

## TAB 3

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**The White House**

Office of the Press Secretary

For Immediate Release

February 28, 2011

## Presidential Memorandum--Administrative Flexibility

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments

Over the last 2 years, my Administration has worked with State, local, and tribal governments through the Recovery Act and other means to create jobs, build infrastructure, and protect critical programs and services in the face of declining revenues. But through smarter government we can do even more to improve outcomes and lower costs for the American taxpayer.

Federal program requirements over the past several decades have sometimes been onerous, and they have not always contributed to better outcomes. With input from our State, local, and tribal partners, we can, consistent with law, reduce unnecessary regulatory and administrative burdens and redirect resources to services that are essential to achieving better outcomes at lower cost. This is especially urgent at a time when State, local, and tribal governments face large budget shortfalls and American taxpayers deserve to know that their funds are being spent wisely.

On January 18, 2011, I signed Executive Order 13563, which, among other things, calls for careful analysis of regulations by executive departments and agencies (agencies), including consideration of costs and benefits. Executive Order 13563 also requires retrospective analysis of existing significant rules and greater coordination across agencies to simplify and harmonize redundant, inconsistent, or overlapping requirements, thus reducing costs.

Executive Order 13563 applies to regulations involving and affecting State, local, and tribal governments. In particular, my Administration has heard from these governments that the array of rules and requirements imposed by various Federal programs and agencies may at times undermine their efforts to modernize and integrate program delivery. While appropriate data collection requirements are important to program accountability, some of these requirements are unduly burdensome, may not properly align compliance requirements with outcomes, are not synchronized across programs, and fail to give governments and taxpayers meaningful information about what works and what needs to be improved or be stopped. I believe that working together, State, local, and tribal governments and Federal agencies can distinguish between rules and requirements that support important goals -- such as promoting public health and welfare; protecting the rights of individuals, organizations, and private businesses; and assuring that programs produce intended outcomes -- from rules and requirements that are excessively burdensome or may not serve their intended purpose.

Through this memorandum, I am instructing agencies to work closely with State, local, and tribal governments to identify administrative, regulatory, and legislative barriers in Federally funded programs that currently prevent States, localities, and tribes, from efficiently using tax dollars to achieve the best results for their constituents.

Section 1. Coordination and Collaboration. To facilitate coordination across Federal agencies and State, local, and tribal governments, I direct the Director of the Office of Management and Budget (OMB) to lead a process, in consultation with State, local, and tribal governments, and agencies, to: (1) provide input to multiple agencies on State-specific, regional, or multistate strategies for eliminating unnecessary administrative, regulatory, and legislative burdens; (2) enable State, local, and tribal governments to request increased flexibility, as appropriate, from multiple agencies simultaneously and receive expeditious and judicious consideration of those requests; (3) establish consistent criteria, where appropriate, for evaluating the potential benefits, costs, and programmatic effects of relaxing, simplifying, or eliminating administrative, regulatory, and legislative requirements; and (4) facilitate consensus among State, local, and tribal governments and agencies on matters that require coordinated action.



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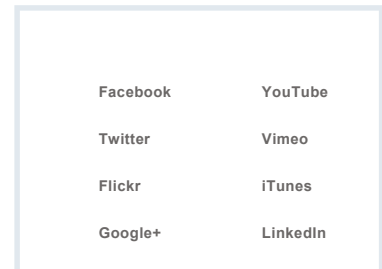
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The Director of the OMB shall also take the following actions:

- Review and where appropriate revise guidance concerning cost principles, burden minimizations, and audits for State, local, and tribal governments in order to eliminate, to the extent permitted by law, unnecessary, unduly burdensome, duplicative, or low-priority recordkeeping requirements and effectively tie such requirements to achievement of outcomes.
- With agencies that administer overlapping programs, collaborate with State, local, and tribal governments to standardize, streamline, and reduce reporting and planning requirements in accordance with the Paperwork Reduction Act. The OMB should play a lead role, with appropriate agencies, in helping to develop efficient, low-cost mechanisms for collecting and reporting data that can support multiple programs and agencies.
- Facilitate cost-efficient modernization of State, local, and tribal information systems, drawing upon the collaboration of the Chief Information Officer in the OMB and the Chief Technology Officer in the Office of Science and Technology Policy.
- Provide written guidance to agencies on implementation of this memorandum within 60 days of the date of this memorandum.

Sec. 2. Streamlining Agency Requirements. Within 180 days of the date of this memorandum, agencies shall take the following actions to identify regulatory and administrative requirements that can be streamlined, reduced, or eliminated, and to specify where and how increased flexibility could be provided to produce the same or better program outcomes at lower cost.

- Work with State, local, and tribal governments to identify the best opportunities to realize efficiency, promote program integrity, and improve program outcomes, including opportunities, consistent with law, that reduce or streamline duplicative paperwork, reporting, and regulatory burdens and those that more effectively use Federal resources across multiple programs or States. Agencies should invite State, local, and tribal governments to identify not only administrative impediments, but also significant statutory barriers, to efficiency and effectiveness in program implementation.
- Establish preliminary plans to (1) consolidate or streamline processes that State, local, and tribal governments must use to obtain increased flexibility to promote the same or better outcomes at lower cost; (2) establish transparent criteria or principles for granting such increased flexibility, including those that are generally available and those that may be granted conditionally; and (3) ensure continued achievement of program results while allowing for such increased flexibility.
- Identify areas where cross-agency collaboration would further reduce administrative and regulatory barriers and improve outcomes. This should include identifying requirements for State planning documents that are prerequisites for awards from individual Federal programs that could be consolidated into one plan serving a number of agencies and programs.
- Report the results of these actions to the Director of the OMB.

Sec. 3. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of any necessary appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

# Proposed Rules

Federal Register

Vol. 77, No. 39

Tuesday, February 28, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF MANAGEMENT AND BUDGET

### 2 CFR Chapters I and II

#### Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act)

**AGENCY:** Executive Office of the President, Office of Management and Budget (OMB).

**ACTION:** Advance Notice of Proposed Guidance.

**SUMMARY:** In his November 23, 2009, Executive Order 13520 on *Reducing Improper Payments* and his February 28, 2011, Presidential Memorandum on *Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments*, the President directed the Office of Management and Budget (OMB) to work with Executive Branch agencies; state, local, and tribal governments; and other key stakeholders to evaluate potential reforms to Federal grants policies. Consistent with the Administration's commitment to increasing the effectiveness and efficiency of Federal programs, the reform effort seeks to strengthen the oversight of Federal grant dollars by aligning existing administrative requirements to better address ongoing and emerging risks to program outcomes and integrity. The reform effort further seeks to increase efficiency and effectiveness of grant programs by eliminating unnecessary and duplicative requirements. Through close and sustained collaboration with Federal and non-Federal partners, OMB has developed a series of reform ideas that would standardize information collections across agencies, adopt a risk-based model for Single Audits, and provide new administrative approaches for determining and monitoring the allocation of Federal funds.

**DATES:** To be assured of consideration, comments must be received by OMB at one of the addresses provided below, no

later than 5 p.m. Eastern Standard Time (E.S.T) on March 29, 2012.

**ADDRESSES:** In submitting comments, please refer to file "Grant Reform". You may submit comments using one of the following three alternatives (please choose only one of these three alternatives):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions under the "more Search Options" tab.

2. *By express or overnight mail.* You may send written comments to the following address only: Office of Management and Budget, 725 17th St. NW., Washington, DC 20025, Attention: Office of Federal Financial Management "Grant Reform".

3. *By regular mail.* You may mail written comments to the following address only: Office of Management and Budget, 725 17th St. NW., Washington DC, 20500, Attention: Office of Federal Financial Management "Grant Reform". Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we strongly encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments sent via surface mail will be received before the comment closing date.

Comments will be most useful if they are presented in the same sequence (and with the same heading) as the section of this notice to which they apply. Also, if you are submitting comments on behalf of an organization, please identify the organization. Finally, the public comments received by OMB will be posted on OMB's Web site and at <http://www.regulations.gov> (follow the search instructions on that Web site to view public comments). Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature.

Copies of the OMB Circulars that are discussed in this notice are available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/). The Cost Principles for Hospitals are in the regulations of the Department of Health and Human Services at 45 CFR part 75, Appendix E (*Principles for Determining Costs Applicable to Research and Development Under Grants and*

*Contracts with Hospitals*), at <http://www.gpo.gov/fdsys/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Victoria Collin at (202) 395-7791 for general information.

**SUPPLEMENTARY INFORMATION:** This advance notice outlines the reform ideas for which OMB seeks public comment. These comments will assist OMB in its development in the coming months of a further **Federal Register** notice, to be published for comment later this year, which would propose specific revisions to existing requirements. These reform ideas relate to, and could result in proposed revisions to the following government-wide issuances: OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in 2 CFR parts 220, 225, 215, and 230); Circulars A-89, A-102, and A-133; the guidance in Circular A-50 on Single Audit Act follow-up; and the Cost Principles for Hospitals at 45 CFR Part 74, Appendix E. As part of this ongoing review, OMB will consider the consolidation of currently-separate guidelines addressing related topics as well as the continued integration of guidelines into title 2 of the Code of Federal Regulations.

The reform ideas would be applicable to grants and cooperative agreements that involve state, local, and tribal governments as well as universities and nonprofit organizations. To the extent that current OMB circulars on cost principles cover all awards including contracts for these entities, reforms to cost principles will equally apply to all Federal awards including contracts, except for those contracts that are subject to "full coverage" under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201. CAS-covered contracts will continue to be subject to the relevant requirements under the Federal Acquisition Regulation (FAR). Single Audit Act requirements will continue to apply to all Federal awards including contracts, though cost reimbursement contracts may continue to be subject to additional audit requirements.

## I. Objectives and Background

### A. Objectives

As the President made clear in Executive Order 13563 of January 18, 2011, on *Improving Regulation and*

*Regulatory Review* (76 FR 3821; January 21, 2011; <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>), each Federal agency must “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations” and, to that end, it is important that Federal agencies identify those “rules that may be outmoded, ineffective, insufficient, or excessively burdensome,” and “modify, streamline, expand, or repeal them in accordance with what has been learned.” The President reinforced his commitment in Executive Order 13579 of July 11, 2011 on *Regulation and Independent Regulatory Agencies* (76 FR 41587; July 14, 2011; <http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf>).

As in other areas involving Federal requirements, the President is committed to eliminating requirements in the financial assistance arena that are unnecessary and reforming those requirements that are overly burdensome. As part of this commitment, the President believes that the Federal government has an obligation to eliminate roadblocks to effective performance in carrying out and completing grants and cooperative agreements. Essential to this reform effort is reducing “red tape” that is attached to the more than \$600 billion the Federal government spends annually in the form of grants and cooperative agreements. These awards provide important benefits and services to the public, and the awards go to state, local and tribal governments as well as to institutions of higher education and non-profit organizations. In order to ensure that the public receives the most value for the tax dollars spent, it is essential that these programs function as effectively and efficiently as possible, and that there be a high level of accountability to prevent waste, fraud, and abuse.

