The Office of Management and Budget is submitting the final guidance below for publication in the Federal Register (FR). OMB released this pre-publication internet version on Thursday, April 4, 2024. While we have taken steps to ensure the accuracy of this pre-publication internet version of the final guidance, it is not the official version of the final guidance for purposes of the Code of Federal Regulations, nor does it constitute publication of the final guidance in the FR for purposes of calculating the effective date. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (https://www.gpo.gov/fdsys/). It will also appear on Regulations.gov (https://www.regulations.gov/). The official version may include technical or other revisions that are not reflected below. Once the official version of this document is published in the FR, this version will be removed from the internet and replaced with a link to the official version.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 1, 25, 170, 175, 180, 182, 183, 184, 200

Guidance for Federal Financial Assistance

AGENCY: Office of Federal Financial Management, Office of Management and Budget

ACTION: Final rule; notification of final guidance.

SUMMARY: The Office of Management and Budget (OMB) is revising the OMB Guidance for Grants and Agreements, which is now called the OMB Guidance for Federal Financial Assistance. The final guidance reflects public comments received in response to the OMB Notification of Proposed Guidance published in October 2023 and comments received from Federal agencies. In response to comments, OMB is revising and updating the guidance to incorporate recent OMB policy priorities related to Federal financial assistance and to reduce agency and recipient burden. OMB is also incorporating certain statutory requirements and clarifying certain sections of the prior version of the guidance that recipients or agencies have interpreted in different ways. OMB is also making revisions to use plain language, improve flow, and address inconsistent use of terms within the guidance text. Finally, OMB is making revisions to improve Federal financial assistance management, transparency, and oversight through more

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

accessible and readily comprehensible guidance.

DATES: The effective date for the final guidance is October 1, 2024. Federal agencies may elect to apply the final guidance to Federal awards issued prior to October 1, 2024, but they are not required to do so. For agencies applying the final guidance before October 1, 2024, the effective date of the final guidance must be no earlier than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andrew Reisig or Steven Mackey at the OMB Office of Federal Financial Management via e-mail at MBX.OMB.Grants@OMB.eop.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Office of Management and Budget (OMB) is revising several parts of the OMB Guidance for Grants and Agreements, now called the OMB Guidance for Federal Financial Assistance, located in title 2 of the Code of Federal Regulations (CFR). These revisions provide clarity and updated guidance to Federal agencies regarding the consistent and efficient use of Federal financial assistance. This document includes revisions to Part 1 (About Title 2 of the Code of Federal Regulations and Subtitle A); Part 25 (Unique Entity Identifier and System for Award Management); Part 170 (Reporting Subaward and Executive Compensation Information), Part 175 (Award Term for Trafficking in Persons); Part 180 (OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement); Part 182 (Government-Wide Requirements for Drug-Free Workplace (Financial Assistance); Part 183 (Never Contract with the Enemy); Part 184 (Buy America Preferences for Infrastructure Projects); and Part 200

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

As explained in further detail below, OMB is revising its guidance in 2 CFR for the purpose of: (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 within the guidance. OMB's revisions are intended to improve Federal financial assistance management, transparency, and oversight through more accessible and easily understandable guidance.

OMB summarizes its policy changes in this document below. OMB also explains its general methodology for plain language revisions. OMB sought to maintain the existing structure of the 2 CFR guidance, which remains generally intact and mostly consistent with earlier iterations of the guidance in this final version. For example, OMB generally maintained the structure of parts, subparts, and sections of the guidance. Except in cases where OMB made policy changes or other edits for consistency with statutory requirements, OMB also generally sought to maintain the existing content of the 2 CFR guidance. In many cases throughout the guidance, however, OMB included plain language revisions to simplify the guidance text, avoid or reduce technical jargon where feasible, provide greater consistency, and make the text more succinct.

The 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. *See* 31 U.S.C. 6307 and 31 U.S.C. 503(a)(2). Additional authorities for the revisions

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

are set forth below. Many of OMB's proposed revisions reflected 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). In the final revisions provided through this document, OMB responds to public comments received in response to the OMB Notification of Proposed Guidance published in the **Federal Register** in October 2023. *See* 88 FR 69390 (Oct. 5, 2023).

