

OMB Publishes Final Uniform Guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

On December 26, 2013, the Office of Management and Budget (“OMB”) published [final guidance](#) in the Federal Register entitled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (“Final Guidance”), to be located at Title 2 of the Code of Federal Regulations (“C.F.R.”). This Final Guidance supersedes and combines the requirements of eight existing [OMB Circulars](#) (A-21, A-50, A-87, A-89, A-102, A-110, A-122 and A-133) with the intent to streamline the federal grant-making and monitoring process, to ease administrative burden for grant applicants and recipients, and to reduce the risk of waste, fraud and abuse. This follows the OMB’s Advanced Notice of Proposed Guidance (“ANPG”), published on March 26, 2012 (OMB-2012-0002) and Notice of Proposed Guidance (“NPG”), published on February 1, 2013 (OMB-2013-0001).

Reforms fall into three main categories: **(i)** Administrative Requirements under Subparts A through D, covering OMB Circulars A-102, A-110 and A-89; **(ii)** Cost Principles under Subpart E, covering OMB Circulars A-21, A-87, A-122 and 45 C.F.R. Part 75; and **(iii)** Audit Requirements under Subpart F, covering OMB Circulars A-133 and A-50. Note that the Final Guidance does not broaden the scope of applicability to non-Federal entities (“NFEs”), which include institutions of higher education (“IHEs”), nonprofits, state/local governments, Indian tribes and certain for-profit and foreign entities. *Some of the most important changes relate to new flexibility in time and effort reporting compliance, as described below.*

The Final Guidance will be effective on December 26, 2014, one year after its publication date. Standards set forth in Subpart F (Audit Requirements) will apply to audits of fiscal years beginning on or after December 26, 2014. See Final Guidance § 200.110 (Effective/Applicability Date).

The major policy reforms implemented through the Final Guidance are outlined below. OMB will publish additional supporting material on its [Web site](#), and an informational webcast hosted by OMB and the Council on Financial Assistance Reform (“COFAR”) can be viewed [here](#).

I. Administrative Requirements (Subparts A – D)

The Final Guidance standardizes definitions, general provisions and pre- and post-award requirements across the OMB Circulars. It includes provisions that, among other things, focus on performance rather than compliance as a means for fiscal accountability, encourage the use of information technology and shared services, and strengthen oversight requirements.

(1) Subpart A: Acronyms and Definitions

- Standardizes defined terms present throughout the Final Guidance, as well as throughout Federal-approved information collections used to manage awards. For example, § 200.94 (Supplies) clarifies the threshold for defining personal property as a “supply” and the circumstances under which computing devices may be considered supplies rather than “equipment” (the latter being subject to more stringent administrative requirements).

(2) Subpart B: General Provisions

- **Exceptions** (§ 200.102)—On a case-by-case basis, in accordance with [OMB Memorandum M-13-17](#), OMB may waive certain compliance requirements and approve new strategies for innovative programming that improve cost-effectiveness and encourage collaboration across programs to achieve targeted outcomes, including pay-for-performance programs.
- **Conflict of Interest; Mandatory Disclosures** (§§ 200.112, -.113)—Requires Federal agencies to have policies on conflict of interest in Federal awards, and requires NFEs to disclose to Federal agencies any conflict of interest or relevant violation of Federal criminal law.

(3) Subpart C: Pre-Award Requirements and Contents of Federal Awards

- **Use of Grant Agreements (Including Fixed Amount Awards), Cooperative Agreements and Contracts** (§ 200.201)—Minimizes compliance requirements in favor of requirements to meet performance milestones.
- **Notice of Funding Opportunities** (§ 200.203)—Sets forth the standard set of data elements to be provided in all Federal notices of funding opportunities to make such notices easier for NFEs to compare and understand. All funding opportunities must be available for application for at least 60 days; the Federal awarding agency, in its discretion, may reduce the application period, but in no case may it be less than 30 days.
- **Information Contained in a Federal Award** (§ 200.210)— Sets forth the standard set of data elements to be provided in all Federal awards, thus reducing the administrative burden and costs associated with award management for NFEs.
- **Federal Awarding Agency Review of Merit of Proposals; Federal Awarding Agency Review of Risk Posed by Applicants; Specific Conditions** (§§ 200.204, -.205, -.207)—Requires Federal awarding agencies to evaluate the merits and risks associated with a potential Federal award and, before the money is spent, to impose specific conditions as necessary to mitigate potential risks of waste, fraud and abuse.
- **Standard Application Requirements; Performance Measurement; Financial Reporting; Monitoring and Reporting Program Performance** (§§ 200.206, -.301, -.327, -.328)—Requires Federal awarding agencies to use OMB-approved standard information collections to manage Federal awards.

