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Legal Sidebar

The Uniform Grants Regulation: OMB's Relation to Federal Grantmaking Agencies

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On May 29, 2026, the Office of Management and Budget (OMB) and 41 executive branch grantmaking agencies published in the *Federal Register* a proposed joint interagency rule. The proposed rule would establish a *Uniform Grants Regulation* (UGR) that would change how executive branch agencies make and administer federal financial assistance awards. The UGR would replace OMB's *Uniform Administrative Requirements* (Uniform Guidance). It would codify certain Uniform Guidance provisions, amend or eliminate others, and add new provisions. The proposed changes range from relatively specific provisions regarding permissible award types (e.g., a proposal to prohibit fixed-amount awards) to relatively general requirements that senior agency appointees use their independent judgment when evaluating award proposals and not defer to (for example) an agency's peer review process.

The UGR also proposes what could be a structural change in how OMB shapes executive branch grant policy, though the exact extent of that change, as discussed below, is unclear. OMB is not a grantmaking agency; it does not make awards of federal financial assistance to nonfederal entities. Rather, OMB affects grants policy through amendments to its Uniform Guidance, an OMB document that does not directly bind nonfederal entities but must be implemented by grantmaking agencies through rulemakings. Under the UGR approach, OMB's role in shaping grants policy could become more direct. OMB would issue a "regulation," and grantmaking agencies would automatically incorporate subsequent changes to the regulation, making them applicable to nonfederal entities without further rulemaking.

This Legal Sidebar first examines OMB's proposed transition from issuing "guidance" affecting federal financial assistance programs to promulgating "regulations." It next reviews the statute that OMB relies on for the change, a 1990 law that requires OMB's Deputy Director of Management to exercise "overall direction and leadership to the executive branch on financial management matters" by setting "financial management policies and requirements." This Sidebar then compares the UGR approach of making its subsequent amendments automatically applicable to agencies to how OMB has implemented amendments to the Uniform Guidance. The Sidebar concludes by briefly noting Congress's options for shaping federal financial assistance management.

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The Uniform Guidance and UGR Compared

OMB first issued the Uniform Guidance in 2013 when it published in the *Federal Register* final guidance creating a new Part 200 of Title 2 of the *Code of Federal Regulations*. OMB explained that the Uniform Guidance sought to eliminate "duplicative and conflicting guidance" contained in at least eight separate OMB publications that, for example, set forth cost principles for nonprofit organizations in one document and for educational institutions in another.

The Uniform Guidance addresses how grantmaking agencies are to make, administer, and close out federal awards. Subpart C of the Uniform Guidance concerns agency actions that lead to the making of an award, such as the publication of funding opportunities. Subpart D articulates post-award requirements, including a recipient's duty to maintain records related to the federal award. Subpart E establishes cost principles, which govern the expenses that a recipient may (or may not) charge to an award. Subpart F prescribes standards for federal award audits.

The Uniform Guidance's directives impact participants in federal financial assistance programs in different ways. OMB regulatory provisions explain that the Uniform Guidance "directly applies only to Federal agencies." Nonfederal entities, by contrast, are affected by OMB's changes to the Uniform Guidance when grantmaking agencies apply those requirements to their assistance programs. The Uniform Guidance states that all of its provisions apply to grantmaking agencies and further requires agencies, in turn, to apply Uniform Guidance provisions on the making, administration, and close out of awards to nonfederal recipients. The Uniform Guidance identifies a particular mode of "implement[ing]" these provisions: Grantmaking agencies must implement the selected Uniform Guidance provisions "in codified regulations unless different provisions are required by Federal statute or are approved by OMB." Exceptions to the Uniform Guidance's provisions, the guidance explains, "will be subject to approval by OMB and only with adequate justification from the Federal agency."

A federal district court examining the Uniform Guidance likened OMB's directives to a statute that delays the application of its requirements to third parties until an agency adopts regulations to implement those statutory requirements. The district court stated that the Uniform Guidance binds grantmaking agencies in the manner of a regulation. Grantmaking agencies are thus "obligate[d]" to adhere to OMB's directives. However, those directives, in the district court's view, are "binding outside the Government only insofar as it is given effect through other authority" (e.g., through a grantmaking agency's rulemaking authority).

Consistent with this structure, OMB's initial promulgation of the Uniform Guidance in December 2013 required grantmaking agencies to adopt implementing regulations effective not later than December 2014. As part of those rulemakings, OMB directed agencies to consider whether their implementing regulations should include exceptions from the Uniform Guidance's requirements. OMB also directed nonfederal entities supporting or opposing such exceptions to address their concerns to grantmaking agencies, explaining that "[f]ederal agencies are responsible for implementing their programs under authorities provided specifically by statute, and are further responsible for responding to any potential concerns from their particular recipients." One year later, OMB and dozens of grantmaking agencies issued a joint interim final rule generally adopting the Uniform Guidance's provisions as agency regulations.