To this end, the President on February 28, 2011, issued his *Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments*, (Daily Comp. Pres. Docs.; <http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf>). In the Memorandum, the President explained that “Federal program requirements over the past several decades have sometimes been onerous, and they have not always contributed to better outcomes. With input from our State, local, and tribal partners, we can, consistent with law, reduce unnecessary regulatory and

administrative burdens and redirect resources to services that are essential to achieving better outcomes at lower cost.” In addition to other actions, the President instructed the OMB Director to “[r]eview and where appropriate revise guidance concerning cost principles, burden minimizations, and audits for State, local, and tribal governments in order to eliminate, to the extent permitted by law, unnecessary, unduly burdensome, duplicative, or low-priority recordkeeping requirements and effectively tie such requirements to achievement of outcomes.”

At the same time that the Federal Government must remove unnecessary and overly burdensome requirements that interfere with efficient and effective program performance, another Presidential priority is “intensifying efforts to eliminate payment error, waste, fraud, and abuse” in Federal programs, as the President emphasized in Executive Order 13520 of November 20, 2009, on *Reducing Improper Payments* (74 FR 62201; November 25, 2009; <http://www.gpo.gov/fdsys/pkg/FR-2009-11-25/pdf/E9-28493.pdf>).

Accordingly, as the President explained, it is important for Federal agencies “to more effectively tailor their methodologies for identifying and measuring improper payments to those programs, or components of programs, where improper payments are most likely to occur.” Moreover, the elimination of unnecessary and overly burdensome requirements can advance the goal of strengthened program integrity, by enabling resources to be focused on those activities that are most effective at reducing payment errors and eliminating waste, fraud and abuse.

Accordingly, in his February 2011 Memorandum on *Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments*, the President directed Federal agencies to “[w]ork with State, local, and tribal governments to identify the best opportunities to realize efficiency, promote program integrity, and improve program outcomes, including opportunities, consistent with law, that reduce or streamline duplicative paperwork, reporting, and regulatory burdens and those that more effectively use Federal resources across multiple programs or States.”

The reform ideas described below are being considered as approaches for pursuing these objectives.

The purpose of this notice is to solicit public input on a range of ideas for reforming the requirements that govern the management of Federal financial assistance awards. OMB is interested in

receiving broad public feedback on these ideas. Based on the feedback that is received, as well as on the ongoing discussions among Federal agencies (including their Inspectors General) as well as with other stakeholders, OMB in the coming months will develop a set of proposed amendments that, later this year, will be published for public comment in the **Federal Register**. The public comments on that proposed set of revisions will in turn be considered as OMB develops a final notice that will adopt a set of reforms. Following the implementation of these reforms, OMB will continue to monitor their impacts to evaluate whether (and the extent to which) the reforms are achieving their desired results, and OMB will consider making further modifications as appropriate.

In addition, OMB is considering implementing these reforms through the development and issuance of an integrated set of guidelines that would be contained in one consolidated circular, in which current administrative requirements that currently vary by type-of-recipient would be streamlined into one set of common requirements, while at the same time some provisions that vary among different types of recipients would be retained. The goal of such a streamlining would be to increase the consistency, and decrease the complexity, in how the Federal Government’s financial assistance programs are administered. Among other benefits, this will make it easier for applicants and recipients of Federal awards to understand and implement these requirements.

#### *B. Background*

The reform ideas outlined in this notice reflect input from a year of work by the Federal and non-Federal financial assistance community. In response to the President’s direction that OMB and Federal agencies identify ways to make the oversight of Federal funds more effective and more efficient, OMB worked with the Office of Science and Technology Policy (OSTP) to convene meetings with both Federal and non-Federal stakeholders to discuss possible ideas for reform efforts. These meetings resulted in OMB receiving a series of reform ideas at the end of August 2011 that have since been further developed as described below. In addition, over 150 comments were received from the university and research community. These comments are publicly available at [http://rbm.nih.gov/a21\\_task\\_force.htm](http://rbm.nih.gov/a21_task_force.htm).

On October 27, 2011, the OMB Director issued Memorandum M–12–01,

*Creation of the Council on Financial Assistance Reform* (<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-01.pdf>). To “create a more streamlined and accountable structure to coordinate financial assistance,” the Memorandum established the interagency Council on Financial Assistance Reform (COFAR) as a replacement for two Federal boards (the Grants Policy Council and the Grants Executive Board). The 10-member COFAR is composed of OMB’s Office of Federal Financial Management (Co-Chair); the eight largest grant-making agencies, which are the Departments of Health and Human Services (a Co-Chair), Agriculture, Education, Energy, Homeland Security, Housing and Urban Development, Labor, and Transportation; and one additional rotating member to represent the perspectives of other agencies, which for the first two-year term is the National Science Foundation.

Since the COFAR’s first meeting on November 4, 2011, it has worked to formulate and further develop reform ideas for consideration to streamline and improve financial management policy for Federal assistance awards. These reform ideas are presented below, in Part II of this notice. In Part III, specific questions are posed regarding these reform ideas, for which comments are especially invited, along with other comments.

## II. Reform Ideas for Comment

OMB invites comments from the public on all issues addressed in this advance notice. We invite those interested in responding to answer all of the questions posed or to choose to respond only to those questions of greatest interest to them. This feedback will assist us in fully considering issues and developing policies. In addition, the public is invited to suggest additional reform ideas for our consideration. Finally, we should note that, as this is an advance notice, the fact that OMB is requesting public comment on a reform idea does not mean that OMB has concluded that the reform idea necessarily should be pursued. That is why public comment is being requested, so that OMB and Federal agencies (and other stakeholders) can have the benefit of the public’s input, views and perspectives at this stage of the process, as we continue to evaluate these ideas for reform.

The reform ideas under discussion are outlined below in three main categories:

- *Section A*: reforms to audit requirements (Circulars A–133 and A–50)

- *Section B*: reforms to cost principles (Circulars A–21, A–87, and A–122, and the Cost Principles for Hospitals)

- *Section C*: reforms to administrative requirements (the government-wide Common Rule implementing Circular A–102; Circular A–110; and Circular A–89)

### *A. Reforms to Audit Requirements (Circulars A–133 and A–50)*

This section discusses ideas for changes that would be made to the audit guidance that is contained in Circular A–133 on *Audits of States, Local Governments, and Non-Profit Organizations* and in Circular A–50 on *Audit Follow-up*. The following are ideas for reform that have been raised and discussed.

#### *1. Concentrating audit resolution and oversight resources on higher dollar, higher risk awards.*

Changing the Single Audit framework could enable agencies to focus their oversight and follow-up resources in the most efficient and effective way for targeting improper payments, waste, fraud, and abuse. The following oversight guidelines are an illustrative example of the form that a revised framework for the Single Audit requirement might take:

*A. Entities that expend less than \$1 million in Federal awards* would not be required to conduct a Single Audit. This would be an increase in the current threshold of \$500,000, below which entities are currently not required to conduct Single Audits.

*B. Entities that expend between \$1 million and \$3 million in Federal awards* would be required to undergo a more focused version of the Single Audit, which would differ from current Single Audit requirements in that once a major program determination has been made, auditors would review only two compliance requirements for those programs. Allowable and unallowable costs would always be one of the required compliance requirements, and agencies would have the discretion to select the second compliance requirement for each of their programs as they deem most appropriate. OMB would provide guidance to agencies that this second compliance requirement should be the one that, for the particular program, would best target the risk of improper payments or waste, fraud, and abuse.

*C. Entities that expend more than \$3 million in Federal awards* would undergo a full Single Audit. These Audits would be strengthened per the ideas in reforms 2–5 (below) to give agencies better tools to reduce improper

payments and to eliminate waste, fraud, and abuse.

Raising the threshold for a Single Audit (from \$500,000 to \$1 million) would reduce the administrative burden for audited entities and for auditing agencies, allowing the agencies to concentrate their audit oversight and follow-up resources more closely on other entities that are higher-dollar and higher-risk. Focusing the Single Audit requirement (for entities expending between \$1 million and \$3 million) to two compliance requirements would enable agencies to tighten their scrutiny on the highest risk areas of program oversight while at the same time reducing the burden—for both agencies and recipients—associated with collecting and resolving audit findings in lower risk areas. This would narrow the scope of compliance-related information that agencies receive for entities expending below \$3 million. Finally, maintaining the full Single Audit for entities expending more than \$3 million would ensure that agencies still receive full Single Audit compliance information for higher dollar recipients, and that they will be able to shift more resources to provide the necessary level of oversight to those recipients.

#### *2. Streamlining the universal compliance requirements in the Circular A–133 Compliance Supplement.*

For all entities that undergo a full Single Audit, the universal compliance requirements listed in the Circular A–133 Compliance Supplement could be streamlined to focus on proper stewardship of Federal funds.

This could be done, for example, by emphasizing—in the universal compliance requirements—those elements that address improper payments, waste, fraud, abuse, and program performance, while streamlining other elements. Under this approach, a subset of compliance requirements would be targeted for increased testing, larger sample sizes, or lower levels of materiality. Examples of these could include: Allowable or unallowable activities and costs, eligibility, reporting, selection of subrecipients and subrecipient monitoring, special tests and provisions, period of availability of Federal funds, and compliance of procurement with suspension and debarment policies. At the same time, other compliance requirements could either be made optional for testing (depending on the material effect of that requirement on the program) or could have smaller sample sizes and higher levels of materiality. In addition, Federal agencies would have the ability, on a

program-specific basis to place higher emphasis through the Compliance Supplement process on those elements (no longer universal) which the agency believes are relevant to prevent waste, fraud, or abuse.

Refocusing the Single Audit Compliance Supplement to reduce the number of types of compliance requirements tested would both reduce the audit burden on recipients and provide agencies with more risk-based audits. This refocusing of the Single Audit is intended to allow agencies to concentrate their audit resolution and oversight resources on the requirements most essential to managing waste, fraud, and abuse and reducing improper payments. This could result in a more focused audit that produces the findings needed to ensure accountability, while relieving the burden of audit work on issues that are secondary to the integrity of funds. Agencies could add back specific requirements under program specific tests and provisions where necessary. This would limit the types of compliance information that Federal agencies routinely receive from the Single Audit process.

### 3. *Strengthening the guidance on audit follow-up for Federal awarding agencies.*

This reform approach could include changes along the following lines:

- Requiring agencies to designate a senior accountable agency official to oversee the audit resolution process;
- Requiring agencies to implement audit-risk metrics including timeliness of report submission, number of audits that did not have an unqualified auditor opinion on major programs, and number of repeat audit findings;
- Encouraging agencies to engage in cooperative audit resolution with recipients; and
- Encouraging agencies to take a proactive approach to resolving weaknesses and deficiencies, whether they are identified with single specific programs or cut across the systems of an audited recipient.

