

Fall Forum 2023  
*Bracing For Significant Regulatory Changes*

# ***HOT OFF THE PRESS!***

## **HIGHLIGHTS OF THE PROPOSED UGG CHANGES**

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# UGG TIMELINE

INITIAL  
START DATE

December 25,  
2014

MOST  
RECENT  
UPDATES

August 13,  
2020

PROPOSED  
RULES

Published  
October 5,  
2023

DEADLINE  
FOR  
COMMENTS

December 4,  
2023

EFFECTIVE  
DATE

2024??



# OMB OBJECTIVES

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.

The background of the slide is a photograph of a classical building with large, fluted columns and a wide set of stone steps leading up to the entrance.

## OBJECTIVE 1

Incorporating statutory requirements and administration priorities



## 200.300 STATUTORY AND NATIONAL POLICY REQUIREMENTS

- **New: (b)** The Federal agency or pass-through entity must ensure that the award is administered in a way that does not unlawfully discriminate based on sexual orientation or gender identity, consistent with the Supreme Court's reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).
- **New: (c)** The Federal agency must take account of the heightened constitutional scrutiny that may apply under the Constitution's Equal Protection clause for government action that provides differential treatment based on sexual orientation or gender identity.



## 200.323 PROCUREMENT OF RECOVERED MATERIALS

- New: 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.



## 200.113 MANDATORY DISCLOSURES

- An applicant, recipient, or subrecipient of a Federal award must promptly disclose whenever they have credible evidence of a violation of Federal criminal law potentially affecting the Federal award (for example, fraud, embezzlement, bribery, gratuity violations, identity theft, or sexual assault and exploitation) or a violation of the civil False Claims Act.
- The disclosure must be made in writing to the Federal agency, pass-through entity (if applicable), and the agency's Office of Inspector General.
  - Aligns with Federal Acquisition Regulations (FAR 52.203-13(b); FAR 3.1003(a)(2).



# NEW 200.217 WHISTLEBLOWER PROTECTIONS

- An employee of a recipient or subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is:
  - Evidence of gross mismanagement of a Federal contract or grant,
  - A gross waste of Federal funds,
  - An abuse of authority relating to a Federal contract or grant,
  - A substantial and specific danger to public health or safety, or
  - A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.
- Currently, these protections are incorporated by reference in 200.300.





## 200.318 GENERAL PROCUREMENT STANDARDS

Must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

- Clarifies: when evaluating contractor responsibility, in addition to considering integrity, public policy, past performance, and financial and technical resources, recipients and subrecipients must also consider whether contractors appropriately classify employees consistent with the Fair Labor Standards Act (29 USCA chapt. 8).
- New: the procurement standards do not prohibit recipients and subrecipients from using Project Labor Agreements or similar forms of pre-hire collective bargaining agreements.



## 200.317 PROCUREMENT BY STATES **AND INDIAN TRIBES**

- **New:** Indian Tribes – follow their own policies and procedures.
- **New:** If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in 200.318 through 200.327.



## 200.321 CONTRACTING WITH SMALL BUSINESSES, MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, VETERAN-OWNED BUSINESSES, AND LABOR SURPLUS AREA FIRMS

- Adds “veteran-owned business” to the types of businesses that recipients and subrecipients are encouraged to consider for procurement contracts under a Federal award.



# 200.216 PROHIBITION ON TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- (c) A recipient or subrecipient may use covered telecommunications equipment or services for their own purposes (not program activities) provided they are not procured with Federal funds.
- **New: (d) The prohibition on covered telecommunications equipment or services applies to funds generated as program income, indirect cost recoveries, or to satisfy cost share requirements.**
- (e) The recipient or subrecipient is not required to certify that funds were not expended on covered telecommunications equipment or services beyond the certification provided upon signing the award.

Incorporates OMB Guidance and § 889 of the 2019 National Defense Authorization Act, P.L. 115-232, 132 Stat.1,636, 1,917 (2018).



## 200.1 DEFINITION - IMPROPER PAYMENT

- Updated to follow OMB Circular A-123
- **New**: The term improper payment includes: any payment to an ineligible recipient; any payment for an ineligible good or service; any duplicate payment; any payment for a good or service not received, except for those payments where authorized by law; any payment that is not authorized by law; and any payment that does not account for credit for applicable discounts.



