



Unpacking OMB's Revised Uniform Guidance

Presented by Bob Lloyd

October 22, 2024





The NADO Research Foundation manages the EDD Community of Practice (CoP). Through the CoP, NADO RF and its partners provide tools, resources, and networking opportunities for EDD staff to strengthen organizational capacity and better guide regions towards becoming more competitive, resilient, and equitable.

www.nado.org/EDDCoP

The EDD CoP is made possible through an award from the U.S. Economic Development Administration, U.S. Department of Commerce (ED22HDQ3070106). The statements, findings, conclusions, and recommendations are those of the participants, trainers, and authors and do not necessarily reflect the views of the U.S. Economic Development Administration or the U.S. Department of Commerce.



Bob Lloyd



Bob Lloyd is a respected authority on policies and practices affecting the award, administration and oversight of federal grants, contracts and subawards. He has nearly 40 years of experience in federal award implementation. Prior to starting his management consulting practice, he served as the executive director of the Grants Management Advisory Service and held staff positions in two large federally funded organizations. He has been a consultant, trainer or advisor to award and audit units in sixteen federal award-making departments and agencies, and to recipient and subrecipient organizations and their professional advisors. He is the principal author of *A Guide to OMB Grant Reform* and several other reference works on federal grants management and audits.



EDD CoP
Economic Development District
Community of Practice



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 (Part 215) (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)**
 - **OMB Commitment to Five Year Review**
- **OMB Proposal for Revisions (1/20/20)**
 - **COVID 19-Related Flexibilities Permitted (Spring, 2020)**
 - **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)**
 - **Earlier Implementation Permitted (No Sooner than 6/21/24)**
 - **Federal Agency Federal Register announcements**



EDD CoP
Economic Development District
Community of Practice



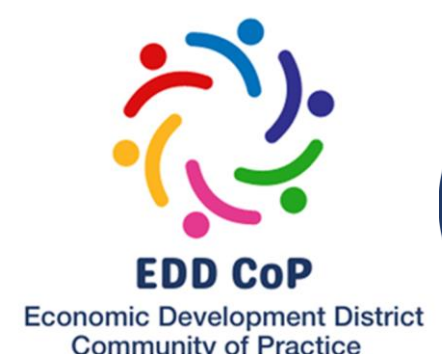
Toward a "Comprehensive System of Guidance"

- **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 (IIJA/BIL)**
- **2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

OMB's Uniform Guidance Baseline

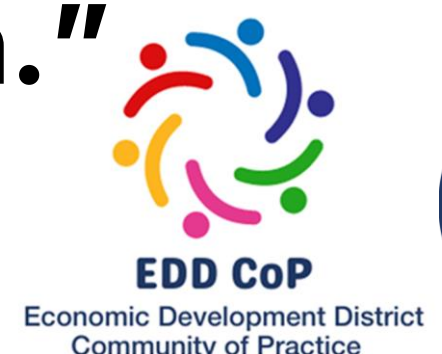
NOTE: The previous implementation of 2 CFR 200 by each federal agency remains in effect until their adoption of the 2024 revisions

- **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 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**
- **OMB's Issuance = "[G]uidance to Federal agencies and not a regulation."**



Federal "Inside Baseball": "Get Your Program Here"

➤ OMB Components

- Office of Federal Financial Management (OFFM)
- Office of Information and Regulatory Affairs (OIRA)

➤ Council on Federal Financial Assistance (COFFA)

- www.coffa.gov
- "Remember the COFAR"

➤ The Federal Program Inventory (FPI)

- "Remember the CFDA"



EDD CoP
Economic Development District
Community of Practice



OMB's Challenge

- **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**
- **“Elephants in the Room”**
- **The Importance of the “Preamble” to the Uniform Guidance**
 - **Public Facing Statements**
 - **Policy 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**
- **Grounds for award termination**

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 Required Application of Revised Guidance to New Awards (10/1/24)**
 - **Earlier Implementation Permitted but Not Required**
 - **No Earlier than 6/21/24**
- **Federal Agency Prerogatives**
 - **Non-US Organizations**
 - **OMB Encouragement of Uniformity**
 - **Commercial Firms**
- **Transition for Old Awards**

Highlights: A Lightning Round

- **Applicability (2 CFR 200.101 and 89 FR 30047)**
- **English Language (2 CFR 200.111)**
- **KEY CHANGE: WORD CHOICE**
 - **"Non-federal entity" □ Recipient or subrecipient"**
- **Clarification**
 - **Federal prior approval authority for subawarding**
 - **Prior approval by pass-through entities of subrecipient actions**
- **Revised Dollar Thresholds**
 - **Expenditure Amount Subject to Single Audit Coverage (□ \$1M)**
 - **Equipment and Supplies Acquisition and Disposition Amounts (□ \$10K)**
 - **Subaward Inclusion in Modified Total Direct Cost Base (□ \$50K)**
 - **Fixed Amount Subawards (Up to \$500K)**

