

March 11 - 15 | Arlington, VA  
Crystal Gateway Marriott

2024

**WINTER TRAINING CONFERENCE**



NASCS

Turning Possibilities into Reality

Getting Real about the Uniform Grants Guidance

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# Getting Real about the Uniform Guidance

NASCSP Winter Training Conference

March 11, 2024

Discussion Leader: Kay Sohl

[www.kaysohlconsulting.net](http://www.kaysohlconsulting.net)



# Workshop Topics:

- **UGG Basics that matter most** for CSBG and WAP recipients and sub-recipients
- **2023 proposed UGG revisions** – next steps for OMB
- Key requirements for **pass-through entities**
- **Procurement** requirements and challenges
- **Cost allowability** and **cost allocation** basics
- **CSBG compliance challenges**
- Emerging **WAP challenges as DOE BIL** funding rolls out

# Who is in our group today?



# Background

- **Uniform Guidance first took effect December 26, 2014**
  - **Replaced OMB Circulars A-87, A-122, and A-133**
- Codified in the Code of Federal Regulations: **2 CFR Part 200**
- OMB required to review UG every 5 years (2 CFR § 200.109)
  - **First significant revisions issued August 13, 2020**
    - Most provisions effective November 12, 2020
    - Applies to new awards and award modifications issued on or after November 12, 2020
    - Revisions don't apply to HHS awards until new rule is issued
- **Additional Uniform Guidance changes are on the way!**

# 2023 Proposed Changes

October 5, 2023

## Four main objectives for proposed revisions:

1. Incorporate statutory requirements and administration priorities;
2. Reduce agency and recipient burden;
3. Clarify differing interpretations; and
4. Rewrite sections in plain language, improving flow, and addressing inconsistent use of terms

# OMB Decision Date for 2023 Revisions

- **Not yet announced**
- **Comment period closed 12/4/23**
- **OMB announced intention to move quickly**
- **Increase in de minimis rate may have significant impact on CAAs**

# Proposed Change in De Minimis Rate

- **Increase** de minimis rate from 10% to **15%**
- Maintain requirement to compute de minimis rate using **Modified Total Direct Cost as base**
- **Maintain 2020 revision** permitting any recipient or sub-recipient to elect to use the de minimis rate – even if they previously had a Negotiated Indirect Cost Rate
- **Action by HHS** will still be needed to make the new de minimis rate provisions apply to HHS awards and sub-recipient agreements



# Federal Agency Versions of UG

**HHS:** codified its own version of the Uniform Guidance as

- 45 CFR Part 75

**All other federal agencies adopted 2 CFR Part 200 with a few exceptions/additions:**

- **Dept.. of Energy:** 2 CFR Part 910
- **CNCS:** 2 CFR Part 2205
- **HUD:** 2 CFR Part 2400
- **DOL:** 2 CFR Part 2900
- **Dept.. of Education:** 2 CFR Part 3474

# DOE Version of UG

## 2 CFR Part 910

### § 910.120 Adoption of 2 CFR part 200.

- (a) Under the authority listed above, the Department of Energy adopts the Office of Management and Budget (OMB) Guidance in [2 CFR part 200](#), with the following additions. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.
- (b) The additions include: Expanding the definition of non-Federal entity for DOE to include For-profit entities; adding back additional coverage from [10 CFR part 600](#) required by DOE statute; adding back coverage specific for For-Profit entities which existed in [10 CFR part 600](#) which still applies.

# What's In the Uniform Guidance

## 2 C.F.R. Part 200

- **Subpart A:** Acronyms and Definitions
- **Subpart B:** General Provisions
- **Subpart C:** Pre-Federal Award Requirements and Contents of Federal Awards
- **Subpart D:** Post-Federal Award Requirements
- **Subpart E:** Cost Principles
- **Subpart F:** Audit Requirements
- **Appendices:** Required contract provisions, indirect costs etc.

