

**Understanding the Standard Assurances**  
**Standard Forms 424-B and 424-D impose important legal obligations**  
**on federal grantees. Ignore them at your peril.**

*By Henry Flood*

Early in my career as a grant specialist, the municipality for which I was working accepted a \$77,000 HUD grant made possible by leftover monies from a concluded funding competition. The purpose of the grant was to demolish some dilapidated housing units. The mayor and the city council were eager to get this federal money so they could move forward with an ambitious plan to redevelop "blighted" neighborhoods. But the deadline for submitting our application was only days away, and everyone was under pressure to get it signed, sealed and delivered without delay. So no one bothered to read the fine print—and that \$77,000 grant ended up costing the city another \$30,000 that was nowhere in our budget.

How did this happen and why should you care? The fine print I am talking about is the Standard Assurances that accompany every federal grant application that you sign and submit. One of those Standard Assurances concerned compliance with the Uniform Relocation Act of 1970. By signing the grant application and the accompanying Standard Form, my employer promised to abide by this assurance, which stipulated that the grantee would make relocation payments when renters, owners and businesses are affected by community redevelopment.

As it turned out, the city did manage to come up with the necessary money to address the overlooked compliance problem—though not without a good deal of wrangling and political embarrassment. The moral of this tale is: Never take the Standard Assurances for granted. Your organization assumes varying levels of risk and responsibility every time you submit a grant application that contains these provisions. They should never be treated as an afterthought and the forms that contain them should not be seen as mere boilerplate.

The Office of Management and Budget, the federal agency charged with producing the Standard Assurances, includes its own standard statement at the head of those forms. It's an estimate of the amount of time normally required to complete the form—as required under the federal Paperwork Reduction Act. Unfortunately, that statement has the effect of reinforcing the common misimpression that this is a fairly perfunctory, routine set of

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provisions. "Public reporting burden for this collection of information is estimated to average 15 minutes per response," OMB declares, "including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information."

You would be well-advised to take that estimate with a grain of salt. Even if your organization has good record-keeping systems in place, it will probably take you more than a few hours to pull together all the necessary data to complete the Standard Assurances form thoroughly and accurately—especially if this is the first time you are doing it or if your organization has little experience with federal grants.

The Standard Assurances come in two varieties. Standard Form 424-B applies to non-construction grants and Standard Form 424-D applies to construction grants. For the most part, they are nearly identical, but Standard Form 424-D contains three assurances that relate only to construction.

The Standard Assurances themselves may be conveniently reduced to a few broad categories: Management, Environment and Development, Civil Rights, Research Activities, and Construction. The chart at the end of the article indicates which assurances fall into which category on each of the two forms. I will use the non-construction assurances (Standard Form 424-B) as the basis for this discussion, followed by a brief survey of the specific construction assurances contained in Standard Form 424-D.

## **Management**

When you agree to the management assurances, you are assuring the awarding agency that you have the legal authority to apply for the grant in question. You are also certifying that your organization has the institutional, managerial and financial capacity to carry out approved project activities; that you will complete your activities in a timely manner; and that you will actually spend the grant funds and any match share for the purposes you propose. Part of your proposal—usually the applicant capacity section—must demonstrate this ability to manage federal assistance. This is the essence of assurances 1 and 4 in Form 424-B.

You also agree that, after you receive the award, you will complete a single audit if one is required; you will allow the Comptroller General to have access to your project records in the event that Congress decides to investigate your

activities; and that you will have established standards to prevent conflicts of interest—with respect to both your employees and the organization as a whole—in the expenditure of federal funds. You also agree that you will maintain a functioning personnel system based on merit, and that the personnel system does not treat grant-funded employees differently from other employees. Nor may your grant-funded employees engage in prohibited political activity. Finally, there is a catch-all assurance which indicates that you have agreed to comply with any other requirement imposed on your grant by federal law, executive order, or the funding agency's own regulations or policies.

