

November 30, 2023

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RE: Proposed Revisions to the Federal Guidance for Grants and Agreements
OMB-2023-0017-0001

The National Council of Nonprofits (NCN) welcomes this opportunity to provide comments on the proposed revisions to the Federal Guidance for Grants and Agreements, OMB-2023-0017-0001. In these comments, we present the following:

- a) Provide background information on the concerns and impact of governmental grants policies on charitable nonprofits,
- b) Express strong support and offer some adjustments to provisions in the proposed revisions regarding expanding access to grants and improving treatment of nonprofit indirect costs, and
- c) Conclude with four additional recommendations for strengthening the OMB Uniform Guidance: **1)** promote up-front or advance payments; **2)** prohibit or discourage match requirements in federal grants; **3)** make adjustments for government labor standards mandates; and **4)** streamline the grants process for organizations receiving earmarks from Congress.

Background

The National Council of Nonprofits is the largest network of charitable nonprofits in North America, creating a connected and powerful nonprofit community that is equipped to advance the public good. We focus on the 97% of charitable organizations with budgets under \$5 million – food banks, neighborhood health clinics, community theatres, domestic violence shelters, environmental programs, senior and child care centers, and more – the nonprofits whose absence would leave huge voids in their communities. Working with our core network and other collaborative partners, we

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champion, inform, and connect organizations across the country to get things done for nonprofits and the people and communities they serve.

Since at least 2009, NCN has championed reforms to government grant and contracting systems. Through direct engagement with frontline nonprofits, nationwide research, detailed analyses, and advocacy at the local, state, and federal levels, we have identified and documented fundamental problems that charitable organizations routinely face when performing services on behalf of governments pursuant to written agreements. Those challenges consistently fall into five categories:

1. failure to pay full costs;
2. needlessly complex application processes;
3. overly complex reporting requirements;
4. inappropriate mid-stream changes to grants and contracts; and
5. late payments.

Importantly, we have also been instrumental in developing and sharing real-world solutions with governments at all levels, many of which have implemented those solutions that are now reaping cost savings, creating greater efficiencies, and delivering enhanced services with greater outcomes for constituents and communities. Many of these solutions are presented at [Solutions to Government-Nonprofit Grantmaking and Contracting Problems](#).

To inform the instant comments, NCN reached out to multiple networks of nonprofits to gather more information to share with OMB the fullest range of experiences and insights. We also gleaned valuable insights from responses of organizations participating in the Nonprofit Workforce Shortages Survey, the results of which were published in August 2023.¹ As we learned from the results of a similar nationwide survey in late 2021, nonprofit employers point to challenges with government grants – e.g., complexity, redundancy, and cost constraints – as adversely impacting their ability to attract and retain qualified staff.² Separate, state-level surveys have also documented the negative

¹ [2023 Nonprofit Workforce Survey Results](#): Communities Suffer as Nonprofit Workforce Shortage Crisis Continues, National Council of Nonprofits, August 2023.

² For example, a **Minnesota** nonprofit with staffing vacancies shared that during exit interviews, staff cited that “burdensome data entry requirements of government contracts and high expectations from community members were the two most common factors leading to burnout/dissatisfaction with work.” The correlation between burdensome and unnecessary paperwork and the workforce shortage is also explained eloquently by this **Illinois** nonprofit comment: “Many staff say the requirements for the government grants (documentation, assessments, multiple systems to have to work in) is too much and too stressful.” A **New York** nonprofit reported, “Monitoring of contracts with government is much more painful,” warning that “unreasonable petty demands may result in organizations closing.”

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effects of current grants policies in discouraging participation by many smaller organizations, those focusing on disadvantaged communities, and those operating in rural areas.³

We share the foregoing to make it clear up front that reforms to the OMB Uniform Guidance are urgently needed, both for the proper administration of grants programs and to empower more charitable organizations to fulfill the policy goals of grants programs to benefit communities and residents throughout the country.

Comments on Proposed Revisions to the Uniform Guidance

In these comments, we focus on specific provisions that would affect the widest array of charitable organizations, with particular attention devoted to smaller nonprofits and those that have traditionally been excluded from grant opportunities.

Advancing Equity and Overcoming Barriers [200.202-211, 200.301, 200.432]

The National Council of Nonprofits fully endorses the multiple provisions in the proposed reforms that seek to advance equity and tear down barriers that deter many qualified and effective organizations from seeking grants opportunities.

A motivation for advancing some of the proposed revisions to the OMB Uniform Guidance appears to be the view of OMB, as stated in the Notice of Proposed Rulemaking summary, that “unnecessary complexity means that often the recipients most in need of federal financial assistance cannot access it, including those who may be most well suited to serve the populations many federal programs are designed to serve.” In our experience, that statement is profoundly true.

