FEDERAL GRANTS MANAGEMENT RESOURCES FOR REGIONAL DEVELOPMENT ORGANIZATIONS

June 2023

NADO Research Foundation

STRONGER DISTRICTS STRONGER REGIONS
A Professional Development Program for EDD Staff

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INTRODUCTION

All Economic Development Districts (EDDs) receive federal grant funds from various agencies including the U.S. Department of Commerce Economic Development Administration (EDA), U.S. Department of Agriculture (USDA), U.S. Department of Housing and Urban Development (HUD), U.S. Small Business Administration (SBA) and many others. The way these funds are managed by the recipients varies from agency to agency because of statue, but all federal grants are subject to the requirements established by the Office of Management and Budget (OMB). In turn, federally funded grantees must also adhere to these requirements.

Through the Code of Federal Regulations (CFR), OMB has outlined specific requirements that grantees must follow. From procurement to indirect cost rate negotiations to records retention to audits to cost allowability and much more, federal grantees need to be familiar with the guidelines set forth in 2 CFR, Part 200.

While most program managers do not need to fully immerse themselves in the details of 2 CFR, Part 200, they should have a basic understanding of the requirements to be sure they are managing federal funds appropriately. This toolkit is designed to provide basic information related to OMB's grants management requirements as of June 2023. It is important to note that the guidelines are updated from time to time.

Throughout this guide numerous references are made to 2 CFR 200 and the OMB Compliance Supplement. The full documents can be found at the links below:

- ***Part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards***
- ***Office of Management and Budget, 2 CFR 200, Appendix XI, Compliance Supplement***

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E·D·A
U.S. ECONOMIC DEVELOPMENT ADMINISTRATION

[1] Economic Development Districts are known variously across the nation by many names including Local Development Districts, Area Development Districts, Planning Development Districts, and much more. NADO refers to them all generically as Regional Development Organizations (RDOs). Throughout this document, reference is made to EDDs and RDOs interchangeably.

MODULE 1: FEDERAL GRANTS OVERVIEW

Types of Federal Awards: Distinctions That are Important to Regional Development Organizations

As with many subjects, the terminology used to describe financial awards made by the federal government can be extremely important. That's because the terms go a long way toward determining what requirements are attached to those awards and how compliance with them is supposed to happen. And because regional development organizations have unique roles to play in many federal grant programs, they are often involved in multiple ways with different types of awards. So, relying on key references to federal statutes and regulations, it is important to sort out the types of federal awards and why that is important. The accompanying diagram illustrates the differences between federal awards graphically.

Federal Assistance vs. Federal Acquisition or Procurement

In 1978, President Jimmy Carter signed the Federal Grant and Cooperative Agreement Act into law (31 U.S.C. 6301-6308). Its purpose was to differentiate between certain legal instruments that could be employed by federal agencies to carry out their missions.

The Grant and Cooperative Agreement Act made clear that if the principal purpose of an award was to buy, acquire, purchase, or procure something for the federal government's use or benefit, then that was to be considered as an acquisition or procurement and the required instrument would be a federal contract entered into in accordance with federal procurement regulations. In 1984, the federal government revised those diverse procurement regulations and issued them as the comprehensive Federal Acquisition Regulation or FAR in Title 48 of the Code of Federal Regulations (CFR).

On the other hand, if the principal purpose of the transaction was to assist, stimulate, or support a non-federal party in a public program authorized by law, that action would be accomplished through a **federal assistance award**. The

Types of Awards:

- ***Federal contract***: An award by a federal agency to a non-federal entity in which the principal purpose is to buy, acquire, purchase or procure something for the use or benefit of the federal government.
- ***Federal assistance award***: An award by a federal agency in which the principal purpose is to assist, stimulate, or support a non-federal entity in the conduct of a public program authorized by law.
- ***Grant***: a type of federal assistance award in which federal agency involvement during performance is limited.
- ***Cooperative agreement***: a type of federal assistance award in which federal agency involvement is substantial.

choices of assistance instruments would be either **grants or cooperative agreements**.

Both types of assistance awards are administered using requirements contained in a policy document entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. These policies are substantially different from those of the Federal Acquisition Regulation. They have become known as the "Uniform Guidance" and they are published in Part 200 of Title 2 of the Code of Federal Regulations. The Grant and Cooperative Agreement Act and that regulation make clear that, in a cooperative agreement, substantial federal awarding agency programmatic involvement during performance is expected. According to Appendix I of 2 CFR 200, once a federal agency has made a determination that it will be making an assistance award, its next decision is whether to do so using a grant or a cooperative agreement. If a cooperative agreement is chosen, the federal agency must publish, in its solicitation for applications, the nature of the substantial involvement that it anticipates. In that way, a potential applicant can make an informed decision about whether to apply for funds under such an arrangement.

Lower Tier Awards

The provisions of the Federal Grant and Cooperative Agreement Act do not apply to lower tier awards that are made by primary recipients of a grant or cooperative agreement. However, the concepts that are used for award differentiation at the federal level were introduced into lower tier relationships by means of policies contained in 2 CFR 200.331.

Important Roles in Lower Tier Awards:

- A **Pass-through entity** is a non-federal entity that receives a federal assistance award and provides a subaward to a subrecipient to carry out a program or procures goods or services to support a program or project.
- A **subrecipient** is a non-federal entity that receives a subaward of federal financial assistance from a pass-through entity to carry out a part of the federal award received by the pass-through entity.
- A **contractor** is an entity that receives a contract from a recipient or subrecipient that is purchasing goods or services needed to carry out a program under which it provides goods or services to carry out the project or program under a federal award.

The party that is entering into a lower tier relationship is called a **pass-through entity**. Under the cited requirement, a pass-through entity "must make case-by-case determinations whether each agreement it makes for disbursement of federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor." The regulation then goes on to identify characteristics indicative of each type of relationship and instructs the pass-through entity to use judgment in making the determination.

However, **central to that decision making process is whether the transaction involves "assistance" to a subrecipient or a "procurement" from a contractor**. Once again, at this level, different policies and practices apply to the different instruments. The agreement clauses that belong in a subaward to a subrecipient flow through from the direct federal award made to the pass-through entity and are largely derived from 2 CFR 200. Those that apply to a contractor under a grant differ and are contained only in Appendix II of 2 CFR 200.

Another significant difference between a subaward and a contract under a grant is that, when a subaward is made and federal funds are drawn, they do not lose their identity when they are spent. When federal funds are paid to a contractor for value received, however, the federal funds lose their identity and can be treated as earned income by the contractor, regardless of its organizational type.

A Typology of Federal Grants

There are several other characteristics that are useful in differentiating types of federal grants and cooperative agreements. These involve such factors as the degree of discretion a federal agency has in making an award, how award amounts are determined, and the degree of discretion that a grant recipient has in using the awarded funds.

- ***Awarding agency discretion***: In a **mandatory** grant program, Congress has stipulated that an award must be made to particular recipients. This often occurs in large awards to state governments. Less often, but still possible, it occurs when Congress has enacted an appropriations "earmark" directed at a specific recipient. On the other hand, in a **discretionary** grant program, the federal awarding agency determines which non-federal entities will receive awards.
- ***Determination of Award Amounts***: In a **formula** grant program, the determination of award amounts is based on the operation of a formula usually established by Congress. Typically, the formulas rely upon the comparison of data elements affecting that organization with those affecting all organizations within a cohort. Socioeconomic data elements like population and per capita income are often the types of data that are relied upon.

  In a **project** grant program, the determination of award amounts is based on review of applications to determine project merit and recipient capability and integrity and to analyze the necessity and reasonableness of the proposed budget.
- ***Recipient discretion in use of funds***: In a **block** grant program, the list of eligible activities for which funds may be used is often lengthy, allowing the applicant to choose among those to fashion a project or program that can be more tailored to their particular circumstances. One of the oldest and best known of this type of grant program is the Community Development Block Grant administered by the U.S. Department of Housing and Urban Development. On the other hand, a categorical grant program may involve a very limited list of eligible activities or even only one. For example, some of the biomedical research programs operated by the National Institutes of Health (NIH) are targeted to investigations related to a single type of disease.