Background

Between 2012 and 2013, OMB worked with Federal agencies to revise and streamline existing guidance to develop the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) located in part 200 of 2 CFR. 79 FR 78589 (Dec. 26, 2013). This effort was intended to assist programs in delivering better outcomes on behalf of the American people while simultaneously reducing administrative burden and the risk of fraud, waste, and abuse. The Uniform Guidance in part 200, which OMB established in 2013, consolidated, streamlined, and superseded requirements from several earlier OMB Circulars and guidance documents related to Federal financial assistance management and implementation of the Single Audit Act. OMB explained in 2013 that its guidance intended to improve both the clarity and accessibility of these requirements across the Federal government. Federal award-making agencies implemented the Uniform Guidance through an interim final rule, which became effective on December 26, 2014. 79 FR 75867 (Dec. 19, 2014).

OMB periodically reviews the Uniform Guidance in accordance with 2 CFR 200.109. For example, OMB made further revisions to the Uniform Guidance in 2020. 85 FR 49506 (Aug. 13, 2020). The 2020 revisions addressed topics including program development and design, as well as measuring recipient performance to assist Federal awarding agencies and non-Federal entities

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

to improve program goals and objectives, share lessons learned, and adopt promising performance practices.

On February 9, 2023, OMB issued a Notice of Request for Information in the **Federal Register**, which explained that OMB was beginning the process of seeking public input for its proposed revisions to OMB's guidance in 2 CFR. *See* 88 FR 8480 (Feb. 9, 2023).

On October 5, 2023, OMB issued a Notification of Proposed Guidance in the **Federal Register**, which explained that OMB was proposing revisions to parts 1, 25, 170, 175, 180, 182, 183, and 200 in 2 CFR, subtitle A. 88 FR 69390 (Oct. 5, 2023). OMB established these parts of the 2 CFR guidance at different times in the last 20 years. See, for example, 69 FR 26276 (May, 11, 2004) (establishing 2 CFR for guidance on grants and other financial assistance and nonprocurement agreements); 70 FR 51863 (Aug. 31, 2005) (establishing part 180); 75 FR 55671 (Sep. 14, 2010) (establishing part 25); and 75 FR 55663 (Sep. 14, 2010) (establishing part 170).

Based on OMB's review of the many public comments received and ongoing engagement with Federal agencies, OMB finds that revisions are warranted to subtitle A of 2 CFR—including parts 1, 25, 170, 175, 180, 182, 183, 184, and 200—to further streamline, clarify, and update the guidance, including raising certain thresholds, where permissible under law, in recognition of inflation and other contributing factors. Further information on OMB's objectives for the revisions is provided below.

OMB Objectives

OMB's objectives for the current round of revisions to several parts of subtitle A of 2 CFR include: (1) incorporating statutory requirements and administration priorities; (2) reducing agency and recipient burden; (3) clarifying sections that recipients or agencies have

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

interpreted in different ways; and (4) rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms.

The revisions to the Uniform Guidance in part 200 and other parts of 2 CFR generally support these four objectives. In support of objective (1)—incorporating statutory requirements and administration priorities—OMB made changes throughout the Uniform Guidance and other parts of 2 CFR to ensure consistency with statutory authorities. For example, OMB revised Parts 25, 170, and 175 to ensure its guidance properly aligns with underlying statutes, as amended. These revisions further align OMB's guidance with the authorizing statutes to ensure proper implementation. OMB also made several structural changes to individual parts within Chapter I to provide further structural consistency throughout OMB's guidance in 2 CFR.

In support of objective (2)—reducing agency and recipient burden—OMB increased several monetary thresholds that have not been updated for many years. For example, OMB increased the single audit threshold from $750,000 to $1,000,000 and also increased the threshold for determining items that are considered to be equipment from $5,000 to $10,000. OMB reviewed previous increases to the thresholds and considered current economic data in making these determinations. In further support of reducing burden, OMB provided a complete revision to the template text for a Notice of Funding Opportunity (NOFO) located in Appendix I of the Uniform Guidance in part 200. With this revision, OMB intends to reduce administrative burden and unnecessary obstacles to applying for Federal financial assistance.