To improve audit follow-up, the Federal Government would digitize Single Audit reports into a searchable database to support analysis of audit results by Federal agencies and pass-through entities.

Strengthening audit resolution policies should result in agencies taking a more pro-active and collaborative approach towards following-up on audit findings, which should result in a decrease in audit findings and program risk over time. This collaborative approach would be envisioned more as a mediation process between agencies and recipients, with informal assistance

as needed, rather than a more formal provision of training or technical assistance. As underlying programmatic weaknesses are resolved and repeat findings reduced, both recipients' and agencies' audit burdens will be lessened. This may require more resources from Federal agencies as they work to strike the right balance on proactive oversight. A web-based searchable database of Single Audit findings will provide a key tool to improve the utility of audits.

### 4. *Reducing burden on pass-through entities and subrecipients by ensuring across-agency coordination.*

In order to reduce redundancy and burden, this reform idea would involve making more explicit the existing requirement that Federal awarding agencies are responsible for coordinating additional audits of a recipient entity with the Federal cognizant or oversight agency for audit for that entity. This would in no way impact the ability of Inspectors General to conduct audit work as deemed necessary in accordance with the Inspector General Act of 1978, as amended.

Ensuring that audits are coordinated across Federal agencies, and that agencies conduct audit follow-up for internal-control issues at those subrecipients which receive the majority of their Federal funds through direct Federal assistance, would reduce the number of subrecipients for which pass-through entities engage in follow-up efforts that could duplicate the Federal efforts.

### 5. *Reducing burdens on pass-through entities and subrecipients from audit follow-up.*

For those situations in which an entity receives a majority of its Federal funds through direct grants from the Federal government, and some Federal funds through subawards, the reform idea would be to require Federal agencies to conduct audit follow-up of the subawards for those audit findings regarding financial or internal control systems that are not specific to the program delivery of the subawards.

Such a change to Circular A-133 would be aimed at eliminating duplicative audit follow-up work performed by a pass-through entity without providing significant additional work to Federal agencies that already will be following-up on these same audit findings, as well as at simplifying the follow-up for the subrecipient. Pass-through entities that give subawards would no longer be required to resolve financial and internal control issues but could instead focus on the programmatic requirements of the

subawards they make. Subrecipients would not be required to negotiate with both the Federal government and the pass-through entity over the same financial and control issues that affect both types of awards. However, once the Federal government has resolved the financial and control issues with the subrecipient, a pass-through entity that awarded a subaward would be responsible for audit follow-up monitoring of these general findings to ensure that the subrecipient complies with the audit resolution as it applies to the subgrants made by the primary grantee. The subrecipient's Federal awarding agency would perform a normal audit follow-up for the financial and control issues, issuing management decisions on these audit findings, and provide a process to make these management decisions and a Federal contact person readily available to the affected pass-through entities.

### B. *Reforms to Cost Principles (Circulars A-21, A-87, and A-122, and the Cost Principles for Hospitals)*

This section discusses ideas for changes that would be made to the OMB cost-principle circulars that have been placed at 2 CFR Parts 220, 225, and 215 (Circulars A-21, *Cost Principles for Educational Institutions*; Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*; and Circular A-122, *Cost Principles for Non-Profit Organizations*), and to the Cost Principles for Hospitals that are in the regulations of the Department of Health and Human Services at 45 CFR Part 75, Appendix E (*Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals*). The following are ideas for reform that have been raised and discussed.

#### 1. *Consolidating the cost principles into a single document, with limited variations by type of entity.*

#### 2. *For indirect ("facilities and administrative") costs, using flat rates instead of negotiated rates.*

- One option would be to establish a mandatory flat rate that is discounted from the recipient's already negotiated rate. This approach could significantly reduce the burden associated with indirect cost rate calculation and negotiation, as well as reduce overall indirect costs.

- Another option would give recipients the option of accepting a flat rate or negotiating a rate. Recipients with a previously negotiated rate may have the additional option of accepting a discounted rate from their already negotiated rate. Recipients with a previously negotiated rate may have the



additional option of accepting a discounted rate from their already negotiated rate. Discounted rates could be maintained for up to a four-year period with minimal documentation, or raised through negotiation with full documentation.

Under both options, OMB would work with cognizant federal agencies and the HHS Division of Cost Allocation to develop a list of flat rates and discount factors by entity type. The aim of such approaches would be to reduce negotiation costs for agencies while reducing—for agencies, recipients, and subrecipients—the administrative burden associated with rate preparation and negotiations. Entities with CAS-covered contracts would still be required to use a negotiated rate for those contracts.

Establishing either a mandatory or optional flat indirect cost rate could reduce administrative burdens on recipients associated with documenting, justifying, negotiating, and maintaining support for a negotiated rate. This burden can be substantial depending on the extent to which an entity analyzes, documents, and negotiates a rate or group of rates. By setting the flat rate at a lower level than the negotiated rate would have been, this approach could also reduce indirect-costs expenses incurred by Federal agencies. OMB would continue to work with stakeholders to address potential challenges to implementation, including finding the right algorithms for setting the rates and reducing overall indirect costs.

One consideration here is the issue of whether Federal agencies would actually end up incurring additional indirect costs if each grantee had the option of choosing to use a flat rate or a negotiated rate. The concern here is that, through their choices, grantees would apply those rates that would result in the highest indirect cost reimbursement, with these increases in indirect costs thereby resulting in less funding being available for direct programmatic activities. OMB is seeking input on how to structure a reform approach in a way that would ensure a reduction in overall indirect costs.

### 3. *Exploring alternatives to time-and-effort reporting requirements for salaries and wages.*

This reform idea would involve working with the Federal grant and Inspector General (IG) communities to identify risks associated with justifications for salaries and wages and to identify possible alternative mechanisms for addressing those risks beyond current time-and-effort reporting requirements.

This would include consideration of the ideas described in existing pilots or development of new pilots to accountably document the allowability and allocability of salaries and wages charged to Federal awards as direct costs. The first three pilots under consideration are those of the Federal Demonstration Partnership ([http://sites.nationalacademies.org/PGA/fdp/PGA\\_055834](http://sites.nationalacademies.org/PGA/fdp/PGA_055834)); the Department of Labor's Workforce Innovation Fund ([http://www.doleta.gov/grants/find\\_grants.cfm](http://www.doleta.gov/grants/find_grants.cfm)); and the Department of Education's Request for Ideas (<http://www.ed.gov/blog/2011/10/granting-administrative-flexibility-for-better-measures-of-success/>).

Considering and developing pilot programs that provide alternatives to time-and-effort reporting could result in substantial reductions of the administrative burden currently associated with compliance, while enhancing compliance and stewardship. OMB will work with IGs and other stakeholders to ensure that any alternative provides appropriate levels of auditable and accountable information.

### 4. *Expanding application of the Utility Cost Adjustment for research to more higher education institutions.*

This reform idea would expand application of the 1.3% indirect (facilities and administration) costs adjustment for utility costs of research to more institutions of higher education.

The Utility Cost Adjustment (UCA) is currently provided to 65 institutions of higher education for research grants. Under this proposal, the UCA would be extended to other institutions that submit to their cognizant Federal agency a utility cost study justifying an increase in utility cost reimbursement and an approved plan to reduce their utility costs over time. OMB would work with Department of Defense's Office of Naval Research and the Department of Health and Human Services' Division of Cost Allocation to develop guidelines and a format for the cost studies to ensure standardization across entities.

Extending the opportunity to apply for the UCA to more institutions of higher education for research is aimed at resolving the equitable treatment concern that has been raised by those academic institutions that have not been offered this opportunity since the UCA became available to some institutions in 1998. This revision would address that concern while still ensuring cost accountability and reduced utility consumption by requiring a utility cost study (to be developed by OMB in coordination with DOD's Office of Naval Research and HHS' Division of Cost

Allocation) as well as a plan to reduce utility costs in order for the adjustment to be approved. If all remaining institutions apply for and receive this adjustment, this revision could raise Federal indirect cost reimbursements for utility costs by up to approximately \$80 million per year once fully implemented.

### 5. *Charging directly allocable administrative support as a direct cost.*

This reform idea would involve clarifying the circumstances under which institutions of higher education, and other entities where appropriate, may charge directly allocable administrative support as a direct cost. Included are project-specific activities such as managing substances/chemicals, data and image management, complex project management, and security.

This clarification would be aimed at ensuring that charges are appropriately classified in order to provide support for all of the costs directly associated with a Federal award, while reducing the burdens of securing special permission to purchase what have become routine supplies. This is not intended to result in a net cost increase, but rather to provide clarity in how allowable costs are routinely charged.

### 6. *Including the cost of certain computing devices as allowable direct cost supplies.*

This reform idea would involve explicitly including the cost of computing devices not otherwise subject to inventory controls (i.e. cost less than the organization's equipment threshold) as allowable direct cost supplies. Applicants for Federal awards would be required to document these items as a separate line-item in their budget requests, but would not be required to conduct the more stringent inventory controls in place for equipment.

This clarification would be aimed at ensuring that charges are appropriately classified in order to provide support for all of the costs directly associated with a Federal award, while reducing the burdens of securing special permission to purchase what have become routine supplies. This is not intended to result in a net cost increase, but rather to provide clarity in how allowable costs are routinely charged.

### 7. *Clarifying the threshold for an allowable maximum residual inventory of unused supplies.*

This reform idea would involve harmonizing cost principles with existing language in Circulars A-110 and A-102 to clarify that \$5,000 is the threshold for an allowable maximum residual inventory of unused supplies that may be retained for use on another

Federal award at no cost, as long as the cost was properly allocable to the original agreement at the time of purchase.

This clarification would be aimed at minimizing confusion about appropriate disposal or re-expensing of unused inventories at the conclusion of an award and at ensuring consistency in the application of the cost principles in the circulars.

**8. *Eliminating requirements to conduct studies of cost reasonableness for large research facilities.***

This reform idea would involve eliminating requirements for institutions of higher education, and other entities where appropriate, to conduct studies of cost reasonableness for large research facilities. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

**9. *Eliminating restrictions on use of indirect costs recovered for depreciation or use allowances.***

This reform idea would involve eliminating the restrictions on the use of the portion of indirect cost recoveries associated with depreciation or use allowances. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

**10. *Eliminating requirements to conduct a lease-purchase analysis for interest costs and to provide notice before relocating federally sponsored activities from a debt-financed facility.***

This reform idea would involve eliminating requirements for institutions of higher education, and other entities where appropriate, to conduct a lease-purchase analysis to justify interest costs, and to notify the cognizant Federal agency prior to relocating federally sponsored activities from a facility financed by debt. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

**11. *Eliminate requirements that printed "help-wanted" advertising comply with particular specifications.***

This reform idea would update the cost principles to reflect the media now used for those notices.