The Grant Award Process

The specific functions that governing board members, senior executives, and staff of regional development organizations

The Grant Award Process

Pre-award

- Solicitation of Applications
- Submission of Application
- Awarding Agency Review
- Award Agreement

Post-award

- Performance of Eligible Activities
- Incurrence of Allowable Costs
- Drawdown of Federal Cash
- Disbursement of Payments for Expenses
- Documentation of Transactions
- Submission of Financial and Performance Reports
- Close-out
- Maintenance of Continuing Accountability

perform in the administration and oversight of the federal grants can vary from organization to organization. In the case of larger entities, duties may be spread across the entire organizations. In others, they may be assigned to a smaller number of people. Regardless of the situation, however, an understanding of the events that will occur and the responsibilities that must be discharged in every federal award will be an asset to everyone who has a role to play in operation and support of that award. That understanding helps assure that a team approach can be achieved in dealing with this important set of financial resources.

Pre-Award

- ***Solicitation:*** The federal agency must provide a standard Assistance Listing Number for the Catalog of Federal Domestic Assistance. However, they were encouraged to do so by the Federal Grant and Cooperative Agreement Act and most agencies do so for discretionary grants. The practice helps create justification for award decisions since, in many cases, there are many more applicants than there are funds available to award to all. There are two different sets of requirements that affect this responsibility:
  - » The federal agency must provide a standard Assistance Listing for the Catalog of Federal Domestic Assistance.
  - » For grants and cooperative agreements that are competed, the federal agency must post a notice on ***www.grants.gov*** containing the standard data elements contained in 2 CFR 200.204 and Appendix II of 2 CFR 200.
- ***Application:*** To receive a federal assistance award, a non-federal entity must request it through an application process. It typically involves the use of the Standard Form 424 series (Application for Federal Assistance) which includes a cover sheet that asks for certain pertinent information about the applicant, a set of budget forms, and a standard statement of assurances in which the applicant agrees that it will follow certain applicable laws, executive orders and regulations if the assistance is awarded. In addition to responses to the forms, the applicant is generally expected to prepare a narrative or plan describing the need for the funds, the objectives of the proposed application, the methodology or work program designed to meet the objectives and justification for the fund amounts that are being requested.

Can we charge this expense to our grant?

The answer is found by the federal cost principles contained in Subpart E of 2 CFR 200.

The principles are a set of rules for determining which costs are allowable, which costs are not and how costs are to be documented.

They present a set of general tests of allowability as well as a listing of allowability determinations for over 50 “selected items of cost,” most of which are commonly encountered in federal grant award implementation.

However, because the principles are not exhaustive of all possibilities, they contain a statement that failure to mention a particular item of cost is not intended to indicate it is either allowable or unallowable.

Instead allowability in those cases should be determined by considering the allowability of similar or related items of cost and by employing the general tests of allowability contained in 2 CFR 200.403.

- ***Awarding Agency Review:*** This process essentially involves distinct components. The first focuses on determining applicant eligibility and assessing application timeliness and completeness. The second, for discretionary grants, involves evaluating programmatic merit under an objective agency-specific process (per 2 CFR 200.205). Third, an analysis of the proposed grant budget is performed to determine whether the costs proposed are necessary, reasonable, allowable and allocable. Finally, a preaward risk assessment is conducted under which the awarding agency can review the applicant organization's management systems and capacity, organizational integrity, and performance record to determine whether the organization is a responsible entity that can manage a federal award.
- ***Award Agreement:*** While the Office of Management and Budget (OMB) directs federal agencies in 2 CFR 200.211 to include certain features, there is no standard form for federal grant agreements. The purpose of the award is to communicate how much federal funding is obligated, the period of performance, and the applicable requirements. Grants are often funded incrementally, meaning that they are programmatically approved for a larger amount over a multiyear period but, based on availability of appropriations, they are funded on annual or even quarterly amounts. With respect to communicating requirements, some awarding agencies choose to include the full text of all applicable requirements while others choose to adopt certain requirements by reference.

Post-Award

- ***Perform Approved Eligible Activities***: Once the performance period begins, a recipient or subrecipient is authorized to begin carrying out the work program of substantive activities that were authorized under the approved award. These include actions like hiring staff, purchasing supplies, equipment, and services, and initiating travel.
- ***Incur Allowable Costs***: Accomplishing the authorized activities under the grant award means entering into transactions to incur the types of expense that will support conduct of the eligible activities. For example, conducting a planning study may be the authorized activity. Paying the salary and fringe benefits of the staff members who do the planning work are the allowable costs.
- ***Documentation of Transactions***: During the process of carrying out authorized activities and incurring costs to pay for them, recipients and subrecipients are expected to generate and retain adequate source documentation. However, the federal rules provide very limited guidance about what that should look like. Making the tacit assumption that a non-federal entity will exercise due care for documentation when expending its own source revenue, the rules indicate that the organization should document their federal fund expenditures using the same procedures that they employ for expenditures of its own funds. However, there are a few places where the federal rules introduce additional criteria:
  - » documentation of personnel expenditures [often called time and effort reporting] (2 CFR 200.430)
  - » documentation of the "significant history of a procurement" –in other words, an audit trail showing how the procurement was executed and whether goods or services were received (2 CFR 200.318(i))
  - » documentation to show how any indirect costs charged were calculated. (2 CFR 200, Appendices IV-VII)
- ***Drawdown of Federal Payment***: One of the most commonly misunderstood terms in federal grants management is "cost reimbursement." Many assume incorrectly that the term indicates that an organization properly receives cash from an awarding agency after it has disbursed comparable amounts of its own. In fact, however, the applicable federal rules reflect the fact that one of the best ways to "assist" an organization is to make capital available for them to disburse for their incurred expenses. Accordingly, (2 CFR 200.305(b)) states that a non-federal entity (recipient or subrecipient)

"must be paid in advance provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-federal entity, and management systems that meet the standards for fund control and accountability established by this part." In making drawdowns, non-federal entities are also supposed to limit the amounts to those necessary to meet "the actual immediate cash requirements" for carrying out the approved project or program. Possible exceptions to the advance payment requirement include construction grants (per 2 CFR 200.305(b)(3) and awards to organizations that cannot meet the cash management standards above (per 2 CFR 200.305(b)(4)).

- ***Disbursement of Cash to Liquidate Obligations***: This involves "paying the bills"—meeting payroll, paying the rent, disbursing payments to contractors. As noted above, this action means making the disbursement quickly. The timeliness standard for federal cash management is frequently cited as three business days. However, that standard is not explicitly stated in the Uniform Guidance. Instead, a non-federal entity is informed in the instructions for completing the Federal Financial Report (Standard Form 425) that if the balance on hand at the end of the reporting period exceeds three days cash requirements, they must provide an explanation as to why the drawdown was made prematurely or other reasons for the excess cash.
- ***Reporting of Claims (Financial and Performance)***: In federal grants administration, reporting is "where the rubber meets the road." First, the federal rules link the timing of performance reporting and financial reporting. Reports to federal awarding agencies must be submitted no more often than quarterly and no less often than annually. Financial reports to federal agencies are submitted on standard forms approved by OMB. Essentially, they constitute assertion of a federal claim and must be certified by a responsible individual of the recipient. The remedy for a reporting misstatement is generally disallowance of cost. However, making a willfully false statement to the federal government is a criminal offense under 18 USC 1001. Consequently, these reports must be carefully prepared. Reports by subrecipients to pass-through entities are not regulated by the federal rules as to content and timing. Those features are the prerogatives of the pass-through entity. Nevertheless, misstatement on subrecipient reports has the similar consequences as those that might occur at the recipient level. Performance reports are generally narratives that compare actual accomplishments to the stated objectives in the approved award and that explain any reasons for slippage.
- ***Close-out***: The process by which the federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the award have been completed and actions covered under 2 CFR 200.344 have been taken. The latter include settlement of amounts due; disposition of grant-acquired property, if necessary; and final performance and financial reporting.
- ***Continuing Accountability***: There are number of matters that are not affected by close-out: responsibility for retention and access to records; stewardship of grant acquired property that has been retained; and the awarding agency's right to audit and, if necessary, disallow costs.