In support of objective (3)—clarifying sections that recipients or agencies have interpreted in different ways—OMB made revisions to 2 CFR to clarify areas of misinterpretation. Many of these clarifications do not represent a change in policy but are intended to eliminate ambiguity and clarify the intent of specific sections of the Uniform

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Guidance in part 200, and other parts in 2 CFR. In issuing its proposed revisions, OMB had incorporated feedback from Federal agencies and the public stating that Federal agencies and the recipient community interpret many sections inconsistently. After reviewing comments received in response to its proposed revisions, OMB is now implementing many of these changes.

In support of objective (4)—rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms—OMB revised the guidance to better follow plain language principles. OMB focused on using simple words and phrases, avoiding jargon, using terms consistently, and being concise.

As a result, throughout subparts A through E of part 200, OMB now uses the terms "recipient," "subrecipient," or both in place of "non-Federal entity." OMB found that using the term "non-Federal entity" in subparts A through E of the prior version of part 200 presented challenges to readers and made it difficult to quickly understand which entity was being addressed, especially in situations in which Federal agencies apply part 200 to Federal agencies, for-profit organizations, foreign public entities, or foreign organizations under 2 CFR 200.101. In the revisions to part 200, OMB now uses the term "non-Federal entity," as defined in section 200.1, only when that entity is specifically intended, such as in subpart F implementing the Single Audit Act. In many cases in part 200, OMB replaced "non-Federal entity" with either "recipient and subrecipient" or "recipient or subrecipient." In cases where the guidance in part 200 relates specifically to only either "recipients" or "subrecipients," but not both, OMB refers specifically to the applicable entity.

Revisions in the final guidance relating to use of the terms "non-Federal entity," "recipient," and "subrecipient" do not change the existing scope or applicability of the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

guidance. The applicability provision for part 200, at section 200.101, continues to provide Federal agencies discretion on whether to apply subparts A through E of part 200 to Federal agencies, for-profit entities, foreign public entities, or foreign organizations. In the same section, the final guidance encourages 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. In cases in which Federal agencies apply part 200 to such entities, OMB's final guidance now further clarifies how the guidance applies to those entities as either recipients or subrecipients.

Another example of plain language revisions is replacing 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 the final guidance OMB now specifically mentions the appropriate system, such as *SAM.gov*, *USASpending.gov*, the Contractor Performance Assessment Reporting System (CPARS), or *Grants.gov*.

The overall goal of OMB's plain language revisions was to make the Uniform Guidance more accessible to the general public and ensure more equitable access to Federal funding opportunities by making the guidance easier to understand. OMB does not specifically discuss each plain language revision in this preamble unless a revision represents a material change to the Uniform Guidance or is otherwise connected to OMB's response to a public comment.

Statutory Authority for OMB Guidance for Grants and Agreements

The Director of OMB is authorized under 31 U.S.C. 6307 to "issue supplementary interpretative guidelines to promote consistent and efficient use of … grant agreements … and cooperative agreements." The Deputy Director for Management of OMB is authorized under 31 U.S.C. 503 to, among other things, provide "overall direction and leadership to the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

executive branch on financial management matters by establishing financial management policies and requirements." 31 U.S.C. 503(a)(2).

OMB also relies on authorities including the Single Audit Act Amendments of 1996 (Pub. L. 104-156, as amended, codified at 31 U.S.C. 7501-7507) (the Single Audit Act); the Federal Funding Accountability and Transparency Act of 2006 (FFATA or the Transparency Act[1]) (Pub. L. 109-282), as amended (31 U.S.C. 6101 note); the Digital Accountability and Transparency Act of 2014 (DATA Act of 2014) (Pub. L. 113-101), as amended; the Federal Program Information Act (Pub. L. 95-220 and Pub. L. 98-169, as amended, codified at 31 U.S.C. 6101-6106); the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224, as amended, codified at 31 U.S.C. 6301-6309); the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 1101-1131); the Budget and Accounting Procedures Act of 1950, as amended (codified at 31 U.S.C. 1101-1126); the Chief Financial Officers Act of 1990 (codified at 31 U.S.C. 503-504); the Trafficking Victims Protection Act of 2000 (TVPA), as amended (codified at 22 U.S.C. 7101-7115); and Executive Order 11541, "Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President."

