



### Key Uniform Guidance Changes

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### Background Information



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### What Is the Uniform Guidance?

- Office of Management and Budget regulations that supersede:
  - Grant administrative circulars A-110 and A-102
  - Cost principle circulars A-122, A-87, A-21
  - Audit circulars A-133 and A-50
  - Circular A-89 (catalogue of federal financial assistance)
- Codified at 2 C.F.R. Part 200
- Each federal agency has adopted by regulation (e.g., 45 C.F.R. Part 75 for HHS)



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### See COFAR Website for More Information

- COFAR: <https://cfo.gov/cofar/>
  - FAQ: <https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf>
  - Webinars, cross-walks to old rules, other resources

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### When Is It Effective?

- Applies to new federal awards and funding increments to existing awards made after Dec. 26, 2014
- Optional grace period for procurement standards for one full fiscal year after Dec. 26, 2014
- Audit requirements will apply to audits of fiscal years that start on or after Dec. 26, 2014

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### Review Date and Inquiries

- OMB will review the Uniform Guidance at least every 5 years after Dec. 26, 2013. § 200.109
- Federal agencies are to direct inquiries to OMB. § 200.108
- Non-federal entities are to direct inquiries to their federal awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate. § 200.108

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### A Note on the Word “Should”

- Not in the definitions
- According to COFAR FAQ:
  - The word “must” is used to indicate requirements
  - The word “should” is used to indicate best practices or recommended approaches that the COFAR wanted non-Federal entities to be aware of, but not necessarily required to comply with

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### Who’s Covered by the Uniform Guidance?

- Uniform Guidance requirements apply to federal agencies that make federal awards to non-federal entities. § 200.101
- Terms and conditions of federal awards (including Uniform Guidance) flow down to subawards to subrecipients unless a particular section of the Uniform Guidance or the terms and conditions of the federal award specifically indicate otherwise
  - Nonfederal entities must comply with Uniform Guidance regardless of whether they are recipients or subrecipients

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### Who’s Covered?

- **Non-Federal Entity:** A state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient. § 200.69
- **Pass-Through Entity:** A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. § 200.74

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### Who's Covered? (cont.)

- **Recipient:** A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program; does not include subrecipients. § 200.86
- **Subrecipient:** A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program. § 200.93
  - May also be a recipient of other federal awards directly from a federal awarding agency
  - Does not include an individual who is a beneficiary of a federal program

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### Pass-Through Entities

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### Pass-Through Entity Requirements

- Pass-through entities must comply with:
  - § 200.330 – Subrecipient and contractor determinations
  - § 200.331 – Requirements for pass-through entities
  - § 200.332 – Fixed amount subawards
- But they are not required to comply with any requirements in Uniform Guidance directed towards federal awarding agencies unless Uniform Guidance or terms and conditions of federal award require otherwise

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### Pass-Through Entities (cont.)

- Pass-through entities must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes certain specified information at time of the subaward and to notify subrecipient of any changes in a subaward modification. § 200.331
- Notably, required info includes (among other things):
  - An approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government, or if no such rate exists, either a 10% “de minimis” indirect cost rate or a rate negotiated between the pass-through entity and the subrecipient

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### Pass-Through Entities (cont.)

- Pass-through entities also required to:
  - Evaluate subrecipient’s risk of noncompliance for purposes of determining appropriate subrecipient monitoring
  - Consider imposing specific subaward conditions if appropriate
  - Monitor subrecipient’s activities as necessary to ensure it is used for authorized purposes and in compliance with federal statutes, regs and terms and conditions of subaward, and that performance goals are achieved (suggests certain monitoring tools, such as T&TA, onsite reviews etc.)

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### Pass-Through Entities (cont.)

