

To: Contract & Grants Officers

Subject: Federal Funding Accountability and Transparency Act (FFATA)

The Federal Funding Accountability and Transparency Act (hereinafter referred to as “the Transparency Act” or “FFATA”), enacted in September 2006, requires that information on federal awards be made available to the public via www.USASpending.gov.¹

At this time, the impact of this data collection requirement on the University is limited to the collection and reporting of information about first-tier sub-recipients under federal assistance awards, and first-tier subcontractors and vendors under federal contracts. Although the law is imprecise on the applicability of these provisions to further tiers, the Office of Management and Budget (OMB) (as the federal office tasked with providing guidance implementation) may require reporting on second-tier subawardees in the future. This memo summarizes some of the main components of the Transparency Act, and provides guidance for University implementation of the *current* requirements.

1. Overview and Applicability

The federal government has implemented the Transparency Act under separate guidance/rules for the two major award mechanisms: 1) Assistance and cooperative agreements (hereinafter collectively called “grants”), and 2) Procurement (i.e., contracts). The overview for each mechanism is summarized below.

a. Under federal grants:

FFATA requires grant recipients with an award date on or after October 1, 2010 to report subawards over \$25,000 in the FFATA Subaward Reporting System (FSRS) (2 CFR 170). Recipients of grants with an earlier start date are not subject to these FFATA reporting requirements even if future amendments or incremental funding actions occur after October 1, 2010.

- The FFATA requirements apply whether or not FFATA is directly mentioned in the grant award.
- Under prime grants, the term “subawards” means legal instruments that provide support to third party entities for the performance of any portion of the substantive project or program. FFATA does not apply to vendor agreements issued under grants.

¹ The Transparency Act and a 2008 supplement may be viewed at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ282.109.pdf and <http://www.thenationalcouncil.org/galleries/resources-services%20files/Supplemental%20Appropriations%20Act,%202008%20PL%20110-252.pdf> (search for section 6202)

- Prime grants subject to the ARRA federal reporting requirements are *not* subject to FFATA.
- OMB has issued interim final guidance to federal agencies concerning grants subject to FFATA.²

b. Under federal contracts:

- FFATA reporting requirements will ultimately apply to all subcontracts/vendor agreements of \$25,000 or more, and are being implemented on a tiered schedule:
 - until September 30, 2010, FFATA reporting requirements apply if the prime contract is newly awarded in an amount of \$20,000,000 or more;
 - from October 1, 2010 until February 28, 2011, FFATA reporting requirements apply if the prime contract is newly awarded in an amount of \$550,000 or more;
 - after March 1, 2011 FFATA reporting requirements apply if the prime contract is newly awarded in an amount of \$25,000 or more.
- Federal agencies will include a FAR clause specifically requiring FFATA reporting in all new prime contracts.
- Federal Contracting Officers have the option of amending existing contracts to include the FFATA reporting requirements in accordance with the tiered schedule listed above.
- FFATA reporting requirements apply to both subcontracts and vendor agreements issued under prime contracts.
- First-tier subcontracts/vendor agreements under contracts subject to FFATA *and* ARRA must be reported in *both* FFATA and ARRA reporting systems.
- Federal agencies (Department of Defense, General Services Administration, and National Aeronautics and Space Administration) have implemented FFATA via Interim Rules amending the procurement regulations.³

2. Required Reporting Elements

- FFATA requires prime awardees to collect and report the following elements for their first-tier **subawardees**⁴, as described in #1 above. (This list is not necessarily exhaustive, and is subject to further OMB direction.)
 - Unique identifier (DUNS Number) for foreign and domestic subawardees and their parent companies. (This will necessitate all subawardees and vendors procure a DUNS number from Dun and Bradstreet.)
 - Name of the subawardee

² See <http://edocket.access.gpo.gov/2010/2010-22705.htm>.

³ 48 CFR 4, 12, 42, and 52. See <http://edocket.access.gpo.gov/2010/2010-16691.htm>.

⁴ For the purposes of general discussion of the FFATA implementation, the term “subawards” and “subawardees” is used loosely in this Memo to contemplate all FFATA affected first tier: 1) subawards for the performance of any portion of the substantive project or program under prime grants, as well as 2) subcontracts vendor agreements under prime contracts. This use does not supersede definitions used elsewhere in University or federal documents.

