



# OMB's Uniform Guidance: The Next Generation

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*Page 2*



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# OMB's Continuing Grant Reform Efforts

- OMB Circulars for Different Types of Performers (1958 →)
- PL 95-224: Toward a “Comprehensive System of Guidance” (1978)
- Common Rules (1988 →)
- Title 2, Code of Federal Regulations (2005→)
- *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200)*
  - The “Super Circular”
  - The “Uniform Guidance”

# Evolution of the “Uniform Guidance”

- OMB Issuance (12/26/13)
- Federal Agency Uniform Implementation (12/26/14)
- Adoption of 2 CFR 200 by Reference and Providing “Regulatory Effect”
- OMB Commitment to Five Year Periodic Review
- OMB Proposal for Revisions (1/20/20)
- COVID 19-Related Flexibilities
- Limited Revisions (Effective 11/12/20)
- OMB Request for Information (2/9/23)
- OMB Proposed Revisions (10/5/23)
- [OMB Federal Register Publication of Revised Guidance \(4/22/24\)](#)
- Federal Agency Implementation (NLT 10/1/24)

# The “Comprehensive System of Guidance”

- **2 CFR 25 Unique Entity Identifier and System for Award Management**
- **2 CFR 170 Reporting Subaward and Executive Compensation Information**
- **2 CFR 175 Award Term for Trafficking in Persons**
- **2 CFR 180 OMB Guidelines to Agencies on Governmentwide Debarment and Suspension**
- **2 CFR 182 Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)**
- **2 CFR 183 Never Contract with the Enemy**
- **2 CFR 184 Buy American Preferences for Infrastructure Projects**
- **2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

# OMB's Uniform Guidance Baseline

- **NOTE: The current implementations of 2 CFR 200 by federal agencies remain in effect until their adoption of the 2024 revisions**
- **2 CFR 200 and Federal Agency Codifications (2 CFR 300-5900)**
- **Six Subparts to 2 CFR 200**
  - **Subpart A: Acronyms and Definitions**
  - **Subpart B: General Provisions**
  - **Subpart C: Pre-Federal Award Requirements and Contents of Federal Awards**
  - **Subpart D: Post Federal Award Requirements**
  - **Subpart E: Cost Principles**
  - **Subpart F: Audit Requirements**
- **Twelve Appendices**
- **Including the new Standard Template for Notices of Funding Opportunities (NOFO) and Instructions on Development and Submission of Indirect (F&A) Cost Rate Proposals**

# OMB's Stated Intentions

- **Incorporate Intervening Statutory and Executive Order Policies**
- **Update, Change, Clarify, or Delete Existing Guidance**
- **Employ Plain Language**
- **Reduce Federal Agency and Recipient Burden**
- **Reflect Administration Priorities**
- **Maintain Policy Structure and Existing Numbering System**
- **OMB's Audience: Federal Awarding Agencies**
- **Issuance = “[G]uidance to Federal agencies and not a regulation.”**



# Federal “Inside Baseball”

- **OMB Components**
  - **Office of Federal Financial Management (OFFM)**
  - **Office of Information and Regulatory Affairs (OIRA)**
- **Council on Federal Financial Assistance (COFFA)**
  - **“Remember the COFAR”**
- **The Federal Program Inventory (FPI)**
  - **“Remember the CFDA”**

# OMB's Challenge

- **Dealing with a Wide Variety of Stakeholder Voices**
  - **Federal Awarding Agencies**
  - **Federal Inspectors General**
  - **State and Local Governments**
  - **Tribal Governments**
  - **Institutions of Higher Education**
  - **Nonprofit Organizations**
  - **Associations**
  - **Private Businesses**
- **The Importance of the “Preamble” to the Uniform Guidance**
  - **Public Facing Statements**
  - **Silence**

# Federal Grant “Politics”—Elections Matter

- Using federal financial assistance as a “policy tool”
- Addressing the underserved
- Consideration for less experienced applicants
- Inclusion of labor organizations
- Domestic preference in procurements
- Encouragement of diversity
- Broader nondiscrimination policies
- Sustainability

# Implementation Steps

- **Federal Agency Implementation Plans to OMB (5/15/24)**
  - **Federal Agency Plans for Simplification of Notices of Funding Opportunities (NOFO) to OMB (8/1/24)**
  - **Federal Agency Application of Revised Guidance to New Awards (10/1/24)**
- Earlier Implementation Permitted but Not Required and No Sooner than 6/21/24**

# Highlights

- **Key Word Choice Change**
  - **“Non-federal entity” → “Recipient and/or subrecipient”**
- **Clarification**
  - **Prior approval authority of pass-through entities**
- **Revised Dollar Thresholds**
  - **Annual Expenditure Amount Subject to Single Audit Coverage (\$1 M)**
  - **Equipment Acquisition (Unit Cost = > \$10 K)**
  - **Equipment and Supply Disposition Amounts (FMV = >\$10K)**
  - **Subaward Exclusion from Modified Total Direct Cost Base (> \$ 50K)**
  - **Fixed Amount Awards and Subawards (Up to > \$500 K)**

# Highlights

- **Prior Approvals**
  - **Clear Definition (2 CFR 200.1)**
  - Treatment of Costs Included in Award Budgets**
- **Treatment of Close-out Costs (2 CFR 200.403)**
- **Clarification on Criteria for Case-by-Case Determination of Lower Tier Relationships (2 CFR 200.331)**
- **Assistance vs. Procurement**
- **No Single Factor or Combination is Determinative**
- **Clarifications on Advance Payments to Subrecipients (2 CFR 200.305(b))**
- **Clarifications on Subaward Financial Reporting (2 CFR 200.328, 2 CFR 200.415(b))**

