



July 18, 2016

To: NIFA Capacity Grantees
From: Cynthia Montgomery, Deputy Director, Office of Grants and Financial Management
Subject: Feedback on prior approval for equipment requirement implementation

I want to thank you for taking the time to participate in NIFA's June 15 and 16 webinars on the implementation of prior approval for equipment for capacity grantees. I received many thoughtful questions and recommendations and appreciate your willingness to work with NIFA. We have created a Q&A, attached to this memorandum, based on the questions we received during the webinar as well as feedback and questions received post-webinar. I hope these will be useful to you as you consider the best implementation path. We extended the deadline for feedback until July 30, so please review the information provided in this memorandum and attached Q&A and feel free to submit additional feedback and recommendations.

There are several issues raised in your feedback I would like to address. First, I want to address the origin of the prior approval requirement. The requirement stems from the Uniform Guidance developed by the Office of Management and Budget and codified in 2 CFR part 200. The Uniform Guidance was published in the Federal Register on December 26, 2014. USDA's adoption of 2 CFR 200, at 7 CFR part 400, was published in the Federal Register as an Interim Final Rule on December 19, 2014. The Office of Management and Budget held numerous webinars related to Uniform Guidance implementation. The Uniform Guidance applies to all federal assistance awards, regardless of whether they are capacity (formula-based) or competitive. The prior approval for equipment is required under Subpart E, the cost principles, specifically 2 CFR part 200.439. In the upcoming FY 2017, capacity terms and conditions will contain this requirement.

Second, many of you indicated that your institution has internal processes related to approval and procurement of equipment. These processes are also required under the Uniform Guidance, as internal controls and to meet the procurement requirements. However, internal processes do not meet the requirement in the Uniform Guidance that equipment purchases receive prior approval from the awarding agency. The purpose of prior approval in the Uniform Guidance is to help reduce unallowable expenditures before they occur by requiring it for items that have higher instances of questioned costs.

Again, I greatly appreciate your time and willingness to work with NIFA. Attached are detailed Q&A's to help in your review. Additionally, the PowerPoint, recorded webinar, and transcript of webinar Q&A's is posted on the NIFA website at: <https://nifa.usda.gov/resource/nifa-webinar-equipment-prior-approval-capacity-grantees>. Please submit any additional feedback or questions on implementation of prior approval requirements to Maggie Ewell at Margaret.ewell@nifa.usda.gov by July 30, 2016. I am confident that we will implement a system that is workable for our grantee institutions and our staff to meet the requirements of the Uniform Guidance.

Attachment

Questions and feedback, with responses, submitted following webinars related to implementation of prior approval requirements for equipment

APPLICATION OF REQUIREMENTS

Q: I believe equipment has been justified and preapproved under the Hatch Act and Smith-Lever Act. Capacity funds should not be treated the same as competitive funds.

A: These authorizing statutes provide funding for a specific purpose; they do not address prior approval of equipment. The Uniform Guidance does not contradict the authorizing statutes; rather it works in concert with them. The Uniform Guidance applies to all federal awards – competitive or Capacity (formula). The Uniform Guidance requires prior approval for equipment and NIFA is implementing that requirement for capacity grantees.

Q: NIFA is inconsistently applying Uniform Guidance requirements. For example, the Centers of Excellence concept violates a fundamental construct of the Uniform Guidance, which is to remove cost sharing preferences from RFAs.

A: Authorizing statutes and appropriations laws trump all other requirements. In the case of a direct conflict between the Uniform Guidance and the authorizing statute, the authorizing statute prevails. In the case of Centers of Excellence, the requirements regarding financial or in-kind support were contained in statute, thereby superseding the Uniform Guidance. This is different than the question above where the Uniform Guidance provides more specificity related to spending funds under the broad authorized activities of the award.

Q: Implementing this requirement for FY 2017 is too fast for a major change.

A: The Uniform Guidance, 2 CFR 200, was first published on December 26, 2013. The Office of Management and Budget conducted numerous outreach efforts (e.g. webinars frequently asked questions, side-by-side documents, and training). See: <https://cfo.gov/cofar/>. On December 19, 2014, the Uniform Guidance was published as a Joint Interim Final Rule with technical corrections and all agencies' adoption of the Uniform Guidance. The requirement took effect for all awards issued on or after December 26, 2014. NIFA has spent 2015 updating terms and conditions and evaluating processes. We are working with you on implementation of prior approval, however the requirement is in effect now and we must require it as of FY 2017.

