – modernization and streamlining of accountability processes.

Recommendation: Amend Section 200.513 “Federal Agency Responsibilities” to require agencies to:

- Communicate clearly to grantees and auditors, through the compliance supplement and other guidance, the flexibilities and specific provisions that allow grantees: (1) to prioritize investments in building capacity to improve performance through better use of data, analytics, evaluation, staff training, and cross-program strategic planning; and (2) to braid funding from multiple sources using a sound cost-allocation plan.
- Engage grantees in streamlining unnecessary reporting and inefficient accountability processes to the maximum degree allowable, including through ongoing engagement that identifies burdensome and unnecessary reporting.
- Ensure that auditors are actively assisting grantees to use reporting flexibilities that streamline compliance reporting and to shift grantee focus to mission-related activities.
- In cases where outcomes-contracts are used, ensure that auditors have the knowledge and capacity to examine program performance based on outcomes achieved as compared (or in addition) to costs incurred.

7. **Encourage federal agencies to innovate in how they communicate to a broad range of potential applicants through Notices of Funding Opportunities (NOFOs) and other outreach activities.**

Problem: Federal agency NOFOs are often dense, bureaucratic documents that deter new applicants, disadvantage lesser-resourced applicants, and make it difficult for interested parties to learn about sources of funding with which they are unfamiliar. While it is helpful for the Uniform Guidance to set forth standard requirements for what information must be

included in a NOFO, the guidance should not become an excuse for federal agencies to issue NOFOs that are difficult to penetrate and that prioritize boilerplate requirements over substantive content that will distinguish strong applicants from weak ones. In addition, wherever possible, federal agencies should take extra steps to help support and encourage state, local, tribal, and nonprofit prospective applicants to think about innovations, waivers, and opportunities to support evidence-based and outcome-oriented approaches that may increase the efficacy, equity, and impact of federal grant dollars. Federal agencies should recognize that many state, local, tribal, and non-profit prospective grantees lack the staff capacity, data-systems, evaluation expertise and procurement specialists necessary to pursue this type of innovation without robust and inclusive federal support.

Recommendation: Under Appendix I, “Full Text of Notice of Funding Opportunity”, include an introduction that encourages agencies to continually refine and test the format and style of their notices, as well as engage in other outreach strategies, such as issuing draft NOFOs for public comment, in order to (1) expand outreach to a broader range of interested parties; and (2) help applicants understand the key program objectives and criteria that will be used to assess proposals. In this Appendix, remind federal agencies that in many cases, unless otherwise prohibited, federal agencies may robustly engage with and provide extensive technical assistance to interested grantees.

8. Require evidence and evaluation as part of program design.

Problem: Despite the hundreds of billions of dollars the federal government spends every year through its grant programs, few grant programs capture evidence of whether what they are funding is effective. In a 2017 Government Accountability Office study, 39% of federal managers reported that they did not know if an evaluation of any program, operation, or project they were involved in had been completed within the past five years. Another 18% of federal managers reported having had no evaluations during this same time period. The federal government has a responsibility to capture information about both whether its grantees are achieving the identified goals of grants and whether grantees’ successful activities can be replicated or scaled. We applaud the proposal’s inclusion of evidence-building language in the Performance Management section of the regulation (Section 200.301), including its requirement that federal agencies notify grant recipients of the need to participate in a federal evaluation. However, we believe the proposal could go further to better utilize federal grantees’ activities to build and disseminate evidence of what works.

Recommendation: Include the following revisions:

- Under Program Planning and Design (Section 200.202), require that programs must be designed to include an evaluation component in addition to clear goals and objectives. (Exceptions could be made where this is inconsistent with statutory intent.) Further, require that the logic model that is part of program design be informed by evidence of effectiveness. The Uniform Guidance should cross-reference examples of what constitutes evidence of effectiveness for different kinds of programs (e.g., human services programs using a tiered evidence design could pull from existing evidence definitions in Education Innovation and Research (EIR), Re-employment Services and Eligibility Assessments, and the Maternal, Infant and Early Childhood Home Visiting Program.)

- Under Information Contained in a Federal Award (Section 200.211), amend the sentence “Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress” by adding “including participation in an evaluation and making grantee-held data available for evaluation and statistical purposes, if requested by the federal partner.” The performance measures required of grantees should go beyond just reporting data metrics, they should also include participating in any evaluation the federal partner undertakes of the program.