Federal Grant Legalities

The legal underpinning of the current vast federal grant system begins with Article I, Section 8 of the United States Constitution which provides Congress with the so-called "spending power." In using the spending power to provide for the "general welfare," Congress enacts statutes that provide delegated authority to the executive branch of government to implement programs under which grants and cooperative agreements can be awarded to non-federal entities to carry out public purposes. Those statutes take precedence over all other sources of authority that might be imposed on a grant recipient or subrecipient. It is important to differentiate among the three types of statutes that are involved.

- ***Authorization Statutes***: These enactments establish, among other things, which federal agency will administer the resulting program, which types of non-federal organizations are eligible to apply for funds, who are eligible citizen beneficiaries, and how program operations are to be carried out. Many authorization statutes affecting programs administered by regional development organizations have been amended several times to reflect changed conditions and to clarify the current intent.
- ***Appropriations Statutes***: The text of an authorization statute will state language to the effect that "There is authorized to be appropriated ___ dollars…" creating a limitation on how much can be spent for the authorized program during a specific fiscal period. Congress will determine how much will actually be appropriated up to that limitation. Without availability of appropriated funds, the federal administering agency cannot make grant awards. It is also common for Congress to add substantive "riders" to particular appropriation statutes that may introduce further restrictions about how the funds may be used.
- ***Cross-cuts***: Often referred to as statutes of general applicability, these enactments articulate general public policies that must be followed for all or most federal grant programs. They deal with matters such as non-discrimination, environmental stewardship, and governmental transparency. A noteworthy example is Title VI of the Civil Rights Act of 1964 which provides that no person can be denied participation in or benefit from any program or activity financed in whole or in part with federal financial assistance on the basis of race, creed, color or national origin. A grant applicant is required in the Statement of Assurances of its grant application to agree to follow such cross-cutting requirements if a grant is awarded and the same requirements will be included or adopted by reference in the actual grant agreement.

Governmentwide Directives

In addition to the statutes affecting their grant programs, federal agencies must implement certain policies because they are derived from executive branch sources that have the authority to impose requirements on the agencies and to require that the agencies, in turn, impose the requirements on their grantees. The most common source of such policies is the Executive Office of the President. The Oath of Office requires the President to "see that the laws are faithfully executed." However, if the law is silent on a subject or the law provides discretion in implementation, the President can issue directives to federal agencies that can affect the grant programs they administer and the grant recipients and subrecipients that they fund.

The vehicles for accomplishing that result are Presidential Executive Orders or directives issued by the Office of Management and Budget (OMB) which is also a part of the Executive Office of the President. An example of the former is Executive Order 12549 which was signed by President Reagan in 1987. It created a system under which an organization or individual can be debarred—precluded from participation in all federal assistance programs for a period of years because of past problematic behavior. Federal agencies and pass-through entities must determine whether a party to whom they plan to award federal assistance funds is listed in a database of debarred parties maintained by the U.S. General Services Administration (GSA). If so, they are precluded from awarding to that party. Congress has not seen fit to legislate on the subject and each of President Reagan's successors has left his Order in place. Accordingly, it is a requirement with which current recipients and subrecipients must comply. An example of the latter policy is guidance issued by the Office of Management and Budget as "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards."

The policies are known colloquially as the "Uniform Guidance" and are codified in 2 CFR 200. Following its development, OMB ordered all federal agencies to adopt the guidance effective on December 26, 2014 and to give it regulatory effect by doing so in their portion of the Code of Federal Regulations (CFR). For instance, the U.S. Department of Commerce accomplished this step by adopting 2 CFR 200 by reference in 2 CFR 1327.

Regulations

Under the Administrative Procedure Act (APA) of 1935, federal agencies are permitted to issue regulations that have the force and effect of law after they engage in the formal rulemaking process mandated by the statute. However, the APA excludes grants-in-aid from coverage. It is because of that anomaly that the procedure adopted by OMB for the Uniform Guidance was pursued. So, despite that impediment, OMB's Uniform Guidance now forms that critical mass of grants management requirements with which a grant recipient or subrecipient must comply. Accordingly, when a grant or subgrant agreement is issued, it will refer to required compliance with 2 CFR 200 and with any supplemental administrative regulation issued by federal awarding agency.

In addition to the administrative regulations, federal awarding agencies may have programmatic regulations to address how substantive program operations are expected to be carried out. An example of such policies is 45 CFR 1321, the regulations issued by the Administration for Community Living in the U.S. Department of Health and Human Services (DHHS) to governs operation of the programs authorized under the Older Americans Act of 1965. As issued, regulations must be consistent with underlying statutes. In case of a conflict between a regulation and a statute, the statute governs.

Award Terms and Conditions

Collectively, the relevant policies discussed above find their way to a recipient or subrecipient by virtue of a written grant agreement or subgrant (subaward) agreement. OMB has chosen to use those terms to describe the documents to avoid possible confusion with the word "contract' which is more appropriately used to document a procurement or purchase transaction. To reinforce how these federal assistance awards are to be presented, OMB has specifically identified the required contents of federal awards to primary recipients and of subawards by pass-through entities to subrecipients. For direct federal awards to primary recipients, the contents are listed in 2 CFR 200.211 while for subawards to subrecipients they are listed in 2 CFR 200.332(a). In case of a conflict between the terms and conditions of an award document and a regulatory or statutory provision, the regulation or statute must govern. While the substance of these awards is standardized, the "packaging" is not. Some awarding agencies include the full text of requirements in their awards while others choose to adopt certain policies by reference, simply providing a legal citation to the recipient or subrecipient. However, if a non-federal entity requests a copy of the full text, the awarding agency is required to provide it.

MODULE 2:
FEDERAL GRANTEE MANAGEMENT STANDARDS

The Current Requirements of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards address these subjects in the following sections:

- 2 CFR 200.302-5—Financial Management Standards
- 2 CFR 200.317-327—Procurement Standards
- 2 CFR 200.310-316—Property Standards
- 2 CFR 200.331-333—Subrecipient Management and Monitoring
- 2 CFR 200.334-338—Records Retention and Access

Financial Management Standards

The system standards for financial management require that a recipient or subrecipient establish and maintain written policies and practices that will enable:

- Accurate federal award identification through the use of accurate data elements about the awarding agency source and program;
- Ability to differentiate one federal award from another through fund accounting;
- Budgetary control so that comparison of actual expenditures with budgeted amounts can be routinely accomplished;
- Internal control over funds, property and other assets and the ability to show that fund use is for authorized purposes;
- Management limiting federal cash advances to the minimum necessary to meet immediate needs and minimizing the time elapsing between transfer of funds

Financial Management Standards

Recipients and subrecipients must have policies and procedures that enable them to:

- Identify all federal awards received and expended
- Differentiate among federal awards
- Manage cash payments received and disbursed
- Determine the allowability and allocability of costs incurred
- Generate source documentation to support expenditure amounts
- Maintain budgetary control by comparing expenditures with budgeted amounts
- Implement internal controls that can provide reasonable assurance about award compliance
- Make accurate, current and complete reports of the financial results of each federal award

and their disbursement;

- Determination of cost allowability and allocability in accordance with the Uniform Guidance Cost Principles (2 CFR 200, Subpart E);
- Creation of adequate source documentation for transactions;
- Accurate, current and complete disclosure of expenditures and disbursements in accordance with financial reporting requirements imposed by awarding agencies.

That the design and operation of these standards is largely left to the discretion of the applicable recipient or subrecipient is reinforced by the statement, made elsewhere in the Uniform Guidance, that the non-federal entity "in recognition of its own unique combination of staff, facilities and experience has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award." The inability to meet these standards or to accomplish the associated tasks opens a recipient or subrecipient to the possibility of additional more stringent requirements in existing awards or even denial of future ones.

There are several useful and important "cross-walks" from the financial management standards to other sections of the Uniform Guidance. For example:

- The requirements for programmatic and budgetary changes in 2 CFR 200.308 are built on the assumptions that the approved budget is a plan that may have to be changed for valid reasons and that the recipient or subrecipient is maintaining sufficient budgetary control in order to recognize when a budget amendment is warranted or the need for prior approval from the awarding agency arises.
- The requirement to create and maintain internal controls is reinforced by 2 CFR 200.303 in which OMB identifies guidance documents that recipients and subrecipients can use to assess and improve such features of their internal control framework as control environment, risk assessment, control activities, information and communication, and monitoring.
- The requirement for federal cash management is expanded in 2 CFR 200.305 which identifies authorized payment methods including advance, working capital advance, and reimbursement and the circumstances under which they are either required to be used or restricted.
- The requirement for supporting source documentation is not embellished in the financial management standards but there are other sections of the Uniform Guidance where details about such documentation emerge. These include time effort reporting (2 CFR 200.430(i)); purchase records (2 CFR 200. 318(i)); and travel justification (2 CFR 200.475(b)).