Q: Why is it not allowable to purchase equipment at the end of an award? Our funds are flowed to states annually.

A: While capacity awards are funded annually via formula, the funds are issued via a grant with a set period of performance. The expectation is that the funds awarded support the authorized activities within the grant period of performance. NIFA strongly encourages institutions to plan to use grant funds within the period of performance such that equipment purchases would be at the beginning and support the activities for the entire period. Equipment purchases at the end of the period of performance do not benefit the grant during the period of performance. We recognize that this may not be feasible in every case, and that some equipment is required at the end of the period of performance. However, it is unallowable to spend excess funds at the end of the period of performance on equipment just to use up the funds.

Q: §200.401 states that "The principles do not apply to: (s) For IEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the

Federal award." Doesn't this mean that the prior approval requirement doesn't apply to capacity grants (formulas include head count of population)?

A: NIFA research has found that capitation awards are a specific type of award that are based solely on numbers serviced and increase or decrease in amount based on enrollees. They are used most commonly in human subject research. Capacity awards are not capitation grants.

EQUIPMENT DEFINITION

Q: Where is the definition of equipment and supplies?

A: Equipment is covered in three places in OMB's Uniform Guidance released on December 19, 2014. Section 200.33 defines equipment; Section 200.313 within the Administrative Requirements covers title, use, management, and disposition of equipment; and Section 200.439 in the Cost Principles details when equipment costs are allowable and includes the prior approval requirement.

Equipment is defined in OMB's Uniform Guidance at §200.33 as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

Supplies are defined at 2 CFR 200.314.

Q: Is furniture in the lab considered equipment?

A: Furniture is considered general-purpose equipment if it exceeds the \$5000 per-unit acquisition cost.

PRIOR APPROVAL

Q: How much detail is needed in prior approvals so I can be responsive, but limit the burden?

A: Prior approval is prior approval to acquire – it is not a detailed review of allowability. Therefore, requests must list the item of equipment, anticipated cost and useful life (to ensure the item meets the definition of equipment), and its intended purpose. The purpose section is what NIFA uses to determine whether the item is necessary and allocable to the grant.

Q: What happens if, after I receive prior approval, the price changes?

A: You are providing an estimate and receive prior approval to acquire. You are not required to resubmit your request if the price changes, however you are responsible for ensuring the cost is reasonable. Therefore, if there is a change in the price, we strongly recommend that you document the price change and the market research and procurement processes used to support that the cost is reasonable.

Q: Can I submit equipment and supplies for review and approval?

A: Prior approval is only required for equipment, NOT supplies. If you have a question about allowability, you can contact your grant's administrative contact. NIFA will not provide prior approval for supplies.

Q: If my equipment purchase necessitates a budget modification, do I have to submit the budget modification and receive approval first?

A: No. You can submit the budget modification and equipment request simultaneously. Budget modifications for Capacity should be sent via REEport or the National Program Leader.

Q: What about capacity grants that provide budgetary information through REEport or other annual programmatic reporting? If the equipment is part of a McIntire Stennis project, do we need prior approval?

A: Yes. Equipment prior approval is a grant administrative process. It is separate from annual programmatic reporting requirements. NIFA will be examining ways to leverage the information available through programmatic reports in our review process.

Q: Who has to submit the request? Do requests need to come from the AR/AOR or could they come from PI/ATR/ Research/Extension Director, etc.

A: The request must be signed by the Authorized Representative (AR), who is authorized to make requests and changes to the grant award. However, the AR signed request may be emailed in by the PI/ATR, Research Director, Extension Director, etc.

Q: We have lab that requires over \$20,000 of renovation, does that require prior approval?

A: Yes, renovations in that amount are likely capital improvements/expenditures and would require prior approval. The prior approval requirement related to capital expenditures is contained in 2 CFR 200.439.

TIMELINE FOR PRIOR APPROVALS

Q: How fast do you think it will take for turnaround approval?

