

ALERT

USAID Grant Regulations Continue USAID's Practice of Treating Foreign Organizations Differently Than U.S.-Based Grantees & Clarify Which Cost Principles Apply to For-Profit Grant Recipients

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On September 17, 2015, the United States Agency for International Development (USAID) adopted, with amendments, the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," issued by the Office of Management and Budget (OMB) and published in the Federal Register on December 26, 2013. USAID's final rule, which becomes effective on October 19, 2015, is codified at 2 CFR part 700. Like many agencies, USAID has largely adopted the OMB "Super Circular" in full as its new grant regulations. The final rule includes two noteworthy revisions concerning the application of the Super Circular's requirements to USAID grantees and subrecipients.

First, the Final Rule confirms concerns that USAID will apply the Uniform Guidance inconsistently to foreign organizations and U.S.-based entities. USAID stated that it will continue its "longstanding practice" of not applying the OMB's Uniform Requirements to foreign organizations. Despite commenters' protestations, USAID stated it would continue this practice because not doing so would, among other things, "result in an across-the-board increase of administrative burden on local organizations and would seriously undermine USAID's development and sustainability goals that have been the subject of significant efforts to reduce such burdens and barriers to local organization partnerships with USAID."

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Consequently, commenters noted that U.S.-based grantees will continue to be subject to different standards when they receive awards from USAID as compare to their foreign counterparts. Commenters also complained that USAID's continuation of its practice of treating foreign organizations differently than U.S.-based grantees will perpetuate a number of other issues. For example, U.S.-based grantees that make subawards to both domestic and foreign organizations will have to continue using different subaward agreements for different classes of subrecipients. Further, given that other agencies have chosen to apply parts of OMB's Uniform Requirements to foreign organizations, USAID's decision to continue its practice of not doing so will, as one commenter noted, result in "non-US based subrecipients who receive funds that originate from USAID and from other federal agencies [being] subject to policies that are not uniform." Thus, while the continuation of this "longstanding practice" may help advance USAID's mission, it also may very well detract from OMB's efforts to increase efficiencies and uniformity in administration of grant monies.

Second, USAID confirmed that that Subpart E (Cost Principles) does not apply to for-profit entities. Instead, for-profit entities must follow Part 30 (Cost Accounting Standards) and Part 31 (Cost Principles) of the Federal Acquisition Regulation (FAR). This clarification eliminates any potential ambiguity over which cost principles apply to a for-profit entity receiving funds from USAID.