How do you know that you really have these capacities? Examine the management provisions of the Common Rule on grant administration for states, local governments and Indian Tribes or OMB Circular A-110 for the management provisions that relate to nonprofit organizations. Consult the management controls and benchmark standards contained in chapters 3 and 6 of the 2003 Compliance Supplement to OMB Circular A-133. Collectively these documents will help you design a management compliance system that meets or exceeds requirements of the management assurances.

## **Environment and Development**

Will your project activities have an impact on the environment or result in development? If the answer is yes, then one or more of the various environmental assurances will apply to your proposed project, depending on the activities that you actually seek to carry out.

Most of the environmental assurance requirements are contained in the eight statutes and executive orders referenced in Assurance 11 of Form 424-B. The most important of these is compliance with the National Environmental Policy Act of 1969 (PL 91-190) and the underlying regulations of the Council on Environmental Quality (CEQ) codified at 40 CFR Part 1500.

This broad statute, together with Executive Order 11514 and the CEQ regulations, establish a stable framework for managing environmental impacts that derive from federally funded programs.

If you propose activities that will have an impact on the environment, your organization and the federal funding agency must work together to evaluate that impact from several perspectives. This initial review is called an environmental assessment.

Once completed, the environmental assessment will usually reach one of two conclusions. If the proposed activities will not have a major impact on the environment, then a finding of "no significant impact" is made and the environmental review is closed (though it is kept on record for future reference). If your activities are likely to have a significant impact on the environment, then a full Environmental Impact Study (EIS) with public participation is required before your project can be cleared and the funds to pay for it can be released.

The process and methods for environmental assessment are now fairly standardized. Architects, engineers and environmental assessment specialists are well versed in these techniques, and they are probably familiar with the requirements of Assurance 11. These pertain to wetlands protection (11c); development in a flood plain (11d); coastal zone development (11e); and endangered species issues (11h).

Will your project affect historic properties or archeological sites? If so, you must obtain a clearance from the historic preservation office in your state and, in some cases, from federal authorities as well. Will your project affect or be located in a designated wild and scenic river area? If so, Assurance 12 must be addressed. If beneficiaries of your project funding are located in a flood zone area, you must ensure that construction activities in excess of \$10,000 are covered by the national flood insurance program (Assurance 10). If your project encompasses rehabilitation or construction activity, you must assure that contractors do not use lead-based paint (Assurance 16). Finally, if individuals or businesses will be displaced by your project activities, you must comply with the Uniform Relocation Act law and regulations (Assurance 17).

In most cases, the federal funding agency bears the legal responsibility to perform this assessment and any resulting environmental impact study. However, there is an important major exception to this general rule. Recipients of funding under the HUD Community Development Block Grant program bear the full legal responsibility for environmental compliance (see especially the regulations at 24 CFR Part 58).

## **Civil Rights**

Standard Assurance 6 contains a list of ten non-discrimination laws, executive orders and regulations pertaining to civil rights. Collectively, these

provisions prohibit discrimination against individuals on the basis of sex, race, national origin (6a), handicap (6c), age (6d), and other provisions of law or regulation. These anti-discrimination provisions cover grant-funded staff, program beneficiaries, and in certain cases—vendors who sell their goods or services to the grantee.

Grant-funded staff have the same rights as other employees. You must not treat them differently. Otherwise, you risk being on the receiving end of a discrimination complaint. The other major risk arises from serving program beneficiaries of your funded project. When you have projects that provide services to others, you must have policies and procedures that treat the beneficiaries of your funds fairly and ensure that their rights are protected.

## **Research Activities**

The federal government awards billions of dollars annually for medical and scientific research. The National Institutes of Health, the Public Health Service and the Department of Health and Human Services have important requirements concerning research integrity, institutional review boards and management of research funding. In addition, when your research involves human subjects (see Assurance 14) or animals (see Assurance 15), you must abide by the strict requirements laid out in these provisions of the Standard Form.