A: Consistent with the time given for agencies to respond to budget requests, NIFA will respond within 30 days of receipt of the request in the majority of cases. Complex requests or requests where additional information or actions are required may take longer than 30 days.

Q: We are concerned that the proposed 30 day timeline for prior approvals will not be met. This will delay the research process. What will NIFA do to ensure that research is not delayed?

A: NIFA understands this concern. The initial pilot was a pilot for NIFA staff as well, where staff were trained in reviewing and approving prior approval requests. NIFA will train all staff and is developing internal processes to ensure that in most circumstances, prior approval requests for equipment are approved within 30 days. This includes separating items within a blanket request if necessary, providing approval where appropriate and only delaying items what require additional information and analysis. We will also have an emergency request process in place to expedite approvals in cases of emergencies.

Q: What about instead requiring a paragraph or so in the Plan of Work on equipment purchase, processes and tracking systems? In an annual reporting process after the actual purchase, the director's offices report what has been actually purchase. This adheres to state and federal policies and is factual, descriptive and qualitative.

A: Reporting after the fact does not meet the requirement in the Uniform Guidance, which states:

“Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.” 2 CFR 200.439

In addition to prior approval, grantees must also follow the requirements related to equipment in 2 CFR 200.313 related to Title, Use, Management, and Disposition.

RELATIONSHIP TO PLAN OF WORK

Q: I am concerned that this new requirement is going to result in Plans of Work needing a lot more detail. Why do my equipment requests need to be aligned with my plan of work?

A: In order to be allowable, equipment purchased under the grant must be necessary, reasonable, and allocable to the grant. To determine necessary and allocable, equipment must align with the plan or work. It is not necessary for equipment to be listed in the plan of work. However, equipment must be related to and support an objective or activity in the plan of work. In the prior approval request, you can explain how the proposed equipment is necessary to the grant and in support of/in alignment with the Plan of Work.

DELEGATION OF APPROVAL AUTHORITY

Q: Why can't NPL's approve equipment within the POW or REEport?

A: Prior approval requests are related to grant administration and expenditures and that activity is handled by OGFMA Awards Management Division, not the NPLs. Prior approval requests are similar to modifications and are approved by the ADO.

Q: Why can't prior approval authority be delegated to the Agricultural Experiment Station Director?

A: Within the Uniform Guidance, prior approvals are specifically listed as a responsibility for the awarding agency.

SOURCES OF FUNDS

Q: How do prior approval requirements apply if multiple sources of funds are used to purchase equipment?

A: Grant funds and matching funds both must meet the Uniform Guidance requirements. Therefore, if you are using grant funds or matching funds to purchase an item that meets the definition of equipment, even if the amount of grant funds and/or match expended is less than \$5000, you would need to request prior approval. Again, prior approval requirements exist to help protect grantees from incurring unallowable expenditures by ensuring that the proposed equipment is reasonable, necessary, and allocable to the grant.

EFFECTIVE USE OF RESOURCES

Q: Are the time and effort associated with requests an effective use of resources?

A: Prior approval requests ensure that federal funds are expended on items that are allowable. Under the Improper Payments Recovery and Elimination Act, agencies are charged with reducing improper payments. The prior approval requirements under the Uniform Guidance are for items that, across the federal government, tend to have the biggest issues with unallowable expenditures. Prior approval to acquire does not guarantee allowability, but, serves as a control to help assure federal funds are not improperly spent.

Q: Is there data available on capacity dollars spent on equipment and what percentage is unallowable?

A: Because capacity grantees do not submit budgets, NIFA does not have data on how much capacity funds are spent on equipment and therefore cannot calculate a percentage of improper expenditures.

IMPLEMENTATION OPTIONS

Q: Why can't PI's list the equipment and costs in the original grant proposal that will be submitted for project approval to NIFA and note if the purchase is planned for year 1 or 2. Approval is then handled on the front end.

A: This is one implementation option proposed by NIFA.

Q: Does there have to be one implementation option, or is it possible to have all options proposed be available to grantees? Our preference would be to have two options: submission of request as an attachment to grants.gov and submission of a request at any time in the first 6 months of the period of performance.

A: There does not have to be only one option. NIFA is seeking feedback on the options proposed to assess the impacts and preferences related to the options.