- Pass-through entities also required to:
  - Verify that every subrecipient is audited as required by Subpart F – Audit Requirements where subrecipient’s federal awards expended during a fiscal year exceed audit threshold
  - Consider whether results of subrecipient’s audits, on-site reviews or other monitoring indicate conditions that necessitate adjustments to pass-through entity’s records
  - Consider taking enforcement action against noncompliant subrecipients

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## Block Grants, Entitlement Programs and Non-Discretionary Federal Awards

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## How Does the Uniform Guidance Apply to Block Grants? (§ 200.101)

- For block grants authorized under Omnibus Reconciliation Act of 1981, including:
  - CSBG (except to the extent that the cost and accounting standards of OMB apply to subrecipients of CSBG funds)
  - LIHEAP
  - Social Services
  - Preventive Health and Health Services
  - Alcohol, Drug Abuse, and Mental Health Services
  - Maternal and Child Health Services
  - States' program of CDBG awards for small cities
  - Elementary and Secondary Education
  - Alcohol and Drug Abuse Treatment and Rehabilitation
  - Mental Health Service for the Homeless

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## Block Grants (cont.)

- And federal awards authorized under the Child Care and Development Block Grant Act of 1990
  - Child Care and Development Block Grant
  - Child Care Mandatory and Matching Funds of the Child Care and Development Fund

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### Block Grants (cont.)

- These provisions are the only Uniform Guidance provisions that apply:
  - § 200.202 – Requirement to provide public notice of federal financial assistance programs
  - § 200.330 – Subrecipient and contractor determinations
  - § 200.331 – Requirements for pass-through entities
  - § 200.332 – Fixed amount subawards

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### What About Entitlement Programs and Non-Discretionary Federal Awards?

- Only § 200.202 (Requirement to provide public notice of federal financial assistance programs) applies to:
  - Entitlement programs, such as:
    - Medicaid
    - TANF
    - Child and Adult Care Food Program
    - Summer Food Service Program for Children
    - Commodity Assistance
  - Non-discretionary federal awards under the following programs:
    - Special Supplemental Nutrition Program for Women, Infants and Children (WIC)
    - The Emergency Food Assistance Programs
    - Commodity Supplemental Food Program

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### Exceptions, Additional Requirements and Prior Approval

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### Additional or Inconsistent Requirements (§ 200.100)

- Federal awarding agencies must not impose additional or inconsistent requirements.
  - Except as provided in 200.102 (Exceptions) and 200.210 (Information contained in a federal award) or unless specifically required by a federal statute, regulation or Executive Order

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### Exceptions (§ 200.102)

- Except for Subpart F – Audit Requirements, OMB may grant exceptions for classes of federal awards or non-federal entities subject to the requirements of the Uniform Guidance, when not prohibited by statute, but will do so only in unusual circumstances
- Federal awarding agency or cognizant agency for indirect costs may authorize exceptions on a case-by-case basis except where otherwise required by law or where OMB or other approval required

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### Exceptions (cont.)

- Federal awarding agency may apply more restrictive requirements to a class of federal awards or non-federal entities when approved by OMB, required by federal statutes or regulations except for requirements of Subpart F – Audit Requirements
- Federal awarding agency may apply less restrictive requirements when making fixed amount awards except for requirements imposed by statute or in Subpart F – Audit Requirements

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### Fixed Amount Awards (§ 200.35)

- A grant award where funding source provides a specific level of support without regard to actual costs incurred. This is a performance and results-oriented grant.
- Rules concerning fixed amount awards are in § 200.201 and § 200.332

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### Exceptions (cont.)

- OMB will approve new strategies for federal awards on a case-by-case basis when proposed by the federal awarding agency in accordance with OMB guidance to develop additional evidence relevant to addressing important policy challenges or to promote cost-effectiveness in and across federal programs

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### Effect on Other Issuances (§ 200.105)

- All federal agency administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of the Uniform Guidance will be superseded upon implementation of Uniform Guidance by the federal agency
  - Except as required by statute or authorized as an exception by OMB

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### Prior Written Approval (§ 200.407)

- Now grouping of (most) prior approval requirements in one regulation
- Absence of prior approval will not affect reasonableness or allocability determination unless prior approval was specifically required

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### Pre-Award Requirements

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### Conflicts of Interest (§ 200.212)

- The funding source must establish conflict of interest policies for federal awards
- Grantees must disclose any potential conflicts in writing to the federal awarding agency or pass-through entity (e.g., state) in accordance with federal awarding agency policy

