

Proposed revisions to UG

2023 Comments:

[Federal Register :: Guidance for Grants and Agreements](#)

Intro



09/28/2023 the federal Office of Management and Budget filed proposed revisions to the Guidance for Grants and Agreements – commonly referred to as the Uniform Guidance.



1st notice period inviting public comment



GATU will collect and compile comments from the State of Illinois for submission.

Background

OMB proposes

- Revising 2 CFR for reasons including:
 - (1) incorporating statutory requirements and administration priorities;
 - (2) reducing agency and recipient burden;
 - (3) clarifying sections that recipients or agencies have interpreted in different ways; and
 - (4) rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms.
- Both policy changes and clarifications to existing guidance including plain language revisions.
- To update the guidance to reflect recent OMB priorities related to Federal financial assistance.
- Intended to improve Federal financial assistance management, transparency, and oversight through more accessible and readily comprehensible guidance.

Background

- Proposed revisions align with OMB's authority to:
 - (i) issue guidance promoting consistent and efficient use of Federal financial assistance instruments; and
 - (ii) provide overall direction and leadership to Federal agencies on policies and requirements related to Federal financial assistance.
- Many of the proposed revisions reflect comments received from Federal agencies and those received from the public in response to the OMB Notice of Request for Information published in the **Federal Register** in February 2023. See [88 FR 8480](#) (Feb. 9, 2023).

History



OMB and federal agencies collaborate 2012 and 2013

Revise and streamline existing guidance to develop the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Intended to assist programs in delivering better outcomes on behalf of the American people while reducing administrative burden and the risk of fraud, waste, and abuse.

2023 Updates

Clarifications

Addressed topics include program development & design, measuring recipient performance to improve program goals and objectives, share lessons learned, and adoption of promising performance practices.

2020 Revisions

Scope of Revisions

2 CFR 200

Also parts 1, 25,
170, 175, 180,
182, and 183.

Plain Language

Overall goal of plain language revision

- Make the Uniform Guidance more accessible to the general public.
- Ensure more equitable access to Federal funding opportunities by making the guidance on that topic easier to understand.

Examples

- Use the terms “recipient,” “subrecipient,” or both in place of “non-Federal entity.”
- Encourage Federal agencies to apply the requirements in subparts A to E of part 200 to all recipients in a consistent and equitable manner, but does not require them to do so.
- Replace the use of the general term “OMB designated governmentwide systems” with more specific terms to reduce ambiguity for those unfamiliar with the Uniform Guidance. In this proposed revisions OMB specifically mentions the appropriate system, such as *SAM.gov*, *USASpending.gov*, the Contractor Performance Assessment Reporting System (CPARS), or *Grants.gov*.

Part 25— Unique Entity Identifier and System for Award Management

- Revise the title of Part 25 to replace “universal identifier” with “unique entity identifier.”
- Clarify that the requirement to obtain a Unique Entity Identifier (UEI) and register in *SAM.gov* does not apply to second-tier subrecipients or contractors.
- Clarify that, even if an exception to the UEI is granted, a Federal agency remains responsible for reporting data to comply with the Transparency Act, as amended, except that it may use a generic entity identifier in the circumstances described.

Part 180—OMB
Guidelines to
Agencies on
Government-Wide
Debarment and
Suspension
(Nonprocurement)

- Revise include sections 180.635 and 180.640 to clarify available administrative actions in lieu of debarment.
- Amend section 180.705 to include “other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits” for officials to consider before initiating a suspension.
- Additional clarifying edits to sections 180.710, 180.815, and 180.860, including adding text to section 180.860 to address factors influencing a debarment decision.

Subpart A— Acronyms & Definition

- Removal of infrequently used acronyms
- Addition of more frequently used acronyms
- Revision to increase thresholds:
 - Supply <\$10,000
 - Equipment >\$10,000
 - MTDC subaward >\$50,000
- Addition of definitions
 - Proposed new definitions include “continuation funding,” “for-profit organization,” “key personnel,” “participant,” and “prior approval.”

