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Part V: Uniform Guidance Conflicts of Interest

AUDIT, HIGHER EDUCATION, NOT-FOR-PROFIT
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The implementation of the Office of Management and Budget (OMB)'s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) has been long anticipated and can be overwhelming to interpret upon first review. While there are numerous changes from the preceding OMB Circulars, one aspect of the Uniform Guidance that is important to note when planning for an organization's policy revisions is the conflict-of-interest policy surrounding procurements. Section 200.112 specifically addresses conflicts of interest and informs the reader that the Federal awarding agency must establish conflict-of-interest policies for Federal awards. Additionally, a non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity.

One thing to keep in mind is that the definition of a conflict of interest has remained unchanged under the Uniform Guidance. Such a conflict of interest can be either real or apparent; in other words, if it looks and smells like a conflict of interest even if no decisions would be altered without a given relationship, then the organization should still steer clear of procuring products or services from this entity. If an officer of an organization owns part of a company that could serve as a potential vendor, this officer should not be involved in the request for proposal process or vendor selection for the sought service. Not only should the officer not be involved in this case, but the organization is required to maintain a written conflict-of-interest policy explicitly prohibiting such involvement in the selection process. The same holds true for an employee, board member, vendor, or any of these parties' family members if the party has a financial interest in procuring products or services from a certain entity or individuals.

Organizational conflicts of interest are considered to be restrictive of competition when requesting proposals for procurements, according to Section 200.319 of the Uniform Guidance. Section 200.318 defines organizational conflicts of interest as a relationship with a parent company, affiliate, or subsidiary that will lead to bias in the procurement process. Similar to familial and financial conflicts of interest described above, this bias can be either real or in appearance, so organizations should be cautious when considering procurement from a parent company, subsidiary, or affiliate. Even perceived conflicts of interest can become problematic in the procurement process for organizations.

When drafting a conflict-of-interest policy, the organization should not only clearly define for the reader what types of relationships may qualify as conflicts of interest, but it is also recommended to explicitly assign certain employees at the organization the responsibility for ensuring the close adherence to this policy. If the responsibility falls on the employee overseeing the procurement process, the policy should include an employee's title in the policy. This will assist in preventing any real or apparent conflicts of interest from negatively affecting an organization and will assist in keeping employees accountable so that they are consistently keeping these oversight responsibilities in mind.

Over the next several weeks, be on the lookout for more of Our Thoughts On the new Uniform Guidance.

If you have any questions on the above material, please contact us, and we will be happy to assist your organization in meeting these new requirements.

You’ve heard our thoughts… We’d like to hear yours

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