(4) Subpart D: Post-Award Requirements

- **Performance Measurement** (§ 200.301)—Provides more robust guidance for measuring performance to help entities improve program outcomes and disseminate promising practices.
- **Internal Controls** (§ 200.303)—Requires NFEs to take reasonable measures to safeguard protected personally identifiable information, as well as any information designated as sensitive by the awarding agency or the pass-through entity. Relocates guidance formerly within audit requirements to encourage NFEs to implement effective internal controls and to do so earlier in the award process.
- **Payment** (§ 200.305)—Extends to NFEs previously covered by A-102 the existing flexibility in A-110 to pay interest earned on Federal advance payments annually to the Department of Health and Human Services Payment Management System rather than “promptly” to each Federal awarding agency.

- **Cost Sharing or Matching** (§ 200.306)—Clarifies policies for voluntary committed cost sharing, ensuring that such sharing (i) is only solicited for research proposals when required by regulation, (ii) is transparent in the notice of funding opportunity and (iii) is never considered during merit review.
- **General Procurement Standards** (§ 200.318)—Requires entities' procurement practices to avoid duplicative purchases and to encourage inter-entity agreements for shared goods and services. Eliminates NPG language requiring (i) review of proposed procurement methods by Federal awarding agencies and (ii) the provision of information concerning any protests of a procurement to the Federal awarding agency.
- **Requirements for Pass-Through Entities** (§ 200.331)—Pass-through entities must provide an indirect cost rate to subrecipients, which may be the *de minimis* rate (10%). Clarifies that required monitoring of subrecipients includes: (i) reviewing any performance and financial reports that the pass-through entity has decided to require in order to meet its own award terms/conditions; (ii) following-up to ensure that the subrecipient takes timely and appropriate corrective action on any and all deficiencies related to Federal awards; and (iii) issuing management decisions on weaknesses found through audits only when those findings pertain to Federal award funds provided to the subrecipient by the pass-through entity. Pass-through entities also must verify, rather than ensure, that the subrecipient has an audit as required by Subpart F. Requires pass-through entities to consider risks associated with subawards and allows flexibility to adjust their oversight framework based on such consideration of risk.
- **Collection, Transmission and Storage of Information** (§ 200.335)—Encourages entities to transmit and store award-related information in electronic, open, machine-readable formats with appropriate internal controls to safeguard against inappropriate alteration of such records.
- **Remedies for Noncompliance; Closeout** (§§ 200.338, -.343)—Provides tools to Federal agencies to manage non-compliance and efficiently closeout awards, including an extension of the closeout period from 180 days to one year.

II. Cost Principles (Subpart E)

The Final Guidance limits allowable costs to make the best use of Federal resources, clarifies allowable spending for certain specific cost items, and provides for the consistent and transparent treatment of costs.

- **Policy Guide** (§ 200.400)—Prohibits NFEs from earning or keeping profit from Federal financial assistance unless expressly authorized by the terms/conditions of the Federal award.
- **Prior Written Approval (Prior Approval)** (§ 200.407)—Provides both Federal agencies and NFEs with a single comprehensive list of circumstances under which NFEs must seek prior approval from the Federal awarding agency, the cognizant agency or the pass-through entity, as applicable. ***NFEs must seek prior approval for the following:***
 - Changes in principal investigator, project leader/partner or scope of effort (§ 200.201(b)(5))
 - Unrecovered indirect costs (*i.e.*, the difference between the amount charged to the award and the amount which could have been charged under the NFE's approved negotiated indirect cost rate) included as part of cost sharing or matching (§ 200.306)
 - Additions to program income or use of program income to meet a cost sharing or matching requirement (§ 200.307)
 - For *non-construction* awards, (i) changes in scope or objective of the project/program; (ii) changes to key persons specified in the application/award; (iii) disengagement for more than three months or 25 percent reduced time by the project director or principal investigator; (iv) costs requiring approval under Subpart E of the Final Guidance, 45 C.F.R. Part 74 Appendix

