



December 4, 2023

Lesley Field
Deputy Administrator for Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: NTCA-The Rural Broadband Association's Comments on OMB-2023-0017,
Guidance for Grants and Agreements, 88 Fed. Reg. 69390 (Oct. 5, 2023)

Dear Deputy Administrator Field,

NTCA-The Rural Broadband Association ("NTCA") writes to express its support for the proposed rulemaking released by the Office of Management and Budget ("OMB") to update the OMB Guidance for Grants and Agreements ("Uniform Guidance"). NTCA is a non-profit association that represents more than 850 family-owned and community-based broadband companies that service rural and small-town communities across the United States. As such, NTCA and its members are committed to helping close the digital divide for rural America.

OMB's proposals to update and in many cases simplify the Uniform Guidance are a welcome initiative that will reduce administrative burden on federal grant recipients, especially smaller organizations like NTCA's members. In support of OMB's objectives, NTCA highlights several items in the proposed updates to the Uniform Guidance, both those that it supports and those that would benefit from greater clarification and additional modification in line with the proposals OMB has already made.

First, NTCA supports several of OMB's proposals, including, but not limited to:

- [2 CFR 200.324] NTCA supports OMB's proposal to remove the requirement for grant recipients "to negotiate profit as a separate element of the price for each contract in which there is no price competition." Doing so will remove a significant hurdle for grant recipients, especially smaller grant recipients like NTCA's members, which may have less leverage or fewer options. Indeed, this requirement often has an unintended consequence of limiting grant recipients' options because commercial entities generally refuse to share this information and withdraw from consideration, especially from smaller procurements and customers, if asked to share this type of information. In turn, many organizations are forced to award contracts without specifically examining profit and therefore take on the risk of disallowance, unfairly shifting the burden to the grant recipient even though the grant recipient already has significant incentives (e.g., the grant budget) to ensure each and every procurement is for fair and reasonable prices.
- [2 CFR 200.414] NTCA welcomes OMB's proposal "to raise the *de minimis* rate from 10 percent to 15 percent." For smaller grant recipients, especially those that do not operate

regularly in the federal grant space, permitting a higher *de minimis* indirect rate will enable such organizations to recoup more of their indirect costs. This not only recognizes the travesty of many non-profit grant recipients being underfunded with an expectation that they subsidize the federal government's grant programs, but it will also potentially open opportunities and encourage many more mission-driven organizations to serve the federal government through its grant programs. Promoting more widespread participation will invite additional industry competition and promote innovation, likely leading to improved performance and results. For organizations that already routinely operate within the grant space, a higher indirect rate will also allow them to recoup more of their true indirect costs by responding to market realities brought on by rising costs and wages by increasing overhead budgets to secure vital supplies and services, as well as attract and/or retain talented people to help run the institutional apparatus that makes successful program execution possible.

Second, NTCA raises three possible areas for greater clarity and improvement in OMB's proposal:

- [2 CFR 200.407] NTCA concurs with OMB's proposal to "reduce Federal agency and recipient burden" by "remov[ing] ten items from the prior written approval requirements." It is indeed burdensome to require federal grant recipients to place their programs on hold to submit and receive prior written approval for reasonable and uncontroversial items that are mission critical. Further, these requests often go unanswered leaving the grant recipient in the challenging position of further delaying the program or proceeding at its own risk. NTCA respectfully requests that OMB, however, go one step further and consider additional items whose removal from Section 200.407 would decrease recipient burden without significant risk of recipients incurring unreasonable or nonallocable costs. For example, Section 200.308's requirement to obtain prior written approval for all changes to approved budget and program plans presents a roadblock to effective and efficient program management because it prevents recipients from quickly adapting to the natural ups and downs of program execution. NTCA would ask OMB to consider exempting this item from the prior approval requirement either in its entirety or when changes fall below a percentage threshold, such as changes affecting less than fifteen percent (15%) of an approved budget or program plan. Likewise, it would improve effectiveness and efficiency to exempt prior approval for fixed amount subawards (Section 200.333) when they are under the Simplified Acquisition Threshold and are otherwise compliant with pertinent Uniform Guidance provisions, such as Section 200.201.
- [2 CFR 200.314, 2 CFR 200.5] NTCA agrees that OMB's proposal to increase the single audit threshold from \$750,000 to \$1,000,000 and the equipment thresholds from \$5,000 to \$10,000 will ease the burden on agencies and recipients. It is evident that OMB took current economic data into consideration when it made this decision. However, economic realities are constantly shifting and may support an even greater threshold increase. This is why NTCA requests that OMB set these thresholds slightly higher. For example, setting the single audit threshold at \$1,500,000 and the equipment threshold at \$20,000 would better serve OMB's purpose of making appropriate adjustments based on economic data. While the proposed threshold increases will help, they do not address the full impact of inflation on federal grant recipients. Based on the Consumer Price Index for All Urban Consumers:

