

Proposed Changes to the Uniform Guidance, 2 CFR Part 200



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Background

- OMB required to review UG every 5 years, 2 CFR § 200.109
 - Proposed revisions issued January 22, 2020
- Redline showing all changes available at <https://www.performance.gov/CAP/innovation-sessions/Grants-CAP-Goal-Proposed-2CFR-Revision1.pdf>
- HHS issued UG separately in 45 CFR Part 75
- COFAR FAQs, <https://cfo.gov/wp-content/uploads/2017/08/July2017-UniformGuidanceFrequentlyAskedQuestions.pdf>
- New rule **not** retroactive
 - Will apply to new awards and award amendments

Goals of Proposed Revisions

- CAP Goal Executive Steering Committee which reports to the Chief Financial Officer's Council (CFOC) identified the following 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

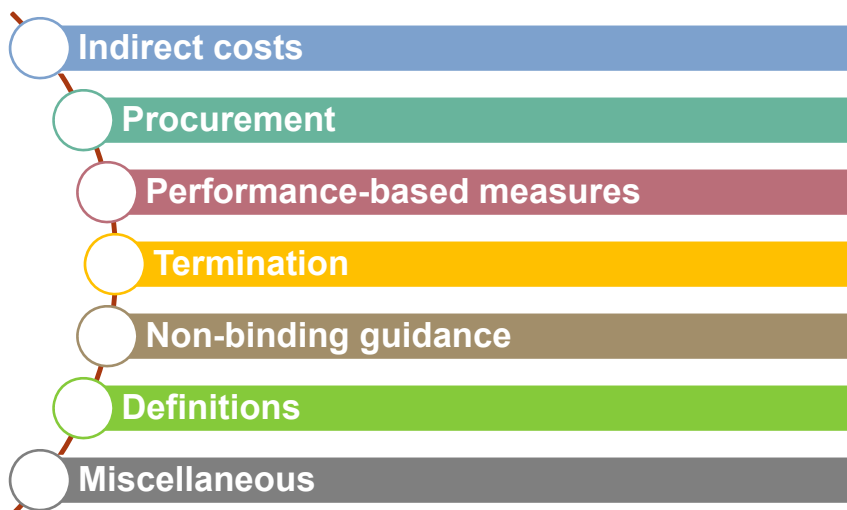
Uniform Guidance Overview

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)

Comment Process

- **Submit comments at**
<https://www.regulations.gov/document?D=OMB-2019-0005-0001>
- **Comments due by** March 23, 2020 at 11:59 pm EDT

Key Proposed Revisions



Indirect Costs

Indirect Costs

§ 200.414 – 10% De Minimus Rate

- **[NEW]** 10% de minimus rate available to **ALL** non-federal entities (§ 200.414(f))
 - 10% of Modified Total Direct Cost (MTDC)
 - Previously, only NFEs that never received a federally negotiated indirect cost rate eligible
- **[CLARIFIED]** When using 10% de minimus rate, not required to provide proof of costs (§ 200.414(f))

Indirect Costs

§ 200.414 – 10% De Minimis Rate

§ 200.414 Indirect (F&A) Costs.

...

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity ~~that has never received a negotiated indirect cost rate~~, except for those non-Federal entities described in Appendix VII to Part 200—~~States and Local Government and Indian Tribe Indirect Cost Proposals~~, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. **No documentation is required to provide proof of costs that are covered under the de minimis indirect cost rate.**

Indirect Costs

§ 200.414 – Indirect Cost Rates

- **[NEW]** All rate agreements to be made publicly available on OMB-designated public website (§ 200.414(h))
- **[NEW]** Existing NICR remains in place until re-negotiated (§ 200.110(b))
- **Considerations:**
 - How does this language reconcile with current § 200.414(g) addressing extension and renegotiation of rates ?

Pass-Through Entities

§ 200.331 – Indirect Cost Recovery

- **[NEW]** Pass-through entities must recognize a subrecipient's indirect costs (§ 200.331(a)(4)):
 1. Recognize federally negotiated indirect cost rate
 2. Negotiate an indirect cost rate with the subrecipient
 3. Recognize the indirect cost rate between the subrecipient and a different pass-through entity
 4. Accept the 10% de minimus rate

Pass-Through Entities

§ 200.331 – Indirect Cost Recovery

§200.331 Requirements for pass-through entities.