Summary of Comments

On October 5, 2023, OMB solicited feedback from the public through proposed guidance published in the **Federal Register**. *See* 88 FR 69390 (Oct. 5, 2023). The period for public comments closed on December 4, 2023. OMB received comments via *Regulations.gov* at Docket

[1] All references to FFATA or the Transparency Act in this document refer to the Act as most recently amended by the Congressional Budget Justification Transparency Act of 2021 (Pub. L. 117-40).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

No. OMB-2023-0017. OMB received approximately 829 public comments from a broad range of interested stakeholders, such as States, local governments, Indian Tribes, labor organizations, industry associations, nonprofit organizations, for-profit organizations, colleges, universities, and individuals.

Section-by-Section Discussion

OMB developed the revisions for this final guidance following review and consideration of comments received on the notification of proposed guidance published in October 2023. In this document, OMB summarizes significant comments received in response to its proposal and substantive changes made to each section of the final guidance. Generally, minor changes to the language of the guidance—such as minor plain language revisions—are not discussed. Sections of the guidance that OMB did not propose to revise in significant ways are also not discussed in many cases, except in response to commenters. For sections where no substantive changes or comments are discussed, the guidance from the notification of proposed guidance was adopted.

2 CFR Subtitle A—General

In the proposed guidance, OMB proposed revising the headings of: (i) title 2 of CFR; (ii) subtitle A of 2 CFR; and (iii) chapter I of subtitle A of 2 CFR. In the case of each heading, OMB proposed to replace "Grants and Agreements" with "Federal Financial Assistance." OMB explained that this revision would help to ensure that 2 CFR is understood to be applicable beyond just grants and cooperative agreements—unless provided otherwise in the applicability provisions in the body of the guidance, such as section 200.101.

OMB received one comment questioning the proposal to revise the headings. The commenter stated that the reference to grants in the original heading was important to preserve the distinction between grants and contracts. OMB also received several comments supporting

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

the revised headings. One commenter also questioned the inconsistent use of "government-wide" versus "governmentwide."

OMB Response: OMB finds that revising the headings to reference "Federal financial assistance" will not cause undue confusion or change the specific applicability of parts and sections of the guidance. The headings merely reflect the overall scope of 2 CFR. The specific applicability of parts and sections of the guidance is addressed within the body of the guidance, such as at 2 CFR 200.101. OMB made several revisions in the final guidance to change "governmentwide" to "government-wide" for consistency.

PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A

Section 1.200—Purpose of chapters I and II

OMB proposed to revise section 1.200 to remove paragraphs (b) and (c), which are no longer accurate. When OMB first established part 1 in 2004, see 69 FR 26276 (May, 11, 2004), it implemented the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107). That legislation ceased to be effective on November 20, 2007 based on a sunset date included in the law. In addition, chapter II of subtitle A in 2 CFR, which now contains part 200, was initially intended to contain OMB guidance in its "initial form" before it was "finalized." That statement no longer accurately reflects the structure of subtitle A of 2 CFR nor the status of the OMB guidance in part 200. OMB did not receive significant comments on this section and included the proposed revisions in the final version.

Section 1.205—Applicability to Federal financial assistance

OMB did not propose significant revisions to section 1.205. OMB received two comments indicating that paragraph (b) contained an error regarding applicability to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

procurements under Federal awards. OMB also received one comment inquiring if section 1.205 means that agencies using Other Transaction Authority (OTA) instruments are permitted to make an award to a de-barred or suspended entity.

OMB Response: In the final guidance, OMB removed both paragraphs (a) and (b) from section 1.205. The applicability of specific parts and sections of the guidance are best addressed in the relevant areas of the guidance—such as in Part 180 and at 200.101. Paragraphs (a) and (b) only provided a partial list of examples of the applicability of specific parts of 2 CFR. OMB finds that the remaining text in the introductory paragraph sufficiently addresses the topic of applicability overall, with more specific information provided in relevant parts and sections. The two examples in this section are not necessary.