U.S. city average (“CPI-U U.S. city average”), the average buying power in October 2023 is 75.57% of 2013, when the Uniform Guidance was promulgated.¹ And this number, as troubling as it is on its own, fails to capture the meteoric rise in inflation since the economic upheavals precipitated by the COVID-19 pandemic in 2020. For example, for the ten-year period between 2010 and 2019, the CPI-U U.S. city average rose by an average of 4.075 points year-over-year.² On the other hand, the same index rose an average of 15.39 points year-over-year from 2020 to 2023.³ If this trend continues, the average purchasing power based on this index in 2025 will be 69.5% of the purchasing power in 2013. Come 2027, purchasing power will be 63.7% of 2013. This downward trend in purchasing power demonstrates the need to raise the equipment threshold as OMB has proposed. At the same time, it also signals that a larger threshold increase would better serve OMB’s purposes in updating the Uniform Guidance. With a smaller threshold increase, there is a risk that agencies and grantees will find themselves back where they started under the existing equipment threshold, *i.e.*, experiencing greater administrative burden caused by the need to dispose of and account for equipment that is in reality routine and inconsequential but that, due to a low threshold, triggers unnecessary administrative requirements.

- [2 CFR 200.113] NTCA understands and appreciates OMB’s efforts to clarify the mandatory disclosure requirements at 2 CFR 200.113. Indeed, the current rule is not followed by many auditors or offices of inspectors general, which apply a standard more akin to that set out at Section 52.203-13 of the Federal Acquisition Regulation. Accordingly, bringing clarity to this requirement is helpful, however, the proposal as currently drafted does not provide any guidance on how to understand “promptly,” what may constitute “credible evidence,” and what a pass-through entity receiving such a disclosure should do with that information (*i.e.*, is the pass-through entity expected to investigate such as would such costs be directly or indirectly allowable), and in what timeframe? Without greater explanation, NTCA fears that this requirement will lead to either over-reporting (out of an abundance of caution) or under-reporting (out of confusion or uncertainty). Given the weighty consequences in Section 200.339, recipients, especially smaller organizations, would benefit from more guidance and greater transparency regarding federal expectations and recipient obligations. Additionally, OMB should consider including language in its proposal addressing several important topics that are currently absent. For example, grace periods between discovery of information and reporting it, such as when an organization undertakes an internal review to determine the credibility of potential evidence, and leniency, such as when an organization promptly discloses and then cooperates with government authorities or when a violation of Federal criminal law or the civil False Claims Act arises out of an organization’s ignorance, mistake, or subjective belief that its approach is correct (even if that belief proves incorrect). Measures like these would help reduce the risk of under-reporting and promote the ultimate objective of making grant administration less susceptible to misuse or abuse.

¹ See Consumer Price Index Historical Tables for U.S. City Average, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm (last visited Nov. 28, 2023).

² *Id.*

³ *Id.*

In conclusion, NTCA commends OMB for undertaking such a monumental and important effort to update the Uniform Guidance. As a non-profit organization with a membership that relies in many cases upon federal financial assistance to accomplish its mission, NTCA believes the proposed clarifications will help in promoting the shared objectives of our members and the programs in which they participate within and support. While OMB's proposal as published in the Federal Register will be a significant accomplishment, NTCA believes greater clarity in some parts and a wider scope in others will help ensure that the changes have as much staying power as the original Uniform Guidance published nearly ten years ago.

Thank you for your consideration.

Sincerely,



Jill Canfield

General Counsel and VP of Policy

NTCA-The Rural Broadband Association

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