

The Uniform Guidance and Fiscal Recovery Funds

Tuesday, December 14th, 2021

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Update on reporting

- As previously communicated, Treasury revised the deadline for submission of the first **Project and Expenditure Report** as follows:
 - For non-entitlement units of government (NEUs) the Project and Expenditure report will now be due on **April 30, 2022** and will cover the period between award date and March 31, 2022. The report will be due annually by the end of April.
- A forthcoming User Guide from Treasury will provide information on submitting Project and Expenditure reports.

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Goals of today's webinar

- Explore the regulatory requirements contained within the Uniform Guidance (2 CFR Part 200) and Local Fiscal Recovery Funds (FRF) Program Guidance, as Non-Entitlement Units (NEUs) of Local Government develop compliance infrastructure for FRF program management.
- Review key elements of 2 CFR Part 200 applicable to the FRF program and NEUs.
- Discuss recommendations to build a compliance infrastructure for the FRF program, including examining potential program administration tools, suggesting best practices and highlighting potential risks.
- Provide additional clarification and answer questions regarding FRF compliance matters from NEUs in Maryland.

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Background on the Uniform Guidance

- The Uniform Guidance is a “government-wide framework for grants management”, developed by the Office of Management and Budget.
- The Uniform Guidance contains an authoritative set of rules and requirements for Federal awards that synthesizes and supersedes guidance from prior OMB circulars.
- It is comprised of six (6) sections - a few of these will be less relevant for NEUs during their management and administration of FRFs.
- Still, NEUs should always refer to the full Uniform Guidance in order to ensure compliance with all applicable Federal rules and requirements.

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A few things to keep in mind

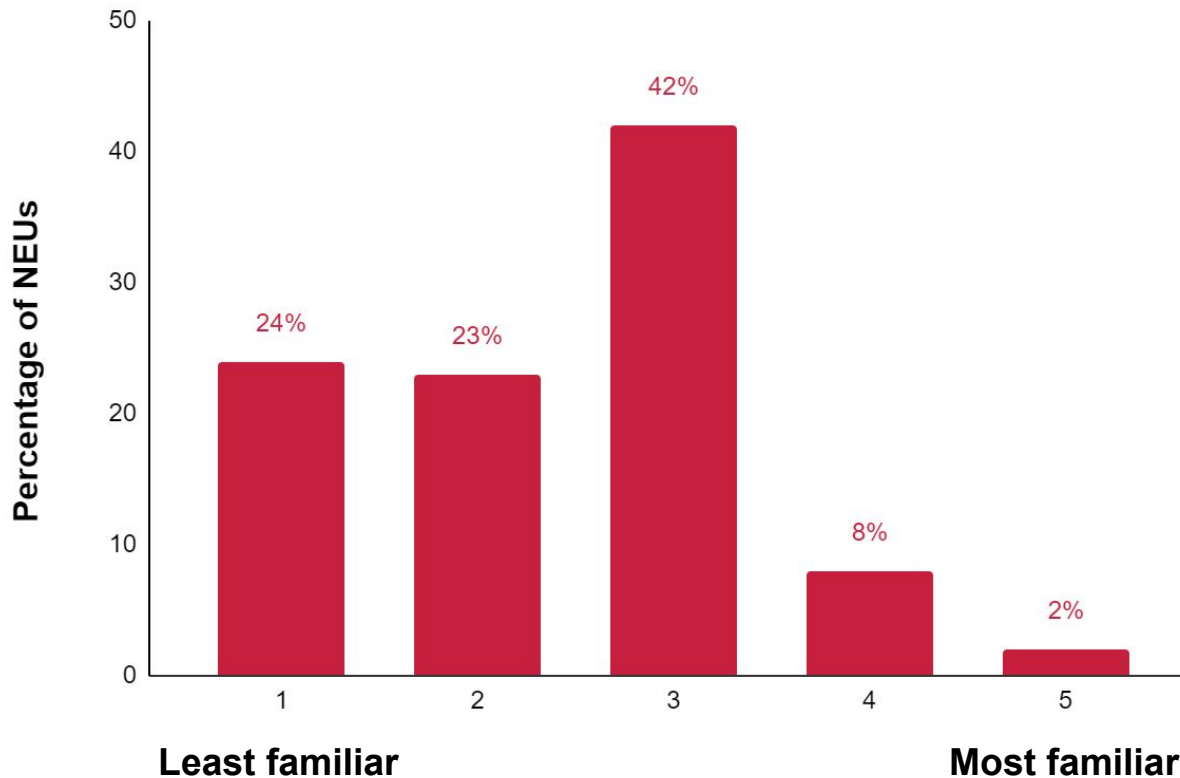
- Not all the Uniform Guidance requirements are applicable to Fiscal Recovery Funds and the types of projects you choose to implement will impact the types of requirements you must comply with.
- Treasury's Compliance and Reporting Guidance references the Uniform Guidance. While it does not replace the Uniform Guidance, it provides a good roadmap of the types of things you should be looking at.
- While there are many separate items that make up the Uniform Guidance, your goal should be to establish a compliance framework that is strong enough to allow your municipality to manage and administer your Fiscal Recovery Funds throughout the life of the program (2026).