## OBJECTIVE 2

Reducing agency and  
recipient burden



## 200.204 NOTICE OF FUNDING OPPORTUNITIES

- **New:** The Federal agency must announce specific funding opportunities for Federal financial assistance that will be openly competed.
  - The Federal agency should also make efforts to limit the length and complexity of the announcement and only include the information that is necessary for the effective communication of the program objectives.
- The merit review process changes risk evaluation to “risk assessment” 200.205 (Federal agency review of proposals) and 200.206 (Federal agency review of risk posed by applicants).
  - **New:** This assessment may incorporate the quality of the application, award amount, risk associated with the program, cybersecurity risks, and impacts on local jobs and the community.



## 200.201/200.333 FIXED AMOUNT AWARDS

- Accountability **must be** based on performance and results, **which can be communicated in performance reports or through routine monitoring.** Except in the case of termination before **the** completion of the Federal award, there is no review of the actual costs incurred by the **recipient or subrecipient under the Federal award.** Therefore, no financial reporting is required. This does not absolve the awardee from the record retention requirements contained in sections 200.334 through 200.338. Payments **must be based on meeting specific requirements of the Federal award.**
- Simplified Acquisition Threshold limit will be removed.
- Also clarify record retention and post-award certification requirements.

**Fixed amount awards are currently not permitted by USDE.**





# 200.308 BUDGET REVISION



- Plans to consolidate construction and nonconstruction award requirements.



## 200.318 GENERAL PROCUREMENT STANDARDS

- Clarifies that State and local intergovernmental agreement or inter-entity agreements: Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part. (200.318(e))
- New: Board members now included in conflict-of-interest provisions (200.318(c)).



## 200.318 GENERAL PROCUREMENT STANDARDS (CONT.)

- New: Clarifies that recipients and subrecipients are not prohibited from:
  - Requiring commitments or goals for hiring residents of high-poverty areas or disadvantaged communities, or high-unemployment census tracts where a federally funded construction project was located, provided there is no prohibition on interstate hiring;
  - Requiring contractors to use hiring preferences or goals for individuals with barriers to employment, including women and people in underserved communities;
  - Using agreements intended to ensure uninterrupted delivery of services or to ensure community benefits;
  - Offering employees of a predecessor contractor rights of first refusal under a new contract.



## 200.319 COMPETITION

- Removes the prohibition on using geographic preferences.
- New: (f) May incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work or products providing services on a contract, and other worker protections.
  - May make inquiries of bidders about these subjects and assessing the responses consistent with the law and the terms and conditions of the award.



## 200.324 CONTRACT COST AND PRICE

- Deletes the requirement that the recipient must negotiate profit as a separate element of the price for each contract in which there is no price competition.





## 200.414 INDIRECT COSTS

- 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.
- Pass-through entities must accept all federally negotiated indirect cost rates for subrecipients.
- **New: Raises the *de minimis* rate from 10 percent to 15 percent.**
- Modified Total Direct Costs (MTDC) exclude subawards **above \$50,000** (currently \$25,000).
- The public posting of NICRAs is no longer required.
- Closeout requirements clarified when no final indirect cost rate (200.344).



## 200.313 EQUIPMENT

- Threshold increased from \$5,000 - \$10,000
- New: An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted.
- New: Indian tribes – dispose of equipment in accordance with Tribal law.



## 200.313 EQUIPMENT (CONT.)

- Disposition:
  - May retain up to \$1,000 or 10% whichever is less to cover expenses associated with the selling and handling of the equipment.
- New: (f) *Equipment retention.* When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.





# 200.314 SUPPLIES

- (a) Title to supplies acquired under the Federal award will vest upon acquisition in the recipient or subrecipient. When there is a residual inventory of **unused supplies** exceeding \$10,000 in aggregate value at the end of the period of performance, and the supplies are not needed for any other Federal award, the recipient or subrecipient may retain or sell the unused supplies.



- New: Unused supplies means supplies that are in new condition, not having been used or opened before.
- New: The aggregate value of unused supplies consists of all supply types, not just like-item supplies.