More Highlights

- **Prior Approval**
 - **Clearer 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 Transaction vs. Procurement Transaction**
 - **Subrecipient: No Direct Relationship with Federal Agency**
 - **No Single Factor or Combination of Factors is Necessarily Determinative**
- **Clarifications on Payments to Subrecipients (2 CFR 200.305)**
- **Clarifications on Subaward Financial Reporting (2 CFR 200.328, 2 CFR 200.415(b))**
 - **Use of Special Conditions (2 CFR 200.208)**



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"**
 - **Posting on Grants.gov, agency website, and in the Federal Register**



EDD CoP
Economic Development District
Community of Practice



Changes: Pre-award

- **Requirements for Obtaining a UEI and Registering on SAM. gov**
 - **2 CFR 25**
 - **Exceptions**
 - **Lower Tier Subrecipients**
 - **Contractors**
 - **Foreign Organizations**
- **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**

Changes—Post-Award

- **2 CFR 200.300: Implementation of Statutory Requirements**
- **Procurement**
 - **2 CFR 200.318: Procurement from Responsible Contractors**
 - Proper Classification of Workers
 - **2 CFR 200.319: Scoring of Offerors Labor Practices**
 - **2 CFR 200.320: Thresholds for Procurement Methods**
 - **2 CFR 200.322: Geographic Preference Policies**
 - Agency Specific Requirements
 - DOT: 49 CFR 26
- **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**
 - **Previous: "...violations..."**
 - **Current: "...credible evidence of violations"**
- **2 CFR 200.340: Clarification of Bases for Non-continuation of Funding**
- **2 CFR 200.407: List of Prior Approval Requirements**
- **2 CFR 200.420: Handling of Discrepancy between 2 CFR 200, Subpart E and the Federal Award**

Changes—Cost Allowability

- **2 CFR 200.403: Allowability of Close-out Costs**
- **2 CFR 200.440 Exchange Rates**
- **2 CFR 200.455: Expanded Allowability of Organizational Costs**
 - **Engagement of Beneficiaries**
 - **Data Collection**
 - **Program Evaluation Costs**
- **2 CFR 200.471 Telecommunications and Video Surveillance Costs**
 - **Implementation of Section 889, NDAA (2 CFR 200.216)**

Changes...or Not—Indirect Cost Recovery

- **Reinforcement of Existing Policy on Acceptance of Federally Negotiated Rates (2 CFR 200.414)**
- **No Relief for Recipients with Provisional/Final NICRA's**
- **Increase of the De Minimis Indirect Cost Rate to Up 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**
- **Deferral of Requirement for Public Posting of Indirect Cost Rates**
- **Possible OMB Role in Indirect Cost Disputes**

Changes: Audit Related Policies

- **2 CFR 200.502: Increased Dollar Threshold of Total Federal Awards Expended Annually Triggering the Single Audit Requirement**
 - **Opposing 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: Possible Extensions of Time for Submission of the Audit Reporting Package**

What's Next?

- **An Active Learning Curve**
- **Stakeholder Comments Seeking Future OMB Engagement**
 - **Permit Additional Outside Review**
 - **Issue "Robust" FAQ's**
 - **Retain "Five Year" Review Policy (2 CFR 200.109)**
 - **Adopt an "Arbiter" Role Between Agencies and Recipients**
- **Response: "OMB will review this part periodically."**

A Few Suggested Takeaways

- **There's No Substitute for First Hand Knowledge**
- **Monitor the Current "Moving Targets"**
 - **OMB 's Website (www.omb.gov)**
 - **COFFA Website (www.coffa.gov)**
 - **Websites of the Your Federal Funding Agencies (www.usa.gov)**
 - **www.Grants.gov**
- *** Review All New Grant and Subaward Agreements and Modifications**
- **Recognize and Request Federal Agency Case-by-Case Exception Authority**
- **Consider a Couple of "Audit Alerts"**
 - **Create a Whistleblower Policy--Now**
 - **Beware of Required FFATA Reporting under 2 CFR 170**
 - **Required Compliance Criterion (OMB 2023 and 2024 Compliance Supplements)**

Questions?

❖ **Now**

❖ **Later**

Bob Lloyd

**Consultant on Public Management and
Government Relations**

Telephone: (864) 235-8680

E-mail: consultlloyd@aol.com



EDD CoP
Economic Development District
Community of Practice





122 C Street, NW, Suite 830 | Washington, DC 20001

202.921.4440 | NADO.ORG

info@nado.org