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How familiar are you with the Uniform Guidance?



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Key Elements of 2 CFR 200

Some key elements of 2 CFR Part 200 applicable to FRF program management include:

- Internal Controls
- Subrecipient Monitoring
- Cost Principles
- Procurement
- Program Income
- Suspension and Debarment
- Civil Rights Compliance
- Closeout, Audit Requirements and Recordkeeping

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Internal Controls

2 CFR 200.303 (Internal Controls)

- NEUs and subrecipients are required to establish and maintain effective internal controls over the federal award.
- Evaluate and monitor compliance with statutes and regulations.
- Safeguard protected personally identified information.

Considerations

- Internal controls are necessary in the financial environment but extend to other compliance areas as well, such as ensuring that FRF funds are not used for ineligible activities.
- Risk assessment is a critical control that must be in place to evaluate subrecipient potential for noncompliance and drives both subrecipient awards and monitoring.
- NEUs must ensure that subrecipients, if any, have adequate controls in place.

Potential Risk

- Subrecipients with inadequate controls may jeopardize your own compliance with 2 CFR 200.303.

How to think about Internal Controls

Financial and Programmatic Controls

- Systems and processes, including but not limited to:
 - Accounting method, system, and records.
 - Roles, responsibilities, and separation of duties:
 - Who does what and when?
 - Who processes, reviews, and approves transactions?
 - Record maintenance and retention.
- Policies and procedures, including but not limited to:
 - Expense eligibility criteria.
 - Risk assessments.
 - Fraud, waste, and abuse.
 - Monitor, inspect, and audit.

Treasury's Best Practices for Internal Controls

Table 1: Internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

Source: U.S. Treasury Compliance and Reporting Guidance

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Subrecipient Monitoring

2 CFR 200.331-333

- NEUs and subrecipients are responsible for monitoring and enforcing compliance for entities receiving a subaward, whether they are considered subrecipients or contractors.

Considerations

- NEUs must manage and monitor subrecipients and grantees to ensure compliance.
- Subrecipient agreements should specifically include the applicable requirements (including indirect cost rates, procurement standards, risk assessments, internal controls, and monitoring) from Subpart D.
- Contracts for goods or services must also include required compliance language.

Potential Risk

- Failing to include requirements in subrecipient agreements is noncompliance and sets up greater noncompliance without adequate recourse.
- Amendments to existing agreements must include all compliance provisions as in a new agreement.
- Adequately differentiating between subrecipients and contractors.

