



OMB's Revisions to 2 CFR 200— What's Changed and What You Need to Do About It

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**National Association of Development Organizations 2020 Annual Training
Conference**

Presented by Bob Lloyd

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 (PMA)**
- **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 Immediate 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 cites future consultation with stakeholders and possible additional revisions**
- **NADO members are not alone**

Revisions to 2 CFR (8/13/20)

- **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—A Quick Gallop

- **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--Definitional 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)**
 - **Effectiveness of SAM and FAPIIS**
- **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: NICRA's

- **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 be 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**
- **Deadlines for submission of single audit reports (OMB M-20-26)**

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**

What to Expect

- **Are you a direct recipient or a subrecipient?**
- **Continued adoption “by reference”**
- **Implementation of new clauses related to SAM and FFATA**
- **Implementation of close-out revisions**
- **Additional federal guidance on CARES Act (Coronavirus Relief Fund (CRF)) oversight**
- **Addendum to OMB’s 2020 *Compliance Supplement***

What to Do Now

- Drill down on the details once again
- Address new policy on incurrence of cost (2 CFR 200.403)
- Review policies on procurement of goods and services (2 CFR 200.318-327)
 - Reconsider thresholds
 - Fashion policy on domestic preference
- Review policies on indirect cost recovery (2 CFR 200.332(a) and 2 CFR 200.414)
 - Prepare and use indirect cost documentation identified in Appendices V and VII of 2 CFR 200
- Adjust close-out procedures to new timeframes (2 CFR 200.344)
- Review OMB M-20-26 audit requirement with your independent auditor

Take the Longer Term View

- OMB's "commitment" for further engagement
- Re-engage on "out of scope" issues (See Slide 4)
- Identify and document additional "pain points"
 - Experiences with OMB administrative flexibilities and CARES Act funding
- Identify and document burden-related consequences
- Communicate with NADO staff
- Communicate on the record with federal agencies and pass-through entities
- Open channels with state and federal elected officials

Questions?

- **NOW**
 - **LATER**
 - **NADO staff contacts**
 - **Bob Lloyd**
- E-mail: consultlloyd@aol.com**
- Telephone: (864) 235-8680**