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### Mandatory Disclosures (§ 200.113)

- Non-federal entity or applicant for federal award must disclose, in a timely manner, in writing to the federal awarding agency or pass-through entity, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award

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### Review of Merit and Risk (§ 200.204 & 200.205)

- For competitive awards, federal awarding agency must use review applications based on merit
- Federal awarding agency must also review risks associated with a potential award
  - Must review info available through OMB-designated repositories of governmentwide eligibility information (e.g., Federal Awardee Performance and Integrity Information System, Dun and Bradstreet, and “Do Not Pay”)

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### Certifications and Representations (§ 200.208 )

- Generally certifications and representations are to be submitted on an annual basis, however submission may be required more frequently if the non-federal entity fails to meet an a award requirement

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## Internal Controls, Record Retention and Access

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### Internal Controls (§ 200.303)

- Non-federal entities must:
  - Establish and maintain effective internal control that provides reasonable assurance that they are managing federal award in compliance with federal statutes, regs and award terms and conditions
  - Internal controls should comply with:
    - “Standards for Internal Control in the Federal Government” (U.S. Comptroller General) <http://www.gao.gov/greenbook/overview> and
    - “Internal Control Integrated Framework” (Committee of Sponsoring Organizations of the Treadway Commission, or COSO) <http://www.coso.org/ic.htm>

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### Internal Controls (cont.)

- Non-federal entities must:
  - Comply with and evaluate and monitor their compliance with federal statutes, regs and award terms and conditions
  - Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings
  - Take reasonable measures to safeguard protected personally identifiable information and other designated sensitive information.

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### Personally Identifiable Information (PII) (§ 200.79)

- Information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual ....

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### Record Retention and Access

- Electronic storage of records is now permitted and encouraged. When original records are electronic and cannot be altered there is no need to create and retain paper copies. See § 200.335.
- No federal awarding agency may place restrictions on the non-federal entity that limit public access to the records of the non-federal entity pertinent to a federal award, except for PII and certain other situations. See § 200.337.
- Period for which federal agencies may disallow costs after award closeout is now limited to the 3-year record retention period. See § 200.344.
  - But federal government may collect amounts due to it at any time. See § 200.345.

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### Procurement

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### Effective Date of Procurement Standards (§ 200.110(a))

- Optional grace period for one full fiscal year after Dec. 26, 2014 in which non-federal entities may continue to use old procurement rules
- Non-federal entities choosing to use the previous procurement standards for an additional fiscal year before adopting the procurement standards in the Uniform Guidance must document this decision in their internal procurement policies

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### General Procurement Standards (§ 200.318)

- Grantees are required to maintain written standards of conduct that cover conflicts of interest. Conflict of interest policy must also cover parent, affiliate, and subsidiary.
- Grantees also encouraged to enter into state/local intergovernmental or inter-entity agreements to share goods and services.
- Records must also detail the history of procurement and the rationale for the method of procurement, selection of contract type, contractor selection/rejection, and basis for contract price.

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### Competition (§ 200.319)

- All procurement transactions must be conducted in a manner providing full and open competition
  - But cost or price analysis no longer required for every procurement transaction
- May not apply state or local geographic preferences, except where required or encouraged by federal statute

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### Methods of Procurement (§ 200.320)

- Rules now outline specific methods of procurement and requirements for each method:
  - Micro-purchases for \$3000 or less
  - Small purchases for Simplified Acquisition Threshold of \$150,000 or less. Price and rate quotes must be obtained.
  - Sealed bids
  - Competitive proposals
  - Non-competitive proposals (sole source)

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### Micropurchase (§ 200.67)

- A purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold
- Threshold set by 48 C.F.R. Subpart 2.1 (Definitions in Federal Acquisition Regulation (FAR))
- Currently \$3,000, but adjusted periodically for inflation

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### Simplified Acquisition Threshold (§ 200.88)

- The dollar amount below which a non-federal entity may purchase property or services using small purchase methods
- Non-federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold
- Set by 48 C.F.R. Subpart 2.1 (Definitions for FAR)
- Currently \$150,000, but adjusted periodically for inflation

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### Procurement Standards

- Cost or price analysis is required for any procurement in excess of the Simplified Acquisition Threshold (\$150,000). See § 200.323(a)
- Non-federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises and labor surplus firms are used when possible. See § 200.320
  - Current A-110 language requires “positive efforts”

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### Procurement Standards (cont.)

- Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed (sealed bids, competitive proposals, and non-competitive procurement) . See § 200.323(b)
- Non-federal entity must make certain information and records regarding its procurement procedures available to the federal awarding agency or pass-through entity upon request for pre-procurement review. See § 200.324.

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### Indirect Costs and Required Certifications

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### Indirect Costs (§ 200.414)

- Negotiated rates must be accepted by all Federal awarding agencies
  - Different rates permitted only when required by Federal law or approved by Federal agency
  - Must notify OMB of approved deviations
  - Federal agency must make publicly available deviation policies, procedures and general decision-making criteria
  - Notice of funding opportunities must include indirect cost rate reimbursement, matching or cost share policies

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### De Minimis Indirect Cost Rate (§ 200.414(f))

- Any non-federal entity that has never received a federally negotiated indirect cost rate may elect to charge a de minimis rate of 10% of modified total direct costs which may be used indefinitely
- If chosen, must be used consistently for all federal awards until the non-federal entity chooses to negotiate for a rate, which it may do at any time

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### Modified Total Direct Costs (§ 200.68)

- Modified Total Direct Costs (MTDC) includes:
  - All direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award).
- MTDC excludes:
  - Equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
  - Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

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### Extension of Indirect Cost Rate (§ 200.414)

- If have federally negotiated indirect cost rate, may apply for one-time extension for up to four years
  - Extension subject to review and approval
  - May not request rate review until end of extension period
  - Must re-apply to negotiate rate

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### Indirect Cost Rate (§ 200.415)

- If don't elect 10% de minimis rate or submit a certified rate or plan proposal, federal gov't may disallow all indirect costs or unilaterally establish a plan or rate

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### Allocable Costs (§ 200.405)

- Still may not shift costs to overcome funding deficiencies or avoid restrictions; *however, costs that are allowable under two or more federal awards may be shifted if permitted by existing federal statutes, regulations or award terms and conditions*

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### Allocable Costs (cont.)

- Direct cost allocation principles:
  - If a cost benefits two or more projects or activities:
    - in determinable proportions, cost should be allocated based on proportional benefit
    - in non-determinable proportions, costs may be allocated or transferred on any reasonable documented basis
  - Equipment or other capital assets costs are assignable to the authorizing federal award regardless of the use when no longer needed for original purposes

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### Required Certifications (§ 200.415)

- Cost allocation plan or indirect cost rate proposal certification must be:
  - Maintained on file
  - On forms in the appendices
  - Signed by an individual no lower than VP or CFO
- If don't elect 10% rate, submit a certified rate or plan proposal, Federal gov't may disallow all indirect costs or unilaterally establish a plan or rate

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### Required Certifications (§ 200.415)

- Expenditure certification required to assure payments are proper and in accordance with:
  - Award terms and conditions
  - Approved project budgets
  - Annual and final fiscal reports or vouchers requesting payment under the agreement
- Must be signed by an official authorized to legally bind entity
- Sample certification language included in regulation

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### Selected Items of Cost

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### “Old” Rules on Compensation for Personal Services: PARs

- PARs required to:
  - Reflect an after-the-fact determination of the actual activity of each employee (budget estimates don't qualify)
  - Account for total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization
  - Be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered
  - Be prepared at least monthly and must coincide with one or more pay periods.

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### Compensation for Personal Services (§ 200.430)

- Charges must be based on records accurately reflecting work performed
- If meet following standards, no additional documentation required:
  - Supported by system of internal control
  - Incorporated in official records
  - Reasonably reflect the total compensated activity
  - Encompass all activities – federal and non federal
  - Comply with established accounting practices and policies
  - Support distribution of employee's salary among specific activities or cost objective

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### Compensation (cont.)