Procurement Standards

Depending on the functional purpose of a grant or subgrant, procurement of goods and services by a grant recipient or subrecipient can often be the most significant element of the award. The federal government's concerns about such procurement involve whether a recipient or subrecipient goes to a fair and open marketplace, it attempts to get the best "deal" that it can and it gets what it pays for. The procurement standards in 2 CFR 200.317-327 create those expectations. Those sections are not sequentially presented in the regulation according to the steps in the procurement process. However, the summary below treats the sections in that more logical order. Accordingly, the features of an acceptable

recipient or subrecipient procurement system include:

- ***Written procedures***: Alignment of the organization's own purchasing procedures reflecting state or local law and organizational practice with the procurement standards in 2 CFR 200.
- ***Code of conduct***: A written statement about how people who are involved in purchasing decisions (including staff, top management, and governing body) are to behave in relation to actual purchases. The rules are concerned about two issues:
  - ***Conflict of interest***: This is addressed in 2 CFR 200.318(c) and covers potential familial or financial interests which could conflict with even-handed treatment of potential contractors. The appropriate solution is for the individual to recuse themselves from actions to select the successful contractor.
  - ***Solicitation and acceptance of gratuities***: The policy concerning gratuities is that an individual should neither solicit nor accept anything of value from a prospective or incumbent contractor. However, the rules do allow a recipient or subrecipient to set a policy related to items of nominal value that would not be viewed as compromising objectivity.
- ***Acquisition planning***: Recipients and subrecipients are expected to plan what, when, how, and where they will procure so that they avoid unnecessary purchases and consider lease and purchase alternatives. The rules prohibit the use of state and local geographic preferences which limit sources of supply to those located within a particular jurisdiction. On the other hand, the rules encourage purchasing from American sources (2 CFR 200.322) and soliciting from small, minority-owned, and women-owned businesses and from firms located in labor surplus areas (2 CFR 200.321).
- ***Acceptable methods of procurement***: The federal rules about permitted methods of purchasing represent perhaps the best example of how the federal policy will dovetail with the policy of the recipient or subrecipient. They identify five permitted methods:
  - ***Micro-purchase***: A recipient or subrecipient may make a non competitive purchase valued at the lesser of $10,000 or its own identified lower dollar threshold.
  - ***Small purchase***: A recipient or subrecipient may make a small purchase valued at the lesser of $250,000 or its own identified lower dollar threshold by soliciting offers from "a reasonable number of sources."
  - ***Sealed bids***: A recipient or subrecipient may make a contract award by engaging in free and open competition with a formal solicitation (invitation for bids) and selecting the lowest responsive responsible bidder as the contractor. This method is preferred for construction.
  - ***Proposals***: A recipient or subrecipient may make a contract award by engaging in free and open competition with a formal solicitation (request for proposals) and by selecting the offer that is "most advantageous with price and other factors

Procurement Standards

An acceptable recipient or subrecipient procurement system should include:

- Written policies
- Code of conduct
- Acquisition planning practices
- Acceptable procurement methods
- Solicitation and free and open competition
- Source evaluation and selection procedures
- Contract award features
- Contract administration and enforcement

considered."

- » ***Non-competitive procurement***: Also known as "sole source" procurement, use of this method is limited to five circumstances:
  - ◊ The aggregate dollar amount of the purchase does not exceed the adopted micro-purchase threshold;
  - ◊ The item is only available from a single source;
  - ◊ The public exigency or emergency will not permit a delay resulting from publicizing a competitive solicitation;
  - ◊ The federal awarding agency or pass-through entity authorizes a non-competitive procurement in response to a written request;
  - ◊ After solicitation of a number of sources, competition is determined to be inadequate.

- ***Solicitation and Competition***: The standards for solicitation documents call for them to incorporate a clear and accurate description of the material, product, or service to be procured and must not contain features that will unduly restrict competition. The regulation actually lists some situations that are considered to be restrictive of competition (2 CFR 200.319(b)).
- ***Source evaluation and selection***: The requirement for creation and retention of procurement records that "detail the history of the procurement." (2 CFR 200.318(i)). That includes, among other things, information about "contractor selection or rejection." The clear expectation is for full transparency about how the successful contractor was selected.
- ***Contract award (2 CFR 200.327 and 2 CFR 200, Appendix II)***: Perhaps on the assumption that recipients or subrecipients can be relied upon to create a sound and complete document, these sections do not identify the features normally required to create an enforceable contract. However, standard clauses that apply, as applicable, and impose compliance with certain federal laws, executive orders or regulations are reproduced in full text in Appendix II of 2 CFR 200.
- ***Contract administration (2 CFR 200.318(b))***: In keeping with its general reliance on the prerogatives of the recipient or subrecipient, the regulation states, "Non-federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." Steps such as monitoring during performance, enforcing delivery, conducting inspection, documenting acceptance, or withholding payment pending completion are left to the recipient or subrecipient to adopt as necessary.

Property Management Standards

The federal government expects recipients and subrecipients to safeguard the property that they have purchased with federal grants, assure that it is used only for authorized purposes, and disposed of in a sensible manner. The Uniform Guidance sections that address those responsibilities for real property, equipment, supplies and intangible property are contained in 2 CFR 200.310-316. The list below addresses important overarching principles affecting certain classes of grant-acquired property:

- ***Title to Property***: The party that purchased the property or created it has title to it. Grant or subgrant acquired property is not federal government property. Instead, the federal government has a residual financial interest in the property which may be exercised under certain circumstances. To document that interest, the federal awarding agency may require that liens or other appropriate notices of record be recorded to show that the property was acquired or improved with federal funds. Since the recipient or subrecipient owns the property, it is expected to maintain insurance

coverage that is equivalent to that provided for similar assets that it acquired with its own funds (2 CFR 200.310).

- ***Use of Real Property***: Property purchased with grant funds is to be used for its original purpose as long as it is needed. Recipients and subrecipients must seek awarding agency approval to change the use of real property. If real property acquired with grant funds is no longer needed, the recipient or subrecipient must seek disposition instructions from the awarding agency, which could involve retention, sale, or transfer of the property to a third party. In any of these cases, there would be a inancial settlement in which the federal government would be compensated for its share based on the level of cost sharing involved on the original project or program (2 CFR 200.313(e)).

Property Management Standards

- Title to property
- Use of real property
- Equipment use and disposition
- Equipment management standards
- Handling of supplies

- ***Use and Disposition of Equipment***: Items of tangible personal property having a useful life of more than one year and a per unit acquisition cost exceeding $5,000 are considered to be equipment for federal grant purposes. That does not change because a recipient or subrecipient has a different capitalization threshold for equipment. These items to be used for the original project or program under which they were purchased but may be used for other organizational activities as long as that use does not interfere with use on the original project. When these items are no longer needed, disposition instructions must be sought from the awarding agency. However, equipment with a per unity fair market value of $5,000 or less may be retained, sold, or otherwise disposed of without further responsibility to the federal government (2 CFR 200.313(e)).
- ***Management Standards for Equipment***: While in possession of grant-acquired equipment, pursuant to 2 CFR 200.313(d), recipients and subrecipients are responsible for five minimum management actions. These are:
  - » Creating property records which contain certain standard data elements such as original cost of the equipment, extent of federal fund participation in its acquisition, and its current use;
  - » Conducting a periodic inventory of equipment at least once every two years;
  - » Maintaining a control system to prevent loss, damage, or theft;
  - » Conducting maintenance to keep the equipment in good condition;
  - » Using proper disposition procedure to ensure the highest possible return.
- ***Handling of Supplies***: The requirement in the procurement standards concerning avoidance of unnecessary purchases comes full circle when the end of a grant or subgrant arrives. In that case, when there is a residual inventory of unused supplies exceeding $5,000 in aggregate value and the supplies are not needed for any other federally financed project, the recipient or subrecipient may use them on non-federally funded activities or sell them but must, in either case, compensate the federal government for its share based on the original level of cost sharing on the project or program (2 CFR 200.314).