# Changes: Pre-award

- Overhaul of NOFO's
- 2 CFR 200.204 and 2 CFR 200, Appendix I
  - Encourage broader pool of applicants
  - Remove “barriers to entry” for less experienced organizations
  - User friendly features
    - Contact information
  - Plain and standard language
  - Use of links to important documents
  - Standard “table of contents”
    - Tracking the award process
  - Posting on Grants.gov, agency website, and in the Federal Register

# Changes: Pre-award

- **Requirements for Obtaining a UEI and Registering on SAM. gov**
  - **2 CFR 25**
  - **Exceptions**
- **2 CFR 200.201(b)**
  - **Use of fixed amount awards and subawards**
  - **Clarification on post-award monitoring of financial expenditures**
  - **Clarification on retention of unexpended amounts**
  - **Recipient and subrecipient responsibility for record retention and access**
- **2 CFR 200.206**
  - **Authority and timing of federal agency risk assessment**



# Changes—New Whistleblower Provision

- **2 CFR 200.217**
- **Incorporates Statutory Requirement (41 U.S.C. 4712)**
- **Non-reprisal against employee reporting**
- **Bases of reporting**
  - **Mismanagement**
  - **Waste**
  - **Abuse**
  - **Noncompliance**
- **Required employee notification of policy**

# Changes—Post-Award

- **Procurement**

- **2 CFR 200.318: Procurement from Responsible Contractors**

- **Proper Classification of Workers**

- **2 CFR 200.319: Scoring of Offerors' Labor Practices**

- **2 CFR 200.322: Geographic Preference Policies**

- **2 CFR 200.324 : Recipient/Subrecipient Responsibility for Cost (Benefit) or Price Analysis**

- **Property Management**

- **Revised Dollar Thresholds for Disposition of Grant-acquired Equipment and Supplies**

# Changes—Post-award

- **2 CFR 200.112: Revised Language Concerning Mandatory Disclosures**  
--- **“Credible Evidence” Standard**
- **2 CFR 200.340: Clarification on Permitted Bases for Non-continuation of Funding**
- **2 CFR 200.407: Bases for Prior Approval Requirements**
- **2 CFR 200.420: Handling of Discrepancies between 2 CFR 200, Subpart E and the Federal Award**

# Changes—Cost Allowability

- **2 CFR 200.403: Allowability of Close-out Costs**
  - **Following End of Performance Period**
- **2 CFR 200.407: List of Sections Containing a Prior Approval Requirement**
- **2 CFR 200.455: Expanded Allowability of Organizational Costs**
  - **Cost of Outreach and Engagement of Beneficiaries**
  - **Data Collection Costs**
  - **Program Evaluation Costs**

# Changes—Indirect Cost Recovery

- Increase of the *De Minimis* Indirect Cost Rate to 15% of the Modified Total Direct Costs (MTDC) Incurred During a Reporting Period
  - Revision of the Definition of “Modified Total Direct Costs” Allowing Indirect Costs to Be Charged on the First \$50,000 of Each Subaward
  - Handling of IDC Cost Rate Cognizance and Proposal Submission Policy for Certain Local Government Entities
- “... recipients and subrecipients have a right to negotiate a rate...” (89 FR 30093)
- Deferral of Requirement for Public Posting of Indirect Cost Rates

# Changes: Audit Related Policies

- **2 CFR 200.502: Increased Dollar Threshold of Total Federal Awards Expended Annually Triggering the Single Audit Requirement**
- **Counter Arguments Concerning Single Audit Report Use in Monitoring**
- **2 CFR 200.518: Revision to Guidance on Auditor's Determination of Major Federal Programs**
- **2 CFR 200.516: Clarification on the Effect of Known and Likely Questioned Costs on the Auditor's Opinion on Compliance**
- **2 CFR 200.512: Handling of Possible Extensions of Time for Submission of the Audit Reporting Package**

# What's Next?

- **Federal Agency Implementation Plans (Due 5/15/24)**
  - **OMB's Issuance of the 2024 *Compliance Supplement* (NLT 6/30/24?)**
  - **Comments Submitted by Stakeholders Concerning Future Policy Changes Previously Submitted Comments**
- **OMB Should:**
- **Permit Additional Outside Review**
  - **Issue "Robust" FAQ's**
  - **Retain "Five Year" Review Policy (2 CFR 200.109)**
  - **Adopt an "Arbiter" Role**
- **Response: "OMB will review this part periodically."**

# Some Suggested Takeaways

- There's No Substitute for First Hand Knowledge
- Monitor the Current "Moving Targets"
  - OMB 's Website ([www.omb.gov](http://www.omb.gov))
  - Websites of the Your Federal Funding Agencies ([www.usa.gov](http://www.usa.gov))
  - The Federal Register
  - [www.Grants.gov](http://www.Grants.gov)
- Recognize and Request Federal Agency Case-by-Case Exception Authority
- Future "Audit Alerts"
  - Create a Whistleblower Policy--Now
  - Beware of Required FFATA Reporting under 2 CFR 170
  - Required Compliance Criterion (from OMB's 2023 *Compliance Supplement*)



# Questions: Now and Later

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- [OMB 2 CFR Guidance for Federal Financial Assistance \(April 22, 2024\)](#)