**12. *Allowing for the budgeting for contingency funds for certain awards.***

This reform idea would involve clarifying that budgeting for contingency funds associated with a Federal award for the construction or upgrade of a large facility or instrument, or for IT systems, is an acceptable and necessary practice; that the method by

which contingency funds are managed and monitored is at the discretion of the Federal funding agency. Contingency related amounts should not be included in recipient proposed budgets for specific awards or in the actual award documents; risk-adjusted total cost estimates should be based on verifiable supporting data consistent in compliance with Generally Accepted Accounting Principles (GAAP) and with standard project-management practices. Rebudgeting out of these funds would not be allowable.

Allowing recipients to budget for contingency funds is aimed at clarifying and harmonizing the rules on what is deemed standard project management practice and to encourage development of shared IT services. There could be some cost implications to projects if and when the contingency funds become necessary spending.

**13. *Requesting that the Cost Accounting Standards Board (CASB) consider increasing the minimum threshold for disclosure statements.***

This reform idea would involve OMB requesting that the Cost Accounting Standards Board consider the following—

- Increasing the minimum threshold for institutions of higher education to file a disclosure statement of cost-accounting standards from \$25 million to \$50 million in Federal awards per year based on the average of the entity's most recent three years;
- Establish that the requirement no longer applies if an entity drops below that threshold and is not required to file under current Cost Accounting Standards Board (CASB) requirements described at 48 CFR 9903.202-1; and
- Remove exhibit A of Circular A-21 from future guidance.

OMB would also request that the CASB reassess its rule to increase the \$25 million procurement contract threshold for institutions of higher education to conform to the \$50 million threshold for other types of entities. OMB would also link the requirement to future adjustments to the CASB rule.

**14. *Allowing for excess or idle capacity for certain facilities, in anticipation of usage increases.***

This reform idea would allow for excess or idle capacity in consolidated data centers, telecommunications, and public safety facilities. In order to consolidate data centers and operate in a cloud-based environment, data centers require excess capacity at their creation in order to accommodate increases in usage later on. Other telecommunications facilities and public safety projects have similar characteristics. Federal sharing of these

costs would be contingent on the grantee providing a multi-year plan for reaching full capacity of the data center. The OMB cost principles currently do not address the excess or idle capacity in consolidated data centers.

**15. *Allowing costs for efforts to collect improper payment recoveries.***

This reform idea would involve revising OMB guidelines to allow costs for expenses associated with the effort to collect improper payment recoveries or related activities, if such costs are specifically approved or directed by the awarding agency.

This change would be aimed at meeting the President's directive to improve the Federal government's ability to recover improper payments. While this could result in increased upfront costs to the agencies, the intention here is that awarding agencies would approve these costs only when the anticipated amount of recovered funding more than justifies the expense of collection.

**16. *Specifying that gains and/or losses due to speculative financing arrangements are unallowable.***

This reform idea would involve specifying that gains and/or losses, related to debt arrangements on capital assets, due to speculative financing arrangements (such as hedges, derivatives, etc.) are unallowable. Due to the volatile nature of such instruments, all derivative and hedging instruments would be unallowable, including derivative and hedging instruments embedded in other contracts, whether used for risk management purposes, forecasting, calculations used for the preparation of proposals for federal funding (e.g., forecasting contingencies) or otherwise, and regardless of whether related to assets, liabilities, or expenses.

This change would be aimed at updating the cost principles to address all types of debt arrangements.

**17. *Providing non-profit organizations an example of the Certificate of Indirect Costs.***

This reform idea would involve providing non-profit organizations an example of the required certification (Certificate of Indirect Costs) similar to the information that is already provided for state, local, and tribal governments. This would be aimed at providing uniformity in documentation requirements across different types of entities.

**18. *Providing non-profit organizations with an example of indirect cost proposal documentation requirements.***

This reform idea would involve providing, for non-profit organizations, an example of indirect cost proposal

documentation requirements that are similar to the information provided for state, local, and tribal governments. This would be aimed at providing uniformity in documentation requirements across different types of entities.

*C. Reforms to Administrative Requirements (the Common Rule implementing Circular A-102; Circular A-110; and Circular A-89)*

This section discusses ideas for changes that would replace the government-wide common rule implementing Circular A-102 on *Grants and Cooperative Agreements with State and Local Governments* and that would revise Circular A-110 on *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations* (2 CFR part 215) and Circular A-89 on *Catalog of Federal Domestic Assistance*. The following are ideas for reform that have been raised and discussed

*1. Creating a consolidated, uniform set of administrative requirements.*

This reform idea would involve consolidating the administrative requirements in OMB Circulars A-102 and A-110 into a uniform set of administrative requirements for all grant recipients. This uniform guidance would continue to include limited exceptions by type of recipient.

*2. Requiring pre-award consideration of each proposal's merit and each applicant's financial risk.*

This reform idea would involve requiring agency consideration of the merit of each proposal and the financial risk associated with each applicant prior to making an award. (Many agencies currently award grants based on merit review under current law and policy. The proposed change would be a reform in the sense that such merit-based review would be required for the first time in an OMB circular.) Indicators of risk would include past financial, internal control, and programmatic performance. The outcome of the review should affect award decisions, and risk assessment may also affect terms and conditions. This would formalize a "best practice" that is already conducted by many agencies, and agencies will continue to have the discretion to determine the format of the review. This reform would not apply to formula grants.

This change would be aimed at ensuring greater transparency in the award making process as well as higher quality of awarded projects, and at delivering improved results with less risk of waste, fraud, or abuse during implementation.

In evaluating risks, agencies would be required to consider factors that could include: Financial stability; quality of management and internal control systems and the ability to meet the management standards prescribed in the amended guidance; history of performance; Federal award Single Audit reports and findings for previous awards; and any other factors that may affect the applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients. Merit reviews may be implemented according to the individual practices of each agency. This reform would include explicit authority for agencies to modify award decisions as well as the terms and conditions of any award based on the findings of a risk review.

Articulating the requirement for this review in an OMB circular could ensure greater transparency in the award making process and higher quality of awarded projects. There may be some additional burden for agencies that do not currently conduct such reviews to incorporate them into their processes, and could also result in additional information collections from recipients.

*3. Requiring agencies to provide 90-day notice of funding opportunities.*

This reform idea would involve requiring Federal agencies to provide 90-day advance forecast of funding opportunities in an updated Catalog of Federal Financial Assistance (CFFA) that will replace the existing Catalog of Federal Domestic Assistance (CFDA). This would not affect the requirement to post actual notices of funding opportunities on Grants.gov.

This change would be aimed at providing applicants with additional time and information with which to prepare financial assistance applications, thereby improving the relevance and quality of proposals submitted to Federal agency programs. Exceptions to the 90-day notice requirement would include statutory obligations or exigent circumstances that dictate a shorter timeframe. The new enhanced CFFA will include both domestic and international funding priorities for grants, loans, insurance, and other types of financial assistance, including information about projected amounts of available funds and a summary of general eligibility requirements. These notices of intended priorities may change based on modifications to funding cycles and/or statutory authorities.

*4. Providing a standard format for announcements of funding opportunities.*

This reform idea would incorporate into circulars the existing requirement for certain categories of information to be published in announcements of public funding opportunities. See OMB Memorandum M-04-01 of October 15, 2003 ([http://www.whitehouse.gov/omb/memoranda\\_fy04\\_m04-01](http://www.whitehouse.gov/omb/memoranda_fy04_m04-01)), which announced the **Federal Register** notice that OMB published at 68 FR 58146 (October 8, 2003).

Among other information, the opportunity announcement must include specific eligibility or qualification information and a clear description of all criteria used in agency review of applications for the grant opportunity. Further, agencies must disclose all terms and conditions that may be attached to the funded awards and general information regarding post-award reporting requirements, except for award specific terms and conditions determined during the pre-award process. Providing this level of transparency at the solicitation stage assists applicants in determining not only whether they are eligible and/or qualified for an award, but also the scope of recipient responsibilities associated with an award.

*5. Reiterating that information collections are subject to Paperwork Reduction Act approval.*

This reform idea would involve reiterating that information collection requests are limited to standardized data elements approved by OMB, as required under the Paperwork Reduction Act of 1995 (PRA), plus OMB-approved exceptions for all applications and reports.

Continued efforts at data standardization are intended to improve governmentwide program management; enhance transparency in Federal awards; and streamline and reduce the reporting burden, including the time necessary to comply with application and reporting requirements. For both applications and post-award reporting, there are current requirements that agencies use standard OMB-approved governmentwide information collections, with deviations approved by OMB on a limited basis. Continued data standardization will also support OMB and Federal agency efforts to develop a comprehensive, end-to-end grants reporting system that allows applicants and recipients to apply for and report on all Federal grants at one location. Approved collections would be designed to include necessary information for program measurement and monitoring. This reform would in some cases limit Federal agencies' ability to require unique information

collections for particular program, except where required by statute.

### III. Questions for Comment

The list below includes the questions about these reform ideas that address issues which are of greatest interest to OMB at this stage of the process. Comments addressing any other concerns, and other types of feedback, are also welcome.

In addition, as was explained at the beginning of this notice, the public comments received by OMB will be posted on OMB's Web site and at <http://www.regulations.gov>. Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature.

#### A. Overarching Questions

1. Which of these reform ideas would result in reduced or increased administrative burden to you or your organization?

2. Which of these reform ideas would be the most or least valuable to you or your organization?

3. Are there any of these reform ideas that you would prefer that OMB not implement?

4. Are there any reform ideas, beyond those included in this notice, that OMB should consider as a way to relieve administrative burden?

#### B. Single Audits

1. In general terms, how important are Single Audits to your entity or to entities you audit for subrecipient monitoring?

2. In general terms, what impacts would the following changes to the Single Audit framework have on your organization in administrative burden and in ability to provide oversight to subrecipients?

a. Increasing the Single Audit threshold to \$1 million?

b. Requiring a more focused Single Audit (with only two compliance requirements) for any entity expending between \$1 million and \$3 million?

c. Requiring full Single Audits for any entity expending more than \$3 million?

3. Should the Single Audit threshold(s) be increased, and if so, to what extent?

4. Which types of currently universal Single Audit compliance requirements do you think are most essential to identifying and mitigating waste, fraud, and abuse?

5. What processes or tools should the Federal Government implement in order to ensure better coordination in the Single Audit oversight by Federal agencies and pass-through agencies,

including in the resolution of audit findings that cut across multiple agencies' programs?

#### C. Cost Principles

1. On indirect cost rates:

a. Would administrative burden be reduced by having an indirect cost rate in place for 4 years?

b. Are there any existing Federal or state level statutory/regulatory/agency requirements that would prohibit recipients from using a "flat" indirect cost rate if it were proposed?

2. What are your views on the following types of indirect cost rates?

a. A flat rate

b. Longer term for negotiated rates to be in effect

c. A flat rate that would be a fixed percentage of the organization's already existing negotiated rate

3. In general terms, what would be the cost implications of implementing each of the following reforms, and/or of all of them together?

a. The proposed clarifications to allowable charges of directly allocable administrative support as a direct cost. As currently envisioned, reforms would clarify that project-specific activities such as managing substances/chemicals, data and image management, and security are allowable.

b. Allowing costs associated with recovery of improper payments.

c. Allowing excess capacity for telecommunications and public safety projects?