Subrecipient Management and Monitoring

The federal requirements in 2 CFR 200.331-333 covering subrecipient management and monitoring cut two ways for regional development organizations:

- In some federal programs, the RDO is a primary recipient of the federal grant but the terms and

conditions of the award require it to act as a pass-through entity and to subaward federal assistance funds to lower tier organizations such as a general or special purpose local government or a nonprofit organization.

- In others, the primary grantee is another entity such as a state government agency and so the RDO is properly treated as a subrecipient of federal financial assistance. Accordingly, a working knowledge of these federal requirements will aid in understanding what the RDO is required to do when it is the pass-through entity and what to expect when it is deemed to be a subrecipient.

Unlike with the procurement standards for purchasing goods and services using grant funds, the federal requirements on subrecipient management and monitoring are silent about how a pass-through entity will conduct solicitation or competition for subawards. Nonetheless, most prudent pass-through entities recognize that there is value in having a defensible set of policies about how to announce the availability of funding opportunities and how to conduct a fair process for awarding funds to organizations that demonstrate the need for support and the capacity to handle performance and administration. Beyond the award process, however, the federal rules contain a number of mandatory requirements affecting the subrecipient relationship and others that may be used as needed at the discretion of the pass-through entity. The mandatory steps are:

Since the federal government's approach toward these functions is on full display in Subpart C of 2 CFR 200, it may make sense to align the subawarding process with the approach used by the federal government while at the same time adjusting some features to reflect local conditions.

- **Make and document a case-by-case determination that the relationship is one of assistance**, warranting the designation of a subaward to a subrecipient, as distinct from a procurement relationship between a buyer (the pass-through entity) and a seller, designated as a contractor.

  The factors and characteristics that can be used for make this determination are listed in 2 CFR 331(a) and (b). The rules instruct that judgement should be used in making the determination and that it is not expected that all characteristics will be present in each case. Instead, they state that the "substance of relationship" is more important than the "form of the agreement."

- **The pass-through entity is expected to conduct and document an assessment of the risk of noncompliance arising with a subaward**. The rules state that the reason for this step is to determine the appropriate level of post-award monitoring. However, as a practical matter, it is also a step that can enable the pass-through entity to decide to impose special conditions on the subrecipient in the subaward agreement as permitted and sometimes expected by 2 CFR 200.208.

- **The template for the subaward agreement is contained in 2 CFR 200.332(a)** and includes (1) required data elements about the award; (2) the flow-through of 2 CFR 200 to the subrecipient; (3) any additional requirements imposed by the pass-through entity to enable it to meet its responsibilities to the federal government including identification of required financial and performance reports; (4) alternative policies for the recognition of subrecipient indirect costs; (5) records retention and access requirements that align with 2 CFR 200.334-338; and (6) appropriate terms and conditions concerning close-out.

- **Monitor the activities of the subrecipient as necessary to determine that that the subaward is used for authorized purposes, in compliance with laws, regulations, and award terms and conditions and that subaward performance goals are achieved (2 CFR 200.332(d)**). The mandatory techniques for conducting such monitoring are: (1) Review financial and performance reports; (2) Follow up and ensure that the subrecipient takes timely appropriate corrective action on

all identified deficiencies affecting the subaward; (3) Verify that the subrecipient has complied with the single audit requirement contained in Subpart F of 2 CFR 200; and (4) Issue timely management decisions on any findings in audits of the subrecipient affecting the subaward. Other techniques such as (1) Provision of training and technical assistance; (2) Performance of on-site reviews of the subrecipient's program operations; and (3) Arranging for agreed-upon procedures engagements of subrecipients that are not required to perform a single audit can be pursued at the discretion of the pass-through entity. While not explicitly stated, the techniques discussed should be conducted in a manner that avoids duplication of other oversight efforts.

When an RDO is a subrecipient, it should expect that the mandatory steps listed above are the ones that the pass-through entity from which it is receiving funds will be held to when it is checked for federal grant compliance. Nevertheless, because there is considerable discretion about the implementation of those steps as well as the others that are optional, RDO subrecipients should be alert to the potential for overreach by pass-through entities and the possibility of additional forthcoming administrative burden. Push-back by recipients and subrecipients in the federal grant arena must be carefully considered. However the technique that experience has shown to yield the most positive results involves using the plain text of the regulatory requirements to illustrate the expected compliance pathway.

Records Retention and Access

The financial management standards in OMB's Uniform Guidance require that a recipient or subrecipient create source documentation that can demonstrate compliance with other award requirements. So, it could be argued that the record retention and access requirements contained in 2 CFR 200.334-338 are really just another example of a management standard to which an awardee must respond by creating consistent policies and procedures. Based on the cited requirements, those policies and procedures must answer several relevant questions:

- **Who must create and retain award records?** Recipients must generate and retain records associated with their grant awards; subrecipients must generate and retain records associated with their awards and certain cost-type contractors must generate and retain records associated with their awards. The expectation is that records will be retained at the level where they were created. So, just as the federal government does not normally require recipients or subrecipients to transfer their records to the federal level, so too it is generally not expected that a pass-through entity will require a subrecipient to transfer their records to the pass-through entity.
- **What records must be kept?** The requirement is quite broad. It states that all financial and performance records that are pertinent to an award must be kept. Facing that kind of requirement, a prudent organization should err on the side of creating and retaining records that can sufficiently demonstrate compliance without the need for verbal explanation.
- **In what form are records to be retained?** The applicable requirement, derived from presidential Executive Order 13642, is that a non-federal entity **should**, whenever practicable, collect, transmit and store award-related information in open and machine-readable formats rather than in closed formats or on paper. However, the non-federal entity may continue to generate and retain paper copies or some combination of electronic and paper records. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. On the other hand, Federal agencies and pass-through entities must also continue to accept paper versions of award-related information.

- **How long must the records be retained?** The general answer is three years. However, there are exceptions that may require a longer period. For example, there may be a federal statutory requirement that requires longer retention. If this is the case, the federal awarding agency is expected to identify the requirement in the grant agreement. Another scenario is where state or local law requires an organization to retain **all** of its records (and thus grant records included) for a longer period.
- **When does the record retention period start?** There are several answers and they depend upon which types of records are involved.
  - » The overarching answer is that the retention period starts with the submission of the final or annual financial report associated with the specific grant award or subaward.
  - » For records associated with grant or subgrant acquired property, the records are kept throughout the entire period of ownership and then for three years after property disposal;
  - » For records associated with indirect cost recovery and the non-federal entity normally submits an indirect cost rate proposal to a cognizant federal agency, the retention period starts when the proposal is submitted. If the non-federal entity is not required to submit a rate proposal, the retention period starts at the end of the fiscal year (or other accounting period) that is covered by its computations.
- **Who has access to the records?** Text contained in 2 CFR 200.336 is often directly quoted in grant award and subaward agreements in order to effectively cover who has authorized access to records. It states, "The Federal awarding agency, Inspector General, the Comptroller General of the United States [head of the Government Accountability Office] and the pass-through entity or any of their authorized representatives must have the right of access to any documents, papers

Record Retention and Access: Key Points

- Record Retention and Access: Key Points
- The federal rules apply to recipients and subrecipients.
- All financial and performance records pertinent to an award must be retained.
- Records may be retained in paper or electronic formats.
- Generally, federal award records must be retained for 3 years. However, there are some federal statutes affecting certain grant programs that require longer retention. Also, state or local laws affecting specific RDO's may also require longer periods.
- The record retention period for a particular federal award starts with submission of the final or annual financial report. However, records for property acquired with award funds must be kept for the full period of ownership and for three years after disposal.
- Indirect cost recovery records must be maintained for 3 years from the date that a rate proposal was submitted or, for organizations that are not required to submit a rate proposal, for 3 years after they employ their calculated rate.
- 2 CFR 200.337 contains standard language that is routinely used to identify awarding agency and other officials who have authorized access to federal award records. However, there is no federal rule that authorizes members of the general public to access grant records. Nevertheless, there are numerous state or local laws that allow or require public access to the records of certain types of organizations such as governmental entities, political subdivisions, and even nonprofit organizations. EDD's should be sure that their records retention and access policies align with such requirements.

or other records of the non-Federal entity which are pertinent to the Federal award in order to make audits, examinations, excerpts and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents." In general, the public does not have access to records that are in the hands of a recipient or subrecipient by virtue of any federal requirement. Further, the federal Freedom of Information Act (FOIA) does not apply to non-federal entities. Instead, it applies to records that are in the hands of the federal government. Accordingly, information that a recipient or subrecipient actually submits to a federal agency would be subject to FOIA. Finally, just as in the case of the length of a record retention period, there are numerous state and local statutes that allow or require public access to the records of certain types of organizations such as political subdivisions, governmental entities, or nonprofit organizations. Thus, an RDO should make sure that its record retention and access policies and procedures align with such requirements as well as with the federal ones. It should also note that the federal requirement for records access warns that access is not limited by the required retention period but lasts as long as records are retained.