Subsequent OMB amendments to the Uniform Guidance have not, however, triggered a similar joint rulemaking by grantmaking agencies. Certain agencies have taken years to amend their implementing regulations following a change in OMB guidance. For example, though OMB amended the Uniform Guidance in August 2020 and again in April 2024, the Department of Health and Human Services (HHS) did not first amend its agency regulations until October 2024. When HHS did so, it explained that it was "lagging behind the rest of the grant making agencies, causing confusion and additional administrative burden for HHS recipients." Other agencies, as discussed below, have never amended their regulations.

OMB's May 2026 rulemaking proposal would replace the Uniform Guidance with the UGR, using a structure that, according to OMB, seeks to dispense with future grantmaking agency rulemaking, which the rule's preamble characterizes as "redundant," "a major drain on agency resources," and an obstacle to "the objective of government-wide uniformity of OMB policy changes." (However, nearly all grantmaking agencies joined OMB in the May 2026 proposed rule to adopt agency rules that would implement the UGR with varying exceptions.) In particular, the proposed UGR's effective date provision would make any subsequent changes to the UGR "affecting the administration of Federal awards by Federal agencies" operative "when any future amendment" to the UGR "becomes effective." The proposed UGR elaborates on what that statements means: "once Federal agencies have issued regulations in subtitle B of this title adopting the OMB regulations in this part," as nearly all grantmaking agencies propose in the May 2026 rulemaking proposal, "the process for future updates of [grantmaking agency] regulations in subtitle B will be complete each time OMB issues a final rule amending this part." Thus, if OMB finalizes the UGR, OMB's *future* amendments would become effective at a time determined by OMB, and agencies would not need to engage in secondary rulemaking. Both grantmaking agencies and nonfederal entities would be bound by OMB's new requirements when OMB decides to make them binding.

OMB's Stated Authority for the UGR's Structure

If adopted in the form proposed by OMB, the UGR could further centralize in OMB the power to shape federal financial assistance programs. As with any agency action, OMB would need statutory authority to exercise this proposed degree of regulatory control. As the Supreme Court has explained, "agencies are creatures of statute" that "possess only the authority that Congress has provided."

Though OMB's proposed rule cites nine different statutes as authority for the proposed rule as a whole, its preamble focuses on one of these provisions, 31 U.S.C. § 503(a)(2), as the basis for OMB's proposed transition from guidance to regulations. Section 503 lists the Deputy Director for Management (DDM) of OMB's functions, which the DDM performs under the direction and with the approval of the Director of OMB. The functions include exercising "overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements." Thus, Section 503(a)(2) identifies a *goal* that the DDM is to pursue (i.e., providing "overall direction and leadership to the executive branch on financial management matters") and *tools* for pursuing that goal (i.e., "financial management policies and requirements").

Congress set this goal and provided these tools in the Chief Financial Officers Act of 1990 (CFO Act), which enacted Section 503(a)(2) in its current form. The CFO Act found that the financial management functions of OMB needed to be "significantly enhanced" to reduce "fraud, waste, abuse, and mismanagement among the hundreds of programs in the Federal Government." A committee report that accompanied the House's version of the legislation faulted an allegedly too-timid OMB reform agenda for the existence of dozens of "high-risk" agency programs that threatened to impose "liabilities of hundreds of billions of dollars more" on the federal government.

Section 503 does not define the phrase "financial management policies and requirements." Courts usually apply a statutorily undefined term's plain and ordinary meaning and consult dictionaries for that plain meaning. "Management" entails "conducting or supervising" an undertaking. For Section 503, the undertaking that is the subject of the DDM's policies and requirements is "financial" matters, or those relating to finances, the "money or other liquid resources of a government." A "requirement" is a "thing demanded or obligatory." A "policy" sets a "course of action adopted and pursued by a government."

If a court were to apply Section 503(a)(2)'s terms in this manner, it might read the statute to authorize the DDM to issue orders and identify courses of action concerning the administration and supervision of federal dollars. However, that reading would not squarely address whether such orders directly bind agencies only or nonfederal entities as well. The statute authorizes the DDM to use these tools, as noted above, to provide "direction and leadership to the executive branch." The statute does not expressly vest the DDM with the power to issue requirements that extend, of their own force, to entities outside the executive branch, and no federal court appears to have construed Section 503(a)(2) in that context. Other statutory interpretation tools, such as the *major questions* doctrine, might weigh against such OMB authority given the scope of federal financial assistance awards and the potential effects on nonfederal entities of regulatory changes.

OMB's Past Approach to Making Uniform Guidance Amendments Effective

Another question raised by OMB's proposal is how much the UGR would, in the future, change OMB's role in shaping executive branch grants policy, as compared to OMB's past processes for making its changes to the Uniform Guidance effective.