We believe the changes above are necessary to help grantees build their capacity to make more effective use of government funds to get positive impacts for people across the country. However, *rule changes alone are not sufficient*. We urge OMB and federal agencies to take additional steps, including:

- *Issuing clear, concise supplementary guidance tailored to program administrators* at the federal, state, tribal, and community levels. This guidance should answer their questions, such as how can regulatory flexibilities be used to support innovative program designs based on either proven evidence or comprehensive logic models tied to evaluation, to revamp reporting to focus on outcomes and meaningful performance indicators rather than compliance, and to braid funding (e.g., for coordinated service delivery or shared data and analytics capacity) while satisfying auditor requirements. Through constructive partnerships, non-federal organizations could supplement federally issued guidance by developing Frequently Asked Questions and clarifying materials that are tailored to specific audiences and fully consistent with federally issued regulations.
- *Developing new, user-friendly tools and templates to assist grantees in efficiently allocating costs* across programs while meeting auditor requirements. For example, grantees might benefit from easy-to-use cost allocation software to assign direct and indirect costs for data infrastructure, shared services, staff training, and outcome-based procurements financed by multiple funding sources.
- *Directly engaging with federal, state, local and nonprofit program administrators to co-create outcome-focused approaches* to implementing grant and financial reporting. A co-creation process is needed to understand barriers and align incentives for program administrators, front-line staff, grants managers, and auditors to adopt accountability approaches that help achieve outcome goals.
- *Providing a data-sharing guide* for how program administrators and grantees can seek out and gain access to administrative data housed in different agencies as a way to measure and track medium- and longer-term outcomes beyond the output activities and timeframe of a particular program or grant.
- *Developing a cross-agency waiver review and approval process* to foster more effective program coordination and cross-sector innovation. Rather than requiring states and other grantees to navigate disconnected waiver review processes in separate federal agencies, a cross-agency process would facilitate coordinated, expedited resolution of issues that involve multiple agencies. A revamped process would be especially valuable for responding to emergencies such as COVID-19, but could also substantially reduce red tape and needless delays that impede adjustment and innovation during more normal times.

We urge OMB and federal agencies to consider these recommendations in the context of the current public health crisis. If implemented well, they would strengthen state and community capacity to adapt quickly and effectively to changing circumstances, using data, evidence and innovation to redirect resources to more effective activities using flexibilities allowed under current law.

As leaders and organizations that regularly interact with state, local, and non-profit community-serving grantees committed to outcome-focused, evidence-based, and data-driven reforms, we stand ready to facilitate constructive problem-solving discussions involving OMB, federal agency program offices, and innovative grantees. We would welcome the opportunity to work with you to identify programmatic areas where, together, we could achieve quick wins and lay groundwork for future collaborations that would advance mutual goals. Based upon our strong track record of working with federal, state, and local government leaders, we can quickly line up practitioner, academic, and private sector experts, provide space and technology for in-person or virtual meetings, leverage philanthropic resources, and open up new channels of communication to program administrators that traditionally are not at the table in most grants management reform discussions.

Thank you again for the opportunity to comment on the proposed regulations. We look forward to exploring ways to collaborate with OMB and federal agencies on how to refine the Uniform Guidance and devise implementation strategies that enable the new rules to have their intended impact on program results.

Sincerely,

Former government officials/policymakers:

John Bridgeland, Former Director, White House Domestic Policy Council, President George W. Bush

Gary Glickman, Former Senior Policy Advisor, U.S. Department of the Treasury; Former Coordinator, Partnership Fund for Program Integrity and Innovation, OMB

Ted McCann, Vice President, the American Idea Foundation; Formerly Office of U.S. House Speaker Paul Ryan

Shelley Metzenbaum, The BETTER Project; Former OMB, Associate Director for Performance and Personnel Management

Jim Shelton, Former Deputy Secretary, U.S. Department of Education

Kathy Stack, CEO, KB Stack Consulting; Former Deputy Associate Director, OMB

Dave Wilkinson, Executive Director, Tobin Center for Economic Policy, Yale University; Former Director, White House Office of Social Innovation; Former Chief Performance Officer, State of Connecticut

David Yokum, Director, the Policy Lab at Brown University; Former Director, U.S. General Services Administration, Office of Evaluation Sciences

Organizations:

Allegheny County Department of Human Services

America Forward

American Society for Engineering Education

AppleTree Institute for Education Innovation
Center for Regional Economic Competitiveness
Citizen Schools
Colorado Evaluation and Action Lab
Council for Community and Economic Research
Data Coalition
Data Quality Campaign
The Education Trust
Forum for Youth Investment
Gateway Technical College
George Washington Institute of Public Policy, GWU
Institute for Child Success
Institute for Higher Education Policy
Knowledge Alliance
Lumina Foundation
New America
New Profit
Project Evident
Results for America
Root Cause
Social Finance
Third Sector Capital Partners
Year Up

Additional Individuals:

Kathy Newcomer, Professor, The Trachtenberg School at the George Washington University
and 2017 President, American Evaluation Association

Tyler Kleykamp, Director, State Chief Data Officers Network

Jeff Myers, Senior Director, REI Systems, Inc.

Amy O'Hara, Research Professor, Georgetown University