Subpart A - Definitions

- Shorten the definition of “improper payment” to ensure that the definition references the appropriate source in Appendix C to OMB Circular A–123, Requirements for Payment Integrity Improvement
- Update the definition of “intangible property” to include more information related to date and licenses.
- Clarify “participant support costs” with additional explanatory information
- Expand the definition of “questioned costs” to provide greater understanding of the terms throughout the Uniform Guidance
- Alter other definitions including “Federal agency,” “Federal award date,” “financial obligations,” “Indian tribe,” “period of performance,” “prior approval,” “real property”, “recipient,” “special purpose equipment,” “subaward,” and “termination.”
- Minor change to “Federal financial assistance” to include assistance received or administered by “recipient or subrecipients”.

Subpart B— General Provisions

- Add language encouraging agencies to apply the requirements in subparts A through E of part 200 to all recipients in a consistent and equitable manner to the extent permitted within applicable statutes, regulations, and policies.
- Convert the applicability table in paragraph (b) of section 200.101 into paragraph form.

Subpart B - Exceptions

- Clarifying revisions in section 200.102 to improve agency and recipient understanding of the availability and use of exceptions to, or deviations from, OMB's Uniform Guidance in part 200.

Subpart B - New guidance on using language other than English

- New guidance to permit Federal agencies to request, receive, and distribute Federal award information in a language other than English when it is appropriate for a specific program or Federal award.
- This proposal would allow for more flexibility when working in international environments or in communities where English is the not the primary language.

Subpart B - “credible evidence” standard for disclosures

- Based on feedback from the oversight community, OMB proposes to revise the section on mandatory disclosure to clarify that recipients and subrecipients must promptly disclose any credible evidence of a violation of Federal criminal law potentially affecting the Federal award. OMB also proposes to revise this section to require recipients and subrecipients to provide written disclosure to the agency's Office of Inspector General.
- Proposed “credible evidence” standard is more appropriate because it would not require recipients, subrecipients, and applicants to make a legal determination that a criminal law has been violated before they are required to make a disclosure.

Subpart C— Pre-Federal Award Requirements and Contents of Federal Awards

- OMB proposes to revise this subpart to clarify certain requirements for fixed amount awards.
 - Recipients are entitled to any unexpended funds under a fixed amount award if the required activities were completed in accordance with the terms and conditions of the award.
 - OMB invites comments on appropriate pre-award certifications for fixed amount awards and notes that it may include a requirement for such certifications in the final guidance document.
- OMB also proposes to clarify record retention and post award certification requirements.

Subpart C— Community Engagement and Impact

- Expand section 200.202 on program planning and design to encourage agencies to encourage recipients to engage members of the community that will benefit from or be impacted by a Federal financial assistance program.
- Encourage Federal agencies to develop programs in consultation with the communities that will benefit from or be impacted by a program.
- Underscore that Federal agencies should consider all available data and evaluation results from past programs and coordinate with other agencies during program planning and design.
- Clarify that a Federal agency should consider diversity when developing policies and procedures for merit review panels.

Subpart C - Risk Assessment

- Revise the section regarding risk evaluation by using the term risk assessment as a standard term and clarifying agency requirements to appropriately review eligibility qualifications and financial integrity information.
- Clarify that agency processes may consider any risk criteria pertinent to a program, such as cybersecurity risk or impacts on local jobs and the community.
- Clarify that an agency may modify its risk assessment at any time during the lifecycle of an award.

Subpart C - Communication

- Reinforce the importance of communicating in plain language and highlighting any program-related customer service initiatives in section 200.203 on Assistance Listings.
- Revise section 200.204 on notices of funding opportunities to encourage Federal agencies to focus more on communicating requirements to the public in an accessible and comprehensible manner.
- Aims to make notices of funding opportunities more consistent and transparent.
- Aims to ensure that applicants are not unintentionally excluded from funding opportunities.

Subpart D – Nondiscrimination Requirements

- Streamline section 200.300 and to reinforce existing nondiscrimination requirements under the Constitution and other applicable law, consistent with
 - [Executive Order 13988](#) of January 20, 2021 (“Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation”), and
 - [Executive Order 14075](#) of June 15, 2022 (“Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals”).