Risk assessments and subrecipients

- Per Treasury's guidance, NEUs working with subrecipients should evaluate each subrecipient's risk of noncompliance based on a set of common factors.
- Risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight.
- Per Treasury's guidance, ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.
- Accordingly, your organization should consider developing written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

Source: U.S. Treasury Compliance and Reporting Guidance

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Differentiating between subrecipients, beneficiaries, and contractors

- In administering FRFs, NEUs must decide the nature of entities receiving funding.
 - **Beneficiary:** individual or entity receiving funding for the purpose of deriving ultimate benefit from an eligible activity. Beneficiaries generally receive funding using a Grant Agreement.
 - **Subrecipient:** receives funding to administer a program consisting of eligible activities on behalf of the NEU. Subrecipients receive funding using a Subrecipient Agreement and, through that agreement, assume responsibility for various financial management, compliance, and reporting requirements.
 - **Contractor.** A contractor receives funding to provide goods or services in furtherance of an eligible activity. Contractors receive funding using vendor agreements or contracts that are part of the procurement process.
- [Part 200.331](#) in the Uniform Guidance provides a test to determine whether a funded entity is a subrecipient or a contractor.

Poll

Are you planning to engage with subrecipients?

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Cost Principles

2 CFR 200.403 (Cost Allowability)

- Costs must be applied **uniformly** and **consistently** to both federal and non-federal activities and between direct and indirect costs.
- Restrictions on use of funds as **non-federal match**.

2 CFR 200.404 (Reasonable Costs)

- Costs must be **necessary** and **reasonable** and conform to any limitations or requirements of the guidance or directive issued by the federal awarding agency.

2 CFR 200.405 (Allocable Costs)

- Costs must be **allocable** and **assignable** to the eligible activities or programs under the federal award.

Considerations

- Unless specifically allowed by guidance, costs must generally be consistent with the entity's normal policies and procedures and offer consistent treatment as non federally-funded costs.
- Administrative costs must be within regulatory parameters.
- **Direct costs** are costs identified specifically as costs of implementing FRF activities.
- **Indirect costs** are general overhead costs of an organization where a portion of such costs are allocable to the FRF award.
- In the absence of a currently negotiated indirect cost rate, NEUs may elect to charge a de minimis rate of 10%.

Potential Risk

- Given the summary nature of many FRF project budgets, administrative costs may not properly be addressed and may represent an audit risk.

Procurement

2 CFR 200.317-327 (Procurement Standards)

- NEUs and subrecipients purchasing goods and services with federal funds must comply with procurement and contracting requirements outlined in this section.
- NEUs must have and use documented procedures consistent with State and local laws and regulations.
- NEUs must maintain and adhere to written standards of conduct and conflict of interest policies.

Considerations

- NEUs and their subrecipients should undertake procurement activities in a manner compliant with their own procurement policies, which should be at least as stringent as the federal regulations and in compliance with State regulations.
- Procurement must be based on free and open competition unless an enumerated exception is met (e.g., sole source, micro purchase, inadequate competition).
- The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight.

Potential Risk

- Subrecipient compliance with procurement standards must be enforced and monitored.

Program Income

2 CFR 200.307

- NEUs and subrecipients must comply with award-specific requirements regarding any revenue generated.
- Program income is defined as “gross income earned by a recipient that is directly generated by a sponsored activity or earned as a result of the award”.
- Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards and principal and interest on loans made with Federal awards.

Considerations

- Treasury intends to provide additional guidance regarding program income.
- Language could be included in Subrecipient Agreements requiring that income generated by programs be reserved until guidance has been clarified.

Potential Risk

- For programs that potentially generate income, guidance on disposition of that income is not yet clear.

Suspension and Debarment

2 CFR 200.214-215

- Non-procurement debarment and suspension regulations.
- Identifies restrictions on entities debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Considerations

- Awards and contracts must not be made to parties listed in the System of Awards Management (SAM) exclusions list.
- NEUs must implement a process that contains adequate controls to ensure that subrecipients and contractors are not suspended, debarred or otherwise ineligible.
- NEUs must also ensure that subrecipients have similar controls in place when administering their programs.