As noted above, from its initial promulgation, the Uniform Guidance has required grantmaking agencies to implement its provisions in a particular way: "in codified regulations unless different provisions are required by Federal statute or are approved by OMB." The Uniform Guidance has also always specified when its provisions become effective, though this language has changed over time.

The December 2013 Uniform Guidance stipulated that it would become effective "once implemented by Federal agencies" and called for implementation to occur by December 2014, a deadline that grantmaking agencies met with their December 2014 joint rule. In 2020, OMB revised the Uniform Guidance's effective date provision to its current form, which now states that Uniform Guidance becomes "effective once implemented by Federal awarding agencies" *or* "when any future amendment to this part becomes final." The UGR would keep this language but would, as noted above, continue by stating that "once Federal agencies have issued regulations" that adopt the UGR, "the process for future updates of regulations in subtitle B will be complete each time OMB issues a final rule amending this part."

Although the Uniform Guidance currently lacks this additional UGR language, OMB appears to have applied the existing effective-date provision in a similar manner. OMB specified the effective date of its 2020 and 2024 amendments, and, unlike their 2013 predecessor, those regulatory actions did not call on agencies to issue new rules to implement the changes. Agencies have subsequently applied new Uniform Guidance provisions to nonfederal entities without first amending their implementing regulations.

By way of example, the National Science Foundation (NSF), unlike other agencies, has never amended its Uniform Guidance implementing regulations since first adopting them as part of the December 2014 joint rule. Even so, NSF has applied OMB's 2020 and 2024 guidance to NSF grantees. To take one example, the 2013 Uniform Guidance allowed agencies to unilaterally terminate an award only if a recipient failed to comply with the award's terms and conditions. The 2020 and 2024 guidance broadened agency authority, granting the power to terminate an award if the agency determines it "no longer effectuates the program goals or agency priorities." NSF General Grant Conditions have included such discretionary termination provisions since at least November 2020, indicating it had applied Uniform Guidance amendments as of that date despite its unchanged implementing regulations.

The reasons why a grantmaking agency might have applied Uniform Guidance changes made in 2020 or 2024 without amending its implementing regulations are unclear. One view might be that, despite Uniform Guidance provisions that state that grantmaking agencies "must implement" relevant guidance provisions "in codified regulations," an agency may apply Uniform Guidance provisions to grantees without needing to engage in rulemaking. Absent waiver, the Administrative Procedure Act's (APA's) notice-and-comment rulemaking provisions do not apply to "a matter relating to . . . grants." For example, an agency might, under this view, apply new guidance provisions by including them in an award's terms and conditions.

Another view might be that an agency's implementing regulations have the effect of adopting, as an agency rule, not only the Uniform Guidance in effect when the regulation became final (in NSF's case, the 2013 guidance), but also subsequent amendments (in NSF's case, the 2020 and 2024 amendments).

Courts occasionally construe statutes that, like grantmaking agency implementing regulations, incorporate another source of law by reference. Appellate courts have stated that regulations are generally to be construed using the same tools that are applied to statutes. One tool used by courts in such cases is the *reference* canon of construction. When applying this canon, courts typically presume that when Congress drafts a statute to *generally* refer to another body of law (e.g., "the crime of piracy as defined by the law of nations"), the statute "adopts the law on that subject as it exists whenever a question under the statute arises." By contrast, a court employing the canon usually presumes that when Congress drafts a statute that refers to another law "by specific title or section number," the reference "in effect cuts and pastes the referenced statute as it existed when the referring statute was enacted, without any subsequent amendments."

Many grantmaking agency implementing regulations appear to be rules of specific reference, at least to the extent they implement the Uniform Guidance "by specific [*Code of Federal Regulations*] title or section number." For example, the NSF's implementing regulations state that the NSF "has formally adopted 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ('the Uniform Guidance')." If a court were to apply the reference canon to such implementing regulations, it might conclude that a grantmaking agency's rule had the effect of cutting and pasting into the agency's rule the Uniform Guidance that existed when the agency finalized its rule. The UGR, by contrast, would expressly direct that subsequent amendments to the UGR would automatically become part of agency implementing regulations, likely overriding the canon's presumption concerning the meaning of specific references to other regulations.

Options for Congress

Congress has broad discretion to shape federal financial assistance management due to its Spending Clause authority and its power to "make all Laws which shall be necessary and proper for carrying into Execution" that authority. Congress may address the processes for setting executive branch grants policy in several ways. For example, it could codify, in whole or in part, the UGR's regulatory structure. Conversely, it could prohibit OMB from prescribing grants administration policies for grantmaking agencies. Congress might choose to revisit its long-standing decision to exempt grants from required APA notice-and-comment rulemaking provisions or leave that exemption in place and continue to allow agencies to employ, or not employ, those rulemaking procedures for covered matters. In addition, Congress may legislate as to the UGR's substantive provisions, either affirming them in statute, prohibiting their adoption as executive branch rules, or adopting new rules to take their place or supplement them, in whole or in part.

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