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DEPARTMENT OF JUSTICE

2 CFR Part 2800

28 CFR Parts 66 and 70

AG Order No. 3737-2016

RIN 1121-AA81

Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice finalizes its implementation of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) published by the Office of Management and Budget (OMB) on December 26, 2013.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Rafael A. Madan, General Counsel, Office of Justice Programs, (202) 307-0790.

SUPPLEMENTARY INFORMATION: This rule makes technical corrections to, and finalizes, the interim final rule that was published by the Department of Justice (Department) on December 19, 2014, and that went into effect on December 26, 2014.

See 79 FR 76081. The interim final rule added 2 CFR part 2800, which implements and supplements parts of 2 CFR part 200 for the Department of Justice, and removed 28 CFR parts 66 and 70, which were superseded by 2 CFR part 200.

The Department of Justice received no comments in response to its portion of the interim final rule. Therefore, the interim final rule is finalized with no substantive changes. The Department has made minor technical changes to make clear that where the Department's implementing rule incorporates by reference other provisions of law, it does so by general reference, which incorporates future amendments to those provisions.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA), see 44 U.S.C. 3506, the Department of Justice reviewed its final rule and determined that there are no new collections of information contained therein. However, the OMB uniform guidance in 2 CFR part 200 may have a negligible effect on burden estimates for existing information collections, including recordkeeping requirements for non-Federal entities that receive Federal awards.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). This rule finalizes the interim final rule implementing for the Department of Justice the OMB guidance at 2 CFR part 200. The OMB guidance consolidated and updated several guidance documents codified and published in various places into one

omnibus document. The consolidation and updates are designed to streamline the Federal grant process, and should, as a whole, substantially simplify the requirements and cost principles applicable to many federally funded entities. Thus, the rule will not have a significant economic impact on a substantial number of small entities.

Executive Orders 12866 and 13563 - Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation.

The Department of Justice has determined that this rule is a not “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic effects, environmental effects, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Administrative Procedure Act

The rule issued by the Department of Justice concerns matters relating to “grants, benefits, or contracts,” 5 U.S.C. 553(a)(2), and therefore is exempt from the requirement

of prior notice and comment. Thus, the Department, along with other Federal grant-making agencies, published an interim final rule that was effective on December 26, 2014. The Department received no comments on its interim final rule.

Generally, those agencies that are subject to the Administrative Procedure Act (APA) are required to delay the effective date of their final regulations by 30 days after publication. See 5 U.S.C. 553(d). The interim final rule issued by the Department that went into effect on December 26, 2014, concerned matters relating to “grants, benefits, or contracts,” 5 U.S.C. 553(a)(2), and therefore was exempt from the requirement of a 30-day delay in the effective date. This rule finalizes, with non-substantive technical changes, the interim final rule that is already in effect, and the final rule will take effect upon publication in the Federal Register.

Unfunded Mandates Reform Act of 1995

Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act, 2 U.S.C. 1535, also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OMB determined that the joint interim-final rule would not result in expenditures by State, local, and tribal governments, or by the private sector, of

\$100 million or more in any one year. See 79 FR 75877. Thus, a budgetary impact statement was not required for the interim final rule, and is not required here.

Executive Order 13132 Determination

The Department determined, as required by Executive Order 13132, “Federalism”, that the joint interim final rule did not have any federalism implications. This final rule similarly has no federalism implications.

List of Subjects

2 CFR Part 2800

Accounting, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Nonprofit organizations, Reporting and recordkeeping requirements.

28 CFR Part 66

Accounting, Administrative practice and procedure, Reporting and recordkeeping requirements.

28 CFR Part 70

Accounting, Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, the interim final rule published by the Department of Justice on December 19, 2014, adding 2 CFR part 2800, and removing 28 CFR parts 66 and 70, is adopted as a final rule with the following changes:

Title 2—Grants and Agreements

Chapter XXVIII—Department of Justice

PART 2800 – UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS BY THE DEPARTMENT OF JUSTICE

1. The authority citation for part 2800 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509; 28 U.S.C. 530C(a)(4); 42 U.S.C. 3789; 2 CFR part 200.

2. Section 2800.101 is revised to read as follows:

§ 2800.101 Adoption of 2 CFR part 200.

Under the authority listed above, the Department of Justice adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except as otherwise may be provided by this Part. Unless expressly provided otherwise, any reference in this part to any provision of law not in this part shall be understood to constitute a general reference and thus to include any subsequent changes to the provision.

Dated: August 31, 2016.

Loretta E. Lynch
Attorney General

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