Potential Risk

- Underdeveloped internal control policies and/or lack of adequate subrecipient oversight could lead to this requirement being overlooked.

Civil Rights Compliance

- NEUs are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds.
- Those requirements include ensuring that NEUs do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with several authorities that are listed in Treasury's Compliance and Reporting Guidance.
- Treasury may request that NEUs submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.

Source: U.S. Treasury Compliance and Reporting Guidance

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Closeout, Audit Requirements and Recordkeeping

2 CFR 200.344-346

- Recipients and subrecipients must comply with award-specific guidance regarding the award close out.

2 CFR 200.503 (Single Audit)

- Nonfederal entities that expend financial assistance of **\$750,000 or more** in Federal awards will have a single or a program-specific audit conducted for that year.

Recordkeeping Requirements

- Must establish and maintain records and documents.
- Maintain records and financial documents for five years after all funds have been expended.

Considerations

- These administrative requirements apply globally to the entire FRF program, including funds expended directly by NEUs or by subrecipients.

Potential Risk

- Controls, record management practices and financial reporting must be coordinated to facilitate closeout, audit and record retention.
- Subrecipient agreements that do not advise of the Single Audit requirement are noncompliant with the Uniform Guidance's Single Audit Requirement.

Single Audit

What is the Single Audit?

- Tool for the Federal government to provide oversight of non-federal entities that receive federal financial assistance and ensure that federal dollars are being spent appropriately and in compliance with federal law, policy, and guidance.

If subject to the Single Audit, your responsibilities include:

- Consider procuring or otherwise arranging for auditors to review, prepare, and submit financial statements when due.
- Report expenses on a Schedule of Expenditures of Federal Awards (SEFA), submitted as a supplemental schedule to the organization's financial statements, and organized and listed separately by federal program.
- If you are engaged with subrecipients, ensure that they are aware of the terms and conditions of the award, including whether they may be subject to single audit requirements, as well as any specific subaward conditions, if appropriate.

Recommendations To Consider

- Review your municipality's internal controls, policies, and procedures to determine if in compliance with the Uniform Guidance and FRF requirements.
- Consider the pros and cons of working with subrecipients vs contractors vs beneficiaries.
- Identify and evaluate existing management, monitoring and reporting workflows. Flag best practices and gaps.
- Establish roles and responsibilities for FRF and project management (eligibility determination, risk analysis, subrecipient monitoring, financial management, program level implementation and monitoring, etc.).
- Review existing and planned FRF projects for compliance, adjust project scopes, budgets, and/or contractual agreements, as necessary.

Additional Recommendations To Consider

- Consider specific program administration toolkits such as:
 - Contracting compliance checklists
 - Model subrecipient agreement templates
 - Risk analysis and monitoring tools.
- Determine if you are subject to the single audit requirement, and, if so, procure auditing services.

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Poll

Which of the following Uniform Guidance provisions are you most interested in learning more about?

Procurement, Internal controls, Subrecipient monitoring, all of the above.

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Questions?

For any questions following this webinar, please submit questions through the [Technical Assistance Portal](#)

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Upcoming events and announcements

- Upcoming NEU newsletter.
- Additional office hours on compliance and other topics.
- Additional opportunities to provide feedback.
- Materials of today's webinar will be distributed at a later date.

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Appendix

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Resources

[U.S. Treasury Compliance and Reporting Guidance](#)

[U.S. Treasury Interim Final Rule](#)

[U.S. Treasury Frequently Asked Questions](#)

[2 CFR Part 200](#)

[CLSFRR Assistance Listing on SAM.gov](#)

[U.S. Chief Financial Officer's Council 2 CFR Frequently Asked Questions](#)

[State of Maryland NEU Technical Assistance Webpage](#)

[State of Maryland NEU Technical Assistance Question Portal](#)

U.S. Treasury guidance is subject to change. As a recipient of Federal funds, each non-entitlement unit of government is responsible for administration and compliance of fiscal recovery funds.

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