Awarding Agency Enforcement

If things go wrong in a federal grant award or subaward and non-compliance results, the federal awarding agency or pass-through entity has a number of tools available to address the condition. These are spread across the Uniform Guidance and are presented below in what might be called "progressive order of discipline" from the least serious to the most serious. They are:

- ***Issuance of a "cure notice"***: A notification to the recipient or subrecipient stating that the awarding agency has determined that noncompliance has occurred in an award and instructing the recipient or subrecipient to bring itself back into compliance or to risk more serious enforcement consequences.
- ***Imposition of special conditions***: As permitted under 2 CFR 200.208, an awarding agency may unilaterally introduce special conditions into its award that differ from those customarily used for compliant recipients or subrecipients. Possible measures that can be taken are outlined in 2 CFR 208(c). They include, but are not limited to, imposition of additional prior approvals, changes in payment timing, and more detailed or frequent financial reporting.
- ***Disallowance of cost***: If a cost is incurred in violation of the terms and conditions of the federal award (most commonly because of a violation of Subpart E of 2 CFR 200), the remedy is to require repayment (2 CFR 200.410). If an award is closed out, the repayment to the awarding must be made with non-federal funds in manner prescribed by the Federal Claims Collection Standards (2 CFR 200.346 and 31 CFR 900). The final financial report reopened and adjusted. For an active award, a financial adjustment to "repay" the award is warranted, again with non-federal funds.
- ***Suspension of an award***: Suspension of an award is its temporary interruption. During suspension, a recipient is to incur no new costs for the suspended portion of the award and there will be interruption or adjustment of payment. There are only two ways that suspension can be resolved—either the recipient or subrecipient brings the award back into compliance or the awarding agency can move on to termination (2 CFR 200.339-342).
- ***Termination of Award***: Termination is cancellation of the balance of the award prior to its expected date of completion. It may be accomplished in whole or in part. Federal awarding agencies and pass-through entities can terminate an award for cause—that is, a material violation of the terms and conditions of the award. Unilateral termination for the convenience of the awarding agency is not an

option. On the other hand, a recipient or subrecipient may terminate an award unilaterally, opting not to continue to receive federal assistance under that award. Even though most enforced terminations occur under less-than-ideal conditions, routine close-out also accompanies termination including final reporting, settlement of obligations and cash, and disposition of property.

- ***Debarment of an organization or an individual***: Debarment is an action that precludes an organization or an individual from continuing to participate in federal assistance programs. Under Executive Order 12549, federal agencies have debarment authority under which they can cause a party to be listed for up to five years on a database known as the "Excluded Parties List System" or EPLS, maintained by the U.S. General Services Administration (***www.SAM.gov***). The possible reasons for debarment are listed in federal regulations at 2 CFR 180.800 and the action means that the affected party cannot become involved in federal aid programs administered by any federal agency or any recipient or subrecipient. Only federal agencies can place an organization or an individual on the EPLS. However, a non-federal entity could recommend that a federal awarding agency undertake debarment of another organization or an individual.

AWARDING AGENCY ENFORCEMENT

Tools for resolving non-compliance:

- "Cure notice"
- Special conditions
- Disallow cost
- Suspend award
- Terminate award
- Debarment (organization OR individual)

Elements of an RDO Compliance Program

Recipients and subrecipients of federal grants have many good reasons to aggressively pursue compliance with the terms and conditions of their awards. One does not have to look far for evidence that organizations that have gotten into compliance trouble suffer reputational harm when those instances become public knowledge. An additional real possibility is that, under 2 CFR 200.206 and 2 CFR 200.332(b), previous non-compliance can be used by an awarding agency as a criterion for denying future discretionary grant applications or for introducing burdensome special conditions that will bog the organization down.

That said, a factor that can actively mitigate against some of those adverse consequences is a formal and specifically identified compliance program. The state of management art in both the private and the public sectors has increasingly included the presence of a compliance program as a worthwhile attribute. For example, the federal government's sentencing guidelines for organizations establishes that the initiation of a good faith compliance program is a factor that may be used to reduce sanctions that would otherwise be imposed in white collar crime cases. And the Office of Inspector General of the U.S. Department of Health and Human Services (DHHS) because of its oversight of the Medicare and Medicaid programs has issued compliance program guidance to multiple sectors of the health care industry ranging from hospitals to home health agencies. Borrowing from the experience in those sectors, an appropriately sized compliance program that is labeled as such and that contains the following features would be a wise supplement to the policy regime of an RDO:

- Implementation of written policies and procedures including standards of conduct;
- Defining roles and responsibilities and assigning the oversight function;
- Designation of a staff compliance officer;
- Designation of a compliance committee at the board of directors level;
- Conduct of effective training and education;
- Conduct of internal monitoring and auditing;
- Enforcement of standards through well-publicized disciplinary guidelines;
- Responding promptly to detected problems and undertaking corrective action.

Not surprisingly some of these identified features align with requirements that are imposed on organizations by virtue of their status as grant recipients and subrecipients. However, by gathering those requirements with the others on the list into an organized document that is actually followed will enhance an organization's posture as a responsible steward of federal funds.

MODULE 3:
ALLOWABILITY OF GRANT COSTS

Composition of Costs: Indirect vs. Direct Costs

One of the most common questions that arises in a federally funded organization is “can we charge this to our grant?” And one of the most common answers to that question is, “It depends.” What it depends upon is contained in 2 CFR 200, Subpart E, known as the Cost Principles. These principles are required to be applied to the facts and circumstances involved with the incurrence of federal grant costs. As such, they are subject to interpretation by grant awarding agencies, recipients and subrecipients, and independent auditors. Given the unique position that regional development organizations occupy in many federal grant programs, understanding and knowing how to employ the cost principles are key skills for RDO staff, whether they work in finance, human resources, or program operations. This module will examine the cost principles and identify their key features to help build those skills.

Composition of Costs

2 CFR 200.402 states that the total cost of a federal award is the sum of the allowable direct costs plus the allowable and allocable indirect costs minus applicable credits. In doing so, it introduces three important concepts that are unfortunately often misunderstood. The words “direct” and “indirect” are words of accounting convenience. They are not intended to convey the underlying purpose of the cost expenditure. In theory, one could charge every cost in a federal award directly but to do so would take considerable accounting effort. Accordingly, the federal policies accept that some costs are going to be pooled and distributed to benefiting activities by means of an allocation basis that approximates how much benefit accrues to each activity. The cost principles define direct costs as those that “can be identified specifically with a particular final cost objective “or that “can be directly assigned to such activities with a high degree of accuracy.”(2 CFR 200.413). On the other hand, indirect costs are defined as “those costs incurred for common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 CFR 200.1; 2 CFR 200.56). It is therefore no wonder that the colloquial phrase “Close enough for government work!” raises chuckles but contains a grain of truth. Before leaving the total cost definition, the term “applicable credits” must also be defined. According to 2 CFR 200.406, applicable credits are those receipts or reduction-of-expenditure transactions that offset or reduce expense items allocable to the Federal award as direct or indirect…costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges.”