# Which UG Provisions Apply to CSBG?

**All these UG provisions apply to all block grants, including CSBG:**

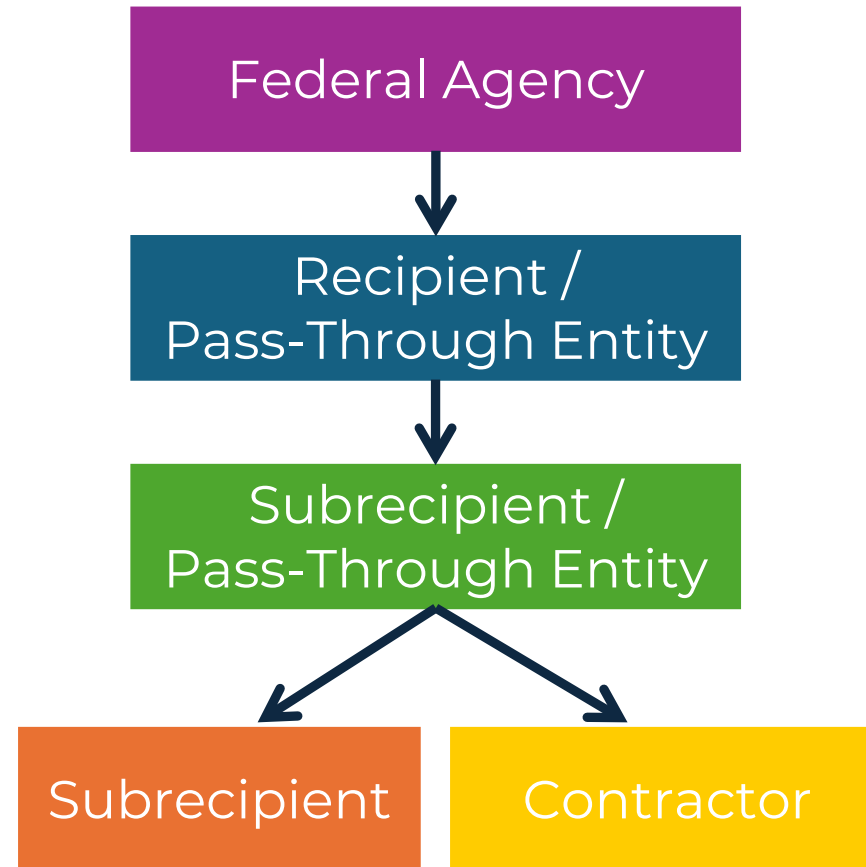
- **Subpart A (definitions)**
- **Subpart B (Provisions)**
- **Subpart F (Audit Requirements)**
- **Subpart C – only certain provisions (see next slide)**

# Provisions in Subpart C that apply to CSBG

- § 200.203 – Public notice/CFDA
- § 200.331 – Subrecipient & contractor determinations
- § 200.332 – Pass-through entities
- § 200.333 – Fixed amount subawards
- **Additionally: Subpart E, Cost Principles, applies to CSBG** because CSBG Act, the authorizing statute (42 U.S.C. § 9916(a)(1)(B)), specifically requires it

# Pass-through Entity Requirements

# Pass-through Entity Relationships



# State Agencies function as Pass-through Entities for CSBG and other Federal \$\$\$

- CAAs, other nonprofits, and local governments may also function as pass-through entities
- State agencies are recipients of federal dollars
- Recipients are required to follow all federal funds management requirements
- **Recipients** making awards to sub-recipients **must hold the sub-recipient accountable for following all federal requirements**
- **Recipients are responsible for sub-recipient compliance**



# Sub-recipient versus Contractor Relationships

- **Not all awards of federal funds are “grants” subject to UGG**
- **UGG applies** to grants, awards, & cooperative agreements between federal agencies and **recipients & sub-recipients**
- **UGG does not apply to exchange-type transactions with “contractors”** - subject to FARS – Federal Acquisition Regulation System

# How Pass-throughs award federal funds

Need to determine whether other entity is a **contractor** or **subrecipient**

- **Subrecipient**: Don't use procurement process, but must conduct pre-award risk assessment
- **Contractor**: Must use procurement process to select, but generally don't need to comply with program rules

The recipient (**pass-through entity**) is always solely responsible to the federal government for the execution of the award

# Subrecipient vs Contractor

<b>Subrecipient (<i>Subaward</i>)</b>	<b>Contractor (<i>Procurement contract</i>)</b>
<b>Purpose is to carry out a portion of the Federal award</b>	<b>Purpose is to obtain goods and services for the non-Federal entity's own use</b>
Determines eligibility for assistance	Provides goods and services within normal business operations
Performance measured according to Federal program objectives	Provides similar goods and services to many different purchasers
Responsible for program decision-making	Normally operates in a competitive environment
Must comply with Federal program requirements	Is not subject to compliance requirements of the Federal program as a result of the agreement
Funds used to carry out the Federal program, rather than providing goods or services	Provides goods or services that are ancillary to the operation of the Federal program