4. Would you be potentially interested in participating in a piloted alternative for time-and-effort reporting? Is there a permanent change to time-and-effort requirements that you recommend OMB consider?

5. If your organization is an educational institution that does not currently receive the Utility Cost Adjustment (UCA), what are the general factors that your organization would likely consider in deciding whether to conduct a cost study, and complete a plan to reduce utility costs, in order to justify receiving the UCA?

6. For organizations with CAS-covered contracts, are there differences between what is envisioned here and the standards for CAS-covered contracts in the FAR that you believe could be challenging to address?

#### D. Administrative Requirements

1. What areas of past performance should be considered as part of a Federal agency assessment of recipient risk (e.g., fulfillment of statutory matching requirements, record of sound financial management practices with no significant or material findings or

weaknesses, ability to meet established deadlines)?

2. What specific standards should be considered in Federal agencies' evaluation of merit prior to making Federal awards?

a. How should these be applied?

b. What elements and what source materials should be looked at?

3. With respect to the existing government-wide standard information collection requests (ICRs) for grant applications and grant reporting—

a. Do these ICRs provide necessary information to enable Federal agencies to review grant applications or to monitor the progress of grant awardees?

b. Are these ICRs unnecessarily burdensome and, if so, in what way(s)?

4. Should there be sets of standard data elements based on the type of assistance being provided (e.g. research, construction, social services, scholarships or aid program awards, etc.)?

5. Are there any system issues and associated costs that may arise as a result of implementing the new pre-award and post award requirements? In general, what is the rough order of relative magnitude of these costs?

**Daniel I. Werfel,**

*Controller.*

[FR Doc. 2012-4521 Filed 2-27-12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[Docket No. EERE-2010-BT-STD-0043]

RIN 1904-AC36

#### Energy Conservation Program: Public Meeting and Availability of the Framework Document for High-Intensity Discharge Lamps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public meeting and availability of the Framework Document.

**SUMMARY:** The U.S. Department of Energy (DOE) is initiating the rulemaking and data collection process to consider establishing energy conservation standards for high-intensity discharge (HID) lamps. Accordingly, DOE will hold a public meeting to discuss and receive comments on its planned analytical approach and the issues it will address in this rulemaking proceeding. DOE welcomes written comments from the

# PROGRAM GUIDANCE

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**PROGRAM:** All HUD Programs

**FOR:** Tribal Government Leaders, Tribally Designated Housing Entities,  
Department of Hawaiian Homelands  
*RJB*

**FROM:** Rodger J. Boyd, Deputy Assistant Secretary for Native American  
Programs

**TOPIC:** Consolidation of OMB Circulars

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**PURPOSE:** The purpose of this guidance is to inform grantees of programs administered by the Office of Native American Programs (ONAP) about government-wide changes to uniform administrative requirements, cost principles, and audit requirements for federal awards.

**BACKGROUND:** On December 26, 2013, the Office of Management and Budget (OMB) issued final guidance that consolidates, supersedes, and streamlines requirements in OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. OMB has now consolidated these Circulars into one new guidance that is codified in 2 CFR Part 200 and can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>.

All Federal agencies are required to make conforming technical changes to their regulations to implement the new 2 CFR Part 200 by December 26, 2014. HUD is starting the process of making these conforming regulatory changes in accordance with the OMB guidance and expects that its new regulations will become effective December 26, 2014. Grantees of HUD funds will be required to comply with these regulations.

HUD will issue further guidance in the near future to help grantees become more familiar with 2 CFR Part 200. HUD also encourage all grantees to review 2 CFR Part 200, and the webcast and FAQs available at this link: <https://cfo.gov/cofar/reform-of-federal-grants-policies-2/>

**ADDITIONAL GUIDANCE:** Contact Roberta Youmans in ONAP Headquarters if you have any immediate questions. She can be reached at (202) 402-3316 or at [roberta.l.youmans@hud.gov](mailto:roberta.l.youmans@hud.gov).



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF THE DEPUTY SECRETARY  
WASHINGTON, DC 20410-0050**

**Special Attention of:**

**NOTICE: SD-2015-01**

**Issued:**

**FEB 26 2015**

HUD Regional Directors  
HUD Field Office Directors  
HUD Offices of Community Planning and Development (CPD),  
Fair Housing and Equal Opportunity (FHEO),  
Housing,  
Native American Programs (ONAP),  
Lead Hazard Control and Healthy Homes (OLHCHH),  
Public and Indian Housing (PIH),  
Policy Development and Research (PD&R)  
HUD Grant Administrators, Grant Officers, Government Technical Monitors (GTMs), and  
Government Technical Representatives (GTRs) and Recipients of HUD Federal Financial  
Assistance

This notice remains effective until amended,  
superseded or rescinded

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**SUBJECT: Transition to 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance***

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## 1. BACKGROUND

On December 26, 2013, the Office of Management and Budget (OMB) published (at 78 Federal Register 78590; <https://federalregister.gov/a/2013-30465>) final guidance on the above subject, which is codified at 2 CFR part 200. OMB and the Federal awardmaking agencies published a joint interim final rule implementing the final guidance as requirements for recipients of Federal financial assistance on December 19, 2014 (at 79 Federal Register 75871; <https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>). OMB also made technical corrections to part 200.

The purpose of 2 CFR part 200 is to streamline the Federal government's guidance on administrative requirements, cost principles, and audit requirements to more effectively focus Federal resources on improving performance and outcomes, while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. The uniform guidance supersedes, consolidates, and streamlines requirements from eight OMB Circulars:

- A-21, *Cost Principles for Educational Institutions*,
- A-87, *Cost Principles for State, Local and Indian Tribal Governments*,
- A-89, *Catalog of Federal Domestic Assistance*,
- A-102, *Grants and Cooperative Agreements With State and Local Governments*,
- A-110, *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*,
- A-122, *Cost Principles for Non-Profit Organizations*,
- A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and
- The guidance in OMB Circular A-50, *Audit Followup*, on Single Audit Act follow-up.

HUD adopted this guidance at a new part, 2 CFR part 2400. The uniform guidance also removed: 2 CFR parts 215, 220, 225, and 230. HUD amended 24 CFR parts 84 and 85, which had codified OMB Circulars superseded by 2 CFR part 200, by removing all substantive provisions and including a saving provision that provides that Federal awards made prior to December 26, 2014, will continue to be governed by parts 84 or 85 as codified in the 2013 edition of the Code of Federal Regulations (CFR) or as provided under the terms of the Federal award.



## Major Reforms and Policy Changes

The policy reforms brought about by OMB's consideration of public comments and efforts to streamline federal grant-making processes are identified as the following:

- Eliminate duplicative/conflicting guidance;
- Focus on performance over compliance for accountability;
- Encourage efficient use of information technology (IT)/shared services;
- Provide for consistent treatment of costs;
- Limit allowable costs for the best use of Federal resources;
- Incorporate standard business processes using data definitions;
- Strengthen oversight; and
- Target audit requirements on risk of waste, fraud, and abuse.

In addition to the consolidation of the OMB Circulars, major audit changes include the following:

- The Single Audit threshold is raised from \$500,000 to \$750,000, which eliminates the need for more than 5,000 audits, with a cost savings estimated at \$250 million;
- The questioned cost limit in Single Audits is raised from \$10,000 to \$25,000;
- Assessment of government-wide audit quality is to be conducted every six years (beginning in 2018).

The uniform guidance, which provides a government-wide framework for grants management, is designed to reduce administrative burden for non-Federal entities receiving Federal awards.

## 2. EFFECTIVE DATE AND APPLICABILITY TO HUD

The uniform guidance was applicable for Federal agencies, including HUD, effective December 26, 2013. Federal agencies, including HUD, adopted 2 CFR part 200 as requirements for Federal financial assistance programs by the interim final rule published December 19, 2014. It was made applicable to non-Federal entities (recipients of Federal financial assistance) effective December 26, 2014, with one exception: §200.110(a) was revised to give a one-year grace period for implementation of the procurement standards. As will be detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation for the procurement standards will need to specify in their documented policies and procedures that they continue to comply with OMB Circulars A-87 or A-110 for one additional fiscal year which begins after December 26, 2014. For example, the first full fiscal year for a non-Federal entity with a June 30<sup>th</sup> year would be the year ending June 30, 2016. See also the General Transition Rules section of this Notice.



### 3. PURPOSE

The purpose of this Notice is to identify and explain significant changes made in 2 CFR part 200, and provide transition guidance and links to additional resource materials for HUD and its grant program stakeholders and other recipients of Federal financial assistance from HUD. This Notice is broken out by the six subparts in 2 CFR part 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*; and
- Subpart F – *Audit Requirements*.

Appendix A of this Notice provides the table of contents for 2 CFR part 200. HUD highly recommends that recipients familiarize themselves with 2 CFR part 200 in its entirety. This Notice is intended to highlight major changes and topical areas that may apply across all HUD programs or be of general interest.

### 4. SUBPART A – ACRONYMS AND DEFINITIONS: HIGHLIGHTS

Subpart A of 2 CFR part 200 lists definitions and acronyms for key terms found throughout the uniform guidance. Each definition is in its own section so that the reader can look at the table of contents to see defined terms. Since the uniform guidance originated in eight different Circulars, there are numerous conforming changes made to provide consistency for the terms used. In particular, part 200 uses “non-Federal entity” and “pass-through entity.” “Non-Federal entity” means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. “Pass-through entity” means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Policy decisions are reflected in some definitions, including: §200.18, *Cognizant agency for audit*, §200.23, *Contractor*, §200.33, *Equipment*, §200.73, *Oversight agency for audit*, and §200.94, *Supplies*. Section 13.b of this Notice provides a link to a crosswalk developed by OMB from the existing OMB Circulars to the final uniform guidance in 2 CFR part 200.

Definition of Indian Tribe: The definition of Indian tribe in §200.54 differs from the definition in the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4013, et seq.). The definition of Indian tribe in §200.54 has no effect on programs with statutory definitions of “Indian tribe.”

### 5. SUBPART B – GENERAL PROVISIONS: HIGHLIGHTS

Subpart B covers general provisions, including the basic purpose of 2 CFR part 200 and its applicability to different types of Federal awards to non-Federal entities, and states that

Federal agencies, including HUD, may apply subparts A-E to for-profit entities. Exceptions to the applicability of the rule are listed in 2 CFR 200.101(d) and (e) and 2 CFR 200.102. This subpart makes clear that part 200 does not supersede any existing or future authority under law or by executive order or the Federal Acquisition Regulation (FAR). As an example, for public housing, the disposition statute at Section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p) supersedes the disposition instructions in §200.311(c). Subpart B also covers Authorities, Effect on other issuances, Agency implementation, OMB responsibilities, Inquiries, Effective date, English language, Conflict of interest, and Mandatory disclosures. Highlights are discussed below.