- Amount , date and type of the subaward
 - Subaward number (as assigned by the prime awardee)
 - A 4000 character description of the products or services (including construction) being provided under the subaward, including the overall purpose and expected outcomes
 - Subawardee's physical address including street address, city, state, country, and nine-digit zip code and congressional district
 - Subawardee's primary performance location including street address, city, state, country, and nine-digit zip code and congressional district
 - The prime award number
 - Federal awarding agency name and code
 - Federal funding agency name and code
 - Amount of subawardee cost-share
 - Names and total compensation of subawardee's top 5 compensated executives (unless the conditions outlined under # 5 below are met.)
- FFATA reporting is driven by a Federal Award Identification Number (FAIN) for grants (including cooperative agreements) and by the contract number for federal contracts. For grants, the FAIN will generally be the agency award number issued at time of award. The federal issuing agency must provide the FAIN, or confirm that the award number (or a portion thereof) should be used.
 - Reports are due at the end of the month following the month in which the subaward was “obligated.” For example, if a subaward is obligated on December 15, 2010, the FFATA report is due January 31, 2011. (See #3 below for definition of “obligation” date.)
 - Only one FFATA report is permitted per FAIN /contract number per month; therefore, campuses will need to manage all necessary subaward transactions and aggregate data before initiating a FFATA report. While corrections/updates are permitted for discrete data elements, new subaward entities may not be added to a submitted report, even if submitting subaward data in the next FFATA reporting period would mean the data is submitted outside of the compliance period. It is recommended that campuses collect all needed data from first-tier subawardees prior to the issuance of the subaward.
 - Prime recipients must report on all first-tier subawards where the funds obligated are over \$25,000. No report is due until this threshold is reached via amendments. For example, even if you plan to award more than \$25,000 to a subawardee, if your initial award is only \$20,000, then the FFATA reporting requirement is not triggered until an amendment increases the subaward to an amount exceeding \$25,000. If at a future date a subaward over \$25,000 is reduced to an amount under the threshold, the FFATA reporting requirement still applies to the subaward.
 - The FSRS does not permit the delegation of reporting responsibility to subawardees. All reporting to the FSRS is initiated by the prime awardees.
 - FFATA does not apply to an individual who applies for or receives an award as a natural person (i.e., unrelated to a business or non-profit entity).

3. Date of Obligation

OMB guidance provides organizations with latitude in defining “obligation date,” the date on which the reporting period commences.

To ensure a consistent standard among the UC campuses the, “date of obligation” will mean the date associated with the final signature affixed to an issued subaward.

Campuses should include language in their subawards defining the “date of obligation” for FFATA reporting purposes. (e.g., “The period of performance for this Subaward is November 1, 2010 through October 30, 2011. Subawardee may begin work as of the period of performance start date. However, this Subaward will not be considered fully obligated until the date of the last signature on this Subaward. Should the start date precede the last signature date, expenditures are made at the Subawardee’s own risk.”)

Should a unilateral agreement or purchase order be issued, the “date of obligation” shall mean the date of UC issuance.

4. Applicability of FFATA reporting for University of California Multiple Campus Awards

Under FFATA, a subaward is “a legal instrument to provide support” to a third party institution “for the performance of any portion of the substantive project or program.” OMB has further clarified that the definition applies to such instruments that the prime awardee or subawardee would consider to be “contracts.”⁵

The ten campuses of the University of California are not legally distinct from each other. Rather they are units of the corporation governed by The Regents of the University of California. UC campuses allocate portions of extramural awards to other UC campuses via Multiple Campus Award (MCA) notifications; they do not issue “subawards” to each other because both “parties” belong to the same legal entity. **Therefore, MCA notifications are to be distinguished from the FFATA definition of a first-tier subaward, and are not subject to FFATA reporting requirements.**

Note that given this clarification, **any subaward meeting the FFATA threshold of \$25,000 or more and issued under an MCA would be considered a first-tier subaward subject to the FFATA reporting requirements.** As an example, if the Berkeley campus issued an MCA to the Davis campus under a federal award subject to FFATA, that MCA would not be considered a first-tier subaward. However, a subaward issued to Stanford by the Davis campus under this MCA would be considered the first-tier subaward and the Berkeley campus would be required to report the FFATA data elements for the Stanford award in the required time frame. Therefore, it is important that MCAs contain proper instructions to the campus receiving the MCA for the conveyance of subaward information to the first campus.