Subpart D – Cost Sharing & Program Income

- Revise section 200.306 on cost sharing, as well as the definition of cost sharing itself, to clarify that “matching” is one category of cost sharing overall—thus eliminating the need to repeat the term “matching” throughout.
- Provide additional guidance on voluntary uncommitted cost sharing for institutes of higher education.
- Revise section 200.307 on program income by providing clarifications in paragraph (a) regarding use and expenditure of program income, including allowing program income for certain closeout costs.
- Revise and provide further clarifying guidance in paragraph (b) for each of the three methods for use of program income.

Subpart D – Prior Approvals

- Combine requirements for construction and non-construction awards revision of budget and program plans by combining the to provide greater uniformity in the requirements for all award types.(200.308)
- Clarify that recipients do not need approval of individual subrecipients under all circumstances, but only when making subawards of programmatic activities not proposed by the recipient in the application for an award.

Subpart D – Intangibles

- In section 200.315 on intangible property, OMB proposes to reinforce the potential requirement for recipients and subrecipients to make intangible property publicly available on agency-designated websites.
- Consistent with proposals in sections 200.311 and 200.313, also proposes a definition of the term “encumbrance.”

Subpart D - Procurement

- Clarify that that the procurement standards in part 200 do not prohibit recipients or subrecipients from using Project Labor Agreements or similar forms of pre-hire collective bargaining agreements; requiring commitments or goals to hire people residing in high-poverty areas, disadvantaged communities etc.
- Remove the prohibition in the Uniform Guidance on using geographic preference requirements.
- State that subpart D does not prohibit recipients and subrecipients from incorporating a scoring mechanism that rewards bidders committing to specific numbers and types of U.S. jobs, as well as certain compensation and benefits.

Subpart D - Procurement

- New paragraph (b) encouraging Federal award recipients, to the extent permitted by law, to purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.
- Add additional language to section 200.324 on contract cost and price to establish that the recipient or subrecipient may consider potential workforce impacts in their procurement analysis if the procurement transaction will potentially displace public sector employees.

Subpart D – Reporting

- 200.328, OMB proposes to provide additional clarity on required deadlines for financial reporting to align with progress reporting requirements.
- Remind agencies of the importance of not requiring information in programmatic reports that is not necessary for the effective monitoring of the award.

Subpart D – Pass-through

- Additional language to emphasize that Federal agencies do not have a direct legal relationship with subrecipients and contractors of pass-through entities.
- Clarify that the characteristics indicative of a subrecipient or contractor determination are not limited to the sample characteristics currently provided in the guidance.
- Include in section 200.332 the requirement for pass-through entities to confirm that potential subrecipients are not suspended, debarred, or otherwise excluded from receiving Federal funds.

Subpart D – Fixed Amount Awards

- Removing the current Simplified Acquisition Threshold limit for fixed amount subawards to provide agencies and recipients with increased flexibility in making programmatic and budgetary decisions, while still allowing recipients to establish their own award-specific thresholds with the prior written approval of the Federal agency.
- Under the proposed revision, a recipient's use of fixed amount subawards remains subject to the prior written approval of the Federal agency.

Subpart D – Termination and Closeout

- Clarifications on termination, discontinuation, and closeout.
- Revise closeout guidance to clarify that recipients must still submit a final financial report even when the recipient does not have a final indirect cost rate; and proposes to clarify that an additional final report must be submitted when the indirect cost rate is finalized.
- Provide additional flexibilities for agencies and recipients to closeout Federal awards in a timely manner.
- Allow an agency and recipient to mutually agree upon a final indirect cost rate for an individual award. This is not granting agencies additional authorities to negotiate rates over cognizant agencies for indirect rates; it affirms the Federal agency's right to negotiate with the recipient or subrecipient on a case-by-case basis with the goal of closing out specific awards in a timely manner.