Applicability: Section 200.101 includes a table that summarizes how the guidance applies to types of Federal awards. This table must be read along with the other provisions of section 200.101:

The following portions of Part 200:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e) of section 200.101):	Are NOT applicable to the following types of Federal Awards:
Subpart A—Acronyms and Definitions.	—All.	
Subpart B—General Provisions, except for §§200.111 English Language, 200.112 Conflict of Interest, 200.113.Mandatory disclosures	—All.	
§§ 200.111 English Language, 200.112 Conflict of Interest, and 200.113. Mandatory Disclosures	—Grant agreements and cooperative agreements.	<ul style="list-style-type: none"> <li>—Agreements for: loans, loan guarantees, interest subsidies, and insurance.</li> <li>—Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts.</li> <li>—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.</li> </ul>
Subparts C–D, except for Subrecipient Monitoring and Management.	—Grant agreements and cooperative agreements	<ul style="list-style-type: none"> <li>—Agreements for: loans, loan guarantees, interest subsidies, and insurance.</li> <li>—Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts.</li> <li>—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.</li> </ul>
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management.	—All.	
Subpart E—Cost Principles.	<ul style="list-style-type: none"> <li>—Grant agreements and cooperative agreements, except those providing food commodities.</li> <li>—Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts in accordance with the FAR.</li> <li>—Fixed price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.</li> </ul>	<ul style="list-style-type: none"> <li>—Grant agreements and cooperative agreements providing food commodities.</li> <li>—Fixed amount awards.</li> <li>—Agreements for: loans, loan guarantees, interest subsidies, insurance.</li> <li>—Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).</li> </ul>
Subpart F—Audit Requirements.	—All.	

Exceptions:

- Section 200.102(a) allows OMB to make exceptions to 2 CFR part 200 for certain classes of Federal awards or for certain non-Federal entities, but only in unusual circumstances and if such exceptions are not prohibited by law. Where the provisions of Federal statutes or regulations differ from the provisions of part 200, the provisions of the Federal statutes or regulations take precedence.
- Section 200.102(b) allows HUD to make certain exceptions on a case-by-case basis except where otherwise required by law or where OMB or other approval is expressly required by 2 CFR part 200. Under §200.102(c), HUD may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB or required by Federal statutes or regulations. HUD may also apply less restrictive requirements when making fixed amount awards as defined in Subpart A, §200.45.
- Exemptions from Subpart F, Audit Requirements, are not permitted under any circumstances.

English Language: Section 200.111 makes clear that all HUD financial assistance announcements, HUD award information (e.g., Notices of Funding Availability), and applications must be in the English language. Non-Federal entities may translate the Federal award and other documents into another language, however, in the event of any inconsistency, the English language meaning would control. Where a significant portion of the non-Federal entity's employees working on the award are not fluent in English, the non-Federal entity must provide the HUD award in English and the language(s) with which the employees are more familiar.

Conflict of Interest: Section 200.112 requires HUD to establish conflict of interest policies for Federal awards and requires non-Federal entities to disclose in writing any potential conflict of interest to HUD or the pass-through entity in accordance with HUD's policy. The general procurement standards in §200.318 require non-Federal entities to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest. "Organizational conflicts of interest" means that, because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

6. SUBPART C – PRE-FEDERAL AWARD REQUIREMENTS AND CONTENTS OF FEDERAL AWARDS: HIGHLIGHTS

Subpart C prescribes the instructions and other pre-award information to be used in the funding announcement and application process.

Selecting the Instrument for Award: Section 200.201 requires the Federal awarding agency or pass-through entity to decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or Federal contract under the Federal Acquisition Regulation) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08). The program statute or pass-through entity may have another name for

the document (e.g., annual contributions contract), but the choice is limited to these three instruments, in accordance with the Federal Grant and Cooperative Agreement Act.

Fixed Amount Awards: Section 200.201(b) allows for “fixed amount” awards under which the amount is negotiated using the cost principles (or other pricing information) as a guide. Fixed amount awards generally may be used if the project scope is specific and if adequate cost, historical, or unit pricing data are available to establish a fixed amount award based on a reasonable estimate of actual cost. Accountability is based on performance. There is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Payments may be based on milestones, on a unit price basis, or in a single payment upon completion of the Federal award. The non-Federal entity is required to provide a certification regarding completion. Periodic reports may be required.

Funding Announcements and Award Agreements: Sections 200.202, 200.203, 200.210, and Appendix I require funding opportunities to be available for at least 60 days and impose standard requirements on HUD’s notices of funding opportunities, on application requirements, and Federal award requirements. HUD will include with each Federal award any program-specific or other terms and conditions, and will share both the general and the program-specific or other requirements on a public website and in Notices of Funding Availability (NOFAs).

Risk-Based Awards: Sections 200.204 and 200.205 require Federal agencies to design and execute a merit review process for competitive applications using a risk-based approach that relies, in part, on HUD review of OMB-designated repositories of government-wide eligibility qualification or financial integrity information (such as the Federal Awardee Performance and Integrity Information System (FAPIS), “Do Not Pay” lists, etc.)<sup>1</sup>. This assessment can include, for example:

- financial stability,
- the quality of management systems and ability to meet the management standards in 2 CFR part 200,
- history of performance,
- reports and findings from audits, and
- the applicant’s ability to effectively implement statutory, regulatory, or other requirements, and debarment and suspension guidelines.

HUD must also comply with the debarment and suspension guidelines in 2 CFR part 180.

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<sup>1</sup> FAPIS is a database that has been established to track contractor misconduct and performance. The database contains Federal contractor criminal, civil, and administrative proceedings in connection with federal awards; suspensions and debarments; administrative agreements issued in lieu of suspension or debarment; non-responsibility determinations; contracts terminated for fault; defective pricing determinations; and past performance evaluations (see: <https://www.fapis.gov/fapis/index.jsp>). The “Do Not Pay” Business Center was developed for programs administered and/or funded by the Federal government to help prevent, reduce and stop improper payments while protecting citizens' privacy, and partner with agencies to identify potential fraud, waste, and abuse while protecting citizens' privacy (see: <http://donotpay.treas.gov/index.htm>).

Section 200.207 authorizes Federal agencies and pass-through entities to impose additional specific award conditions on applicants or recipients who have a history of failure to comply with terms and conditions, or failure to meet performance goals, or are not otherwise responsible. The conditions include requiring reimbursements rather than advance payments, requiring additional, more detailed reports, additional monitoring, etc. If such additional requirements are imposed, HUD or the pass-through entity must notify the applicant or non-Federal entity as to the nature of, and reasons for, the requirements, actions needed, and timeframe, if applicable. Special conditions must be promptly removed once the causal conditions have been corrected.

## 7. SUBPART D – POST-FEDERAL AWARD REQUIREMENTS: HIGHLIGHTS

Subpart D describes the requirements standards for managing and administering HUD awards. It includes standards for financial and program management, property and procurement standards, performance and financial monitoring and reporting, subrecipient monitoring and management, record retention and access, remedies for noncompliance, the provisions of the Federal Funding and Accountability Transparency Act (FFATA)<sup>2</sup> and closeout. NOTE: There will be exceptions to the items listed below and they will be published by regulation. See also Section 5 of this Notice.

Performance Measurement: Section 200.301 requires, as appropriate and in accordance with OMB information collection requirements, recipients to relate financial data to performance accomplishments of the Federal award and provide cost information to demonstrate cost effective practices (e.g., through unit cost data). This is in line with the shift in 2 CFR part 200 from compliance to performance. It also requires Federal agencies to use only OMB-approved forms for performance reports. Non-Federal entities must comply with FFATA. A recipient's performance should be measured in a way that will help HUD and other non-Federal entities improve program outcomes, share lessons learned, and spread the adoption of promising practices.

Internal Controls and Protected Personally Identifiable Information: Section 200.303 sets forth requirements for internal controls. This section reflects requirements that were previously in the A-133 audit requirements. It also addresses the non-Federal entity's responsibilities to take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the Federal awarding agency or the pass-through entity, consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

Payment: Section 200.305 describes cash management requirements applicable to states and other non-Federal entities to minimize the time elapsed between agencies' advance

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<sup>2</sup> FFATA, signed September 26, 2006, requires information on Federal awards (Federal financial assistance and expenditures) to be made available to the public via a single, searchable website, which is [www.USASpending.gov](http://www.USASpending.gov). The intent is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. Amendments to FFATA have expanded its scope. See also <https://www.frs.gov/>.

payments of funds to the non-Federal entity and the entity's disbursement of funds for direct program or project costs.

Interest Earned on Federal Advances: Section 200.305(b)(8) requires non-Federal entities to maintain advance Federal payments in interest-bearing accounts (with some exceptions). Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expenses. Under §200.303(b)(9), interest earned in excess of \$500 must be remitted annually to the Department of Health and Human Services' Payment Management System (either electronically through the system, or by check to the Department of Health and Human Services to the Treasury-approved lockbox: HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231).

Program Income: Section 200.307 generally encourages recipients to earn income to offset program costs. This section has several provisions that include, but are not limited to, the following:

- Proceeds from the sale of property or equipment are not program income; such proceeds will be handled in accordance with the requirements of §200.311, *Real property*, and §200.313, *Equipment*, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.
- If the Federal awarding agency does not specify in its regulations or the terms and conditions of its award, or give prior approval for how program income is to be used, then, ordinarily, program income must be deducted from total allowable costs to determine the net costs. Program income must be used for current costs unless HUD authorizes otherwise. Program income that the recipient did not anticipate at time of the Federal award must be used to reduce the award rather than to increase the funds committed to the project.

Revision of Budget and Program Plans: Section 200.308 requires, among other things, recipients to obtain Federal agency approvals for budget and program or project scope revisions.

Property Standards: Sections 200.310-200.316 set forth standards for real property, equipment, supplies, and intangible property. The regulations cover title, insurance, property trust relationships, and disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from HUD that provides for: 1) retention of title after compensation to HUD, 2) sale of the property and compensation to HUD, or 3) transfer of title to HUD or a third party approved or designated by HUD.

Procurement: §§200.317- 200.326 cover procurement standards. The standards are generally consistent with the requirements in 24 CFR part 85 for all non-Federal entities. For governmental recipients, the regulations have not substantially changed.

- The regulations require non-Federal entities to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest, and governing the performance of their employees engaged in the selection, award and administration of contracts. "Organizational conflicts of interest" means that,

because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization (§200.318(c)(2)).

