

July 30, 2019

Mr. Gilbert Tran
Office of Federal Financial Management
Office of Management and Budget
Washington, DC

BY ELECTRONIC TRANSMISSION

RE: 2 CFR part 200 Subpart F-Audit Requirements, Appendix XI-Compliance Supplement-2019

Dear Mr. Tran:

This letter is submitted in response to the notice published in the July 1, 2019 edition of Federal Register concerning the availability of the 2019 Compliance Supplement for Single Audits and the accompanying invitation for comment.

The National Association of Development Organizations (NADO) provides advocacy, education, research and training for the nation's regional development organizations. The Association and its members promote regional strategies, partnerships, and solutions to strengthen the economic competitiveness and quality of life across America's local communities. NADO members are part of a network of 540 multi-jurisdictional regional planning and development organizations that play a key role in fostering intergovernmental cooperation and collaboration among federal, state, and local officials. In this capacity, NADO members are involved in a myriad of federal assistance programs as direct recipients and subrecipients and are thus vitally interested in the policies contained in 2 CFR 200, *Uniform Administrative Requirements, Cost Principles and Audit Requirements* and its Appendices. Since the Compliance Supplement referenced above is one of those Appendices, we are writing to call your attention to a prominent compliance requirement which we believe has a direct and material effect on federal awards that are received by our members when they are subrecipients and which has not been subjected to the type of required audit coverage that is mandated when a requirement is included in the Compliance Supplement.

Specifically, we assert the regulatory provision contained in 2 CFR 200.305(b) should be addressed as a compliance requirement that should be tested by auditors when the auditee acts as a pass-through entity that subawards financial assistance funds to lower tier subrecipients. That provision states: "The non-federal entity **must be paid in advance** (emphasis added) provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-federal entity and financial management systems that meet the standards of fund control and accountability as established in this part." Since the definition of "non-federal entity" (2 CFR 200.69) includes "a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as recipient or subrecipient," it is clear that a subrecipient is entitled to advance payment unless it fails to meet the financial management requirements contained in 2 CFR 200. While that latter exception may arise occasionally in the case of a particular subrecipient, we have received reports from our members located across the country that indicate that many pass-through entities (particularly state government agencies) refuse to comply with this requirement and will not make advance payments. A typical example of this behavior comes from the administrative manual of one state agency which states, "In accordance with 2 CFR 200.305, TDEM minimizes the time elapsing between transfer of funds from the

United States Treasury and disbursement to the non-federal entities (subrecipients) primarily through a reimbursement process for expended funds and a working capital advance process to be utilized on an as-needed basis.” However, the applicable regulations provide that the methods cited are only to be used either punitively (per 2 CFR 200.207(b)(1)) or when the subrecipient cannot meet the financial management standards (per 2 CFR 200.305(b)(4)). They should not be employed in an across-the-board manner as is the case in the numerous situations about which we have received reports.

OMB’s issuance of 2 CFR 200 and its instructions to all federal awardmaking agencies to adopt the regulation has provided recent increased visibility of the requirement that we are citing. However, we point out that the policy of advance payment to subrecipients has long been contained in previous OMB grants management circulars. For example, Section 21(c) of the Common Rule issued pursuant to OMB Circular A-102 (March 11, 1988) aligned completely with what is now contained in 2 CFR 200.305(b) and Section 37(a)(4) of the same policy document specifically instructed state governments concerning the standards for advances. The fact that interest on borrowed capital has remained generally unallowable under 2 CFR 200.449 means that the extent of non-compliance with the advance payment requirement is particularly problematic for subrecipients trying to maintain their cash flow for grant program implementation. A related problem arises when many pass-through entities not only refuse to make advance payment but also require subrecipients to submit all back-up documentation associated with claims under their subawards in order to receive reimbursement for expenses that they have already incurred with their own funds. This latter practice, while not expressly prohibited, is certainly contrary to the spirit of 2 CFR 200.

We call on OMB to identify the advance payment requirement as one to be tested going forward under single audits of pass-through entities either as part of the testing conducted under Section 3.2-C (Cash Management) or Section 3.2-M (Subrecipient Monitoring). Auditors should be informed that advance payment is a requirement and should be required to test to determine whether advance payments are being provided and, if not, whether a valid reason exists for that departure (such as special conditioning under 2 CFR 200.207 or prohibitions in federal or state statutes). Any noncompliance detected should be reported as a finding and should be subject to corrective action.

We would be glad to provide additional examples of the payment practices that our members are encountering and to discuss any related to our comments with OMB officials as well as with other federal program and audit officials.

Sincerely,



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