



# Nonprofit Federal Award Recipients: Establishing an Ethical Culture, Appropriate Internal Controls, and a Collaborative Relationship with Your Federal Agency That Adds Value

*Co-sponsored by Venable LLP, InsideNGO, and BDO*

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Venable LLP, Washington, DC

## Introduction

**Marie McNamee**, Director of Programs, InsideNGO

## Moderator

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## Speakers

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- **May 19, 2016:** [Election-Year Activity: How Your Nonprofit Can Be Legally Active in the Political World](#)



# Mandatory Disclosure



# Mandatory Disclosure Under the Uniform Guidance

- Mandatory Disclosure – 2 C.F.R. § 200.113:
  - Requires organizations to disclose:
    - “[I]n a timely manner”
    - In writing
    - To the awarding agency (or pass-through entity)
    - “[A]ll violations of federal *criminal* law involving fraud, bribery, or gratuity violations potentially affecting the federal award”
      - This may include violations under both Titles 15 and 18 of the U.S.C.
  - An organization’s failure to make the required disclosures can result in a number of actions, including suspension and/or debarment



# Mandatory Disclosure Under the FAR

- FAR 52-203-13:
  - “[T]imely”
  - In writing to the agency OIG, with a copy to the Contracting Officer
  - “[C]redible evidence” that a principal, employee, agent, or subcontractor of the contract has committed:
    - A violation of federal criminal law violations in Title 18 U.S.C. (e.g., fraud, bribery, etc.)
    - Violation of False Claims Act
- Preamble to the rule provides that the “credible evidence” standard is intended to allow contractors the opportunity to conduct a preliminary examination of the evidence before deciding to disclose



# Uniform Guidance v. FAR Mandatory Disclosure Requirements

- Uniform Guidance is a clear move toward the FAR arena, which has a mandatory reporting requirement, *but does not:*
  - Require disclosure to the awarding agency's OIG
  - Include all crimes under Title 18 of the U.S.C.
  - Apply to *civil* acts of fraud, such as those that may be alleged under the False Claims Act (FCA)
- "All violations" of the Uniform Guidance versus the "Credible evidence" standard of the FAR
- What about meaning of "timely"?
  - No guidance provided by the Uniform Guidance



# Standard Provisions for U.S. Nongovernmental Organizations

*A Mandatory Reference for ADS Chapter 303 Partial*

Consistent with 2 CFR §200.113, applicants and recipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General, with a copy to the cognizant Agreement Officer, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General and to the prime recipient (pass through entity) all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award



# Standard Provisions for U.S. Nongovernmental Organizations

*A Mandatory Reference for ADS Chapter 303 Partial*

- Disclosures must be sent to:
  - U.S. Agency for International Development Office of the Inspector General P.O. Box 657 Washington, DC 20044-0657
  - Phone: 1-800-230-6539 or 202-712-1023 Email: [ig.hotline@usaid.gov](mailto:ig.hotline@usaid.gov)
  - URL: <https://oig.usaid.gov/content/usaid-contractor-reporting-form>
- Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment (See 2 CFR 180, 2 CFR 780 and 31 U.S.C. 3321)
- The recipient must include this mandatory disclosure requirement in all subawards and contracts under this award



# Internal Controls



# Internal Control Requirements

- Section 200.303 – Internal Controls:
  - The non-federal organization must:
    - Comply with federal statutes, regulations, and the terms and conditions of the Federal awards
    - Evaluate and monitor the non-federal organization’s compliance with statute, regulations and the terms and conditions of federal awards
    - Take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings
    - Take reasonable measures to safeguard protected personally identifiable information and other information the federal awarding agency or pass-through organization designates as sensitive or the non-federal organization considers sensitive consistent with applicable federal, state and local laws regarding privacy and obligations of confidentiality
    - These internal controls *should* be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States *and* the “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)



# Internal Control Best Practices

- Design and document internal controls with written policies and procedures
- Establish monitoring practices to ensure actual practices are consistent with documented processes, including review of established policies and procedures
- Establish reporting requirements for potential noncompliance, including recommended corrective action plans and milestones for implementing corrective actions;
- Develop and provide training to applicable personnel
- Part Six of the current OMB A-133, Compliance Supplement, advises auditors to evaluate internal controls against the COSO framework or Greenbook standard



# COSO v. “Green Book”

It is important to point out the differences between the COSO Integrated Framework and the Green Book standards when assessing your internal control structure

COSO Framework	Green Book Standards
Can satisfy <i>global</i> operations	Can satisfy <i>government</i> operations
More in depth	Direct
Information technology general controls	Information technology general <i>and</i> application controls
More focus on <i>organization’s</i> responsibilities	More focus on <i>management’s</i> responsibilities

# Components of Internal Control

1. Control Environment
2. Risk Assessment
3. Control Activities
4. Information and Communication
5. Monitoring Activities



# Questions?

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