

OMB'S REVISIONS TO TITLE 2 OF THE CODE OF FEDERAL REGULATIONS

**Sponsored by the
National Association of
Development
Organizations**

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Title 2 of the Code of Federal Regulations

- Entitled “Grants and Agreements”
- Policies affecting grants and cooperative agreements and subawards thereunder
 - *Issued by the Office of Management and Budget (OMB)*
 - *Issued by federal awarding agencies in response to issuances by OMB*
- Formal rulemaking under the Administrative Procedure Act

How Did We Get Here?

- OMB's federal grant reform initiative (2012-2014)
- Implementation of 2 CFR 200 (December 26, 2014)
 - *Issuance of Interpretations (COFAR FAQ's)*
- OMB Commitment for 5 Year Review of 2 CFR 200 (2 CFR 200.109)
- Enactment of Statutes Affecting Assistance Awards (Primarily National Defense Authorization Acts)
- Issuance of Presidential Executive Orders
- Development of Revised President's Management Agenda
- Issuance of NPRM (January 22, 2020) with 60 Day Comment Period
- 215 Separate Responses (Approximately 2,500 Separate Comments)
- OMB COVID19 Class Deviations (M-20-11, M-20-17, M-20-26)
- OMB's Main Objective: Alignment with Revised Sources of Authority

NADO Engagement with OMB

- **Comment letter on 2020 *Compliance Supplement* (7/31/19)**
 - *Payment by pass-through entities*
 - *Requirements for submission of back-up documentation to support financial reports*

- **Comment letter on 2 CFR 200 revisions (3/23/20)**
 - *Comments on sections solicited by OMB*
 - *Acceptance of indirect cost rates by awarding agencies*
 - *Comments on other sections deemed problematic by NADO members*
 - *Payment by pass-through entities*
 - *Reporting burden on subawards received*
 - *Space occupancy in fully depreciated buildings*

What's The Verdict?

- OMB limited changes only to purposes and subjects originally proposed
- Extensive comments on other aspects of 2 CFR 200 were deemed to be “out of scope” and “were not accepted”
- Numerous problems affecting recipients and subrecipients remain
- OMB's statement about future consultation with stakeholders and possible additional revisions

Revisions to 2 CFR

- **Affected Sections**
 - *2 CFR 25*
 - *2 CFR 170*
 - *2 CFR 183 Never Contract with the Enemy*
 - *2 CFR 200*
- **Published August 13, 2020**
- **Effective November 12, 2020 except for 2 CFR 200.216 and 2 CFR 200.340 (Immediate)**
- **Today's Subject Coverage**
 - *2 CFR 200*
 - *2 CFR 25*
 - *2 CFR 170*

2 CFR 200 Revisions

- **Subpart A—Definitions (2 CFR 200.1)**
- **Subpart B—General Requirements (2 CFR 200.100 et seq.)**
- **Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards (2 CFR 200.200 et seq.)**
- **Subpart D— Post Federal Award Requirements (2 CFR 200.300 et. seq.)**
- **Subpart E—Cost Principles (2 CFR 200.400 et seq.)**
- **Subpart F—Audit Requirements (2 CFR 200.500 et seq.)**
- **Appendices (I-XII)**

“Housekeeping”

- Renumbering of Many Sections
 - *Full Integration After 1/1/21*
- Supersession of COFAR FAQ's
- Key Definition Changes
 - *“Assistance Listing”*
 - *Period of Performance*
 - *Budget Period*
 - *Renewal*
- Management of Exceptions
- Required Notice and Comment on Requirements to be Imposed in Financial Assistance Awards (2 CFR 200.105(b))

Revisions to Federal Agency Responsibilities

- **Enhanced Program Planning and Design (2 CFR 200.202)**
- **Enhanced Risk Assessment Criteria (2 CFR 200.206)**
 - *Including Inquiries to the Federal Awardee Performance and Integrity Information System (FAPIIS--2 CFR 200.213)*
- **Public Access to FAPIIS (2 CFR 200.212)**

Section 889

McCain NDAA for FY 2019

- **Statutory prohibition (PL 115-232)**
 - *“Procure or obtain...”*
 - *“Extend or renew...”*
 - *“Enter into a contract to procure or obtain...”*
- **Affected equipment and services (from China)**
- **Affects federal agencies, contractors and recipients**
- **“A fluid situation” with lots of players**
- **New regulatory section (2 CFR 200.216) affecting grant recipients and subrecipients**
- **New regulatory section (2 CFR 200.471) on allowability of telecommunications equipment and services**