...

(a)(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. **The pass-through entity must not require use of a de minimus indirect cost rate if the subrecipient has a federally approved rate. If no federally approved rate exists, the pass-through entity must accept 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):**

- (i) The negotiated indirect cost rate between the pass-through entity and the subrecipient;
- (ii) The negotiated indirect cost rate between a different pass-through entity and the subrecipient; or
- (iii) The de minimus indirect cost rate;

Appendix IV to Part 200

Indirect Cost Recovery

- **[CLARIFICATION]** If the nonprofit does not receive direct federal funding, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with § 200.331(a)(4) (*C.2. Negotiation and Approval of Indirect Cost Rates*)

A Few Considerations

Indirect Cost Recovery

- Who decides which of the indirect cost options to use?
 - **[COFAR JULY 2017 FAQ .331-6]** PTE may, but not required to, negotiate a rate with a subrecipient who requests a rate
 - **[COFAR JULY 2017 FAQ .331-9]** PTEs can negotiate separate rates with the same subrecipient
- Can NFEs still recover costs via a cost allocation plan?
 - **[COFAR JULY 2017 FAQ .331-5]** NFEs will not be forced to establish indirect costs rates

Procurement

Procurement

§ 200.319 – Methods Generally

- **[NEW]** Two overarching method categories based on simplified acquisition threshold (SAT) (currently \$250,000) (§ 200.319(a), (b)):
 - Informal = purchases less than SAT
 - Includes micropurchase and small purchase
 - Formal = purchases greater than SAT
 - Includes competitive bids, sealed bids and noncompetitive procurement

Procurement

§ 200.319 – Methods Generally

§200.319 Methods of procurement to be followed.

The non-Federal entity must **have and use documented procurement procedures for the ~~one of the~~** following methods of procurement for the acquisition of property or services required under a Federal award.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold, as defined in §200.1 Definitions, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The following informal methods of procurement used for procurement of property or services at or below the simplified acquisition threshold include:

Procurement

§ 200.319 – Methods Generally

§200.319 Methods of procurement to be followed.

...

(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the simplified acquisition threshold (SAT) (Simplified acquisition threshold), or a threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.318 Competition. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

Procurement

§ 200.319 – Simplified Acquisition Threshold

- **[NEW]** NFE is responsible for determining appropriate SAT based on internal controls, risk evaluation, and procurement procedures (§ 200.319(a)(2)(ii))
- **[NEW]** When applicable, SAT must be authorized/not prohibited under state, local or tribal laws/regulations (§ 200.319(a)(2)(ii))
- **Considerations:**
 - What is the purpose of adding this language? Does this language open the door to review of SAT thresholds?

Procurement

§ 200.319 – Methods Generally

§200.319 Methods of procurement to be followed.

...

(a)(2)(ii) Simplified acquisition thresholds that differ from the FAR. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. **When applicable, the simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.**

(emphasis added by CAPLAW)

Procurement

§ 200.319 – Micro-purchase

- **[NEW]** NFEs may request higher micro-purchase threshold (currently \$10,000) (§ 200.319(a)(1)(iii), (iv)):
 - Seek from cognizant agency for indirect costs
 - Requires low risk finding
 - When applicable, must be authorized/not prohibited under state, local or tribal laws/regulations
- **Considerations:**
 - How is this option available for NFEs without a cognizant agency for indirect costs?

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Procurement

§ 200.319 – Micro-purchase

§200.319 Methods of procurement to be followed.

...

(a)(1)(iii) Micro-purchase thresholds that differ from the FAR. The non-Federal entity is responsible for determining an appropriate micro-purchase threshold based on internal controls, an evaluation of risk and its documented procurement procedures. **All non-Federal entities can establish lower thresholds.** However, a non-Federal entity may request a higher micro-purchase threshold in accordance to section (iv) below. When applicable, the micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. **Requests for approval of a higher threshold must be submitted to the cognizant Federal agency for indirect cost rates (see Cognizant agency for indirect costs) for review and approval.**

(emphasis added by CAPLAW)

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Procurement

§ 200.319 – Micro-purchase

§200.319 Methods of procurement to be followed.

...

