

Part Two: Other Key Changes

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



Friday, November 20, 2020

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**Part One:
Cost Recovery**
Friday, November 13, 2020



**Part Two:
Other Key Changes**
Today's Webinar

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Background/Effective Date

- 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
- *Does not apply to HHS awards until new rule is issued*
 - HHS Uniform Guidance codified at 45 CFR 75

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)

Key Proposed Revisions

Indirect costs (*discussed in November 13 webinar*)

Procurement

Contracts

Non-binding guidance

Termination/Closeout

Performance-based Measures

Miscellaneous

Procurement

Procurement Methods, 2 CFR § 200.320

- **Existing methods did not change:**
 - Micro-purchase (less than \$10,000)
 - Small purchase (\$10,000 - \$250,000 or simplified acquisition threshold/SAT)
 - Sealed bids (greater than \$250,000/SAT)
 - Competitive proposals (greater than \$250,000/SAT)
 - Non-competitive proposals (sole source)

Procurement

Procurement Methods, 2 CFR § 200.320

- **[NEW]** Grouped existing methods into three categories
 - **Informal** = purchases do not exceed SAT
 - Includes micro-purchase and small purchase
 - **Formal** = purchases exceed SAT
 - Includes competitive bids and sealed bids
 - **Noncompetitive procurement** = sole source
 - Adds micro-purchase to existing circumstances

Procurement

Micro-purchases, 2 CFR § 200.320(a)(1)

- **[CLARIFIED]** micro-purchase considered noncompetitive procurement, **BUT:**
 - **[NEW]** “To the maximum extent practicable, the non-Federal entity ~~must~~should distribute micro-purchases equitably among qualified suppliers” (non-binding)
 - **[NEW]** price must be reasonable based on research, experience, purchase history or other information
- **[CLARIFIED]** purchase cards can be used if procedures are documented and approved by the NFE

Procurement

Micro-purchases, 2 CFR § 200.320(a)(1)

- **[NEW]** NFE responsible for determining and documenting an appropriate micro-purchase threshold
 - Based on internal controls, an evaluation of risk, and its documented procurement procedures
 - Must be authorized or not prohibited under state, local, or tribal laws/regulations

Procurement

Micro-purchases, 2 CFR § 200.320(a)(1)

- **[NEW]** NFEs may self-certify a micro-purchase threshold of **up to \$50,000** if supporting documentation is available to funding source and auditors and demonstrates any of the following:
 - Qualification as a low-risk auditee on most recent audit in accordance with § 200.520;
 - Annual internal institutional risk assessment to identify, mitigate and manage financial risk; or
 - A higher threshold consistent with state law (public institutions only)
- Must self-certify on an **annual basis** and maintain records that include **justification, clear identification of the threshold**

Procurement

Micro-purchases, 2 CFR § 200.320(a)(1)

- **[NEW]** NFEs may increase micro-purchase threshold above \$50,000 if:
 - Approved by cognizant agency for indirect costs and
 - Submitted request certifying the previous requirements (see slide 11)
- **[NEW]** Increased threshold valid until there is a change in status in which the justification was approved

Procurement

Small Purchases, 2 CFR § 200.320(a)(2)

- **[CLARIFIED]** NFE is responsible for determining appropriate SAT based on internal controls, risk evaluation, and procurement procedures **which must not exceed the threshold established in the FAR** (§ 200.319(a)(2)(ii))
- **[CLARIFIED]** When applicable, SAT must be authorized/not prohibited under state, local or tribal laws/regulations (§ 200.319(a)(2)(ii))

Procurement

- **Formal methods** largely the same
- **Noncompetitive procurement** largely the same
- **[NEW]** soft preference for American-made goods, materials, and supplies when using federal funds (§ 200.322(a))
 - Must be included in subawards, contracts, and purchase orders

Contracts

Certain Telecommunications, 2 CFR § 200.216

- **[NEW]** Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to
 - Procure or obtain;
 - Extend or renew a contract to procure or obtain; or
 - Enter into a contract to procure or obtain
 equipment, services, or systems that use **covered telecommunications equipment or services** as a substantial or essential component of any system, or as critical technology as part of any system
- **[NEW]** Cannot use video surveillance products or services from certain entities associated with foreign governments

Contracts

Certain Telecommunications, 2 CFR § 200.216

- **“Covered telecommunications equipment”**
= equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
- For video surveillance purposes, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company



HUAWEI

Hytera

ZTE

HIKVISION[®]

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TECHNOLOGY

Non-binding Guidance

Effect on other issuances, 2 CFR § 200.105(b)

- **[NEW]** In award terms and conditions, Federal agencies may not reference non-binding guidance that has not gone through the appropriate administrative rulemaking process
- **[NEW]** Can only impose legally binding requirements through the notice and comment process
- Implementing Executive Order 13891
- No explicit guidance on COFAR FAQ

Termination

Information contained in a Federal award, 2 CFR § 200.211(c)(iv)

- **[NEW]** Federal awards with multiple budget periods must contain language indicating that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with Federal award terms and conditions
 - 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)

Closeout

Closeout, 2 CFR § 200.344

- **[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

Closeout

Closeout, 2 CFR § 200.344

- **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

Post-Closeout Adjustments

Post-closeout adjustments and continuing responsibilities, 2 CFR § 200.345

- **[NEW]** The closeout of a Federal award does not affect any of the following:
 - Ability of Federal awarding agency to make *financial adjustments* to a previously closed award such as resolving indirect cost payments and making final payments

Performance-based measures

Program planning and design, 2 CFR § 200.202

- **[NEW]** Before NFA, Federal agency must:
 - Establish program goals and objectives before notice of funding opportunity
 - Align goals and objectives with congressional intent as well as agency strategic plan and priority goals
 - Publish program goals and objectives
- **[NEW]** Federal agency responsible for ensuring specific federal award conditions are consistent with program design reflected in goals and objectives, § 200.208(a)
- **[CLARIFIED]** Federal agency or PTE may adjust award conditions as needed, § 200.208(b)
 - Redundant language authorizing “more or less restrictive” conditions removed after CAPLAW comment

Performance-based measures

Exceptions and Termination

- **[NEW]** Federal agencies encouraged to request exceptions to UG in support of innovative program designs that apply a risk-based, data-driven framework, § 200.102(d)
- **[NEW]** Federal award must specify how performance will be assessed, including metrics, timing, and scope, § 200.211(a), § 200.301(a)
- **[NEW]** Award may be terminated by Federal agency or PTE if it no longer effectuates the program goals or agency priorities, § 200.340(a)(2)
 - **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)

Audit Findings

Requirements for pass-through entities, 2 CFR § 200.332(d)

- **[NEW]** PTE only responsible for resolving audit findings specifically related to the subaward, not “cross-cutting findings” (findings that impact the whole organization/all federal awards)
 - PTE 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)
 - Follow-up can also be received via written confirmation from subrecipient

Merit Review

Federal awarding agency review of merit of proposals, 2 *CFR* § 200.205

- For discretionary federal awards, **not CSBG**
- **[NEW]** Implements merit review process for proposals, with the objective of selecting recipients most likely to be successful in delivering results based on program objectives
 - Objective process in accordance with written standards set forth by the agency

Questions?



This training is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement - Grant Award Number 90ETO482-01.

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