Organization and Use of the Cost Principles

The principles are organized into three interrelated components:

- General Provisions including the so-called general tests of allowability (2 CFR 200.400-419)
- A listing of "Selected Items of Cost" (2 CFR 200.400-476)
- Procedures for Indirect Cost Rate Determination for Different Award Performers (2 CFR 200, Appendices III-VII)

The principles are employed at numerous stages of the lifecycle of a grant including:

- The decision to make a fixed amount or a cost type award
- Inclusion of allowable cost in a grant application budget
- Cost analysis of the grant budget by the awarding agency
- Approval of the grant budget
- Incurrence of cost by the grant recipient or subrecipient
- Review of cost allowability during an audit or monitoring activity
- Acceptance of cost claims by the awarding agency

General Tests of Allowability

In order to be allowable under a federal award, a cost must meet all of the general tests of allowability contained in 2 CFR 200.403, even if the cost is specifically listed as allowable in the cost principles "Selected Items of Cost" list. The language in the general tests invites interpretation and proves the wisdom of calling them "principles." The general tests are that a cost must be:

- necessary
- reasonable
- allocable
- conforming to any required limitations on types or amounts of cost items
- consistent with organizational policies that apply uniformly to both federally financed and other activities of the organization
- be accorded consistent treatment;
- determined in accordance with generally accepted accounting principles
- not charged elsewhere
- adequately documented
- incurred during the approved budget period

The Selected Items of Cost

The Office of Management and Budget has chosen to list 56 different cost items in 2 CFR 200, Subpart E. The selection of these items can be characterized under one of three broad reasons. These are:

- The listing represents a type of cost that is commonly encountered by non-federal entities in the course of doing business with the government. Typical examples are compensation for employee services (2 CFR 200.430-431), purchases of equipment and other capital expenditures (2 CFR 200.439), and purchases of materials and supplies (2 CFR 200.453).
- The listing involves a type of cost that OMB seeks to fully preclude from allowability. Examples include alcoholic beverages (2 CFR 200.423) and fines and penalties (2 CFR 200.441).
- The listing represents a type of cost that is common to a specific sector of awardees that are subject to the consolidated principles. Examples include the general cost of government (2 CFR 200.444) and student activity costs (2 CFR 200.469).

Most of the 56 listed items include substantial text that identifies the circumstances under which the cost is allowable or not allowable. Those narratives will lead the reader to the proper conclusion that many of the selected items are allowable under some circumstances and unallowable under others. It might be helpful if OMB could group the principles according but the complexity of the principles precludes that. Nevertheless, the allowable cost groupings fall into the following categories:

- Allowable
- Allowable under certain circumstances
- Allowable with prior approval
- Allowable with approval
- Unallowable

OMB could not hope to address every kind of cost that a grant recipient or subrecipient might encounter in the course of administering one of its awards. Accordingly, a very important policy about interpreting the cost principles is presented in 2 CFR 200.420, the introduction to the list of selected items of cost. It states, “Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment provided for similar or related items of cost and based on the principles described in 200.402 through 200.411.” Thus, if an item is not mentioned, a proper interpretation could be fashioned by relying on other stated principles or on the general tests of allowability. While not mentioned, another possibility indicator of the federal government’s posture could be whether the subject cost is treated in one of the remaining free-standing sets of federal cost principles—48 CFR 31.2 for commercial organizations and Appendix IX of 2 CFR 200 for hospitals. Clearly, the farther away from an affirmative statement of allowability, the more likely that other stakeholders may disagree with the interpretation. In view of that concern, OMB has suggested that a recipient or subrecipient seek prior written approval or an advance understanding prior to incurring special or unusual costs. It adds, “The absence of prior written approval will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances” (emphasis added) in various sections of 2 CFR 200.

While the type of documentation used by a recipient or subrecipient is often based on the non-federal entity’s own policies, the cost principles are the locus of several federal statements about the documentation necessary to support cost allowability determinations. These include:

- Personnel expenses (time and effort reporting): 2 CFR 200.430(i)
- Employee travel (justification; adherence to organizational travel policy): 2 CFR 200.475(b)
- Fringe benefits (adherence to organizational policy): 2 CFR 200.431
- Employee health and welfare (adherence to organizational policy: 2 CFR 200.437

Sources of Allowable Matching Resources

Many federal programs require or encourage matching or costs sharing by the recipient or subrecipient. The resources that are used to provide a "non-federal" share must, with very few exceptions, come from non-federal sources. Nevertheless, they must be used for costs that otherwise allowable under the cost principles. The OMB's Uniform Guidance at 2 CFR 200.306 establishes the requirements for the resources that can be employed. They include:

- Recipient cash outlay, including that contributed by third parties
- Subrecipient cash outlay
- Third party in-kind contributions

In addition to the cost allowability test, 2 CFR 200.306(b) lists these basic tests for the non-federal share:

- Verifiable from recipient or subrecipient records
- Not charged elsewhere
- Not paid by the federal government under another award (with limited exceptions)
- Provided for in the approved award budget
- Conform to other applicable 2 CFR 200 administrative requirements

The expenditure of non-federal cash outlay should not be difficult to document. However, because it involves estimates, the valuation of third-party in-kind contributions where no cash changes hands can present a challenge. The basic rule is: what would it cost if it weren't for free? While valuation of donated services and donated supplies is relatively simple, donations of capital assets such as equipment, buildings, and land can be more complicated particularly when title to the property changes hands. Except for donations of land, most awarding agencies are reluctant to recognize the full capital fair market value of the asset in a single year.

Things to Know About Match

Allowable Match Sources:

- Recipient cash outlay
- Subrecipient cash outlay
- Third party in-kind contributions

Match Test:

- Verifiable from recipient or subrecipient records
- Not charged elsewhere
- Not paid by the federal government under another award (with limited exceptions)
- Provided for in the approved award budget
- Conform to other applicable 2 CFR 200 administrative requirements

MODULE 4:
INDIRECT COST RECOVERY FUNDAMENTALS

Federal Policies on Indirect Cost Recognition

It has been a longstanding practice of the federal government to allow organizations that have federal awards to prepare a plan for allocating indirect costs to all benefitting activities and to calculate a percentage rate that can be applied to each federal award so that the federal government bears its fair share of the indirect costs of operating the awards.

- **Indirect cost rate proposal** means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate.
- **Indirect cost rate** means a device used to identify what portion of an organization's indirect costs each benefiting activity should bear. It is the ratio (percentage) that results from dividing allowable indirect costs by a selected direct cost base.
- **Cognizant agency for indirect costs** is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost rate proposals developed under [2 CFR 200] on behalf of all Federal agencies. It is normally the federal agency whose funds predominate in the federal fund portfolio of the recipient.

Federally Negotiated Indirect Cost Rate Agreements

The protocols established in the Appendices III-VII of 2 CFR 200 call on an organization that has a direct funding relationship with the federal government to submit its indirect cost rate proposal six months before the beginning of its fiscal year to provide sufficient time for review, negotiation, and agreement.

Once finalized, the resulting negotiated indirect rate agreement (NICRA) must be accepted by all federal agencies (with minor exceptions) and by all pass-through entities (2 CFR 200.414(c)(1)). As such, it represents what might be characterized as the "gold standard" of indirect cost recovery.

Regional development organizations are normally considered to be units of local government for indirect cost cognizance purposes and there are two provisions in the federal rules that affect their handling of indirect cost rate proposals:

- They are generally assigned to the Department of Commerce for cognizance. However, because the Department of Commerce has engaged in a cross-serving arrangement with the Department of Interior, any submission seeking a NICRA is transmitted to Interior rather than to Commerce; however, the Department of Commerce would remain with the cognizant agency.

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities easily with a high degree of accuracy. (2 CFR 200.413(a)).

- Under procedures contained in Appendix VII of 2 CFR 200, any local government organization that receives less than $35 million in direct federal awards must develop its cost allocation plan and rate calculation, employ it on its federal awards, and retain the documentation about the calculation for review by its independent auditor as part of the conduct of the organization's single audit. This scenario does not result in the issuance of a federal NICRA, which the rules identify as the feature that must be accepted by federal awarding agencies and pass-through entities. This has led many RDO's to submit their plans and calculations for review and negotiation by the Department of Interior in order to obtain a federally negotiated rate.