(a)(1)(iv) Cognizant agency for indirect cost evaluation of higher threshold requests are performed to determine if an entity is low risk (see §200.520 Criteria for a low-risk auditee) and must include at a minimum a review of the entity's audit findings and any appropriate internal institutional risk assessments. Values used to set micropurchase thresholds must also be consistent with any applicable state laws.

(emphasis added by CAPLAW)

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Procurement

§ 200.319 – Micro-purchase

- **[NEW]** Change “must distribute...equitably among qualified suppliers” to “should distribute...” for micro-purchases (§ 200.319(a)(1)(i))
- **[CLARIFICATION]** Micro-purchase considered a sole source procurement (§ 200.319(b)(3))

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Procurement

§ 200.319 – Micro-purchase

§200.319 Methods of procurement to be followed.

...

(a)(1) ~~Procurement by micro~~Micro-purchases.

(i) ~~Procurement by micro-purchase is the~~The acquisition of supplies property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (~~§200.67~~See Micro-purchase in §200.1 Definitions). **To the maximum extent practicable, the non-Federal entity must should distribute micro-purchases equitably among qualified suppliers.**

(emphasis added by CAPLAW)

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Procurement

§ 200.319 – Micro-purchase

§200.319 Methods of procurement to be followed.

...

(b)(f3) ~~Noncompetitive Procurement~~ procurement. There are specific circumstances in which noncompetitive procurement can be used. ~~Noncompetitive procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used~~ can only be awarded if ~~when~~ one or more of the following circumstances apply:

(i) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see §200.319(a)(1));

(emphasis added by CAPLAW)

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Procurement

§ 200.321 – Preference for U.S.-Made Goods

- **[NEW SECTION]** NFEs encouraged to buy American-made goods, materials, and supplies when using federal funds
- “Soft” preference – similar to preference for minority and women-owned businesses



Procurement

§ 200.321 – Preference for U.S.-Made Goods

§200.321. Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This term must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this award term:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Contracts

§ 200.216 – Certain Telecommunications

- **[NEW SECTION]** Cannot use federal funds to contract with entities that use “covered technology”, i.e., telecommunications equipment/services produced by:
 - Huawei Technologies Company
 - ZTE Corporation
 - Hytera Communications Corporation
 - Hangzhou Hikvision Digital Technology Company
 - Dahua Technology Company
 - Or any of their subsidiaries/affiliates
- **Considerations:**
 - How do grantees know, or how can they identify the use of the specified equipment and services?

Contracts

§ 200.216 – Certain Telecommunications

§ 200.216. Prohibition on certain telecommunications and video surveillance services or equipment.

Grant, cooperative agreement, and loan recipients are prohibited from using government funds to enter into contracts (or extend or renew contracts) with entities that use covered technology. See section 889 of Pub. L. 115-232 (National Defense Authorization Act 2019).

Contracts

§ 200.215 – Hostile Parties

- **[NEW SECTION]** Cannot use federal funds to subaward to, or contract with, entities actively opposing the U.S., i.e., “cannot contract with the enemy”
 - Applies to contracts that exceed \$50,000 within the period of performance
 - Federal agencies must add terms and conditions requiring NFEs to comply with this provision
 - Failure to comply is grounds for terminating award or contract

Contracts

§ 200.215 – Hostile Parties

§200.215 Never contract with the enemy

Federal awarding agencies and non-Federal entities are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. These regulations affect grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States, including U.S. territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

Performance-Based Measures

Performance Based Measures Program Planning & Design



[NEW] § 200.202

Federal agency must:

- Establish program goals, objectives, and indicators before notice of funding opportunity
- Align goals and outcomes with congressional intent as well as agency strategic plan and priority goals
- Publish program goals, objectives, and metrics for measuring performance
- Collect relevant performance data to demonstrate result
- Ensure taxpayers \$ providing critical Federal services to citizens efficiently and cost-effectively

Remember: applies to subrecipients!

§ 200.205 – Merit Review

Proposals

- **[NEW]** Add to merit review of proposals, the objective of selecting recipients likely to be successful in **delivering results** based on program objectives outlined in the notice of funding opportunity (See § 200.202)
- **[NEW]** Federal Awarding agency must systematically review award selection criteria for effectiveness

§ 200.205 – Merit Review

§ 200.205 Federal awarding agency review of merit of proposals.

