



Government Contracts Update

October 2020

DoD Issues Updates to Grant and Cooperative Agreement Regulations

Key Notes:

- New DoDGARs final rules are effective October 19, 2020.
- In general, the final rules seek to update, standardize, and clarify the DoDGARs for the benefit of both DoD administrators and award recipients.
- The final rules are intended to implement government-wide guidance on administrative requirements, cost principles, and audit requirements.

Background

Over the past few years, the federal government, through the U.S. Office of Management and Budget (“OMB”), has significantly rewritten its guidance concerning grants and cooperative agreements (referred to as the “Uniform Guidance”). In light of those changes, the U.S. Department of Defense (“DoD”) established interim implementation of OMB’s guidance in December 2014 and took further steps to implement the OMB’s Uniform Guidance in November 2016.

On August 19, 2020, the DoD published six final rules that collectively update the department’s existing interim regulations governing grants and cooperative agreements. The DoD Grant and Agreement Regulations (“DoDGARs”) are being updated to, among other things, implement the OMB Uniform Guidance to DoD agencies on administrative requirements, cost principles, and audit requirements applicable to federal grants, cooperative agreements, and other federal financial agreements.

The final rules seek to establish several new DoDGARs parts and make conforming changes to existing DoDGARs parts. The six rules, all of which go into effect on October 19, 2020, are discussed in further detail below.

DoDGARs Final Rules

The DoDGARs update is comprised of six individual final rules, each addressing a different aspect of the regulations governing DoD grants and cooperative agreements:

1. Implementation of Governmentwide Guidance for Grants and Cooperative Agreements. This final rule creates Part 1104 of Title 2 of the Code of Federal Regulations (“CFR”). This part will serve as the central hub to direct DoD Components to the provisions of the DoDGARs that apply to DoD grants and cooperative agreements for various pre-award, time-of-award, and post-award purposes, pending completion of additional updates to the DoDGARs that are needed to fully implement the Uniform Guidance. It also removes 2 CFR Part 1103, which is now superseded by 2 CFR Part 1104.

2. Award Format for DoD Grants and Cooperative Agreements. This final rule creates Part 1120 of Title 2 of the CFR to provide a standard format for organizing the content of DoD grant and cooperative agreement awards and award modifications, making it easier for recipients to locate specific content. The standard format covers many administrative details, such as what should be included on cover pages, policies for including award-specific terms and

conditions, and procedures to follow when using general terms and conditions.

3. DoD Grant and Agreement Regulations. This final rule removes two existing DoDGARs parts and revises four others to update outdated references and eliminate internal inconsistencies between those portions of the DoDGARs that remain and the new DoDGARs provisions noted in the other five final rules.

4. National Policy Requirements: General Award Terms and Conditions. This final rule creates Part 1122 of Title 2 of the CFR that provides consistent formatting and standard wording for the general terms and conditions related to national policy requirements that DoD includes in grant and cooperative agreement awards. This rule will establish a consistent way for DoD Components to organize the portion of their general terms and conditions covering national policy requirements in several areas such as nondiscrimination, environmental protection, and live organisms. The new Part 1122 also provides standard wording for terms and conditions for national policy requirements that commonly apply to DoD programs and awards.

5. Definitions for DoD Grant and Agreement Regulations. This final rule creates Part 1108 of Title 2 of the CFR, which will serve as a central location for definitions of terms that are needed to make the DoDGARs as clear as possible for DoD awarding and administering officials, recipients, auditors, and others who may need to use them. This final rule contains the most noticeable changes to the current DoD grant and cooperative agreement environment, as it is designed to clarify many long-held (albeit erroneous) understandings of key terms.

6. Administrative Requirements and Conditions for Cost-Type Grants and Cooperative Agreements to Nonprofit and Governmental Entities. This final rule establishes seven new parts to Title 2 of the CFR that address the administrative requirements portion of the general terms and conditions for DoD cost-type grants and cooperative agreements. The new parts collectively govern DoD Components'

organization of their general terms and conditions in several areas such as financial and program management, property administration, recipient procurement procedures, and subawards. Notably, this final rule also includes guidance that further explains how disclosures under the Uniform Guidance should be handled with respect to DoD grants and cooperative agreements.

CONCLUSION

The six final rules change certain requirements to provide additional clarity in the regulations for grants and cooperative agreement award recipients. Because the final rules include standardization of terms and conditions in DoD grants and cooperative agreements, in addition to defining certain key acquisition terms, these changes require a thorough review and immediate attention as they could potentially impact award recipients. For example, among other issues, the new rules address how each award document must have an award cover page, define award-specific terms and conditions, define general terms and conditions that apply to an individual DoD component's grants or awards, include administrative requirements, state the basis for the legal requirements governing the grant or award (executive order, regulation, or law), and state the programmatic requirements of the grant or award.

Given the foregoing discussion, grant and cooperative agreement recipients should review the final rules as well as their current business practices with respect to the application of these important changes due to their impact on award and performance. The above is not an exhaustive list. Interested parties with, or pursuing, agreements subject to the DoDGARs should watch for regulatory changes.

FOR MORE INFORMATION

If you have any questions about the final rules, please contact any of the below Thompson Hine grant and cooperative agreement specialists for additional information, including any updates, and other steps your business may need to take:

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