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FEDERAL GRANT AND CONTRACT NEWS FOR NONPROFITS - JULY 2014

This month's newsletter focuses on one of the more important and scrutinized aspects of being a federal grant recipient: monitoring project performance efforts, and the project performance efforts of subrecipients.¹ While the drafters of the Super Circular do not believe it vastly differs from prior guidance [78 Fed. Reg. 78590, 78598 (Dec. 26, 2013)], it certainly opens up room for interpretation, misunderstanding, and disagreement. Accordingly, we attempt to shed some light on these requirements and provide practical considerations for addressing them.

Super Circular Guidance

Section 200.303 of the Super Circular requires that grant recipients establish and maintain effective internal controls over their federal awards that provide reasonable assurances the grant recipient is managing the grant in compliance with law and the terms of the grant. Moreover, grant recipients must "evaluate and monitor" such compliance and take "prompt action when instances of noncompliance are identified including noncompliance identified in audit findings."

Section 200.328, *Monitoring and Reporting Program Performance*, provides that at least annually, but no more than quarterly, grant recipients will submit performance reports that:

- Compare actual accomplishments to the objectives of the grant;
- If applicable, describe the reasons why established goals were not met; and
- Provide additional relevant information, such as analysis and explanation of cost overruns or high unit costs.

Further, grant recipients are required to notify the awarding agency of "significant developments" that arise during the performance of a grant, specifically:

- Problems, delays, or adverse conditions that will impair the ability of the grant recipient to meet the grant objective; or
- Favorable developments that will enable the grant recipient to meet time schedules and objectives sooner than anticipated, at costs less than expected, and/or produce more or different beneficial results than originally planned.

Of course, to meet these requirements, grant recipients must have processes in place to track their performance against the budget and objectives of the grant.

In Section 200.331, the Super Circular imposes specific monitoring requirements on grant recipients regarding their evaluation and review of subrecipients, including evaluating each subrecipient's risk of noncompliance with applicable laws and terms of the subgrant. The Super Circular provides that grant recipients should determine subrecipient risk of noncompliance through past performance information, audit results, knowledge of new personnel, systems, or results of the awarding federal agency's monitoring efforts. Depending on the circumstances, the Super Circular suggests a number of additional monitoring tools, including:

- Providing subrecipients with training and technical assistance;
- Performing on-site reviews of the subrecipient's operations; or

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- Arranging for specific audit procedures.

However, the Super Circular also provides guidance that is far more ambiguous:

- "Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.207 Specific conditions;" and
- "Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with [law] and the terms and conditions of the subaward..."

Monitoring Considerations

In light of the above guidance, nonprofits must implement monitoring programs that address the specifics of each grant they receive and each grant they pass down to others, but must do so in an effective manner, so as to make efficient use of federal funds. Accordingly, grant recipients can implement general monitoring concepts, but, pursuant to the Super Circular, they must consider grant-specific measures as well. As a result, organizations will have a myriad of measures in place both generally and specifically that must be documented and enforced. For instance, the following are a handful of measures nonprofits can take both generally and specifically to help ensure compliance:

General Compliance Measures	Grant-Specific Compliance Measures	Additional Efforts Due to Grant-Specific Measures
<ul style="list-style-type: none"> ■ General policies and procedures applicable to grant recipient's standard operations and subrecipients 	<ul style="list-style-type: none"> ■ Policies and procedures specific to each grant and/or subgrant 	<ul style="list-style-type: none"> ■ Requires in-depth analysis of grant/subgrant to determine appropriate and practical monitoring policies and procedures ■ Implementation of grant-specific policies and procedures, perhaps at the outset when all risk factors are not known ■ Could require continuous consideration and analysis to determine appropriate monitoring policies and procedures
<ul style="list-style-type: none"> ■ General reporting requirements mandated by prior Circulars and the Super Circular 	<ul style="list-style-type: none"> ■ Impose grant-specific reporting requirements to ensure grant recipient is aware of adverse (or positive) developments, etc. 	<ul style="list-style-type: none"> ■ Must adequately define "adverse" or positive developments for program office/subrecipient ■ Must ensure sufficient resources to perform and address audit and subsequent results
<ul style="list-style-type: none"> ■ Communications and meetings between grant administration and operations, internally and externally with subrecipient 	<ul style="list-style-type: none"> ■ Devise communication plan for scheduled/appropriate discussions and meetings in context of specific grant/subgrant requirements 	<ul style="list-style-type: none"> ■ Requires in-depth analysis of grant/subgrant to determine appropriate communication plan ■ May require costly travel to varying locations ■ Could require continuous refinement to ensure discussions and meeting are focused on the appropriate aspect and issues of the program
<ul style="list-style-type: none"> ■ General training internally and requirement that 	<ul style="list-style-type: none"> ■ Impose grant-specific training, which could include training for 	<ul style="list-style-type: none"> ■ May require additional time, resources, etc. to meet with and

subrecipients properly train employees to meet appropriate standards	subrecipient by grant recipient	train subrecipient(s) on terms and conditions of subrecipient agreement, applicable law, etc. <ul style="list-style-type: none"> ■ Could require continuous refinement as risk factors and issues arise over the course of the program
<ul style="list-style-type: none"> ■ Audit requirements, both federally mandated and as required for business reasons 	<ul style="list-style-type: none"> ■ Impose additional audit requirements, such as added elements to required audits, requiring additional audits, etc. 	<ul style="list-style-type: none"> ■ Could require continuous consideration and analysis to determine appropriate audit elements or audits in order to focus on proper risk factors ■ Must ensure sufficient resources to perform and address audit and subsequent results

Related Information

To read any of Venable's previous Federal Grant & Contract News for Nonprofits newsletters or other related publications, please [click here](#).

For more information, please contact [Dismas Locaria](#), [Melanie Jones Totman](#), or [Jeffrey Tenenbaum](#).

This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to a specific fact situation.

¹In this newsletter, we focus solely on monitoring and reporting as it relates to legal compliance and performance matters; this newsletter does not discuss financial monitoring or reporting requirements.