



Governance of Federal Grants and Cooperative Agreements

This quick guide outlines the full governance structure that regulates federal grants and cooperative agreements. It explains the legal hierarchy, from the United States Constitution to federal award documentation, and how each layer shapes the responsibilities of federal agencies and recipients.

Understanding the Legal and Administrative Framework Behind Federal Financial Assistance

Publish Date	DATE
Background	<p>Federal grants and cooperative agreements are governed by a complex framework of legal and administrative authorities. This structure ensures that public funds are used lawfully, efficiently, and in alignment with national priorities.</p> <p>Why It Matters:</p> <ul style="list-style-type: none">• Ensures accountability and transparency• Protects public interest• Provides consistency across federal programs• Guides recipients in compliance and performance
Key Components	<p>As outlined in more detail below, each level’s authority and its impact become increasingly more influenced by the directives of higher levels of governance. For example, federal statutes take precedence over agency regulations, which in turn supersede internal policy guidance or procedural manuals.</p> <p>A. Constitution of the United States</p> <ul style="list-style-type: none">• Article VI, Paragraph 2: Commonly referred to as the “Supremacy Clause,” declares that the Constitution of the United States, federal laws, and treaties take precedence over state law (i.e. supreme law of the land) (Article VI Supreme Law). <p>B. Federal Statutes (i.e. federal laws)</p> <ul style="list-style-type: none">• Enacted by Congress and signed by the President of the United States to authorize specific grant programs (e.g., Coronavirus Aid, Relief, and Economic Security Act (CARES), Higher Education Act).

- Federal statutes can be temporary with a set end date (often called a “sunset”) or can be permanent. Temporary statutes include most appropriation acts. Permanent statutes are codified in the United States Code (USC) and organized into titles according to subject.
- In most cases, federal grants are authorized through specific statutes that establish the legal basis for the program, while the actual funding is allocated separately through congressional appropriations legislation.

C. Federal Regulations

- Federal regulations, often known as Rules, typically hold the same force and effect of law, with several exceptions. Importantly, this means that violations of these regulations can result in rulings involving legal relief and remedies.
- Federal regulations typically follow the procedures laid out, in part, in the Administrative Procedure Act (APA). The Act specifies the circumstances in which a federal agency must follow different procedures in rulemaking, as well as the specific steps in those procedures.
- Many federal regulations use the public notice and comment process—where the proposed rule is published in the Federal Register, a period of public comment follows, and the agency takes the comments into account when revising and publishing the final version of the rule/regulation.
- The Federal Register is the official daily publication for presential documents and federal agency rules. It is also the central location for publishing documents for public inspection and public comment.
- The final rules posted in the Federal Register are codified in the **Code of Federal Regulations (CFR)**. The main body of rules governing federal grants is located in **2 CFR Part 200**, also known as Uniform Guidance.
 - Provides detailed rules for financial management, cost principles, and audit requirements for Federal awards.

D. Executive Orders (EOs)

- Issued by the President
 - With the use of Executive Orders (EOs), U.S. presidents can set the direction for their administration.
- Carry the full weight of the law under the statutory or constitutional powers of the President of the United States. However, EOs must typically be interpreted and implemented by federal agencies following rulemaking guidelines (see above) before their requirements begin to be acted upon.
- May require agencies to revise policies or reporting practices.
- EOs bypass Congress and the standard legislative law-making process but are not outside of the law nor beyond the bounds of Congressional authority. However, they must be grounded in statutory or constitutional authority and are subject to judicial and legislative checks.

E. Office of Management and Budget (OMB) Policy and Guidance

- The Office of Management and Budget (OMB) has the authority to issue policy statements, known as “Circulars,” which provide guidance on managing grants and cooperative agreements. These Circulars serve as instructional tools to help organizations implement laws and regulations in situations expected to persist for two years or longer.

- OMB has the authority to 1) issue guidance promoting consistent and efficient use of federal financial assistance instruments; and 2) provide overall direction and leadership to Federal agencies on policies and requirements to federal financial assistance (See [Guidance for Federal Financial Assistance](#); 31 U.S.C. 6307; and 31 U.S.C. 503(a)(2).)
- OMB also provides instructions and guidance in the form of memoranda and bulletins, which are generally issued when the subject matter needs “one-time” action by departments.

F. Agency-Specific Regulations and Guidance

- Federal agencies (e.g., National Institutes of Health, Department of Energy) issue program-specific rules, guidance, and handbooks that recipients must follow.
- These may include additional requirements for performance metrics, reporting, or allowable costs that is program specific that recipients should follow.
- Must align with OMB guidance but may be more restrictive.

G. State, Local, and Tribal Laws

- Recipients must comply with applicable non-federal laws (state, local, tribal, and territorial laws), including procurement, labor, and environmental regulations.
- These laws may impose stricter standards than federal rules.