- The non-Federal entity's procurement procedures must be designed to avoid acquisition of unnecessary or duplicative items and the non-Federal entity is encouraged to enter into intergovernmental or inter-entity agreements to procure or use common goods and services (§200.318(d) and (e)).
- Non-Federal entities, in conducting procurements, must conduct them in a manner providing full and open competition and are prohibited from using state or local geographical preferences in evaluating bids or proposals (except where applicable Federal statutes expressly mandate or encourage geographical preferences, such as HUD's Section 3 requirements in 24 CFR part 135) (§200.319).
- Methods of procurement now include a micro-purchase option, which is the acquisition of supplies or services that do not exceed \$3,000 (or \$2,000 for acquisitions for construction subject to the Davis-Bacon Act) (§200.320(a)).
- "Supplies" includes computing devices if the acquisition cost was less than the lesser of the capitalization level established by a non-Federal entity for financial statement purposes or \$5,000, regardless of the length of their useful life (§200.94).
- The Simplified Acquisition Threshold for small purchase procedures, which are those relatively simple and informal procurement methods for securing services, supplies or other property, is now \$150,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 and will be periodically adjusted for inflation (§200.88 and §200.320(b)).
- The non-Federal entity's contracts must contain certain provisions which are included in Appendix II of 2 CFR part 200 (§200.326).
- Non-Federal entities have one full fiscal year after the effective date to comply with the revised procurements standards (see *Implementation Dates* in the December 19, 2014, Federal Register at <https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>).

**Bonding Requirements:** Section 200.325 permits the Federal agency to accept the recipient's bonding policy and requirements if the Federal agency has determined that the Federal interest is adequately protected, and if not, the minimum requirements (abbreviated) are as follows:

- A bid guarantee equal to five percent of the bid price.
- A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment



as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

Performance and Financial Monitoring and Reporting: Sections 200.327-328 address the frequency, standards, and OMB approval requirements for agency collection of recipient performance and financial data and monitoring of recipient performance.

Real Property Reporting: Section 200.329 requires annual reporting on real property for which there is a Federal interest, but permits an option for various and less stringent multi-year reporting periods where the Federal interest extends beyond 15 years.

Subrecipient or Contractor: Section 200.330 provides guidance for determining whether an entity is a subrecipient or contractor, in order to apply the appropriate oversight of the Federal funds.

Requirements for Pass-Through Entities: Section 200.331 requires pass-through entities to comply with certain requirements in order to meet their own responsibility to the Federal awarding agency. Many of these requirements were in OMB Circular A-133. Pass-through entities are required to identify certain, clearly identified subaward information. This includes an indirect cost rate if the subrecipient has indirect costs. Pass-through entities must consider risks associated with subawards. The evaluation of a subrecipient's risk of noncompliance with Federal statutes and regulations is used to determine the appropriate level of subrecipient monitoring. Specific subrecipient monitoring tools are outlined, giving pass-through entities flexibility to adjust their oversight framework based on that consideration of risk.

Record Retention: Section 200.333 continues the existing record retention period of generally three years, with some exceptions and caveats. Federal agencies and non-Federal entities should, whenever practicable, collect, transmit and store Federal award-related information in machine-readable formats instead of closed formats or on paper.

Remedies for Noncompliance: Sections 200.338-200.342 cover remedies for noncompliance, including termination and notices of termination. Section 200.338 permits conditions to be imposed on the award if the non-Federal entity fails to comply with the requirements of the award. Previously, only pre-award conditions were authorized.

Closeout: Section 200.343 describes specific closeout actions that are required for all Federal awards at the end of the period of performance and should be completed no later than one year after receipt and acceptance of all required final reports. The non-Federal entity must submit all required final reports within 90 days after the end of the period of performance. The period of performance, defined at §200.77, means from the start to the end dates in the Federal award.

Post-closeout Adjustments and Continuing Responsibilities: Section 200.344 limits the period during which any post-closeout adjustments can be made. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify

the non-Federal entity within the record retention period. However, amounts due can be collected after this period.

## 8. SUBPART E – COST PRINCIPLES: HIGHLIGHTS

Subpart E covers the principles that must be used in determining the allowable costs of work performed by a non-Federal entity under a Federal award and in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate prices. It covers exemptions (§200.401(c)) and basic considerations (§§200.402-200.411). The application of the cost principles should require no significant changes in the internal accounting policies and practices of non-Federal entities. The Basic Considerations for costs are largely unchanged. Changes have been made to some select items of cost.

Profit: Section 200.400(g) states that non-Federal entities may not earn or keep any profit resulting from the Federal financial assistance (unless explicitly authorized by the terms and conditions of the Federal award). This is not new.

Prior Approval: In recognition of the difficulty in determining the reasonableness and allocability of certain items of cost, non-Federal entities may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of incurring unusual or special costs. Prior approval is specifically required for allowability under certain circumstances as described in §200.407.

Direct Costs: Direct costs are covered in §200.413. This section is largely unchanged from previous OMB cost principles.

- Direct costs are identified specifically with the Federal award or can be easily and accurately assigned to activities of the award. Typical direct costs include employee compensation, fringe benefits, materials and other items attributable to the award.
- If directly related to a specific award, certain costs that would otherwise be included with an indirect cost rate can be direct charged, such as extraordinary utility consumption, cost of materials supplied from stock or services from specialized facilities or other institutional service operations.

Indirect Costs: Indirect costs are addressed in §200.414. This section is largely unchanged from previous OMB cost principles.

- Negotiated indirect cost rates must be accepted by all Federal awarding agencies unless certain conditions are met. A Federal awarding agency must implement and make publicly available (e.g., via the Federal Register) the policies, procedures, and general decision-making criteria the programs would follow in seeking and justifying deviations from negotiated rates.
- Pass-through entities must accept a federally recognized indirect cost rate between a subrecipient and the Federal government or, if no such rate exists, either negotiate a rate between the entity and the subrecipient or establish a de minimis indirect cost rate (see also §200.331(a)(4)).

- If a non-Federal entity has never received a negotiated indirect cost rate, it may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) as defined in §200.68, which may be used indefinitely (§200.414(f)). (Exceptions for some non-Federal entities are listed in Appendix VII, paragraph (d)(1)(B).)
- Non-Federal entities that are able to allocate and charge 100% of their costs directly may continue to do so. Charging the Federal award for indirect costs is never mandatory; a non-Federal entity may conclude that the amount it would recover thereby would be immaterial and not worth the effort needed to obtain it.
- Non-Federal entities that have a federally negotiated indirect cost rate may apply for a one-time extension of the current rate for a period up to four years, subject to the review and approval of the cognizant agency for indirect costs. At the end of the four-year extension period, the non-Federal entity must negotiate a rate. This rate may be extended.

Certifications: Section 200.415 addresses certifications, which are required to be submitted with annual and final fiscal reports, vouchers for payment, and proposals to establish a cost allocation plan or indirect cost rate. Specific language is included acknowledging the statutory consequences of false certifications.

Special Considerations: Special considerations for states, local governments, and Indian tribes for identification and assignment of central service costs are included in §§200.416 and 200.417. Special considerations for institutions of higher education are covered in §§200.418 and 200.419.

General Provisions for Selected Items of Cost: General provisions for 56 selected items of cost are covered in §§200.420-200.475; this section uses language from three Circulars, A-21 (2 CFR part 220), A-87 (2 CFR part 225), and A-122 (2 CFR part 230). These principles apply whether a particular item is properly treated as either a direct or indirect cost. These selected items include two additions (§200.428, *Collections of Improper Payments*, and §200.440, *Exchange Rates*), some changed provisions (including the deletion of *Communications*, which OMB thought could be addressed through “Basic Considerations,” §§200.402 – 200.411), and some clarifications.

- Audit Services: Any costs when audits required by the Single Audit Act have not been conducted or costs of auditing grantees or recipients that are not required to have a single audit are not allowable (§200.425). This provision was in OMB Circular A-133.
- Collections of Improper Payments: Costs of recipients to recover improper payments may be charged as direct or indirect, and may be used in accordance with cash management standards described in §200.305 (§200.428).
- Compensation – Personal Services: §200.430 requires non-Federal entities to maintain a strong system of internal controls over their records to justify costs of salaries and wages and provides additional flexibility in the processes they use to meet these standards.
- Conferences: Allowable conference costs paid by non-Federal entities must be necessary and reasonable for successful performance under the award and may include facilities rentals, speakers’ fees, costs of meals and refreshments, local

transportation, and other incidental items, unless further restricted by the terms and conditions of the Federal award (§200.432).

- Contingency Provisions: Contingency definitions, allowances, and disallowances are set forth in §200.433.
- Fines, Penalties, Damages, and Other Settlements: Costs resulting from a recipient's violations of, alleged violations of, or failure to follow Federal, State, local, tribal, or foreign laws or regulations are unallowable (§200.441).
- Lobbying: The cost to influence activities associated with obtaining grants, contracts, cooperative agreements or loans is unallowable (§200.450).
- Organization Costs: Costs for items such as incorporation fees, attorneys, or accountants in connection with establishment or reorganization of an entity are unallowable except with prior approval of the Federal awarding agency (§200.455).
- Pre-award Costs: Are only allowable to the extent that they would have been approved if incurred after the date of the Federal award and only with prior approval of the Federal awarding agency (§200.458).

## 9. SUBPART F – AUDIT REQUIREMENTS: HIGHLIGHTS

Subpart F sets forth the standards for audits of non-Federal entities expending Federal awards.

Increased Audit Threshold: One of the significant changes is the raised threshold which requires a non-Federal entity to have a single or program-specific audit conducted for any year in which the non-Federal entity expends \$750,000 or more (up from \$500,000) (§200.501(a)).

Making Audits Publicly Available: Auditees must make copies of their audit available for public inspection, ensuring that protected personally identifiable information is not included. Audit reports must be submitted to the Federal Audit Clearinghouse (FAC) and all Federal agencies, pass-through entities, and others interested in an audit report must obtain it from the FAC. Indian tribes may opt out of authorizing the FAC to publish the reporting package on the Web, but are then responsible for providing the reporting package directly to any affected pass-through entities and also making it available for public inspection (§200.512(b)(2)).

Federal Agency Responsibilities: §200.513 requires Federal agencies, including HUD, to:

- Appoint a Single Audit Accountable Official (SAAO) and a Single Audit Liaison;
- Participate in a government-wide project to determine the quality of single audits;
- Use cooperative audit resolution mechanisms to improve Federal program outcomes through better audit resolution follow-up and corrective action; and
- Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow up on audit findings and the effectiveness of Single Audits in improving non-Federal agency accountability and their use in making award decisions.

Audits and GAGAS: Audits must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) (§200.514(a)).

Higher Threshold for Known Questioned Costs: The threshold for known questioned costs has been increased to \$25,000 from \$10,000. As before, in evaluating the effect of questioned costs on its opinion on compliance, the auditor must consider the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The higher threshold amount is also used in several related aspects of auditing (§200.516(a)).

Major Program Determinations and Low-Risk Auditees: Changes have been made to the auditor's risk-based approach for determining which Federal programs are major programs (§200.518). Auditees that meet the criteria for a low-risk auditee are eligible for reduced audit coverage (§200.520).

Transition Guidance: To ensure the uniform application of the requirements of Subpart F for all Federal programs, the requirements will be effective for audits of fiscal years starting December 26, 2014, or later. These revised audit requirements are not applicable to fiscal years beginning before that date.