Post-award Issues

- More renumbering
- Enhanced public policy requirements (2 CFR 200.301)
 - *Drawn from executive orders*
 - Examples: “free speech”; “religious liberty”
 - *Must be incorporated into awards*
- “Federal” payment (2 CFR 200.305)
- Programmatic and budgetary changes (2 CFR 200.308)—“Expanded authorities”

Procurement

- Three year deferred implementation of requirements
- Revised thresholds based on statute and OMB Memorandum 18-18
 - *Micropurchase (2 CFR 200.320 (a)(1))*
 - Statutory migration of the threshold (2014-2018)
 - OMB Memorandum 18-18
 - (\$3,000→\$3,500→\$10,000→\$50,000)
 - *Small purchase (2 CFR 200.320 (a)(2))*
 - Role of the federal Simplified Acquisition Threshold
- Domestic preference (2 CFR 200.322)
 - *“As appropriate and to the extent consistent with law, the non-federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition or use of goods, products or materials produced in the United States...”*

Close-out

- Multiple GAO reports to Congress on slow close-outs
- Enactment of the GONE Act (Grant Oversight and New Efficiency Act)
- Revised deadlines for completion of close-out actions (2 CFR 200.344)
 - *Recipients (120 days)*
 - *Subrecipients (90 days or earlier, if agreed)*
 - *Federal agencies (1 year)*
- Recipient close-out actions
 - *Settle claims and reconcile cash*
 - *Submits final reports*
 - *Report on and address grant acquired property*
- OMB did not address impact of slow determination of final NICRA's under the provisional/final methodology

The De Minimis Indirect Cost Rate

- 10% of modified total direct costs (MTDC) incurred
- Expanded use will be permitted for:
 - *Organizations that never had a federal NICRA*
 - *Organizations that have had gaps in funding*
 - *Organizations that elect usage*
- Must be used consistently
- Key clarification: NO need to prove costs under this method!

Pass-through Entities and Indirect Costs

- Responding to scenarios involving multiple pass-through entities (such as state agencies in the same state)
- Acceptance of rates negotiated by others is permitted
- Possible “best practice” considerations
 - *Certification by subrecipient (2 CFR 200.415)*
 - *Issuance of federal-type rate agreement by pass-through entity (Per 2 CFR 200 Appendices)*
 - *Statement by pass-through entity concerning use of procedures established in 2 CFR 200 Appendices*

Public Notice Re: NICRAs

- Previous access policy related to federal agency access only
- Posting of NICRA's on a federal website
 - *Limited data elements included (indirect cost rate, distribution base, and rate type)*
- Applicability of FOIA to proprietary information

Cost Principles and Audit

- More renumbering without substantive changes
- New section added to 2 CFR 200.403
 - *Costs must incurred during the approved budget period*
- New section added to 2 CFR 200.414
 - *Public information on NICRA's*
- New section of telecommunications costs (2 CFR 200.471)
 - *Allowable with “carve out” related to prohibited items*
- Clarification of pass-through entity responsibilities for subrecipient audit findings related to financial statements

Revised Appendices

- **Appendix I—Full Text of Notice of Funding Opportunity**
- **Appendix IV-VII—Indirect (F&A) Cost Recovery Procedures by Sector of Performers**
- **Appendix XI—2020 Compliance Supplement**

2 CFR 200 Appendix XI

2020 Compliance Supplement

- Released August 18, 2020
- Effective for audits of fiscal years beginning after June 30, 2019
- Two pieces
 - *Main document—annual update*
 - *Future addendum related to COVID19 programs*
- Key features (Part 2—Matrix of Compliance Requirements; Part 3—Compliance Requirements listing)
- Major issues
 - *Identification of CARES Act funding on SEFA*
 - *Differing requirements for COVID 19 and regular funding under the same CFDA numbers*
 - *Differing requirements under 2 CFR 200 and OMB administrative flexibility memoranda*

2 CFR 25

- **Registration on SAM or issuance of “unique identifier”**
- **Exemptions**
- **Broader definition of federal financial assistance**
- **Updated standard clause (Appendix A)**
- **Required flow-down**
- **Implementation**

2 CFR 170

- **Revision to standard clause (Appendix A)**
- **Subaward reporting raised to cover obligations of \$30,000 or more**
- **Implementation**

Areas for Continued Engagement

- Federal agency implementation
 - *Example: HHS regulations 45 CFR 75*
 - *2 CFR 25 and 2 CFR 170*
- OMB “commitment” to stakeholder consultation and possible additional changes
- Revisiting “out of scope” issues
 - *Fixing “patent” and “latent” defects*
 - *Advance payment to subrecipients*
 - *Excessive reporting and submission of back-up documentation*
 - *Waiver of prior approvals*
- Experience with COVID 19 “administrative flexibilities”

Questions?

- **NOW**

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- **LATER**

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