The summary to this rulemaking goes on to state, “Non-specialists face difficulties in navigating complex compliance requirements and overcoming high barriers to entry.” We expressly endorse the following provisions that would reduce costly complexities and overcome barriers ([brackets] indicate 2 CFR section):

- The proposed revisions that would encourage government agencies to urge recipients to **engage members of the community** who will benefit from or be impacted by a federal financial assistance program. [200.202]

³ See, e.g., [2022 Government Contracting Report](#), Nonprofit Association of Washington, March 2022.

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- Proposed reforms to simplify and clarify **Notices of Funding Opportunities**, discussed below, that are designed, according to OMB, “in consideration of applicants with less experience applying for federal financial assistance, such as applicants from underserved communities.” [202.204]
- The proposal to clarify that a federal agency should **consider diversity when developing policies** and procedures for merit review panels. [200.205]
- OMB’s proposal to encourage federal agencies to develop programs in **consultation with the communities** that will benefit from or be impacted by a program. [200.205]
- The exclusive use of **English language** in notices, applications, and reporting would not be required. [200.111]
- The proposed language that calls on government agencies to **only measure things that matter** and refrain from requiring information that is not necessary. Specifically, proposed Section 200.301(b) would state: “The Federal agency should not require additional information that is not necessary for measuring program performance.” We view this provision as requiring federal agencies to eliminate reports that are not necessary for the effective monitoring of the grant. Nonprofits have consistently complained of the burden of collecting and reporting unnecessary and redundant measurements, as well as pointed to the unequal impact on many organizations. For example, the requirement to use evidence-based practices (EBP) in myriad federal grants “cements traditional white dominant culture approaches that are often very expensive and out of reach for nonprofits working in, and led by people of color or rooted in underserved communities,” wrote a nonprofit professional in response to a NCN survey. [200.301]
- The proposed **removal of the prohibition on using geographic preference requirements**. NCN supports this change in recognition of the challenges that recipients and subrecipients in rural areas often face when procuring services. [200.319]
- The proposal to allow for **dependent-care costs** associated with participants’ attending or partaking in program-related conferences is particularly well designed to enable more employees of lesser means to participate in educational programming that will benefit their performance in serving their communities. [200.432]

The foregoing list is intended to be illustrative rather than an exhaustive list of needed improvements. We encourage OMB and all federal, state, and local agencies to expand efforts to broaden participation in grant programs, particularly by organizations that traditionally have been excluded, overlooked, or denied access.

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In particular, we urge OMB to require or encourage federal agencies to expand technical assistance and capacity building programs on the lifecycle of grants – applying for, managing, and reporting on grants – with a goal of expanding access to grants programs for groups that have traditionally been excluded. The government provides similar guidance and support to for-profit businesses.⁴ Nonprofits deserve no less to improve services to local communities.

Clarifying Notices of Funding Opportunities [202.204; Appendix I]

We enthusiastically endorse OMB’s proposed complete revision of the template text for a Notice of Funding Opportunity (NOFO). We agree with OMB’s explanation in the summary materials that the government needs to reduce administrative burden and unnecessary obstacles for applying to federal financial assistance. These reforms are needed and welcomed by the nonprofit community. We believe future NOFOs, if revised as proposed to put basic information at the top of a grant announcement, would provide a quick and effective way for potential applicants to make informed decisions about whether they should invest time to further explore the NOFO. We also appreciate that NOFOs would have to include an Executive Summary and use plain language (as opposed to jargon) that communicates program requirements specifically and clearly, as well as limit the length of program announcements.

Standardizing Treatment of Indirect Costs [200.414]

On a national webinar conducted on November 20, 2023, the National Council of Nonprofits devoted considerable attention to the proposed reforms to 200.414, which were termed “righting wrongs suffered by charitable nonprofits.” By that, we meant that OMB’s earlier best intentions when first promulgating the Uniform Guidance of requiring fair and equitable treatment of nonprofits regarding payment of indirect costs have not been fulfilled in practice. This is often because various federal, state, and local government agencies impose disparate and unfair interpretations of rights that charitable organizations considered clear and fundamental.

In most cases, charitable nonprofits operating outside the higher education space have found themselves at the bottom of the grantmaking food chain and subjected to unsustainable program mandates and restrictive funding options. A key area of challenge involves indirect costs, those costs (sometimes called “overhead” or “administrative costs” by the general public) that cannot be

⁴ See e.g., [APEX Accelerators](#) (formerly known as Procurement Technical Assistance Centers) run by the Small Business Administration.