For ~~competitive~~ discretionary grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, **with the objective of selecting the recipients most likely to be successful in delivering results based on the program objectives outlines in section §200.202.** This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this part, ~~Full text of the Funding opportunity.~~) See also §200.204~~3~~ ~~Notices of funding opportunities.~~ **The Federal awarding agency must also systematically review award selection criteria for effectiveness.**

Performance Based Measures

Program Planning & Design



[NEW] §200.102

Exceptions include:

- OMB encouraging Federal agencies to request exceptions supporting innovative program designs
- **Also** encouraging more restrictive T&C when merited



[COMMENT]

OMB seeking on behalf of federal agencies:

- Promising practices that may be leveraged within existing and proposed flexibilities or future exceptions
- Ways to better hold recipients accountable for results

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Performance Based Measures

Program Planning & Design



[NEW] §200.211(a)

Info in federal award must:

- Include any performance measures or independent data sources that may be used to measure progress



[NEW] §200.301

Performance measurement must:

- Build evidence-based practices
- Operate in tandem with evidence related statutes and related OMB implementation guidance

Remember: applies to subrecipients!

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§ 200.208 – Specific Conditions Restrictions

- **[NEW]** Federal agencies responsible for ensuring that specific Federal award conditions are consistent with program design (§ 200.202) and include clear performance expectations (§ 200.301)
- **[CLARIFICATION]** Federal awarding agency or pass through entity may impose more or less restrictive or additional specific conditions
- **Considerations:**
 - Does this make sense to add in this section or at all?

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Termination

§ 200.339 – Termination

- **[NEW]** Much broader basis for federal agencies to terminate award—if it “*no longer effectuates the program goals or agency priorities*”
- **BUT** CSBG and Head Start funding require procedural process before termination
 - Federal CSBG Act, 42 U.S.C. § 9908(b)(8)
 - Head Start Act, 42 U.S.C. § 9841(a)

§ 200.111(c) – Award Terms & Conditions Termination

- **[NEW]** Federal award terms and conditions must include reference to UG termination provision (§200.339) **and** federal award agency’s applicable requirements

§ 200.339 – Termination

§200.339 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

...

(2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities; ~~for cause~~;

... [existing termination conditions]; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) A Federal awarding agency should specify applicable termination provisions in its regulations and in each Federal award, consistent with this section.

(emphasis added by CAPLAW)

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Non-binding
Guidance

Award Terms & Conditions

§ 200.211(e) – Non-Binding Guidance

- **[NEW]** Prohibits federal agencies from referencing non-binding guidance in award terms and conditions
 - Implementing Executive Order 13891
- **Consideration:**
 - Is the COFAR FAQ (updated July 2017) still applicable?

Award Terms & Conditions

§ 200.211(e) – Non-Binding Guidance

§ 200.211 Information contained in a Federal award.

...

(e) Prohibition of including references to non-binding guidance documents. Federal awarding agencies are prohibited from including references to non-binding guidance in the terms and conditions of award. As described in Executive Order (EO) 13891, references to non-binding guidance include references to promising practices and other documents that the inclusion of by reference carries the implicit threat of enforcement action. These resources may be shared outside of the terms and conditions for reference purposes.

Definitions

§200.1 – Definitions

Generally

- All definitions listed under **one** section #
- Catalog of Financial Domestic Assistance (CFDA) now referred to as **Assistance Listing**
 - Assistance listing # = unique # assigned to identify Federal assistance listing
 - Assistance listing program title = title that corresponds Federal Assistance #
- **Fixed Amount Awards** now include cooperative agreements

§200.1 – Definitions

Time Period Terms

- **[NEW DEFINITION] Budget period** means the time interval during which recipients are authorized to expend the current funds awarded and must meet the matching or cost-sharing requirements, if any
- **[NEW DEFINITION] Renewal** means a subsequent Federal award to a current Federal award; each renewal must have a period of performance
- **[CLARIFICATION] Period of performance** means the anticipated time interval between the start and end date of an initial Federal award or Renewal