5. Executive Compensation

The Executive Compensation reporting requirements do not apply if, in the preceding fiscal year:

- i) the recipient did not receive more than 80 percent or more of its annual gross revenue in

⁵ 8/27/10 Jeffrey D. Zients Memorandum for Senior Accountable Officials.
9/14/10 Federal Register /Vol. 75, No. 177.

federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to FFATA; and ii) the recipient did not receive \$25,000,000 or more in annual gross revenue from federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to FFATA; and iii) the public does not have access to information about compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986.

The University has determined that per exception (i) above, it is exempt from the Executive Compensation requirement of FFATA, as our federal awards do not comprise 80% or more of our annual gross revenue. In any case, it should be noted that while we do not disclose salary information through either of the options stated in (iii) above (SEC or IRS filings), salary information for all University employees is otherwise publically available.

In addition to the above exceptions, under the Federal Acquisition Regulations (FAR) (applicable to federal contracts), prime contractors *and subcontractors* who had a gross income in the previous tax year under \$300,000 are exempt from FFATA reporting. Although the same exemption for prime grant recipients is provided under the federal assistance regulations, the regulations do not unequivocally exempt grant subrecipients under the \$300,000 threshold. Therefore, until further notice by OMB, we should presume that grant subrecipients cannot use this exemption.

While most U.S. institutions of higher education will qualify for one of the exceptions stated above, pre-award forms provided to all potential subawardees should include or reference the Executive Compensation policy. The simplest way to assure compliance with FFATA executive compensation regulations is to require that subawardees obtain Data Universal Numbering System (DUNS) identifiers (provided by Dun and Bradstreet) and register in the federal Central Contractor Registration (CCR) system. If the subawardee is registered in CCR, this information will be migrated into FSRS to facilitate the prime awardee's reporting. (Also see #6 below.) We recommend that campuses require subawardees to: 1) certify on pre-award forms that they qualify for one of the exceptions stated above, 2) certify that executive compensation information is publicly available through their CCR, or 3) assure compliance with the executive compensation requirements by providing the information directly to the prime UC campus.

Note that a foreign entity can register in the CCR. There is an "International Registrant" tab at the www.CCR.gov site. The foreign entity does not need to enter a U.S. Tax ID number or the Electronic Funds Transfer information if located in a foreign country, but they do need a DUNS number and NATO Commercial and Governmental Entity Code (NCAGE). There is an International FAQ link to assist with foreign entity questions. See <https://www.bpn.gov/ccr/international.aspx>.

Reporting the executive compensation of grant subrecipients occurs only during the initial FFATA reporting (no later than the month following the month that a subaward is obligated). In contrast, under the acquisition regulations, unless otherwise directed by the federal contracting officer, the prime contractor will report on first-tier subcontractors' executive compensation *both during the initial FFATA reporting period and annually* from the subcontract's date of obligation.

6. Method of Compliance

Prime awardees will be required to register in two systems to comply with the FFATA reporting requirements. First, prime awardees will be required to register into the Central Contractor Registration System ("CCR"). All UC campuses are already currently registered in the CCR. For FFATA purposes, campuses must maintain an active CCR registration for their DUNS number.

FFATA regulations require annual updates from the start date of an award. **Therefore, in order to maintain an active CCR registration that meets the FFATA requirements, campuses should update their CCR semi-annually, and require the same from their subawardees.**

Second, prime awardees will be required to register into FSRS and report subaward and/or subawardee executive compensation data through FSRS. The FSRS will pre-populate with information entered by the federal awarding agencies, the awardee's CCR information, and if available, the subawardee's CCR information. As stated above, we recommend that campuses require subawardees to register and maintain an entry in the CCR.

7. Coordination with campus Purchasing Offices

Vendor agreements and subcontracts are usually managed by campus Purchasing offices. Therefore, it is imperative that the C&G Office communicate the FFATA reporting requirements with other offices involved in the issuance of subawards, and coordinate the input of data. **As previously stated, once data for a single prime award is submitted, the system will not allow the addition of subsequent subawards in that reporting period.** The OP Research Policy & Analysis and Coordination (RPAC) office will also coordinate on a systemwide level with the OP Procurement Services office, which is responsible for the issuance of systemwide guidance to campus Material Managers.

Contact:

Andrew C. Boulter

Andrew.Boulter@ucop.edu

(510) 987-9840

Lourdes DeMattos

Lourdes.DeMattos@ucop.edu

(510) 987-9850



Wendy Streit

Director - Research Policy Analysis & Campus Services

Research Policy Analysis & Coordination

cc: Systemwide Material Managers