- E or 48 C.F.R. Part 31, as applicable; (v) transfer of participant support costs to other expense categories; (vi) transfer or subcontract of work under the award not otherwise approved; or (vii) changes in the amount of approved cost sharing or matching provided by the NFE; for *construction* awards, budget revisions that involve (i) changes in the scope/objective of the project or program; (ii) addition of funds necessary to complete the project; or (iii) specific costs that implicate Subpart E (Cost Principles) (§ 200.308)
- Provision of subawards by pass-through entity based on fixed amounts up to the Simplified Acquisition Threshold (§ 200.332)
 - Direct costs for the salaries of administrative and clerical staff, if not expressly included in the budget (§ 200.413(c))
 - For IHEs, incidental activities for which supplemental compensation is allowable under written institutional policy, if not specifically provided for in the award budget, or a faculty member's salary that exceeds the proportionate share of the Institutional Base Salary ("IBS") for the period during which the faculty member worked on the award (§ 200.430(h))
 - Indirect costs related to severance payments (§ 200.431)
 - Entertainment costs (*i.e.*, amusement, diversion and social activities), if not expressly included in the approved budget (§ 200.438)
 - Capital expenditures for (i) general purpose equipment, buildings and land as direct charges; (ii) special purpose equipment as direct charges, where items have a unit cost of \$5,000 or greater; (iii) improvements to land, buildings or equipment as direct costs, where such costs materially increase in value or useful life (§ 200.439)
 - Cost increases for fluctuations in exchange rates (§ 200.440)
 - Costs resulting from NFE violations of, alleged violations of or failure to comply with applicable laws and regulations, except when incurred as a result of compliance with specific provisions of the Federal award (§ 200.441)
 - Fund raising costs for the purposes of meeting the Federal program objectives (§ 200.442)
 - Direct costs of housing, housing allowances and personal living expenses (§ 200.445)
 - Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal property (§ 200.447)
 - Costs of membership in any civic/community organization (§ 200.454(c))
 - Costs associated with the establishment or reorganization of an organization, e.g., incorporation fees or attorneys' fees (§ 200.455)
 - Participant support costs (*i.e.*, direct costs for stipends, travel allowances and other items paid to or on behalf of participants in connection with conferences or training) (§ 200.456)
 - Pre-award costs (*i.e.*, those costs incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award) (§ 200.458)
 - Special arrangements and alternations of facilities (§ 200.462)
 - Costs of selling and marketing any NFE products or services (§ 200.467)
 - Travel costs of dependents and officials (§ 200.474)
- **Direct Costs** (§ 200.413)—Makes consistent the guidance that administrative costs may be treated as direct costs if the NFE demonstrates that such costs are directly allocable to a Federal award. Identification with the Federal award, rather than the nature of the goods and services involved, is the determining factor in distinguishing direct costs from indirect costs. If directly related to a specific award, certain costs that would otherwise be treated as indirect costs also may include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations. Salaries of administrative and clerical staff may be treated as direct costs if (i) the services are integral to a project or activity; (ii) the

individuals involved can be identified specifically with the project or activity; (iii) the costs are included expressly in the budget or have the prior written approval of the Federal awarding agency; and (iv) the costs are not recovered as indirect costs. Activities that (i) include the salaries of personnel, (ii) occupy space and (iii) benefit from the NFE's indirect costs must be treated as direct costs for purposes of determining indirect cost rates.

