



DEPARTMENT OF EDUCATION

Retroactive Application of the Revised Version of the Guidance for Federal Financial Assistance

AGENCY: Office of Planning, Evaluation and Policy Development, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces updates to awardees' Grant Award Notices (GANs) to conform the retroactive application of the 2024 revision of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Uniform Guidance) to cross-agency understandings and established interpretive principles. This update applies to all Department grants that are subject to the Uniform Guidance and withdraws and supersedes prior Department policies and actions, including the notice titled Application of the Revised Version of the Uniform Guidance to Department Grants published on Jan. 16, 2025.

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

SUPPLEMENTARY INFORMATION: On April 22, 2024, the Office of Management and Budget (OMB) published a final rule in the Federal Register, "Guidance for Federal Financial Assistance" that revised the Uniform Guidance. See 89 FR 30046 (the April 22

revised Guidance). This final rule, effective as of October 1, 2024, made certain revisions to the process and requirements for grant administration.

On January 16, 2025, the Department of Education issued a notice updating the terms and conditions of Department grants to incorporate certain parts of the revised Uniform Guidance. See 90 FR 4727 (the Jan. 16 Notice). In particular, the Department added the following condition to Box 10 of its GANs:

By the drawdown of funds under this GAN, the grantee accepts that this award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR part 200 as revised at 89 FR 30136-30208 (April 22, 2024).

The Department is now withdrawing this notice of January 16, 2025, and the condition it sets forth in Box 10 of the Department's GANs. The revised Box 10 is below.

OMB set the effective date for the April 22 revised Guidance as October 1, 2024. See 89 FR 30208. Agencies had the option to "elect to apply the financial guidance to Federal awards issued prior to October 1, 2024," but no "earlier than June 21, 2024." *Id.* The Department's Jan. 16 Notice purported to retroactively apply the revised Uniform Guidance to grants issued before June 21, 2024, creating uncertainty among grant recipients and generating non-conformity with the policies and interpretive

understandings of other federal agencies which follow the Uniform Guidance.

For federal grant programs, courts consistently apply the legal requirements that were in effect at the time the grants were made. *Bennett v. New Jersey*, 470 U.S. 632, 638 (1984). The Supreme Court has held that "changes in substantive requirements for federal grants should not be presumed to operate retroactively." *Id.* General background principles and "practical considerations related to the administration of federal grant programs" support the principle "that obligations generally should be determined by reference to the law in effect when the grants were made." *Id.*

After consulting with OMB, the Department understands that nothing in the April 22 revised Guidance departed from this basic interpretive principle. While OMB provided agencies with some discretion to specify an application date prior to the rule's effective date of October 1, 2024, the earliest date OMB's revisions permitted an agency to elect for the guidance to apply was June 21, 2024, two months after the final rule was issued. This period offered agencies and grantees sufficient time to adjust and ensured that federal grants would not be retroactively changed. As noted, federal grants sound in contract, and retroactive changes to the terms are unfair to the granting agency and the grantee. *See Bennett*, 470 U.S. at 638.

To remove any uncertainty or ambiguity, the Department now makes clear that the April 22 revised Guidance for Federal Financial

Assistance only applies to grants awarded after the OMB effective date of October 1, 2024. The Department is withdrawing its Jan. 16 Notice, removing its language from Box 10, and instead adding the following new language to Box 10:

By the drawdown of funds under this GAN, the grantee accepts Department regulations that this award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR part 200. The specific version applicable depends on the date of the award: (i) grants issued on or after October 1, 2024, are subject to Title 2 CFR part 200 as revised at 89 FR 30136-30208 (April 22, 2024), while (ii) grants issued prior to the October 1, 2024 effective date of those revisions, 89 FR 30046-30208, are governed by the version of the Uniform Guidance applicable at the time of the Federal award, *provided that* for grants issued on or after June 21, 2024, where grantees drew down funds under the previous version of Box 10, those grants are subject to Title 2 CFR part 200 as revised at 89 FR 30136-30208 (April 22, 2024).

While grantees may not automatically receive a new printed GAN, the revised Box 10 and this notice supersede any previous GAN or Notice. Grantees are not required to take any action but are encouraged to maintain a copy of this notice within their grant files as documentation for grant management and auditing purposes.

Program Authority: 2 CFR part 200 as adopted at 89 FR 30046

(April 22, 2024); 2 CFR 3474.

Thomas Wheeler,
Acting General Counsel.

[FR Doc. 2025-02396 Filed: 2/7/2025 8:45 am; Publication Date: 2/10/2025]