

Uniform Grant Guidance Changes

SPEAKERS

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Learning Objectives and Agenda

- Describe the overall structure of Uniform Guidance and key points
- List terms and requirements for specific topics
- List ways to determine whether exceptions apply to a particular program
- Describe changes to Uniform Guidance and how to find them



Federal Award

- ▶ Federal financial assistance that non-federal entities receive directly from federal awarding agencies or indirectly from Pass-Through Entities (PTE)
- ▶ Federal cost-reimbursement contracts under the Federal Acquisition Regulation (FAR) that a non-federal entity receives directly from a federal awarding agency or indirectly from a PTE
 - Terms and conditions set forth in grant agreement, cooperative agreement, other agreement, or cost-reimbursement contracts

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Examples of Federal Awards

- ▶ Grants
- ▶ Contracts
- ▶ Cooperative Agreements
- ▶ Loans
- ▶ Loan Guarantees
- ▶ Property
- ▶ Interest Subsidies
- ▶ Insurance
- ▶ Direct Appropriations
- ▶ Endowments
- ▶ Other Non-Cash Assistance
- ▶ Indirect State or Local Gov't Transfers of Federal Funds

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Streamlining of Related Circulars and Guidance

A-21	Cost Principles for Educational Institutions
A-50	Audit Follow-Up, related to Single Audit
A-87	Cost Principles for State, Local, and Indian Tribal Governments
A-89	Federal Domestic Assistance Program Information
A-102	Awards and Cooperative Agreements with State and Local Governments
A-110	Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations
A-122	Cost Principles for Non-Profit Organizations
A-133	Audits of States, Local Governments and Non-Profit Organizations

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About the Law 2 CFR 200

- ▶ Title 2 in the Code of Federal Regulations (2 CFR) – Grants and Agreements
- ▶ Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

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

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Appendices

Appendix I	Full Text of Notice of Funding Opportunity
Appendix II	Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
Appendix III	Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)
Appendix IV	Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations
Appendix V	State/Local Governmentwide Central Service Cost Allocation Plans
Appendix VI	Public Assistance Cost Allocation Plans
Appendix VII	States and Local Government and Indian Tribe Indirect Cost Proposals
Appendix VIII	Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200
Appendix IX	Hospital Cost Principles
Appendix X	Data Collection Form (Form SF-SAC)
Appendix XI	Compliance Supplement
Appendix XII	Award Term and Condition for Recipient Integrity and Performance Matters

Federal Agency Regulations

- ▶ Codified in agency's specific Title of the CFR
 - Federal Register 28697 (2014)
 - E.g., DHHS is 45 CFR 74, 75, and 92
- ▶ Detailed agency clarifications and exceptions OMB allowed for various agencies
- ▶ Did not create any new policies

Applicability of UG vs. Circulars

- ▶ Federal awards existing at 12/26/14 will continue to be governed by terms and conditions of the award.
 - Example: In Nov 2014 HUD awarded a grant allowing 3 years to commit funds and 2 years to spend them. Previous Circulars apply.
- ▶ Subawards
 - Effective date of UG for subawards is the same as the effective date for the federal award from which the subaward is made, regardless of when the subaward was made
- ▶ Audit requirements in Subpart F replace Circular A-133 and are effective for all auditees now

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Uniform Guidance Subparts

Subpart A, Definitions

200.00 – Acronyms (44)

IHE – Institutions of Higher Education

200.1 – 200.99, Definitions

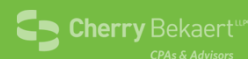
Subpart B, General Provisions

FAQ on 2 CFR 200.303

“Must” means “required”

“Should” indicates best practices or recommended approach

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Uniform Guidance Subparts

Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards

Streamlined guidance to Federal agencies

Fixed amount awards (new)

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Uniform Guidance Subparts

Subpart D, Post-Federal Award Requirements

- ▶ 10 sections of requirements – from award to post closeout
- ▶ New emphasis on internal controls
 - Non-Federal Entity is responsible for effective internal control systems – “must establish and maintain” (200.303)
 - Best Practices
 - “Standards for Internal Control in the Federal Government” (Green Book) issued by the Comptroller General of the United States
 - “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)

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Uniform Guidance Subparts

Subpart E, Cost Principles

- ▶ Allowable activity—what you can use grant money for
 - Grant document says you can use the grant funding for this purpose
- ▶ Allowable cost—amount the federal government will reimburse (how the amount is calculated)
- ▶ Direct vs indirect costs
- ▶ Prior approval (200.407 comprehensive list)
- ▶ Compensation
 - Increased focus on documentation
- 13 ▶ Comply with established accounting policies and practices