Various federal agencies such as the Departments of Interior, Labor, and Health and Human Services have developed manuals instructing non-federal organizations how to develop the documentary support for an indirect cost rate proposal. In general, they describe a process under which the non-federal entity:

- Reviews its federal funding and accounting system
- Identifies organizational units and activities that involve support for operational units (indirect activities)
- Prepares a cost policy statement which documents its direct and indirect cost charging practices
- Describes in narrative form how the indirect activities benefit the organization's federal awards
- Identifies the items of expense associated with the indirect activities
- Excludes unallowable costs from the indirect cost total
- Divides the remaining indirect costs by a selected direct cost base
- Submits the associated documentation to the cognizant agency along with a certification from a high-level management official that all of the documentation is true, complete and correct.
- Applies the resulting percentage rate to the base expenditures of each federal award

Indirect costs are those costs incurred for common or joint purposes benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

The direct cost base chosen may be either salaries and wages; salaries, wages and fringe benefits; or modified total direct cost (MTDC). Modified total direct costs is defined as "all direct salaries and wages, applicable fringe benefits, materials and supplies, travel, and up to the first $25,000 of each subaward regardless of the period of performance under the award."

Pass-through Entity Indirect Cost Rate Agreement

The federal cognizant agencies will not negotiate indirect cost rates with non-federal organizations that do not have a direct funding relationship with the federal government. Those organizations (i.e., subrecipients with no direct federal awards) must negotiate indirect cost recovery on a subaward-by-subaward basis with their pass-through entity. The Uniform Guidance (2 CFR 200.332(a)(4)) states that a pass-through entity must negotiate rates with their subrecipients. While the Guidance makes clear that other pass-through entities may accept those rates if they were calculated using the procedures contained in the 2 CFR 200 Appendices, there is no requirement that they do so. Thus, many subrecipients can face burdensome difficulties in recovering portions of their indirect costs.

De Minimis Indirect Cost Rate

In an attempt to provide a means for other non-federal entities to recover some of their indirect costs, the Uniform Guidance introduced a procedure under which an organization could elect a simple method of charging called the "De Minimis Indirect Cost Rate." The procedure can be used by any organization that has never had a negotiated indirect cost rate agreement or one whose previous rate(s) have expired. Under this arrangement, the organization is not required to submit documentary support but is permitted to charge ten (10) percent of the modified total direct costs it charges to each award. The organization must use the de minimis rate consistently but, if it's circumstances change, if may subsequently decide to pursue a negotiated rate. Importantly, OMB makes clear that neither federal awarding agencies or pass-through entities may force an organization to use the de minimis rate.

Indirect Cost Allocation Plans and Rate Proposals

One of the variations associated with indirect cost rates involves how they may be adjusted following their use. The Uniform Guidance introduces three possible scenarios that may be employed. These are:

- ***Provisional/Final Rates***: A provisional rate is negotiated in advance of a fiscal period (usually a single fiscal year) based on an estimate of future costs. The rate is charged on all federal awards during the fiscal period. After end of the year, the rate is recalculated based on actual costs and resubmitted to the cognizant or pass-through agency for finalization. Once finalized, the rate is used to adjust charges that were made to federal awards during the fiscal period. Accordingly, its use can result in revised cost claims against federal awards including refunding of overcharges.
- ***Predetermined Rates***: A predetermined rate is negotiated in advance based on an estimate of future costs. The rate is charged on all federal awards administered during the fiscal period. However, the rate is not changed at the end of the fiscal period regardless of what the actual costs were. Federal cognizant agencies are instructed that predetermined rates only apply where the agency has "reasonable assurance based on past experience and reliable project of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs." The de minimis rate is considered to be a predetermined rate.
- ***Fixed Rate with Carry Forward***: Like the other rate types, this rate is negotiated in advance based upon an estimate of future costs and is charged to all federal awards administered during the fiscal period. However, when the rate is recalculated at the end of the fiscal period, any over or under charge is carried forward to the next indirect cost rate proposal and added or subtracted from the indirect costs that will be claimed during that subsequent period. Federal cognizant agencies use this rate approach when the non-Federal entity has longstanding funding relationships that will enable the carry-forward feature to be employed.

MODULE 5:
FEDERAL GRANT AUDITS

Two Statutory Prong

Federal fund audit policy has two statutory prongs:

- The Inspector General Act of 1978 (as amended) established statutory inspectors general in all of the federal departments and agencies, but required these appointed federal officials to make maximum use of audits performed by non-federal auditors.
- The Single Audit Act of 1984 (as amended) requires non-federal entities that expend a threshold dollar amount of federal funds annually to arrange for an audit of those funds performed by an independent auditor who follows generally accepted government auditing standards. These audits are intended to be the non-federal audits on which the inspectors general would rely.

Congress provided the U.S. Office of Management and Budget (OMB) with the authority to issue policies, procedures, and guidelines to implement the Single Audit Act. OMB has done so most recently in Subpart F of 2 CFR 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award*, often referred to as the "Uniform Guidance." Subpart F imposes certain responsibilities on management of covered organizations. They include:

- Procurement of audit services: Arranging for a qualified independent auditor to perform the examination by procuring services following a competitive solicitation using the provisions of 2 CFR 200.509 and 2 CFR 200.318-327. Recipients should review the auditor selection criteria contained in 2 CFR 200.509 to determine whether firms offering to conduct the single audit possess the experience and capacity to do so including meeting continuing professional education and audit quality control requirements.
- Prepare a Schedule of Expenditures of Federal Awards (SEFA): Compiling from accounting records a listing of all the federal programs under which funds were received and the amounts expended. The accurate total amount shown on the SEFA determines whether the single audit dollar threshold has been reached and whether a covered audit must be performed.
- Prepare a Summary Schedule of Prior Audit Findings (if findings from previously conducted single audits exist).
- Prepare a Corrective Action Plan to address any findings that related to the current audit.
- Submit the audit reporting package that includes the auditor's reports, the Summary Schedule of Prior Audit Findings, and the Corrective Action to the Federal Audit Clearinghouse (FAC). The audit reporting package is currently managed by the Bureau of Census in the U.S. Department of Commerce which is intended to be transferred to the General Services Administration (GSA) in late 2023.

Understanding Single Audit Objectives

While Subpart F of 2 CFR 200 properly relies on a high degree of technical language that is derived from authoritative accounting and auditing sources, the purposes of the single audit actually boil down to three very understandable ones. The auditor is to determine:

- Whether the financial statements of the auditee and its Schedule of Expenditures of Federal Awards are presented fairly and accurately;
- Whether the internal controls of the auditee are well-designed and placed in operation and whether they can be relied upon by the auditor to limit the amount of transaction testing the auditor must perform;
- Whether the auditee has complied with laws, regulations, and award terms and conditions that could have a "direct and material" effect on its program expenditures in the major programs it administers. One such effect may be the need to repay amounts that were improperly charged to the awarding agency.

Not surprisingly, federal awarding agencies and pass-through entities are required to focus their attention on any adverse findings that materialize in these areas and to make financial adjustments such as disallowing costs.

The Role of the OMB Compliance Supplement

To aid the independent auditors in the conduct of their field work and reporting, OMB annually compiles a massive audit guide known as the Compliance Supplement. The intent of the document is to identify the general and specific compliance requirements that federal agencies want the auditors to test and to suggest audit procedures for how that testing should be performed. For compliance requirements related to the more than 250 individual federal programs that are covered in the Supplement, an audit of those requirements will meet the requirements of Subpart F. In a sense, then, the auditors are said to have a "safe harbor" that defines the scope of their testing. For grant recipients, the listing of the compliance requirements that will be tested is equally important because they show what administrative areas the recipients can expect to have scrutinized. In short, the program listings are a useful roadmap for recipient audit readiness.

Diving deeper into the *Compliance Supplement*, there are 12 cross-cutting compliance areas that are common to federal programs because they are largely derived from the administrative requirements and cost principles contained in Subparts D and E of 2 CFR 200. OMB has instructed the federal awarding agencies administering the specific federal aid programs and which cooperate in compiling the Supplement to select six of the 12 that represent their highest oversight priorities. So while a recipient is expected to comply with all the term and conditions of their federal awards, the six areas chosen are virtually guaranteed to receive special attention. The twelve areas that federal agencies may choose from are:

- Activities allowed and not allowed
- Allowable costs/cost principles
- Cash management
- Eligibility
- Matching, level of effort, earmarking
- Program income
- Real property and equipment management
- Period of performance
- Procurement/ suspension and debarment
- Reporting
- Subrecipient monitoring
- Special tests and provisions

The annual Supplement offers an opportunity for the administering federal agency to change its selections from one year to the next, so that over several years, testing of all 12 areas will take place.