# Sub-Recipient Characteristics

- Can **determine who is eligible** to receive what Federal assistance
- **Performance** is measured relative to **objectives of a Federal program**
- Is responsible for **making programmatic decisions**
- Is responsible for **adherence to applicable Federal program requirements**

# Contractor Characteristics

- Provides a goods or services that **benefit the pass-through entity**
- Goods or services provided are within the entity's normal business operations
- Goods or services are **ancillary** to the Federal program
- **Not subject to compliance requirements of Federal Program**

# Sub-recipient Agreements Must -

- Identify CAA or other entity as a **sub-recipient**
- Explicitly state the requirement to comply with **§ 2 CFR 200**
- Include **ALN # \*** for specific federal program providing the funds

**\*Assistance Listing Number ALN is new term for CFDA #**

# Common Sub-Recipient Agreement Challenges

- Agreements are **silent** as to sub-recipient vs contractor vs beneficiary
- Sub-recipient agreement is labeled **“contract”**
- Sub-recipient agreement fails to identify **ALN#**
- **SLFRF** (State & Local Fiscal Recovery Funds) **does not permit sub-awards** – many pass-throughs realized they needed to amend subrecipient agreements
- Agreement originally states that entity is subrecipient but **later amends** to clarify that entity is beneficiary or contractor

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complete the  
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for this  
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# Procurement Requirements

# UGG Procurement Standards

## § 200.318

- Must have **written** procurement procedures
- Must cover **conflicts of interest**
  - Employees, officers, or agents (including board)
  - Members of their immediate family, partners, or employers
  - Organization
- **Records** must detail rationale for:
  - **method** of procurement,
  - selection of **contract type**,
  - contractor **selection/rejection**,
  - **basis for contract price**

# Goal is Fairness

## § 200.319

- Full and open **competition**
- Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be **excluded** from competing for such procurements
- **Pre-qualified contractors**: Must ensure lists are current and include enough qualified sources to ensure competition;
- **Non-competitive procurement only allowed in certain circumstances**

# Procurement Methods

## 2020 Revisions § 200.320

- **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)

# Exceptions to the Federal Procurement Thresholds

- State pass-throughs must require sub-recipients to **follow state procurement requirements** if they are **more stringent** than UGG
- **Sub-recipients may elect to use lower thresholds** for small purchases and/or simplified acquisition threshold
- Must follow **your entity's** procurement requirements

# Small Purchase

## § 200.320(a)(2)

- **Price or rate quote** must be obtained from adequate number of qualified sources
- Must not exceed **Simplified Acquisition Threshold** (\$250,000)
- Must set threshold based on internal controls, evaluation of risk and documented procurement procedures

# Formal Procurement Methods

§ 200.320(b)

- **Required if procurement > \$250,000 / SAT**
- **Sealed Bids**
  - Publicly solicited
  - Firm, fixed price contract to the lowest bidder
  - Preferred method for construction contracts
- **Competitive Proposals**
  - Publicize proposal and identify evaluation factors
  - May consider price and other factors in awarding contract

# Cost Allowability Requirements



# Cost Allowability Subpart E: Cost Principles

**Only allowable costs may be charged to federal awards.** To be allowable must have:

- Evidence **cost was incurred** and/or the work was done
- Evidence purchase was **necessary**
- Expense **not prohibited**
- Ability to **associate** the cost **with award objective**

# Documenting Costs

- **Evidence of purchase** of allowable goods recorded in the **appropriate cost center** in accounting system
- Evidence of **evaluation of reasonableness of cost & approval** by knowledgeable person
- **Personnel time records**
  - **Contemporaneous** record of how staff member spent time
  - **Clear relationship** between the activity of staff and objectives of award

## Biggest *Allowability* Challenge

# Allocability

- Not all costs can be **directly associated** with a specific **cost objective – cost center**
- **Cost objective** may be defined as **programs, projects, or funding awards**
- Some costs **benefit more than one cost center** or all cost centers
- Costs which benefit multiple cost centers must be **allocated to all cost centers benefited**
- **Allocation methods** must be **reasonable** and **cost effective**
- **Allocation methods** must be **applied consistently**

# Cost Objective

## §200.28

- ***Cost objective*** means a **program, function, activity, award, organizational subdivision, contract, or work unit** for which cost data are desired and for which provision is made to accumulate and measure the cost... A cost objective may be a major function of the Grantee, a particular service or project, [or] a Federal award