Uniform Guidance Subparts

Subpart F, Audit Requirements

- ▶ Selecting programs to audit (two categories—A and B)
 - Dollars expended for the program
 - Not audited in either of the previous two audit periods
 - Risk assessment (audit results in previous period and other criteria)
 - Percentage of total expended dollars audited
- ▶ Reporting findings
 - 200.516 – 7 categories of findings on internal controls, compliance, questioned costs, fraud, audit report other than unmodified on major programs, materially misstated summary of prior findings
- ▶ Reporting federal expenditures and single audit results
 - 200.510 – requirements for reporting package to Federal Audit Clearinghouse

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Specific Topics

- ▶ Procurement
- ▶ Vendor vs. Contractor vs. Subrecipient
- ▶ Subrecipient Monitoring & Management
- ▶ Indirect (Facilities & Administrative) Costs
- ▶ Pension Expense Reimbursement Requirements



Procurement (Sections 200.317 - 200.326)

- ▶ Effective July 1, 2018 for June year ends
- ▶ States (Section 200.317)
 - Property and services purchases must follow the same policies and procedures used for procurements from non-Federal funds
 - Must comply with Section 200.322 (procurement of Recovered Materials)
 - Must ensure all clauses required by section 200.326 are included in each applicable PO or other contract

Procurement

(Sections 200.318 - 200.326)

All other non-Federal entities must have **written** procurement policies or procedures reflecting procurement standards

- ▶ Oversight to ensure contractors perform per PO/contract terms
- ▶ Conflicts of interest: real or apparent, individual or organizational
- ▶ Obtain economical prices. Examples include:
 - Avoid unnecessary or duplicative purchases
 - State or interlocal agreements for common or shared goods/services.
 - Use of Federal excess and surplus property.
- ▶ Award contracts only to responsible contractors
- ▶ Maintain records detailing history procurement (200.318i)

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Procurement (Sections 200.318 - 200.326)

All other non-Federal entities (continued)

Competition:

- Full and open competition is required
 - See noncompetitive proposals in next section for sole source
- Section 200.319 provides examples of inappropriate restrictions
- Written procedures must ensure all solicitations include clear and accurate descriptions of technical requirements and all other requirements/factors used in evaluating bids or proposals
- Prequalified lists must include enough sources for competition

Effect of state law

- Must still follow state procurement laws as applicable
- Most restrictive law applies

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Procurement (Sections 200.318 - 200.326)

All other non-Federal entities (continued)

- ▶ **Methods of procurement**
 - Micropurchase (see 48 CFR 2.101 for threshold) [\$3,500]
 - Small purchase (do not exceed Simplified Acquisition Threshold - 48 CFR 2.101) [\$150,000]
 - Sealed bid (over Simplified Acquisition Threshold)
 - Competitive proposals (over Simplified Acquisition Threshold)
 - Noncompetitive proposals (sole source)
- ▶ **Small/minority/women’s businesses and labor surplus area firms**
 - Must take steps to solicit procurements from these types of entities
- ▶ **Procurement of recovered materials (200.322) [state/local gov’t]**
 - Solid waste management services
 - Recycling of certain items designated in 40 CFR 247

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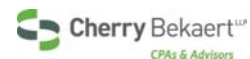


Procurement (Sections 200.318 - 200.326)

All other non-Federal entities (continued)

Contract cost and price				
Must perform a cost or price analysis for EVERY procurement action over Simplified Acquisition Threshold, including contract modifications. Independent estimate before receiving bids or proposals	Negotiate profit as separate element of price in certain situations	Costs/prices based on estimates must be based on allowable costs	Time and Materials is last resort; should be rare and well documented	Cost plus a percentage must not be used

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Procurement (Sections 200.318 - 200.326)

All other non-Federal entities (continued)

Pass-through entity review

- ▶ Must provide documentation as requested for such things as:
 - Technical specifications of proposed item
 - RFPs, IFBs, or independent cost estimates under certain circumstances
 - Entity is exempt from review if PTE determines the entity's procurement system complies with these standards
- ▶ Bonding requirements
 - Construction, facility improvement, subcontracts over Simplified Acquisition Threshold: Minimum bonds below are required unless Federal agency or PTE determines otherwise.
 - Bid guarantee (5% of bid price)
 - Performance bond (100% of contract price)
 - Payment bond (100% of contract price)

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Procurement (Sections 200.318 - 200.326)

All other non-Federal entities (continued)

- ▶ Contract provisions
 - Contracts must contain applicable provisions in Appendix II to 2 CFR 200
- ▶ Local governments, colleges and universities
 - Must compare federal and state requirements to determine most restrictive elements in order to comply
 - Can use a blanket statement to incorporate federal requirements
 - Employees should be trained on the differences and how to comply
 - LGC Memo 2018-06
 - www.ncpurchasing.unc.edu
 - Tools on right side bar
 - Then scroll down to Federal Procurement Requirements

