

March 12, 2001

PL 106-107 Comments
Department of Health and Human Services
200 Independence Avenue, SW
Room 517-D
Washington, DC 20201

Dear Sir:

I am writing to comment on the Federal Register notice of January 17, 2001 concerning the Federal Financial Assistance Management Improvement Act of 1999 (PL 106-107). This letter is offered as one from an interested citizen with considerable experience in Federal grants management in general and with PL 106-107 in particular. While these comments are primarily reflective of my experience within the Department of Health and Human Services (HHS) and its many and varied grant programs, they may be of some interest to other Federal agencies and the grant recipient communities actively working on meeting the goals established by PL 106-107 regarding achieving greater efficiencies and improvements in grants management.

The comments are organized along the same lines as the PL 106-107 structure presented in the notice, namely: General Policy and Oversight; Pre-Award; Post-Award; Audit Oversight; and Electronic Processing. There is a real need to maintain this organized approach, which closely follows the grants life cycle and the fundamental grants management topics covered in OMB Circular A-110 and the grants management common rule. This organized approach is particularly useful for individuals newly entering the grants management profession either as Federal or non-Federal staff so that the subject matter flows in the same order, rather than being presented without any rhyme or reason. Federal agencies should be encouraged to follow this same organization when developing their internal grants management policies and manuals. While not all of the A-110 topics are in the exact order as the ones in the common rule, they are quite similar and establish the grants life cycle as the defining way to administer all Federal grant programs. The topics, ranging from definitions to payment to property to collection of amounts due, form a framework of basic grants management requirements, and all grant recipient organizations, regardless of size, need to understand these subjects and their accountability responsibilities in administering their Federal grants. Likewise, Federal agency grants management staff must be expert in these topics; heedful of their need to administer and manage their programs with a high level of integrity and accountability; and respectful of the basic ground rules inherent in grantor--grant recipient relationships. I understand that not all grant programs are subject to these basic grants management requirements, but they, nonetheless, are the foundations on which the vast majority of grants are administered in this country.

A principal general purpose of this effort should be to ensure that, unlike many other grant reform initiatives of the past, there is a commitment to producing tangible improvements and opportunities for consolidation and streamlining. Past related efforts, of which I am personally aware, dating back to former Health Education and Welfare Secretary Richardson's Allied Services Act of the early 1970s; former President Carter's initiative in the late 1970s; Block Grants in the 1980s; and Performance Partnership/Local Flexibility efforts in the 1990s all created considerable enthusiasm and the hope for grant reform, but delivered little in terms of tangible and lasting improvements in reforming our many grant programs. In fact, individual and narrowly focused categorical grant programs continued to proliferate during that period. There is an opportunity with this new Act, particularly with Federal agencies and grant recipients working cooperatively, to achieve such lasting improvements. However, improvements don't come about with the stroke of a pen. Resources will be necessary to demonstrate that Federal agencies and grant recipients can agree on how to consolidate many of the categorical programs operationally in a responsible fashion. There are several recommendations presented in this letter. Some may be ambitious and controversial, while others are fairly straightforward and relatively easy to accomplish. In any case, they are presented solely to be helpful to the many Federal and non-Federal staff engaged in this major opportunity for unprecedented grant reform.

General

1) Regulations. Just as it has become a virtual truism that once a grant program is enacted, it almost never is rescinded, the same principle applies to Federal regulations. There are many outdated and unnecessary regulations in HHS alone (e.g., portions of 45 CFR Parts 201-206 and 42 CFR Parts 1-399), and there needs to be a regular review to determine what is required and what can be rescinded. Unfortunately, by keeping unnecessary and outdated regulations in place, we unwittingly add to the confusion surrounding the administration of our grant programs.