# Cost Allocation:

## Estimating Benefit Provided to Each Cost Objective

- Allocation method must be **reasonable** and **cost effective** to use
- May use **different approaches** to allocating **different types** of costs
- Must be **consistent** in use of an approach for similar types of costs

# Allowable Costs May Be:

## Direct

- Cost **benefits a single cost center** - program, project, or funding award.
- Examples:
  - Cost of staff position that benefits only one cost center
  - Supplies used for one project

## Indirect/Shared

- Costs for which **benefit provided** to multiple cost centers **must be estimated**.
- Examples:
  - Cost staff position providing benefit to more than one program or project
  - Accounting for entire organization
  - Rent for office in which multiple functions are performed

# Shared or Common Costs

- Costs which **benefit multiple cost objectives** – programs, functions, awards
- **Includes but not limited to Administrative costs**
- Impossible to track the exact benefit to each program or function – **benefit must be estimated**

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- Cost allocation plans
- Administrative costs
- Recovering administrative & other common costs
- Indirect cost rates
- Issues in monitoring cost allocation plans & practices
- Single audits



# CSBG Challenges

# CSBG Basics

- Use of CSBG \$ is very **flexible**
- CSBG can be **combined with other sources of funds** to provide eligible services to eligible participants
- Must be used to support services for **eligible participants** – previously participants may have incomes up to 125% of federal poverty line. CARES Act allowed states to authorize use of CSBG for participants with income up to 200% of federal poverty line. Eligibility may return to 125% of federal poverty line.

# CSBG Recipients

- Meet **CSBG Organizational Standards**
- Be consistent with **community needs assessment** and **strategic plans**
- **Document and justify costs** charged to CSBG

# CSBG Org Standards Require Organization-Wide Budget

- Includes **all sources** and **uses** of funds
- Identifies **cost center/ cost objective** structure
- Identifies **Administrative** costs
- Identifies **Shared** costs
- Shows **how Administrative and Shared costs will be allocated** or charged to direct cost centers
- Shows **which revenue sources will fund each cost center**

# Organization-wide Budget

- CSBG Organizational Standard 8.9
  - “The governing board annually approves an organization-wide budget”
- Basis for **cost allocation plan** or **indirect cost rate proposal**
- **Displays planned use of CSBG \$\$**

# Organization-wide Budget Displays

- All sources which will pay for each program
- Programs or award cost centers for which unrestricted funds will need to be used to close gaps – cover admin costs which exceed funder limits
- Sources of unrestricted funds
- Plan for overall organization-wide surplus- revenue exceeding expenses

# Emerging WAP/BIL Challenges

# Compliance Framework for WAP & BIL

- 2 CFR 200 – Uniform Guidance
- 10 CFR Part 440 – DOE Weatherization
- Public Law 117-58: Bipartisan Infrastructure Law – BIL
- BIL requires separate financial tracking, monitoring, & reporting



# Administrative Costs for WAP

- WAP statute & regulation **do not define** Administrative Cost Categories
- May choose to charge any cost other than direct cost to weatherize dwelling units to Admin ( **not a good idea** )
- **Use definition consistent with GAAP & agency's policies**

# WAP & BIL: Different Admin Cost Caps

- **WAP** – administrative costs limited to **15%** with States permitted to use no more than **7.5%** and provided **sub-recipients** with **at least 7.5 %**

<https://www.energy.gov/sites/default/files/2021/01/f82/wap-memo-075.pdf>

- **Bipartisan Infrastructure Law** (BIL) – will limit agency-wide admin costs to **10%**

# Uniform Guidance requires fair allocation of shared costs to all cost objectives

- Must allocate agency-wide admin costs or apply Negotiated Indirect Cost Rate fairly to all cost objectives
- May only charge costs that were incurred
- May need to use unrestricted funds to cover the portion of allocated admin costs or of the indirect rate that exceed WAP maximum
- De Minimis rate does not require proof that costs were incurred

# Budget Reality

- UGG requires **allocating costs to all cost centers that benefit**
- Some grant awards **will not provide** funding to fully cover the costs of the fulfilling grant requirements
- **Limitations** on use of grant funds for admin costs **may require use of other funding sources** to cover the full cost of meeting grant requirements

# Next Steps ???

- Review sub-recipient agreements
- Review monitoring tools and practices
- Build understanding of cost allocation requirements
- Prepare for WAP/BIL challenges
- ??????

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