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Procurement (Sections 200.318 - 200.326)

All other non-Federal entities (continued)

- ▶ Local governments, colleges and universities (continued)
 - Unallowed procurement actions
 - Piggybacking
 - COOP purchases
 - Group purchasing programs (unless run by a local government and qualifies as an interlocal agreement)
 - Allowed
 - Ordering off a state contract IF the state bid it out in accordance with federal procurement requirements
 - “When in doubt, bid it out”
 - Could also contact the Federal agency to get their opinion
- ▶ New policies and procedures should be in place by July 1

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Subrecipient Monitoring and Management (Sections 200.330 - 200.332)

Vendor vs. Contractor vs. Subrecipient

- ▶ Vendor (A-133): Dealer, distributor, merchant, or other seller providing goods/services required for Federal program. Goods/services may be used by organization or program beneficiaries.
- ▶ Contractor (200.23): An entity that receives a contract (200.22). [A legal instrument to purchase property or services needed to carry out a project or program under a Federal award. “Contract” does NOT include any document meeting the definition of a Federal Award or subaward (200.92).]
- ▶ Substance over form
 - Term used to label the legal instrument does NOT determine whether the other party is a vendor/contractor or subrecipient.
 - **“Vendor” and “Contractor” mean NOT a recipient or subrecipient.**

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Subrecipient Monitoring and Management (Sections 200.330 - 200.332)

Vendor/Contractor

Procurement relationship with recipient/subrecipient

Provides goods/services within normal business operations

Provides similar goods/services to many different purchasers

Operates in a competitive environment

Provides goods/services ancillary to program operation

Not subject to program compliance requirements

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Subrecipient Monitoring and Management (Sections 200.330 - 200.332)

Subrecipient

A-133: Non-Federal entity expending Federal awards received from a PTE to carry out a Federal program. Does not include individuals that benefit from such a program.

UG: Non-Federal entity receiving a subaward from the PTE to carry out part of a Federal program. Does not include beneficiary of such program.

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Subrecipient Monitoring and Management (Sections 200.330 - 200.332)

Subrecipient

A-133 characteristics:

- Determines who is eligible to receive Federal assistance.
- Performance is measured against objectives of Federal program
- Responsible for programmatic decision making
- Responsible for adherence to program compliance requirements
- Carries out a program

UG characteristics

- Determines who is eligible to receive Federal assistance
- Performance is measured by Federal program objectives being met
- Responsible for programmatic decision making
- Responsible for adherence to program award requirements
- Carries out a program for a public purpose specified by statute

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Subrecipient Monitoring and Management (Sections 200.330 - 200.332)

- ▶ Evaluate each subrecipient's risk of noncompliance—to determine appropriate subrecipient monitoring
 - Prior experience
 - Results of previous audits
 - Changes in personnel or systems
 - Extent and results of federal agency monitoring
- ▶ Consider imposing specific subaward conditions
 - Specific conditions, 200.207.
 - Risk assessment
 - History of failure to comply
 - Failure to meet performance goals
 - Otherwise not responsible
 - 6 example conditions to impose
 - Notifications to subrecipient

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Subrecipient Monitoring and Management (Sections 200.330 - 200.332)

Pass-Through Agreement Requirements

- ▶ 13 specified data elements in subrecipient agreements
- ▶ All requirements imposed for compliance with award
- ▶ Additional requirements imposed for PTE's compliance
- ▶ Approved federally recognized indirect cost rate, indirect cost rate negotiated with PTE (if no federal rate), or de minimis rate per 200.414
- ▶ Subrecipient permits PTE and auditors to access records and financial statements
- ▶ Appropriate terms and conditions for closeout.

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Subrecipient Monitoring and Management (Sections 200.330 - 200.332)

- ▶ Monitor subrecipient's activities as necessary to ensure:
 - Use of subaward for authorized purpose
 - Compliance with Federal requirements and terms of subaward
 - Subaward performance goals are achieved
 - Monitoring must include:
 - Reviewing financial and performance reports required by PTE.
 - Following up and ensuring subrecipient takes timely and appropriate action on all deficiencies pertaining to subaward, however detected
- ▶ Possible useful monitoring tools
 - Training and technical assistance on program-related matters
 - On-site reviews of program operations
 - Agreed-upon-procedures engagements

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Subrecipient Monitoring and Management (Sections 200.330 - 200.332)

Verify every subrecipient is audited as required by Subpart F when Federal award expenditures are expected to exceed threshold in 200.501 (single audit)

Consider whether results of subrecipient's audits or other monitoring indicate a need to adjust PTE's records.

