

Part One: Cost Recovery

**New Rules of the Road:
The 2020 Uniform
Guidance Revisions**



CAPLAW
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**Part One:
Cost Recovery
Today's Webinar**



**Part Two:
Other Key Changes
Friday, November 20, 2020**

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Background

- OMB required to review UG every 5 years, *2 CFR § 200.109*
- Proposed revisions issued January 22, 2020
- Final guidance issued August 13, 2020
 - Most provisions effective November 12, 2020
 - Applies to new awards and award modifications issued on or after November 12, 2020
- HHS separately codified UG, 45 CFR Part 75
 - Must issue separate rulemaking

Goals of Proposed Revisions

- CAP Goal Executive Steering Committee, which reports to the Chief Financial Officer's Council, identified these strategies:
 - **Strategy 1:** Standardize the Grants Management Business Process and Data
 - **Strategy 2:** Build Shared IT Infrastructure
 - **Strategy 3:** Manage Risk
 - **Strategy 4:** Achieve Program Goals and Objectives

Uniform Guidance Overview

Subpart A	Acronyms and Definitions
Subpart B	General Provisions
Subpart C	Pre-Award Requirement and Contents of Federal Award
Subpart D	Post-Federal Award Requirements
Subpart E	Cost Principles
Subpart F	Audit Requirements
Appendices	IV (Nonprofit CAAs); V (Public CAAs)

Organizational Changes

- All definitions listed in § 200.1
- Numbering system has changed for some sections
 - e.g., new § 200.322 pushes back numbering for rest of Subpart C
- **[Practice Tip]** UG citations in current award agreement may not match new UG sections

Key Proposed Revisions

Cost recovery

Procurement

Performance-based metrics

Termination

Non-binding guidance

Definitions

Miscellaneous

Direct and Indirect Costs

- **2 CFR § 200.412-415** (45 CFR § 75.412-415)
 - **200.412** Classification of costs
 - **200.413** Direct costs
 - **200.414** Indirect (F&A) costs
 - **200.415** Required Certifications

Indirect Costs

De minimis rate

- **[NEW] 10% de minimis rate** now available to all non-federal entities that don't have a current negotiated (including provisional) rate (*2 CFR § 200.414(f)*)
 - 10% of Modified Total Direct Cost (MTDC)
 - Previously, only NFEs that never received a federally negotiated indirect cost rate were eligible
 - If negotiated rate is lower than de minimis, use negotiated rate
- **[PRACTICE TIP]** Revisit eligibility and need for 10% de minimis rate before new awards are issued

Indirect Costs

De minimis rate

- **[CLARIFIED]** When using 10% de minimis rate, not required to provide proof of costs (2 CFR § 200.414(f))
 - No formal election or documentation needed to justify
- **[PRACTICE TIP]** No need to show that actual indirect costs equal or exceed 10% of MTDC

Indirect Costs

Pass-through entities

- **[MODIFIED]** Pass-through entities **must** allow subrecipients to charge indirect costs (2 CFR § 200.332(a)(4))
 - If subrecipient has a federally negotiated indirect cost rate, pass-through entity must recognize the rate
 - If subrecipient does not have a federally negotiated indirect cost rate:
 - Negotiate an indirect cost rate with the subrecipient
 - Recognize the indirect cost rate between the subrecipient and a different pass-through entity
 - Accept the 10% de minimis rate

Indirect Costs

Pass-through entities

(a)(4)(i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. **If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either** ~~or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f);~~

(A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate.

Indirect Costs

Pass-through entities

- **[CLARIFIED]** If the nonprofit does not receive direct federal funding, the pass-through entity is responsible for the negotiation of the indirect cost rates (2 CFR § 200.332(a)(4))
- *C.2. Negotiation and Approval of Indirect Cost Rates*

Indirect Costs

Negotiated Indirect Cost Rates

- **[NEW]** Existing NICR remains in place until re-negotiated (2 *CFR* § 200.110(b))
- Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request (2 *CFR* § 200.414(g))

Indirect Costs

Negotiated Indirect Cost Rates

- **[NEW]** NICR, distribution base, rate type to be made publicly available on OMB-designated public website (2 *CFR* § 200.414(h))
- Entire rate agreement will *not* be shared
- Responsibility for public posting “will be communicated appropriately”

Indirect Costs

Direct Cost Allocation

- **[CLARIFIED]** Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d). (2 CFR § 200.332(a)(4)(ii))

Scenario 1

Action CAA used a negotiated indirect cost rate up until 10 years ago, then switched to direct cost allocation for its shared costs. Action CAA is considering its options for indirect cost allocation under the revisions to the Uniform Guidance. What are its options?

- A. Negotiate a new indirect cost rate
- B. 10% de minimis rate
- C. Direct cost allocation
- D. All of the above

Scenario 2

Total CAA has a negotiated indirect cost rate for its Head Start grant. Is the state CSBG office required to accept Total CAA's federally negotiated rate?

- A. Yes
- B. No

Direct Costs

- **[CLARIFIED] 2 CFR § 200.413(b).**

If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also be considered direct costs. Examples include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, program evaluation costs, or other institutional service operations.

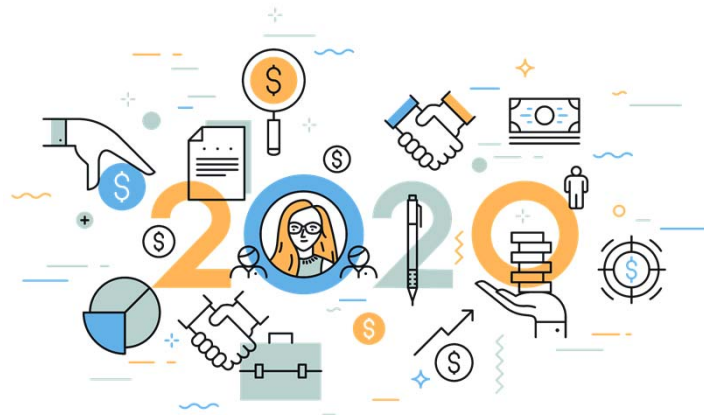
Technology Costs

- **[NEW] 2 CFR § 200.471(a)-(b).**
 - (a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:
 - (b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 (*to be discussed on November 20*)

Timing of Costs

- **[NEW] Budget Period vs. Period of Performance**
- **2 CFR § 200.403.** Costs must be incurred during the approved budget period; awarding agency authorized to waive prior written approvals to carry forward unobligated balances to subsequent budget periods
- **2 CFR § 200.458, Pre-award costs.**
If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

Questions?



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