10. 2 CFR PART 200 APPENDICES: A BRIEF DESCRIPTION

2 CFR part 200 contains 11 Appendices, briefly described here:

- Appendix I: This Appendix provides the full text of the notice of funding opportunities as required by §200.203, along with application and submission information, application review information, Federal award administration information, and Federal awarding agency contact(s) requirements.
- Appendix II: This Appendix contains required contract provisions for all contracts made by a non-Federal entity under a Federal award. The description of each provision should be sufficient for a non-Federal entity to determine if the provision needs to be included in a specific contract.
- Appendix III: This Appendix provides criteria for identifying and computing indirect cost rates at institutions of higher education (IHEs).
- Appendix IV: This Appendix provides guidance for identifying and assigning indirect costs and making rate determinations for nonprofit organizations.
- Appendix V: This Appendix provides guidance on a process for state and local governments to identify and assign central service costs to benefitted activities on a reasonable and consistent basis.
- Appendix VI: This Appendix extends requirements by the Department of Health and Human Services (HHS) on developing, documenting, submitting, negotiating, and approving public assistance cost allocation plans to all Federal agencies whose

programs are administered by a state public assistance agency. (Most such programs are funded by HHS; few, if any, are funded by HUD.)

- Appendix VII: This Appendix provides guidance to state and local governments and Indian tribes on developing, submitting and documenting indirect cost rate proposals.
- Appendix VIII: This Appendix lists those nonprofit organizations that are exempted from the requirements of Subpart E, *Cost Principles*.
- Appendix IX: This Appendix makes clear that existing principles at 45 CFR Part 74 Appendix E, *Principles for Determining Cost Applicable to Research and Development under Grants and Contracts with Hospitals*, remains in effect until OMB implements revised guidance for hospitals.
- Appendix X: This Appendix states that the Data Collection Form SF-SAC for Single Audits is available on the Federal Audit Clearinghouse (FAC) website. The FAC website address <http://harvester.census.gov/sac/>, given in §200.36, *Federal Audit Clearinghouse (FAC)*, for accessing the FAC, was valid as of the issuance of this Notice.
- Appendix XI: This Appendix states that the audit compliance supplement for Single Audits cited by §200.21, *Compliance supplement*, is available on OMB's website, and provides an address (<http://www.whitehouse.gov/omb/circulars>) that was valid for accessing the supplement as of the issuance of this Notice.

## 11. GENERAL TRANSITION RULES

HUD's regulations adopting the requirements of 2 CFR part 200 for HUD programs were published in the Federal Register on December 19, 2014

(<https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>).

Questions have been raised about the applicability of these requirements. The following applies:

- Federal awards made before December 26, 2014, will continue to be governed by the terms and conditions of the Federal award. The grant agreements for some HUD programs (e.g., Community Development Block Grant, HOME Investment Partnerships, Emergency Solutions Grants, Indian Housing Block Grants, Native Hawaiian Block Grants, Indian Community Development Block Grants) incorporate the regulations "as now in effect and as may be amended from time to time" and, therefore, 2 CFR part 200 will be applicable to these grants.
- New Federal awards made on or after December 26, 2014, are governed by 2 CFR part 200, including formula awards.

- For Federal agencies that consider incremental funding action on previously made awards to be opportunities to change award terms and conditions, 2 CFR part 200 applies to the first funding increment issued on or after December 26, 2014, and any subsequent funding increment. Awards made before then that have been modified on or after that date in ways that do not increase the funding amount (such as a no-cost extension, or more frequent reporting) will continue to be governed by the terms and conditions of the Federal award. As a result, 2 CFR part 200 will not apply to such awards unless there is another requirement that makes that part apply to them.
- For Federal agency incremental funding actions that are subject to 2 CFR part 200, non-Federal entities are not obligated to segregate or otherwise track old funds and new funds but may do so at their discretion. For example, a non-Federal entity may track the old funds and continue to apply the Federal award flexibilities to the funding awarded under the old rules (e.g., local ability to issue fixed price subawards, non-Federal entity determination of the need to incur administrative and clerical salaries based on major project classification).
- For Federal awards made with modified award terms and conditions at the time of incremental funding actions, Federal awarding agencies may apply 2 CFR part 200 to the entire Federal award that is uncommitted or unobligated as of the Federal award date of the first increment received on or after December 26, 2014.
- Existing negotiated indirect cost rates will remain in place until they are due to be re-negotiated. HUD and indirect cost negotiating agencies will use 2 CFR part 200, both in generating proposals and negotiating new rates (when the rate is due to be re-negotiated) for non-Federal entities' fiscal years that start on or after December 26, 2014.
- The effective date of 2 CFR part 200 for subawards is the same as the effective date of 2 CFR part 200 for the Federal award from which the subaward is made. The requirements for a subaward, no matter when made, flow from the requirements of the original Federal award from the Federal awarding agency.
- Subpart F, Audit requirements, applies to audits of non-Federal entity fiscal years beginning on or after December 26, 2014. The revised audit requirements are not applicable to fiscal years beginning before that date.

OMB provided additional guidance on the effective dates in its Frequently Asked Questions updated November 2014:

Q.110-13 (Previously Q II-2) Effective Dates and Federal Awards Made Previously

Will this apply only to awards made after the effective date, or does it apply to awards made earlier?

- Once the Uniform Guidance goes into effect for non-Federal entities, it will apply to Federal awards or funding increments after that date, in cases where the Federal agency considers funding increments to be an opportunity to modify the terms and conditions

of the Federal award. It will not retroactively change the terms and conditions for funds a non-Federal entity has already received.

•We would anticipate that for many of the changes, non-Federal entities with both old and new awards may make changes to their entity-wide policies (for example to payroll or procurement systems). Practically speaking, these changes would impact their existing/older awards. Non-Federal entities wishing to implement entity-wide system changes to comply with the Uniform Guidance after the effective date of December 26, 2014 will not be penalized for doing so.

## 12. CONFORMING PROGRAM REGULATIONS AND GUIDANCE

HUD will publish conforming rule changes for its programs and will provide notification of these changes when they are made. These changes will update the program regulations to revise the sections that refer to the OMB Circulars and HUD regulations in 24 CFR parts 84 and 85, as well as to reflect the provisions of 2 CFR part 200 that are not applicable because they are inconsistent with a program statute or because OMB has given an exception to specific requirements.

HUD recognizes that there may be uncertainty pending publication of the conforming program regulations. The provisions of 2 CFR part 200 apply, consistent with the exceptions given to the HUD program for requirements which are detailed in the 2013 edition of the Code of Federal Regulations in 2 CFR parts 215, 220, 225, and 230, 24 CFR parts 84 and 85, and OMB Circulars. HUD will notify recipients through program regulations, grants or cooperative agreements, or other guidance, which subparts are applicable to specific programs.<sup>3</sup>

## 13. ADDITIONAL RESOURCE MATERIALS

Grant recipients are strongly encouraged to review this information to obtain a better understanding of the uniform guidance and its implications for their Federal awards. The Council on Financial Assistance Reform (COFAR) has provided additional tools to assist in the transition including:

- a. Frequently Asked Questions for New Uniform Guidance at 2 CFR 200:  
[The FAQ For 2 CFR 200 \(https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf\)](https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf).
- b. Uniform Guidance Crosswalk from Existing Guidance to Final Guidance:  
<http://www.whitehouse.gov/sites/default/files/omb/fedreg/2013/uniform-guidance-crosswalk-from-predominate-source-in-existing-guidance.pdf>.

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<sup>3</sup> Separate guidance will be issued as necessary to identify and clarify whether all provisions of part 200 apply to the Section 8 project-based and tenant-based programs, particularly with respect to financial management concerns and alternative requirements. This guidance will be based, in part, on the treatment of this assistance in CMS Contract Management Services et al v. Massachusetts Housing Finance Agency v. United States for which the Solicitor General has sought certiorari from the Supreme Court (745 F.3d 1379 (Fed. Cir. 2014)).



- c. COFAR Webcast Trainings & Slides:
  - i. Uniform Guidance 1-27-14 Training Webcast  
COFAR Training Intro 1-27-14  
<http://youtu.be/SOET4b-7my8>
  - ii. COFAR Training Administrative Requirements 1-27-14  
<http://youtu.be/BP3I3PjI1JQ>  
Link to the Training Webcast Presentation Slides  
[COFAR Training Administrative Requirements 1-27-14 Slides](https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Administrative-Requirements-Public.pptx)  
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Administrative-Requirements-Public.pptx>
  - iii. COFAR Training Cost Principles 1-27-14  
<http://youtu.be/q0rWXdy2ICM>  
Link to the Training Webcast Presentation Slides  
[COFAR Training Cost Principles 1-27-14 Slides](https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Cost-Principles-Public.pptx)  
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Cost-Principles-Public.pptx>
  - iv. COFAR Training Audit Requirements 1-27-14  
<http://youtu.be/g-U8HGbbC-Y>  
Link to the Training Webcast Presentation Slides  
[COFAR Training Audit Requirements 1-27-14 Slides](https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Audit-Requirements-Public.pptx)  
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Audit-Requirements-Public.pptx>
  - v. Uniform Guidance Implementation: A Conversation Presented by the Council on Financial Assistance Reform; October 2, 2014  
<https://www.youtube.com/channel/UCL7wVVxWI4pRHL6cHgj0vVQ/videos>

#### 14. UPCOMING TRAINING AND ADDITIONAL GUIDANCE

Additional upcoming training and/or guidance by COFAR will be publicized on its website; recipients of Federal financial assistance, and their subrecipients and contractors, are encouraged to periodically check <https://cfo.gov/cofar/>. HUD is also planning program-specific guidance and additional training, including an on-line financial management curriculum that integrates and highlights the requirements of 2 CFR part 200, and will provide notification of such when developed. In addition, we have established an internal Frequently Asked Questions (FAQ) Outlook mailbox in the Grants Management and Oversight Division of the Office of Strategic Planning and Management to which HUD employees may address implementation questions. Questions can be sent to the email address: **2 CFR 200 Administrative Requirements@hud.gov**.

#### 15. CONTACTS FOR QUESTIONS

Questions from grant recipients, subrecipients and contractors should be directed to their HUD Headquarters or Field Office contacts, Government Technical Representatives (GTRs) or Government Technical Monitors (GTMs).

For HUD Headquarters and field office staff, operational questions should be directed to the Office of Strategic Planning and Management's Grants Management and Oversight Division at (202) 402-3964 (this is not a toll-free number), or [Loyd.LaMois@hud.gov](mailto:Loyd.LaMois@hud.gov), and policy questions should be directed to the Office of the Chief Financial Officer's Financial Policy & Procedures Division at (202) 402-2277 or [Scott.Moore@hud.gov](mailto:Scott.Moore@hud.gov). Persons with hearing or speech impairments may access the number above through TTY by calling the toll-free Federal Relay Services at (800) 877-8339.

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