Consider taking enforcement action against noncompliant subrecipients (200.338, Remedies for noncompliance)

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Indirect Costs (Facilities & Administration) (Section 200.414)

Major IHE's (required to use Standard Format for Submission in 2 CFR 200, Appendix III, para C.11.) and Major Nonprofits (> \$10 mil direct Federal funding)

Facilities

- ▶ Depreciation on buildings, equipment, capital improvement
- ▶ Interest on debt associated with certain items above
- ▶ Operations and maintenance expenses
- ▶ IHE Libraries
- ▶ Allocations from other indirect cost pools

Administration

- ▶ General administration and general expenses (Director's office, accounting, personnel, anything else not in Facilities)
- ▶ Nonprofit Libraries

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Indirect Costs (Facilities & Administration) (Section 200.414)

- ▶ Nonprofit direct vs. indirect determined on cost identified with a particular Federal award, not type of cost
- ▶ Negotiated indirect cost rates
 - All Federal agencies and PTEs must accept the rate an entity has negotiated in accordance with the Appendices to 2 CFR 200
 - Exceptions for Federal statute/regulation; Agency must notify OMB
 - PTE must negotiate rate with subrecipient or accept 10% if no Federal rate
- ▶ Entity may elect 10% de minimis rate if never received a negotiated Federal rate
 - May use indefinitely
 - Must use consistently until entity chooses to negotiate a rate

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Indirect Costs (Facilities & Administration) (Section 200.414)

- ▶ Entities with current federally negotiated indirect cost rate may apply for a one-time extension of the rate for up to four years
 - If extension is granted, rate review cannot be requested until extension ends
 - When extension ends, entity must apply to negotiate new rate
 - Once a new rate is negotiated, entity may apply for a one-time extension of up to 4 years on that rate.
- ▶ FAQs on 200.414
 - Ties with “Effective Date” for the most questions (15)
- ▶ Appendices III-VII can also provide additional information

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Pension Expense Reimbursement Requirements (Section 200.431g)

Pension costs incurred under established policies

- ▶ Reasonable policies
- ▶ Allocation of costs is not discriminatory
- ▶ Accrual basis costs assigned to fiscal years complies with GAAP
- ▶ Costs assigned to fiscal year are paid within 6 months after FYE

NOT actuarial increases in pension costs from payment delays



Pension Expense Reimbursement Requirements (Section 200.431g)

Pension plan cost computation:

- ▶ Pay-as-you-go costs: actual payments to retirees/beneficiaries
- ▶ Actuarially calculated costs must comply with GAAP
 - Funding >6 months after FYE is a cost in next year
- ▶ Funding > actuarial cost may be used as contribution in future years
- ▶ Federal agency gets equitable share of returned pension costs



Exceptions to Uniform Guidance (Section 200.102)

- ▶ Only OMB may allow exceptions
 - Only for classes of Federal awards or non-federal entities
 - No exceptions for Subpart F allowed (single audit)
 - Exceptions for classes of awards or non-Federal entities will be posted on the OMB Website.
- ▶ <https://cfo.gov/wp-content/uploads/2014/12/Agency-Exceptions.pdf>
(or Google “Agency-Exceptions”)
- ▶ Compliance Supplement, Appendix I
 - Lists programs which are exempt from Post Award Requirements
 - Except 200.330 - 200.332 regarding subrecipients and PTEs
 - Except procurement for certain HHS programs
 - Lists programs exempt from Cost Principles

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Exceptions to Uniform Guidance (Section 200.102)

- ▶ Compliance supplement, Appendix VII, Section VI
 - OMB does not maintain a complete list of exceptions
 - Auditors (and grant administrators) should review program compliance supplement and agency regulations implementing the Uniform Guidance as necessary to identify any applicable exceptions.
 - For programs without a compliance supplement, agency implementing regulations for Uniform Guidance should be reviewed to identify exceptions.
 - Questions should be directed to Federal agency key management liaisons listed in Appendix III.
- ▶ Federal agencies can make exceptions on case by case basis

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Changes to Uniform Guidance (Appendix XII and FAQs)

- ▶ Appendix XII (1/1/16) addresses proceedings to report
- ▶ FAQs provide additional context and background for the Uniform Guidance.
- ▶ FAQs have the same authority as CFR 200.
 - In case of any discrepancy, 2 CFR 200 governs.
- ▶ Comprehensive list of FAQs
 - <https://cfo.gov/wp-content/uploads/2017/08/July2017-UniformGuidanceFrequentlyAskedQuestions.pdf>
 - 200.511-1: Auditee must prepare summary schedule of prior audit findings and corrective action plan.
 - Corrective action plan must be on auditee letterhead and separate from auditor's findings.

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What Questions Do You Have?

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