- If use budget estimates (estimates determined before services are performed) must:
  - Have system that produces reasonable approximation of actual activity
  - Enter significant changes into records in a timely manner
  - Follow processes to review after-the-fact interim charges to estimate and ensure final amount charged is accurate, allowable and properly allocated

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### Compensation (cont.)

- For blended funding:
  - May account for combined use based on performance metrics if all involved federal awarding agencies approve
  - Must submit request for waiver of standards based on documentation that:
    - Describes method of charging costs,
    - Relates charging of costs to a specific activity applicable to all funding sources and
    - Is based on quantifiable measures of the activity in relation to time charged

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### Compensation (cont.)

- If don't meet documentation standards, may be required to submit personnel activity reports (PARs)

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**Salaries of Admin. and Clerical Staff  
(§ 200.413)**

- Salaries of administrative and clerical staff will be treated as indirect (F&A) costs
- Direct charging allowed if:
  - Costs integral to a project or activity;
  - Individuals involved specifically identified with the project or activity;
  - Costs explicitly included in budget or prior written approval received; and
  - Costs not recovered as indirect

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**Fundraising and Investment  
Management Costs (§ 200.422)**

- Fundraising costs for meeting federal program objectives are allowable with prior written approval
- Investment counsel and staff costs (currently unallowable) are allowable when associated with investments covering pension, self insurance or other funds which include federal participation

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**Proposal Costs (§ 200.460)**

- Proposal costs include:
  - Preparing bids, proposals, or applications on potential Federal/non-Federal awards or projects, including development of support data
  - Successful and unsuccessful bids
- Current costs treated as indirect and allocated to all entity activities
- No past proposal costs will be allocable to current accounting period

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### Fines, Penalties, Damages and Other Settlements (§ 200.441)

- Other settlement costs and damages resulting from violations of, alleged violations of or failure to comply with laws and regs are unallowable except when incurred as a result of compliance with Federal award provisions or with prior written approval from the awarding agency

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### Depreciation (§ 200.436)

- No more use allowance
  - When replacing use allowance with depreciation method, depreciation must be computed as if asset has been depreciated over its entire life
- Charges must be supported by adequate property records and physical inventories (taken at least every 2 yrs) to ensure assets useable, used and needed
- Must maintain records showing that adequate depreciation taken

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### Memberships, Subscriptions & Professional Activity Costs (§ 200.454)

- Costs of membership in organizations whose primary purpose is lobbying are unallowable

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### Employee Health and Welfare Costs (§ 200.437)

- Costs incurred in accordance with the non-federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable
  - Employee morale cost removed
  - Previously, costs only had to be incurred in accordance with the non-federal entity's established practice or custom

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### Advertising and Public Relations (§ 200.421)

- Includes program outreach as an allowable advertising cost

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### Audit Requirements

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### Audit Requirements

- Threshold for Single Audit requirement raised to \$750,000. § 200.501.
- The threshold for reporting questioned costs has been raised to \$25,000 for major programs. § 200.516.
- When selecting an auditor, the grantee must review peer review reports. § 200.509.

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### Audit Requirements (cont.)

- All audits will be available for public inspection on the internet, on the website of the Federal Audit Clearinghouse. § 200.512.
- If additional audits required then fed. awarding agency or state gov. must first review the Federal Audit Clearinghouse for existing audits and rely on the information there to the extent possible. § 200.503.

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### Audit Requirements (cont.)

- Determination of Type A programs will now be based on higher value of \$750,000. See table in § 200.518 with threshold values to determine where federal programs fall in terms of risk and required audit level.
- To qualify for low-risk status, grantee must use GAAP unless another basis is required by state law. § 200.520.

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### Audit Requirements (cont.)

- Audit due dates that fall on Saturday, Sunday, or Federal holiday, are due the following business day. § 200.512.
- In addition to the sanctions provided for under A-133 for noncompliance with audit requirements the federal agency or state may now also initiate suspension or debarment proceedings. §§ 200.505, 200.338.

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