- **Indirect (Facilities and Administrative (“F&A”)) Costs** (§ 200.414)—Provides for a *de minimis* indirect cost rate of 10% of modified total direct costs (“MTDC”) to NFEs that have never had a negotiated indirect cost rate. Federal agencies must accept a negotiated indirect cost rate unless an exception is required by statute or regulation or is approved by a Federal awarding agency head/delegate based on publicly documented justification. Allows for a one-time extension without further negotiation of a federally approved negotiated indirect cost rate for up to four years.
- **Required Certifications** (§ 200.415)—Strengthens NFE accountability by providing explicit and consistent language for required certifications that includes awareness of potential penalties under the False Claims Act.
- **Cost Accounting Standards and Disclosure Statement** (§ 200.419)—Threshold for IHEs to comply with Cost Accounting Standards is raised to align with the threshold in the Federal Acquisition Regulations. Process for Federal agency review of changes in accounting practices is streamlined to reduce risk of noncompliance.
- **Time and Effort Reporting Requirements** (§ 200.430)—Strengthens requirements for NFEs’ internal controls over salaries and wages, while allowing flexibility to meet such requirements. Emphasizes that charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. When after-the-fact interim charges are based on budget estimates, the NFE’s internal controls must contain processes to ensure that necessary adjustments are made such that the final amount charged to the award is accurate, allowable and properly allocated. For Federal awards of similar purpose or instances of approved blended funding, allows NFEs to submit and Federal agencies to approve alternative methods of accounting for salaries and wages based on achievement of performance outcomes. Auditors must test the NFE’s internal controls as part of the Single Audit requirements in Subpart F.
- **Conferences** (§ 200.432)—Clarifies allowable conference spending, including, but not limited to, facility rental fees, speakers’ fees, meals and refreshments, local transportation and the cost of identifying (but not providing) locally available dependent care options for attendees. Requires conference hosts/sponsors to exercise judgment in ensuring that conference costs are appropriate and necessary and to manage conferences so as to minimize Federal award costs.
- **Employee Health/Welfare Costs** (§ 200.437)—Eliminates the allowance for “morale” costs.
- **Contingency Provisions** (§ 200.433)—Outlines circumstances under which contingency costs may be included in awards.
- **Idle Facilities and Idle Capacity** (§ 200.446)—Allows for costs of idle facilities when necessary to meet workload fluctuations (*e.g.*, when developing shared service arrangements).
- **Interest** (§ 200.449)—Allows NFEs to be reimbursed for financing costs associated with patents and computer software capitalized in accordance with GAAP for fiscal years beginning on or after January 1, 2016.
- **Relocation Costs of Employees** (§ 200.464)—Limits the amount of time for which a Federal award may be charged for the costs of an employee’s vacant former home to six months.
- **Student Activity Costs** (§ 200.469)—Expands to all entities the limitation on student activity costs that previously applied only to IHEs.

- **Travel Costs** (§ 200.474)—Allows temporary dependent care costs that result directly from travel to conferences and that meet specified standards.
- **Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs** (Appendix III)—Extends to all IHEs provisions allowing for recovery of increased utility costs associated with research.

III. Audit Requirements (Subpart F)

The Final Guidance reduces the pool of audited entities and focuses on areas with the highest risk of waste, fraud and abuse. The Final Guidance increases transparency and accountability by making audit reports publicly available online, and encourages Federal agencies to take a more cooperative approach to audit resolution by seeking to remedy underlying weaknesses in internal controls.

- **Audit Requirements** (§ 200.501)—Raises the Single Audit threshold from \$500,000 in federal awards per year to \$750,000 in federal awards per year. Reduces the audit burden for approximately 5,000 NFEs while maintaining Single Audit coverage for over 99% of the Federal dollars currently covered.
- **Report Submission** (§ 200.512)—Requires publication of Single Audit Reports online (with safeguards for protected personally identifiable information) to reduce the administrative burden on NFEs associated with transmitting these reports to all interested persons.
- **Responsibilities** (§ 200.513)—Requires Federal awarding agencies to designate a Senior Accountable Official to oversee effective use of the Single Audit tool and to implement metrics to evaluate audit follow-up. Encourages Federal awarding agencies to make effective use of cooperative audit resolution practices to reduce repeated audit findings.
- **Audit Findings** (§ 200.516)—Raises the threshold for reporting questioned costs to \$25,000.
- **Major Program Determination** (§ 200.518)—Focuses audits on areas with internal control deficiencies identified as material weaknesses. Future updates to the Compliance Supplement will reflect this focus.

If you would like to discuss the foregoing or any other related matter, please contact [Mark Barnes](#), [Eve Brunts](#), [Leslie Thornton](#) or your usual Ropes & Gray advisor.