



NOTES -- Partners' Day: *Policy Brief*

Session Title: Policy Brief

Date: December 1, 2015

Time & Location: 2:25 p.m. – 3:25 p.m. EST at the Ronald Reagan Building

Presenters:

- Deb Broderick, Deputy Director of Accountability, Compliance, Transparency & Systems Support (ACTS), M/OAA
- Marcelle Wijesinghe, Chief of Policy Division, M/OAA

Purpose of the Session

The purpose of this session was to review new policies implemented over the last year, to discuss upcoming policy changes, and answer questions from partners.

Discussion Topics

Deb Broderick presented the following background information:

1. **Source and impact of Policy changes:** We understand that Policy changes have a huge impact on partners. Sources include new law, regulations, and executive orders, such as 2 CFR 200 and the Executive Order on cyber security. Partners frequently get information at the same time that we get it. We try to be as transparent as we can be with partners regarding changes, given our limited staff and large workload. The Ombudsmen is partners' first line of defense and is kept updated on what happens in the Policy shop.
2. **Rulemaking** is a tedious and cumbersome process. We are an agency that likes to get full agreement so we spend a lot of time trying to get agreement during rulemaking.
3. Policy provides **assistance to the AOs and COs in the field**, and conducts information sharing through brown bags, conference calls, notices, newsletters, etc. If partners see problems, such as inconsistencies, with how AOs/COs apply policies, let us know. We do our best to try to get the word out on policy issues. Keep in mind that COs/AOs have discretion which isn't the same as inconsistency.
4. **Training** – Policy works with the Professional Development and Training Division (M/OAA/PDT) to use training to get information out to AOs/COs on policy issues.

Marcelle Wijesinghe presented the following policy updates:

2015 Changes

1. **AIDAR Revisions** - We are updating in phases. 2015 revisions included administrative changes, which became effective in March 2015, and included changes to the suspending and debarment official
2. **The Final Rule for Partner Vetting** was published in the Federal Register.
3. **Issued 2 CFR 700 to replace 22 CFR 226** in its entirety, to adopt OMB's assistance regulation in 2 CFR 200 and include Agency specific requirements.



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4. **Revisions to ADS 303** to bring internal policies and mandatory reference documents into conformity with 2 CFR 200/700, including:
 - i. Removed threshold for fixed amount awards
 - ii. Replaced FOGS with Fixed Amount Awards
 - iii. Included de minimis indirect cost rate
 - iv. Updated standard provisions for awards, including child safeguarding requirements.
5. **Issued Procurement Executive Bulletins**, including on human trafficking requirements.
6. **Kept regulations and policies in sync** with more than 20 FAR revisions.
7. **Revised ADS 302** acquisition chapter and guidance on past performance
8. Incorporate **Open Data requirements** into policies
9. **Branding and marking revisions** to allow special branding for presidential initiatives.
10. **ADS 331 - purchase card program** revised in its entirety.

Expected Changes in 2016

1. More **AIDAR revisions**
2. **Implement Open Data** – we are working with OMB to finalize the regulation – this will be in the next AIDAR revision
3. **Agency warrant program for cooperating country nationals** – they will be allowed to get warrants based on seniority and experience.
4. **Changes to respond to new regulations.** We expect a number of FAR rules based on the draft rules we have seen.
5. Additional revisions to **ADS 303** to reduce FAR creep, including terminology of a contractual nature.
6. Revision to **ADS 304** on choice of instrument is in the clearance process.
7. **Changes to assistance terminology** – for example, technical evaluation is now merit review, responsibility determination is now a risk assessment, past performance is now reviewed as part of the risk assessment, Fixed Obligation Grants (FOGs) are now Fixed Amount Awards and we removed the threshold that formerly applied to FOGs. See handouts for additional changes.
8. **Consolidation of policies** – we are trying to consolidate as many of the policies as we can, by pulling them out of general notices and Acquisition and Assistance Policy Directives (AAPDs) and putting them into the ADS for a one-stop shop. We are only issuing new AAPDs if there is a rush to implement a requirement (such as a new regulation) that is time sensitive, while concurrently going through the rulemaking process.
9. Update clauses in **GLAAS** and in **PDT** documents as quickly as we can.



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10. **Disseminate information** on changes through the M/OAA Director's newsletter, Policy Quarterly Updates, brown bags, and worldwide calls.

USAID took comments and questions from attendees on the following topics:

1. Why the limitation on Fixed amount awards to pass through entities?
USAID: The limitation is based on 2 CFR 200. Any changes would have to go to OMB as it was in their regulation. If the Agency wants to include an exception to this OMB limitation, it will have to go through the regulatory process
2. 10% de minimis rate.
USAID: Payment of the 10% de minimus indirect cost rate is not based on actual costs. However, Policy defers questions on the rate to M/OAA's unit that deals with indirect costs
3. Is Open Data going through the rulemaking process? In the meantime, why is it still being incorporated into their agreement?
USAID: Open data was issued as an interim agency policy to respond to OMB's requirement to collect data while we work through the rulemaking process.
4. Limitations on compensation increase typically found in Section H of contracts. Doesn't the 3% ceiling need to go through rulemaking per the administrative procedures act?
USAID: The language on annual salary increases is contained in the Special Contract Requirements section of the Uniform Contract Format and is determined by the CO for cost effectiveness purposes. This is not an AIDAR clause and therefore it does not need to go through rulemaking.
5. Comment: COs need best practices guidance regarding VAT reimbursements.
USAID: VAT reimbursement procedures vary greatly from Mission to Mission. As such, there needs to be flexibility for each Mission to apply the appropriate processes to the awards. While a standard policy may not be possible, we can explore the possibility of providing best practice guidance.