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More Change to Federal Grant Administration: Political Appointees Overseeing Grantmaking? Uniform Guidance Changes? And Indirect Rate Caps?

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The Trump Administration announced its intent to overhaul federal grantmaking and grant administration in an August 7 Executive Order titled Improving Oversight of Federal Grantmaking. The Executive Order has major ramifications for colleges, universities, and other grant recipients, including by requiring grantmaking agencies to implement indirect rate caps, terminations for convenience, and draw down restrictions to grant agreements, as well as requiring agencies to obtain senior political appointee review and approval for funding opportunities, among other changes. Once implemented, these changes could have a dramatic effect on grant recipients' operations.

Here are several of the key ways in which the new Executive Order intends to re-shape grantmaking and administration in the coming months and years:

- **Indirect/Facilities & Administrative Costs.** Building on the Administration's recent (and enjoined) efforts to retroactively and prospectively apply significantly reduced indirect cost rates (typically 15%), the Executive Order directs the Office of Management and Budget to revise grant-related regulations to "appropriately limit the use of discretionary grant funds for costs related to facilities and administration." Relatedly, in determining grant awards, the executive order requires agencies to give preference "to institutions with lower indirect cost rates." This is a curious stipulation—suggesting a "lowest price, technically acceptable" approach to federal research award-making that may be in tension with rigorous science that requires reimbursement of the real—and considerable—costs associated with the expensive equipment and supplies that are necessary in many fields of research.
- **Selection and Award.** The Trump Administration also announced that it intends to revise the Uniform Guidance—the set of regulations governing grant administration most agencies have adopted in whole or in part. The Executive Order provides the government will "streamline application requirements" and prioritize "minimizing the need for legal or technical expertise in drafting a [grant] application." Depending on the specific changes, this may change who receives federal awards and may tilt the balance toward organizations that are new to federal grant-making or otherwise lack historical experience in federal awards.
- **Termination.** Each Federal agency head is directed to revise existing grant terms and conditions to permit immediate terminations for convenience (i.e., terminations

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without cause) and to ensure those terms are included in all future discretionary grants. Presumably this clarity is necessary only because of the patchwork of termination clauses and rights that the Administration has sought to deploy against grantees under current law.

- **Draw Downs.** Future grant terms and conditions must (i) prohibit directly drawing down general grant funds for "specific projects" without agency approval; and (ii) require that grant recipients provide specific written justifications for draw down requests. These provisions may slow recipient payment.
- **Increased Role of Political Appointees.** Senior political appointees are required to exercise their "independent judgment" when reviewing notices of funding opportunities and discretionary grant awards. Appointees must conduct "pre-issuance reviews" of new funding opportunity announcements to ensure they align with "agency priorities and the national interest" and assess whether discretionary awards "demonstrably advance the President's policy priorities." The Executive Order specifically identifies the following subjects as those which the administration will not fund awards for:
  - Racial preferences or other forms of racial discrimination, "including activities where race or intentional proxies for race will be used as a selection criteria";
  - "Denial by the grant recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic";
  - Illegal immigration;
  - Other initiatives that compromise public safety or "promote anti-American values."

- **Funding Opportunities on Hold.** The Executive Order directs agencies to refrain from issuing any notices of funding opportunities until such time that the agency implements the Executive Order's processes for senior political appointee pre-issuance reviews. The Executive Order does include a limited exception for posting funding opportunities with prior approval from a senior political appointee or as required by law.

While it is unclear from the Executive Order when all of these changes will be completed, the Administration evidently intends to move quickly given the Executive Order's requirement that agency heads submit a report within 30 days explaining whether each agency's current standard grant terms and conditions permit termination for convenience or termination "based on the national interest," as well as identifying the approximate number of active discretionary awards at each agency. Colleges, universities, research institutions, and other grant recipients should consider taking these steps to prepare now:

- Monitor changes. From revisions to the Uniform Guidance to agency outreach regarding specific grant terms and conditions, Federal grants are in a state of flux. It is key that grant recipients and subrecipients keep close track of each agency's—and even each grant's—varying requirements.
- Plan ahead. These changes could potentially have major impacts on grant recipients' and subrecipients' external funding for both direct research and indirect administrative costs. The time to start assessing how these reductions could affect your organization's operations is now.