

Uniform Guidance Revisions

NASCSP training for
State Administrators



CAPLAW
Community Action Program Legal Services, Inc.

Tuesday, December 1, 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
- *Does not apply to HHS awards until new rule is issued*
 - HHS Uniform Guidance codified at 45 *CFR* 75

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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

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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)

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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]** when modifying or renegotiating an award agreement, check to make sure UG citations match new UG sections
- **[PRACTICE TIP]** HHS awards should include references to 45 CFR Part 75

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Key Revisions for State Administrators

Cost recovery

Non-binding guidance

Audit findings

Future budget periods and closeout

Performance-based measures

Procurement

Contracts



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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 until re-negotiated or expires



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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

Indirect Costs

Pass-through entities

- **[CLARIFIED]** 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.

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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), Appendix IV, C.2.a)

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Indirect Costs

Negotiated Indirect Cost Rates

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

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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”

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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))

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Scenario 1

Action CAA used a federally 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 recovering costs 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

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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

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Scenario 2

(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.

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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.

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

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

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Future Budget Periods

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)

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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
- **[CLARIFIED]** **Subrecipient** still required to submit closeout documents to pass-through entity within **90 days** of the end of the period of performance
- **[NOTE]** **CSBG/LIHEAP/WAP** (*and other pass-through funding*)
 - **No change** – CAA still must submit within 90 days to state CSBG office

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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

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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

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Performance-based measures

Specific Conditions, 2 CFR § 200.208

- **[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

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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)

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Performance-based measures

Exceptions and Termination

- **[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)

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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)
- Grouped into three categories: informal, formal, noncompetitive



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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



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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**



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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 32)
- **[NEW]** Increased threshold valid until there is a change in status in which the justification was approved



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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))

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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

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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

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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



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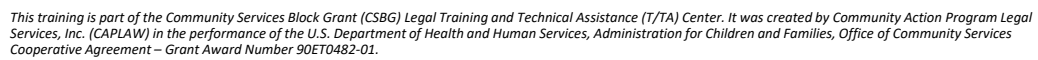
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Technology Costs

- **[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

Questions?



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