H. Federal Award Documentation

- Includes the **Notice of Award (NOA)**, terms and conditions, and program-specific guidance.
- Legally binding contractual requirements on the recipient.
- May incorporate agency policies, special conditions, and performance expectations.
- Grant agreements typically contain broad language requiring the recipient to follow all other applicable laws, regulations, and policies. This catch-all provision puts the onus on recipients to know and follow a variety of requirements, including those not enumerated in the agreement.
- Agreements also typically contain provisions allowing the awarding agency to unilaterally amend the agreement after it is signed.

I. Order of Legal Precedence for Grants and Cooperative Agreements

No federal or state statute, regulation, or terms and conditions of a federal award may conflict with the United States Constitution, laws enacted by Congress and signed by the President, or valid federal regulations. Below is an image outlining the order of legal precedence affecting grants and cooperative agreements.

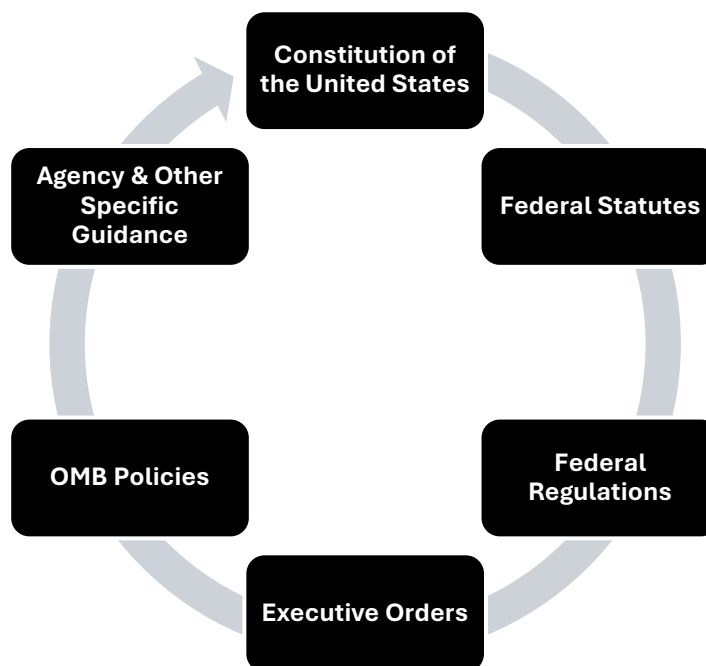


Figure 1: Order of Legal Precedence for Grants & Cooperative Agreements

Case Example: Disaster Recovery Grant - Federal Emergency Management Agency (FEMA)

A state agency receiving FEMA funds must comply with the [Stafford Act](#) provisions (statute), 2 CFR Part 200 (regulation), FEMA's Public Assistance Guide (agency guidance), and state procurement laws. The Notice of Award (NOA) includes additional reporting deadlines and environmental review conditions.

Case Example: Research Grant - National Institutes of Health (NIH)

A university receiving an NIH grant must follow the [Public Health Service Act](#) (statute), 2 CFR Part 200, NIH Grants Policy Statement (agency guidance), and Institutional Review Board (IRB) policies. The Notice of Award (NOA) outlines indirect cost rates and data-sharing requirements.

Understanding the Impact

For Recipients:

- Must understand and comply with multiple layers of governance.
- Noncompliance can result in audit findings, repayment, or even debarment from future awards.
- Legal and administrative staff must stay current with evolving guidance.

For Agencies:

- Must ensure alignment between statutes, OMB guidance, and internal policies.
- Responsible for clear communication of requirements to recipients.

Next Steps & Recommendations

- Develop a compliance matrix or crosswalk mapping each grant or cooperative agreement's legal and regulatory requirements.
- Train staff on the hierarchy of grant governance.

- Monitor updates from OMB, agency websites, and the Federal Register.
- Engage legal counsel for complex or high-risk awards.

Additional Resources

- [Grants.gov - Grant Policies Overview](#)
- [U.S. Constitution | U.S. Constitution | US Law | LII / Legal Information Institute](#)
- [Distinguishing Between Legislative Rules and Non-Legislative Rules](#)
- [eCFR : Home](#)
- [Federal Register](#)
- [Guidance for Federal Financial Assistance](#)
- [31 U.S.C. 6307 and 31 U.S.C. 503\(a\)\(2\).](#)
- [The Reg Map: Informal Rulemaking](#)
- [Federal Laws and Regulations - USA.gov](#)
- [Regulations.gov](#)
- [RegInfo.gov](#)
- [Executive Orders: Issuance, Modification, and Revocation; Vivian S. Chu Legislative Attorney
Todd Garvey Legislative Attorney](#)

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