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allocated to a specific program but are spread out across an organization. The proposed reforms correct past problems in five significant ways:

- 1. Stronger Mandate to Apply Negotiated Indirect Cost Rates: [200.414(c)(1) and (d)]** NCN wholeheartedly supports language in the proposed guidance to clarify that negotiated indirect cost rates must be applied by all levels of government using federal funds unless a different rate is required by federal statute, regulation, or when approved by the awarding Federal agency based on documented justification described in paragraph (c)(3) of this section. As proposed, pass-through entities would also be required to “accept all federally negotiated indirect costs rates for subrecipients.” These mandates, when implemented, will ensure that organizations cannot be denied the protections guaranteed in the Uniform Guidance and will greatly enhance needed uniformity and fairness.
- 2. Notice of Indirect Cost Disputes: [200.414(c)(2)]** Since OMB first implemented the Uniform Guidance, charitable nonprofits have experienced disparate, and at times unfair, treatment as various federal, state, and local governments have interpreted the indirect cost rules differently. Nonprofit organizations have sought to appeal adverse and often arbitrary decisions but typically have been told that as subrecipients they have no standing to communicate directly with OMB. NCN supports the proposed change clarifying that recipients and subrecipients may notify OMB of any disputes with regards to a federal agency’s application or acceptance of a federally negotiated indirect cost rates. This means nonprofits can turn to OMB for help when agencies are not following the law. The approach has the added bonus of giving OMB input from the field about where confusion persists and can base future updates to the Uniform Guidance based on real-world experiences.

NCN urges OMB to go further in these revisions by more thoroughly defining the appeals process and identifying specific enforcement actions that may be available. Specifically, we request additional language in this section that authorizes and details OMB action in the event that Federal agencies refuse to apply or allow recipients or subrecipients to use their federally negotiated indirect cost rate.

- 3. Clarity Regarding Application to Pass-Through Entities: [200.414(d)]** NCN welcomes the addition of the proposed text: “Pass-through entities are subject to the requirements in § 200.332(b)(4) and must accept all federally negotiated indirect costs rates for subrecipients.” We believe this language will reduce financial burdens on nonprofit subrecipients and encourage more nonprofit organizations to participate in grant programs. As in the preceding

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comment on Section 200.414(c)(2), we request additional language in this section that authorizes and details OMB action in the event that pass-through entities refuse to apply or allow recipients or subrecipients to use their federally negotiated indirect cost rate.

- 4. 15% *de minimis* rate: [200.414(f)]** NCN strongly supports the proposal to raise the guaranteed *de minimis* rate for indirect costs from 10% to 15% of modified total direct costs. We share the perspective expressed by OMB in its Summary: “This change would allow for a more reasonable and realistic recovery of indirect costs, particularly for new or inexperienced organizations that may not have the capacity to undergo a formal rate negotiation....” The more realistic higher rate would expand access and broaden participation beyond the “usual suspects,” enabling more charitable nonprofits in economically disadvantaged and rural communities to make a difference in the lives of residents.

We do note that the *de minimis* rate is a form of safe harbor or option that requires the recipient or subrecipient to conduct a cost-benefit analysis, weighing their actual costs against the cost of compiling data and negotiating a higher rate. As such, we do not think it appropriate to say that a 15% *de minimis* rate ensures that organizations would “be fully compensated for their overhead costs,” as asserted in the Notice of Proposed Guidance. The recognition in the Summary that nonprofits and others “deserve” to be fully compensated, however, is very much appreciated.

- 5. Eliminate Pressure to Accept Unsustainable Rates: [200.414(f)]** NCN strongly supports the inclusion of the following proposed text in the Uniform Guidance: “Federal agencies may not require recipients and subrecipients to use a *de minimis* rate lower than this standard unless required by Federal statute.” The proposed guidance clarifies that it is the decision of recipients and subrecipients of whether to apply a rate that is less than 15% minimum, but they cannot be forced to do so. This essential and straightforward reform will go far to alter the power dynamic that has prevented many charitable nonprofits from seeking and performing grants that would otherwise be unsustainable due to the practices and policies of various government agencies.

Raising the Single Audit Threshold [200.501]

The proposal to raise the **Single Audit Threshold** from \$750,000 to \$1 million is reasonable and cost effective. That is especially true now when the costs of CPAs to conduct independent audits have

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increased so sharply.⁵ It furthers the goal of broadening participation by previously excluded groups. The proposed threshold is a more accurate threshold that better reflects the level of funding at which smaller recipients and subrecipients operate.

Additional Recommendations

1. Promote Up-Front Payments

The practice of governments forcing nonprofits to subsidize delivery of services on behalf of those governments by issuing only reimbursable grants is a major impediment to many nonprofit organizations that would otherwise qualify for funding opportunities and provide quality services in their communities. This backwards system requires service providers to essentially front the governments' start-up costs and trust that the government program management and accounts payable processes are properly functioning.