2) Merit and Competition. The Congressional practice of earmarking grant funds for certain locally favored entities appears to be growing, regardless of the fact that the Federal Grant and Cooperative Agreement Act lays out the fundamental principle that discretionary grants should be competed. Perhaps with the reform envisioned with the passage of PL 106-107 and the help of the research community in promoting merit review as a guiding principle, responsible Federal staff and grant recipient officials, who believe that Federal discretionary grants should be awarded to the most deserving applicants, could work together to curtail the flagrant abuses in Congress and in some Federal agencies with respect to noncompetitive grant awards. President Bush issued a call for all Federal officials to observe high standards of conduct on January 20, 2001. One of those standards called for impartiality, and not giving, A...preferential treatment to any private organization or individual.@ Promoting merit and competition in our grant competitions will go a long way in meeting that standard.

3) Effect on Other Issuances. The companion sections on this subject in Circular A-110 and the grants

unauthorized requirements established by some Federal agencies (e.g., refusal to authorize the award of indirect costs). The idea of an Ombudsman or some similar concept needs to be further developed and enforced to ensure that the ground rules are observed by the Federal agencies as well as the grant recipients.

4) Grants/Cost/Audit Coordination. The definitions and policies in the various grants requirements (e.g., OMB Circular A-110 and the grants management common rule); the cost requirements (e.g., OMB Circulars, A-87, A21, and A-122); and the audit requirements (e.g., OMB Circular A-133) need to be more in sync with one another and less disjointed. Definitions on subjects such as pass through entities/subawards, contract responsibilities of grant recipients, and policies on program income and allowable costs under grants need to be examined for consistency and to ensure a better understanding of such subjects by these different, yet closely related communities.

Pre-award

1) Grants versus Contracts. The Federal Grant and Cooperative Agreement Act passed in 1977 provided the basic distinctions between grants and cooperative agreements (assistance to accomplish a public purpose of support or stimulation) and contracts (acquiring property or services for the direct benefit or use of the Federal government). The key grant and contract officials in all Federal agencies should ensure that assistance is not awarded and treated as a contract simply because the agency staff are more familiar with the latter instrument, and, conversely, that contracts are not awarded as assistance simply to avoid required contract procedures. Unfortunately, these practices continue in several agencies, particularly with respect to cooperative agreements. After nearly a quarter century of the passage of the aforementioned Act, there is no good reason for such confusion and misunderstanding concerning this fundamental distinction.

2) Grant Solicitations. Better models can be developed and used much more frequently among Federal agencies. Grant solicitations have certain characteristics in common (e.g., amount of funding expected to be provided; eligible applicants; evaluation criteria; deadline for submitting applications, etc.). Increased use of models with more standard language will facilitate prospective applicant review of the many solicitations issued and allow them to target the ones under which they are most qualified to compete.

3) Certifications and Representations. In conjunction with the Electronic Processing effort, the acceleration of permitting applicants and grant recipient organizations to submit all required certifications and representations once, rather than on a grant-by-grant basis, can be accomplished. Establishing this matter as a priority would also demonstrate serious intentions with respect to eliminating needless red tape and making the electronic option envisioned in the requirements of PL 106-107 a reality.

4) High Risk/Special Award Conditions. These authorities embedded in the grants management common rule and OMB Circular A-110 need to be invoked more frequently by the Federal awarding agencies. There are many organizations receiving grants which are not exercising required fundamental internal controls concerning the Federal funds, and it is incumbent upon the Federal awarding agencies to invoke these authorities when circumstances warrant. Too frequently, some of our Federal grant and program officials prefer to look the other way rather than address the deficiencies identified, either because it is extra work or it is unpleasant to deal with these problems.

Post-Award

1) Training and Technical Assistance. In some instances, the grant process is heavily focused on getting the award out, and, consequently, there is little interaction between the Federal agency and the grant recipient over the important life of the grant. Holding regular training and technical assistance sessions (as some agencies within and outside of HHS do) is an opportunity for cooperative learning and interaction between Federal agency staff and grant recipients on such important post-award topics as: standards for financial management systems; payment requirements; program income; and grantee equipment thresholds. All of these post-award topics are and will continue to be areas about which there are misunderstandings as to the intent of the Federal grants and cost policies.