§200.111(c)(1)(iv) – Information in Award

Budget Periods

- **[NEW]** General terms and conditions must now include information about (i) future budget periods if period of performance will include multiple budget periods and (ii) subsequent budget periods being subject to availability of funds, satisfactory performance and compliance with terms and conditions

§200.402(b) – Timing of Costs

Budget Periods

- **[NEW]** Provision addressing timing of costs and requiring costs to be charged to the approved budget period in which they were incurred except where noted in a specific cost principle

§200.1 – Definitions

Financial Obligations

~~§200.71~~ Financial Obligations

~~When used in connection with a non-Federal entity's or recipient's utilization of funds under a Federal award, financial obligations means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment. by the non-Federal entity during the same or a future period.~~

§200.1 – Definitions

Improper Payments

~~§200.53~~ Improper payment.

See definition of improper payment in OMB Circular A-123 Appendix C, Part I A (2) "What is an improper payment?" Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 Appendix C. ~~(a) Improper payment means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and (b) Improper payment includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.~~

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Miscellaneous

§ 200.343 – Closeout

- **[NEW] Recipient** now has within **120 days** (up from 90 days) of the end of the period of performance to submit closeout documents to federal agency
- **[CLARIFICATION] Subrecipient** still required to submit closeout documents to pass-through entity within **90 days** of the end of the period of performance

§ 200.343 – Closeout Impact

- **CSBG/LIHEAP/WAP** (*and other pass-through funding*)
 - No change – CAA still must submit within 90 days to state CSBG office
- **Head Start** (*and other direct federal funding*)
 - CAA has 120 days (up from 90 days) to submit to federal agency
 - CAA's subrecipients must submit to CAA within 90 days

§ 200.344(a)(3) – Post Closeout Adjustments

- **[NEW]** Closeout of award not affect the ability of the Federal award agency to make financial adjustment to a previously closed award
- **Considerations:**
 - How does this work with the record retention period and requiring a cost disallowance determination within that period?
 - Is this necessary as a provision exists that requires an NFE to return any funds due to later refunds, corrections or other transactions? (See § 200.344(a)(2))

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§ 200.331(d)(4) – Audits Pass-Through Entity Responsibilities

- **[NEW]** Pass-through entity only responsible for addressing a subrecipient's audit findings that are ***specifically related to the subaward*** (“nonsystemic findings”)
 - Pass-through entity can rely on subrecipient's auditors and cognizant agency for routine audit follow-up and management decisions (if subrecipient's current Single Audit Report is posted in Federal Audit Clearinghouse)

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§ 200.413(b) – Direct Costs

- **[CLARIFICATION]** Expanded types of indirect costs that may be considered direct costs by noting that the costs currently listed are “examples” of such costs, rather than the only types of such costs
 - Added **program evaluation costs** to “examples”

§ 200.413(b) – Direct Costs

§ 200.413 Direct Costs.

(b) . . . If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also **be considered direct cost, 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.

Select Items of Cost



Depreciation, §200.436

When computing depreciation, acquisition cost exclude:

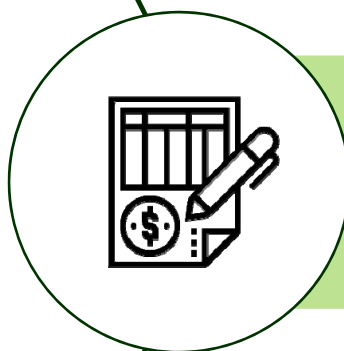
- Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity ***that are already claimed as matching or*** where law or agreement prohibits recovery
- ***Assets that were directly paid for and expensed using federal financial assistance***



Pre-award costs, §200.458

. . . 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

Select Items of Cost



Fringe Benefits, §200.431(g)

Removed from what is required for a pension plan cost to be allowable that ***“for entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP”***. .

§ 200.513 – Responsibilities

Cognizant Agency for Audit

- **[CLARIFICATION]** When direct funding represents less than 25% of total funding received by NFE (as prime and sub award), the Federal agency with the predominant amount of total funding is the designated agency for audit

A Few Clarifications

Forms

- **[CLARIFICATION]** Updates throughout replace term “standard form” with “**common form**”
 - Common form is an information collection that can be used by two or more agencies or government wide for the same purpose
- **[CLARIFICATION]** Revise § 200.335 to further explain and promote the collection of data in machine-readable formats