The catch-all assurance (Assurance 18 on SF 424-B) states that you will "comply with all applicable requirements of all other federal laws, executive orders, regulations, and policies governing this program." This assurance incorporates all of the awarding agency program specific requirements that are not otherwise contained in one of the standard assurances. A good example of how this incorporation process works is illustrated by the responsibilities you assume when undertaking research involving humans or animals. Assurance 18 binds you to adhere to the numerous policies and procedures required by the National Institute of Health, the Public Health Service and the Department of Health and Human Services when you accept grant funds involving animal or human-subject research.

## **Construction**

Minor construction and renovation activities whose value exceeds \$10,000 are subject to the Davis Bacon prevailing wage requirements; grantees that carry

out those activities must also follow procedures to document payrolls and prevent kickback payments. Assurance 9 of Standard Form 424-B (the non-construction form) requires compliance with these requirements. Once you reach the expenditure threshold, you must obtain an official wage determination from the Department of Labor's Wage and Hour Division. The contractor you select must furnish you with a documented payroll and certification of compliance with the anti-kickback provisions of the Copeland Act. In the case of a major construction project, you or your architect or engineer must periodically spot check wage payments by going to the construction site and interviewing workers to determine if the payroll documents submitted by the contractor are authentic.

Construction grants, covered by Standard Form 424-D, are complex projects involving the use of many professionals, such as architects, engineers and construction firms as well as their associated sub-contractors. These professionals will be charged with designing and building a facility that is grant funded. As the actual recipient of the construction grant, however, your organization will be held legally responsible for the authorized construction activities. Assurances 3, 4, 5 and 6 of Standard Form 424-D for construction programs impose specific construction management requirements on recipients of federal funding.

Assurance 3 is designed to protect the property title interest where funded construction activity will take place. You cannot dispose of the property or change the terms of the property title or other conditions of title without advance approval of the awarding agency. This requirement protects the value of what is built and the joint legal interests of the recipient and the awarding agency. When property is acquired with federal funds for construction purposes, the federal interest in the site must be recorded in the title and a covenant of non-discrimination must also be recorded.

Most federal agencies that fund construction activity impose special requirements concerning project design and review of the project plans, specifications and bid documents. Assurance 4 of Standard Form 424-D binds you to complying with these requirements. Typically, projects that cost more than \$100,000 will require advance approval. The major federal agencies that award construction grants (Economic Development Administration, Environmental Protection Agency, Department of Housing and Urban Development, and Rural Development Administration) have detailed construction project management procedures covering design, specification, bid and award of construction contracts. To a considerable extent, these policies and procedures track the standard design and construction document

packages developed by professional organizations such as the American Institute of Architects, the National Association of Professional Engineers, the American Council of Engineering Companies, the Engineers' Joint Contract Documents Committee, and the Construction Specification Institute.

Once your construction plans and specifications have been approved and your project is bid, you will be legally responsible for project supervision and completion of approved construction activities. Assurance 5 of Standard Form 424-D requires you to maintain architect and engineering (A\E) supervision at the construction site to ensure that the contractor complies with the approved project plans and specifications. You must furnish progress and financial reports documenting construction progress as required by the awarding agency. Finally, Assurance 6 of Standard Form 424-D requires that you complete the project within the established timeframes and approved project budget.

Most grant recipients lack the in-house expertise to fully supervise a major construction project. Therefore, basic post-award construction supervision services become the primary responsibility of the architect or engineer who designed the project and developed the project plans and specifications. These costs are almost always grant-eligible. On complex projects and in cases where a recipient has limited experience with construction activities, the funder may require you to hire a resident project inspector (RPI). The RPI reports both to you and to the architect or engineer. Hiring a qualified RPI is usually a good investment because architects and engineers provide only periodic inspection of what goes on at a construction site.

**Chart:**

	<b>Standard Form 424-B (Non-construction)</b>	<b>Standard Form 424-D (Construction)</b>
<b>Management</b>	1 2 3 4 5 8 17 18	1 2 6 7 8 12 18 19
<b>Environment and Development</b>	7 10 11 12 13 16	9 11 14 15 16 17
<b>Civil Rights</b>	6	10
<b>Research Activities</b>	12 15	N/A
<b>Construction</b>	9	3 4 5 13