2) Grantee Procurement Systems. Grantees are required to establish certain basic and equitable requirements, including ones regarding competition and conflict of interest, for operating their own procurement systems. Such procurement systems incorporate everything from small purchases to major contracts for performing part of the purposes of the grant (assistance), in which case the Federal government considers the contract to be a subgrant/subaward (under either the definition of subgrant in the grants management common rule or the definition of subaward in OMB Circular A-110). Reviews of grantee procurement systems have been sorely missing over the past few decades and should be more of a priority of the Federal awarding agencies.

3) Unobligated Balances. When reviewing reports of grant recipient cash transactions, it is apparent that, in many cases, there are significant unobligated balances that are not being well managed at the grant recipient organizations. Another serious problem related to this point is that many grant recipients are not returning interest earned on grant advances. Federal agencies need to be more attuned to this issue, so that the funds can either be awarded to grant recipient organizations which are properly managing their cash transactions, or so they may be otherwise disposed of in accordance with appropriations law.

4) On-site Monitoring. Due to many years of shortfalls in Federal salary and expense money and associated funds for travel purposes, opportunities for meaningful on-site monitoring, particularly with respect to the financial aspects of grants management have become rarer and

rarer in some Federal programs and agencies. Program integrity and accountability are essential components of any sound grants management effort, and, by including an on-site monitoring program as an essential part of its operations, that type of sound effort can be achieved. Such a program also helps ensure that grant recipient organizations understand that the Federal grant dollars are intended for the true beneficiaries of our grant programs, and not the organizations themselves. A recent coordinated effort in HHS validated the need for this type of emphasis.

Audit Oversight

1) Value of A-133 Audits. While the Office of Management and Budget and Federal agencies have been working diligently to improve the A-133 process and product, especially over the past few years, more work is needed to make the audit reports valuable and useful to all customers, including the grants management officials and program officials charged with oversight responsibilities of grant recipient institutions. Too often, we've emphasized the priorities and concerns of the Inspector General and audit communities in the A-133 process without a comparable emphasis on grants management and program official concerns.

2) Audit Linkage with Debt Collection. With the passage of the Debt Collection Improvement Act, there are certain time frames in which debts are to be collected or otherwise offset. Since audit reports serve as principal vehicles for Federal agencies to identify instances where grant recipients have misspent their Federal grant funds, we should require more follow-up and coordination between audit resolution officials responsible for determining that grant funds were misspent and the debt collection officials responsible for ensuring that the funds were collected.

3) Auditor Independence and Competence. These are longstanding problems which have been discussed in the past, particularly in the Inspector General and audit communities. When it becomes clear that auditors are not meeting their professional responsibilities and substandard work is performed, there needs to be quick and appropriate action and sanctions taken against such auditors and, in some cases, the grant recipient organizations.

Electronic Processing

1) Commitment to Completion. Creating an all electronic option for processing all grant applications and transactions throughout the grant life cycle is a massive undertaking. As with many difficult endeavors, there needs to be a real commitment to seeing this effort involving over \$300 billion of grants per year through to completion. In that regard, an achievable business plan needs to be carefully drafted and followed. The plan should not project too far into the future if it has a realistic chance to be implemented.

2) Collaborating Grant Recipient Organizations. In order to ensure that the electronic option works well for the varied grant recipient communities and the many different Federal granting agencies under the

auspices of the Federal commons, we need to reach out further to ensure that
Page 6

the system is as user-friendly as possible for all types of the various potential Federal and non-Federal users. A broad outreach effort to enlist volunteers from all segments of the grant recipient communities should remain a priority in electronic grants. Expansion of the current international interest in electronic grants management should also be continued.

3) Collaboration with Industry. There are tremendous resources and experience available through the private sector regarding the effective and efficient use of electronic means to conduct business. Given the volume of Federal grants and the expressions of interest from many private companies to become associated with electronic grants management, we should continue efforts to explore mutually beneficial arrangements with industry to accelerate the implementation of the electronic option.