## 200.314 SUPPLIES (CONT.)

- New: The Federal agency or pass-through entity is entitled to compensation in an amount calculated by multiplying the percentage of the Federal agency's or pass-through entity's contribution towards the cost of the original purchase(s) by the current market value or proceeds from the sale.
- If the supplies are sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain \$500 or 10% (whichever is less) from the Federal share of the proceeds to cover expenses associated with the selling and handling of the supplies.



## 200.472 TERMINATION COSTS

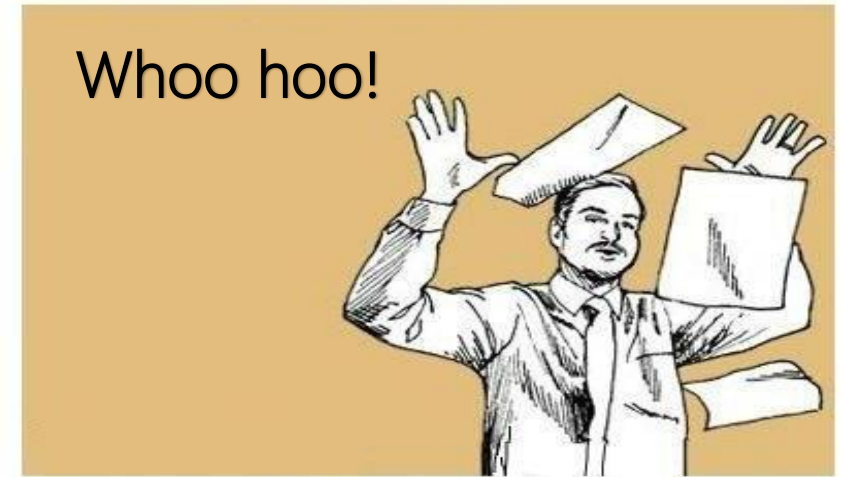
Currently, this section does not address closeout costs.

- New: Administrative costs associated with the closeout activities of a Federal award are allowable.
- New: This permits recipients and subrecipients to “charge the Federal award during the closeout for the necessary administrative costs of that Federal award (for example, salaries of personnel preparing final reports, publication and printing costs, and the costs associated with the disposition of equipment and property).”



# 200.501 AUDIT REQUIREMENTS

- Increased threshold from \$750,000 to **\$1 Million**
- OMB proposes to 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 (**200.514 Scope of audit**).



The background of the slide is a photograph of a classical building's entrance, showing a series of wide, light-colored stone steps leading up to a row of tall, fluted columns. The columns are made of a light-colored stone, possibly marble or limestone, and have a prominent fluted design. The lighting is bright, suggesting an outdoor setting during the day.

## OBJECTIVE 3

Clarifying sections that recipients or agencies have interpreted in different ways



## 200.1 PERIOD OF PERFORMANCE

- Current:
  - Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods.
- New:
  - Means the time during which the recipient and subrecipient must perform and complete the work authorized under the Federal award. It is the time interval between the start and end date of a Federal award, which may include one or more funded portions or budget periods.



# 200.1 CLOSEOUT



**Closeout** means the process by which the Federal agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344.



## 200.308 REVISION OF BUDGET AND PROGRAM PLANS

*New: Prior approval* means the written approval by an authorized official of a Federal agency or pass-through entity of certain costs or programmatic decisions (200.1).

- New: (f) *Revisions Requiring Prior Approval.*
  - The Federal agency may waive prior approval of these costs when the costs requiring prior approval are included in the recipient's or subrecipient's application, and also included in the Federal award.
- Clarify that no-cost extensions require prior approval versus one-time extensions do not require prior approval.
  - Note: A one time extension is specifically authorized in the terms and conditions of the Federal award 200.308(g).



# 200.407 PRIOR WRITTEN APPROVAL

- (a) § 200.306 Cost sharing;
- (b) § 200.307 Program income;
- (c) § 200.308 Revision of budget and program plans;
- ~~Real property~~
- ~~Equipment~~
- (d) § 200.333 Fixed amount subawards;
- ~~Direct costs~~
- (e) § 200.430 Compensation - personal services, paragraph (h);
- (f) § 200.431 Compensation - fringe benefits;
- ~~Entertainment costs~~
- (g) § 200.439 Equipment and other capital expenditures;
- ~~Exchange rates~~
- (h) § 200.441 Fines, penalties, damages and other settlements;
- (i) § 200.442 Fund raising and investment management costs;
- (j) § 200.445 Goods or services for personal use;
- (k) § 200.447 Insurance and indemnification;
- (l) § 200.455 Organization costs;
- ~~Participant support costs~~
- (m) § 200.458 Pre-award costs;
- (n) § 200.462 Rearrangement and reconversion costs;
- ~~Taxes~~
- (o) § 200.475 Travel costs.