The challenge to charitable nonprofits of reimbursable-only grants is fully documented in NCN's most recent national survey.⁶ The culture in government of only paying on a reimbursement basis is so prevalent that the U.S. Treasury Department had to expressly override it last year when instructing state and local governments on the rules governing spending of Coronavirus State and Local Fiscal Recovery Funds allocated under the American Rescue Act.⁷ In fact, the practice of reimbursement-only grants is so destructive that nonprofits are actively seeking reforms at the state level to ensure that grants to charitable nonprofits include an up-front expenditure component.⁸

We join in the call of nonprofits throughout the country in urging OMB to mandate lump-sum advance payments or partially pre-paid grants in many circumstances. This approach would make

⁵ See Jerlyn Dressler, CPA, "[A Storm is Brewing: The Accountant Shortage Is Already Affecting Nonprofits](#)," National Council of Nonprofits, Jan. 18, 2023.

⁶ [2023 Nonprofit Workforce Survey Results](#): Communities Suffer as Nonprofit Workforce Shortage Crisis Continues, National Council of Nonprofits, August 2023.

⁷ The "[Treasury] Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (e.g., advance payments, reimbursement basis, etc.). Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries." [Final Rule for the State and Local Fiscal Recovery Funds](#), Treasury Department, Jan. 27, 2022, 87 Fed. Reg. at 4379, footnote 230. Elsewhere, the ARPA Final Rule states, "Recipients may transfer funds to subrecipients in several ways, including advance payments and on a reimbursement basis." Final Rule, Treasury Department, Jan. 27, 2022, 87 Fed. Reg. at 4380.

⁸ See **California** [A.B. 590](#) (2023) (enacted law stipulating an advance payment structure and request process); **North Carolina** [H.B. 259](#) (2023) (requiring full or quarterly disbursement of grant funds); and **Oregon** [S.B. 606](#) (2023) (restricting use of reimbursement as a mechanism for grant payments except in limited circumstances).

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grant opportunities more accessible and enable nonprofits to staff up and provide ongoing training to ensure both performance and accountability.

2. Prohibit or Discourage Match Requirements

Often, grant provisions requiring applicants to secure matching funds and/or in-kind donations serve as an unsurmountable barrier for many charitable nonprofits unable to access funding to provide essential services in the communities they serve. This barrier can negatively impact both smaller and rural organizations with limited or no access to traditional funding sources. It can also be a challenge for larger nonprofits with budgets that are dedicated to existing priorities and have fundraising capacity aimed at additional needs in the community outside the scope of a specific grant. The requirements for documentation of matching and in-kind resources can create additional audit complexities. In some cases, matching-fund requirements can essentially force the applicants to subsidize governmental operations, creating needless challenges and inefficiencies in the use of other scarce funding resources.

The goal of matching funds may be to require a showing of broad-based support and sustainability for projects. In practice, however, matching requirements are inequitable, unrealistic operationally and logistically, and not conducive to serving vulnerable populations or making those efforts sustainable. We urge OMB to include language in the updated Uniform Guidance requiring federal agencies to eliminate match requirements in all instances except those expressly mandated by statutes.

3. Make Adjustments for Changes in Government Labor Standards Mandates

In recognition of separate but overlapping rulemaking by the U.S. Department of Labor (Overtime Rule) and OMB (updating the Uniform Guidance), the NCN and other national nonprofit organizations submitted [Nonprofit Joint Comments](#) on November 2, 2023. Those comments specifically urge OMB to create a mechanism that ensures that grants are adjusted automatically to cover the increased costs of complying with revised rules governing overtime pay and similar labor standards.

Our request is based on simple fairness. When the federal government changes overtime rules, for-profit businesses with government contracts automatically receive the opportunity to reopen their written agreements to seek additional reimbursements to cover the resulting increased costs. Charitable nonprofits do not. This disparity means nonprofits must bear the full burden for additional and non-reimbursable costs, forcing them to decide between eliminating either jobs or

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services, both of which hurts the public through no fault of the innocent nonprofits complying with new labor laws.

We ask that the federal government treat nonprofits fairly. We believe the solutions proposed in the [Nonprofit Joint Comments](#) are in the best interests of governments, charitable nonprofits, and, most importantly, the people we collectively serve.

4. Streamline the Grants Process for Organizations Receiving Earmarks from Congress

Charitable organizations receiving designated funding from Congress, called Congressionally Directed Spending in the Senate and Community Project Funding in the House, are often surprised to learn that they must go through the full federal grants process, including conducting risk assessments, completing paperwork, and complying with reporting regimes, to receive the monies. Often, these compliance burdens impose costs that exceed the value of the earmark. In too many cases, grants authorized by Congress in FY 2021 and 2022 still have not resulted yet in payments. We urge OMB to streamline the grantmaking process for nonprofits that receive earmarks to remove unnecessary burdens while also ensuring financial and management integrity.

On behalf of the networks of the National Council of Nonprofits, we thank you for your consideration of these comments. Please do not hesitate to contact us with any questions you may have.

Respectfully submitted,

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