Conclusion

PL 106-107 provides a unique opportunity to consider changing the way we have conducted business in many of our grant programs over the past thirty years. As a logical extension of the Single Audit Act, which emphasized entity-wide performance over grant by grant transactions, this initiative can serve as the means to adopt changes which will permit the Federal government to authorize responsible grant recipients to emphasize how they operate as organizations in terms of consolidation and macro-results, as opposed to the more traditional focus on each individual grant program. As a quick illustration as to how this concept could be carried out, there are over 30 Federal programs involved with serving the homeless populations in this country. If grant recipient organizations and their Federal cognizant agencies were provided with an overarching statutory basis under which agreements could be made committing the grant recipient to individual statutory requirements without having to report on the over 30 individual program requirements, that would be true grant reform. In that regard, just as we maintain the high risk/special award conditions for problem grant recipients, the Federal government should develop a low risk designation for responsible grant recipient organizations. These low risk entities would be the most likely candidates for receiving approval to consolidate their Federal grant programs.

Some areas which are broad and more difficult, but still require attention as comprehensive grant reforms are pursued are:

1) applying the common rule to all programs (block grant and non-block grant) for State, Local, and Tribal governments. In working to coordinate the coverage of the common rule provisions to the entitlement programs with the Department of Agriculture (USDA), we found that States use the same administrative rules in managing all of their programs. In fact, the largest block grant to States (Temporary Assistance to Needy Families - TANF) is now subject to the provisions of the common rule, so there is no good reason to keep the other block grant programs under different regulatory coverage. The same principle applies to Local and Tribal governments for the reasons discussed in the beginning of this letter involving the sound financial management

topics covered in the common rule, which are basic requirements for operating in a business-like fashion in any case.

2) streamlining the administration of the open-ended entitlement grant programs. HHS and USDA are the only Federal agencies charged with administering the open-ended entitlement grant programs. Much of the grants administration involving quarterly awards and receipt of estimate and expenditure reports is similar to the way the administration has been carried out over the past 25 to 30 years, depending on the age of the program. With the passage of the Cash Management Improvement Act, there is no real need to maintain the practice of quarterly grant awards, as States are penalized if they draw excess funds too far in advance. Annual awards would be a big administrative improvement and saving to the States and to HHS and USDA. This proposal is not new and has considerable widespread support in the States and the Federal government. While it would be controversial, capping the open-ended programs makes sense at this time. Capping the TANF program has not resulted in the catastrophe that many predicted, and the incentives to maximize Federal Financial Participation (FFP) at all costs have become virtually a full-time business in some States with their consultants, who are always looking for A loopholes@ to exploit. Those incentives are eliminated if the programs are no longer open-ended. The recent well-publicized problems involving upper payment limits in Medicaid and State claims for FFP, which were technically legal yet clearly unwarranted and unreasonable, should be reasons enough to strongly consider the benefits of capping these programs, particularly given the role of consultants in the case.

3) using grant recipient comments as a high priority in crafting legislative recommendations and other improvements to the PL 106-107 initiative. One of the underlying principles of the law is to increase dialogue and consultation opportunities with the people who manage Federal grant awards at the recipient level. In attempting to meet that goal, many sound suggestions have already been received by such non-Federal grant recipients and their representatives. It will be important to pursue additional mechanisms for developing more exchanges with such grant recipients, even if it means establishing formal Advisory Committees in accordance with the provisions of the Federal Advisory Committee Act.

Finally, I would like to add that I am proud to have been associated with HHS, the other Federal agencies, OMB, and our many non-Federal grant recipient partners and representatives in overall grants management improvement efforts. While it's clear from the comments contained in this letter that there are many more improvements which can still be made, we have maintained high standards and tried to make incremental improvements to the profession of grants management through the years. PL 106-107 offers the best opportunity to set the stage for lasting improvements, and it would be a shame not to take full advantage of that opportunity.