Subpart E— Cost Principles

- Clarify that the cost principles in subpart E do not apply to grants and cooperative agreements for food commodities.
- Clarify when allowable administrative closeout costs may be incurred.
- Clarify that recipients and subrecipients may notify OMB of any disputes with regards to a Federal agency's application or acceptance of a federally negotiated indirect cost rates.
- Revise the guidance to clarify that pass-through entities must accept all federally negotiated indirect cost rates for subrecipients.
- Require subrecipients to certify to pass-through entities that financial information submitted to the pass-through entity is complete and accurate.

Subpart E - Costs

- Additional cost item clarifications, including:
 - allow for dependent-care costs associated with participants' attending or partaking in program-related conferences;
 - remove the prior approval option for selling and marketing costs, clarifying selling and marketing costs are unallowable unless they meet the requirements in section 200.421 and are required to meet the requirements of the award; and
 - revise the section on termination costs at section 200.472 to also include closeout costs.

Subpart E - Costs

- Clarifying text explaining that the listed items of cost are not intended to provide a comprehensive list and that failure to mention an item, even as an example, is not intended to imply that is allowable or unallowable.
- Revise the section on fringe benefits to require recipients and subrecipients to allocate payments for unused leave as general administrative expenses or include them in a fringe benefit rate with cognizant agency approval.

Subpart E - Higher Ed

- Remove the requirement in section 200.419 for an IHE that receives an aggregate total \$50 million or more in Federal awards and instruments subject to subpart E to submit a disclosure statement form (DS-2) containing information on cost accounting standards.

OMB seeks comments on the potential impact of this proposed change to section 200.419, including analysis on the advantages and disadvantages of removing the requirement for use of the DS-2 form.

Subpart E – De Minimis

- Raise the *de minimis* rate from 10 percent to 15 percent.
- Clarify that Federal agencies may not compel recipients and subrecipients to use an indirect rate lower than the proposed 15 percent rate, unless required by statute.
- Clarify that the *de minimis* rate may not be applied to cost reimbursement contracts and recipients and subrecipients are not required to use the *de minimis* rate.
- Remove the existing requirement in paragraph (h) of section 200.414 for all indirect cost rates to be publicly available on a government-wide website.
- Clarify that recipients and subrecipients may notify OMB of any disputes with regards to a Federal agency's application or acceptance of a federally negotiated indirect cost rates.

Prior Approval

- In section 200.407, OMB has removed ten items from the prior written approval requirements to reduce Federal agency and recipient burden:
 - real property,
 - equipment,
 - direct costs,
 - entertainment costs,
 - exchange rates,
 - memberships,
 - participant support costs,
 - selling and marketing costs, and
 - taxes.

Subpart F— Audit Requirements

- Raise the Single Audit threshold from \$750,000 to \$1,000,000 in section 200.501.
- Additional guidance explaining that, for audits covering multiple recipients (such as departments, agencies, IHEs, and other organizational units), the schedule of expenditures must identify the recipient of the Federal award.
- Revise in the definitions of known questioned costs and likely questioned costs and provide further clarity on how they are identified in an audit report.

Subpart F— Audit Requirements Scope

- Clarification: in determining Federal awards expended, loan and loan guarantees retain their Federal character through the end of the Federal award period of performance unless otherwise specified.
- Revise compliance requirements to specify that compliance testing must include a test of transactions and other auditing procedures necessary to provide the auditor with sufficient evidence to support an opinion on compliance.
- Section 200.516, based on feedback OMB received from the Federal financial assistance community, OMB proposes to revise in the definitions of known questioned costs and likely questioned costs and provide further clarity on how they are identified in an audit report.

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

- Revise this appendix to simplify and clarify the grant solicitation and application process; this is key objective under [Executive Order 14058](#) on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.
- Proposed changes are intended to improve the quality and accessibility of funding opportunities;
 - (1) follow plain language principles;
 - (2) group similar items together to streamline content;
 - (3) align sections more closely to the application process;
 - (4) include basic information at the top of a funding opportunity so that applicants can more easily make decisions about whether or not to apply;
 - (5) clearly define what must be included in a section of the funding opportunity versus what is at an agency's discretion; and
 - (6) provide flexibility to agencies while also giving applicants a common way to find information in every funding opportunity.