# 200.403 FACTORS AFFECTING ALLOWABILITY OF COSTS

- New: (h)
  - Administrative closeout costs may be incurred until the due date of the final report(s).
  - If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.
  - All other costs must be incurred during the approved budget period.
  - At its discretion, the Federal agency is authorized to waive prior written approvals to carry forward unobligated balances to subsequent budget periods. See § 200.308(g)(3).



## 200.306 COST SHARING ~~OR~~ ~~MATCHING~~

Clarified that 'matching' is one category of cost sharing.

Clarified voluntary uncommitted cost sharing for IHEs.



## 200.431 COMPENSATION - FRINGE BENEFITS

- Allocate payments for unused leave as general administrative expenses or include them in a fringe benefit rate with cognizant agency approval.
- May not charge unfunded pension and post-retirement health benefits to an award in a manner that is inconsistent with the allocation principles of Subpart E.



This is wrong on so many levels



## 200.430 COMPENSATION – PERSONAL SERVICES

No Changes!!

Just rearranged sections for time  
distribution (time and effort) so  
now at 200.430(g).



## OBJECTIVE 4

Rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms



# PLAIN LANGUAGE/ ADDRESSING INCONSISTENT TERMS

- Replacing “Non-federal entity” with “recipient and subrecipient”.
- Changing Title from “Grants and Agreements” to “Federal Financial Assistance”.
- ~~Small Purchase Procedures~~ » **Simplified Acquisition Procedures** (200.320 Methods of Procurement).



## 200.432 CONFERENCES

- Removed any limitations provided by the specific types of events (meeting, retreat, seminar, symposium, workshop) currently listed in the guidance currently
- Allow for dependent-care costs associated with participants' attending or partaking in program-related conferences.
- The costs of identifying and providing locally available dependent-care resources for participants are allowable as needed.





## 200.438 ENTERTAINMENT AND PRIZES



Costs of entertainment, including amusement, diversion, and social activities and any associated costs (such as gifts), are unallowable unless they have a specific and direct programmatic purpose and are included in a Federal award.

New: (b) Prizes. Costs of prizes or challenges are allowable if they have a specific and direct programmatic purpose and are included in the Federal award. Federal agencies should refer to OMB guidance in M-10-11 "Guidance on the Use of Challenges and Prizes to Promote Open Government," issued March 8, 2010, or its successor.



# 200.456 PARTICIPANT SUPPORT COSTS

- **Prior approval requirement removed.**
- The classification of items as participant support costs must be documented in the recipient's or subrecipient's written policies and procedures and treated consistently across all Federal awards.
- 200.1 Participate support costs (definition)
  - **New: Participant support costs means direct costs that support participants and their involvement in a Federal award, such as stipends, subsistence allowances, travel allowances, registration fees, dependent care, and per diem paid directly to or on behalf of participants.**
  - **Current**: Direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.



# 200.331 SUBRECIPIENT AND CONTRACTOR DETERMINATIONS

- New: The Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier.
- New: Pass-throughs must confirm subrecipients are not suspended, debarred or otherwise excluded (200.332 Requirements for pass-through entities).



## 200.340 TERMINATION.

- Removes language that allows a Federal agency or pass-through entity to terminate an award “if an award no longer effectuates the program goals or agency priorities.”
- Clarifies requirements that must be included in a notice of termination (**200.341 Notification of termination requirement**).



WHAT'S NEXT?



# WHAT DOES ALL THIS MEAN??

- Changes are coming!
- Get ready to update your policies and procedures!

1. READ DIRECTIONS ON BOX



2. THROW BOX AWAY



3. PULL BOX OUT OF TRASH  
15 SECONDS LATER



4. REPEAT





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# Save The Date!!!

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Spring Forum 2024

APRIL 30 - MAY 2, 2024

BALTIMORE, MD