The guidance in part 200 does not specifically address OTA instruments. Federal agencies using such authority are in the best position to answer questions and provide guidance on what specific requirements apply to OTA instruments—and under what circumstances any parts, subparts, or sections of 2 CFR may apply. The commenter seeking information on the applicability of 2 CFR part 180 to OTA instruments may also consider the definition of "nonprocurment transaction" at 2 CFR 180.970.

Section 1.215—Relationship to previous issuances

OMB proposed to provide a more succinct statement in section 1.215 explaining that some of the guidance was organized differently within previous OMB Circulars or other guidance documents, before the establishment of title 2 of the CFR. Because 2 CFR has now existed for almost 20 years in its current format and location, OMB did not find it necessary to continue to include the table showing earlier sources of certain elements of the OMB guidance in 2 CFR. The **Federal Register** notice establishing 2 CFR in 2004, see 69 FR 26276 (May, 11, 2004), and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

other subsequent **Federal Register** notices establishing and revising particular parts and provisions of subtitle A in 2 CFR, include that information. For example, the **Federal Register** notice establishing part 200 in 2013 explained that it superseded and streamlined requirements from OMB Circulars A–21, A–87, A–110, and A–122; Circulars A–89, A–102, and A–133; and the guidance in Circular A–50 on Single Audit Act follow-up. *See* 78 FR 78590 (Dec. 26, 2013). OMB did not receive significant comments on this section and incorporated the proposed revisions.

Section—1.220 Federal agency implementation of this subtitle

OMB did not propose significant revisions to section 1.220. OMB received one comment seeking clarification on the implementation of the 2 CFR revisions by Federal agencies, particularly in situations when a Federal agency has not specifically referenced the OMB 2 CFR guidance in the terms and conditions of a Federal award.

OMB Response: OMB did not make substantial changes to the long-standing structure of agency implementation of OMB's 2 CFR guidance. OMB did not find it necessary to make additional revisions, but is issuing a memorandum to Federal agencies with implementation guidance concurrently with this document. OMB also provides some additional responsive information in other parts of the guidance text and within this preamble. In the case of individual Federal awards, the Federal agency making the award is the best source of information on agency implementation of 2 CFR and applicable agency regulations and requirements. Federal agencies are responsible for implementing the guidance for their Federal awards. The government-wide effective date of the final guidance is October 1, 2024, but Federal agencies may also elect to apply the final guidance to their Federal awards issued prior to October 1, 2024. For agencies applying the final guidance before October 1, 2024, the effective date must be no earlier than

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

60 days from the date of publication in the **Federal Register**—as specified above.

Section 1.231—Severability

OMB proposed to add section 1.231 to clarify its intent that if any provision of the final guidance were held to be invalid or unenforceable, such provision, or combination of provisions, are severable from the remaining provisions of the guidance. OMB did not receive significant comments on this section and made the change in the final guidance. OMB made a minor revision to replace the word "part" with "subtitle" in the final sentence of this section, which is consistent with other language in this section as both proposed and finalized. This change reflects how OMB intends this provision to apply.

In the final guidance provided through this document, OMB adopts a unified scheme addressing how Federal agencies will consistently and efficiently use Federal financial assistance in their programs across the Federal government. While the final guidance best serves OMB's objectives if left intact as adopted by OMB, the benefits of the guidance related to coordination across the Federal government do not hinge on any single provision. Accordingly, OMB considers individual provisions adopted in the final guidance to be separate and severable from one another. In the event of a stay or invalidation of any provision, or any provision as it applies to a particular person or circumstance, OMB's intent is to otherwise preserve the final guidance to the fullest possible extent. The provisions that remain in effect will continue to provide essential guidance and information to Federal agencies on consistently applying requirements for Federal financial assistance across the Federal government.

Section 1.300—OMB Responsibilities

OMB did not propose significant revisions to section 1.300. OMB received a comment requesting that OMB establish a policy and process for pass-through entities to submit questions

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

to OMB. Another comment requested additional technical assistance in support of Federal financial assistance.

OMB Response: Pass-through entities should direct all comments and questions pertaining to the implementation of specific Federal awards to the appropriate Federal agency making the award. Federal agencies are the best resource for questions related to specific Federal awards.

Section 1.305—Federal agency responsibilities

OMB proposed to revise section 1.305 to further clarify Federal agency responsibilities, such as coordinating with the Council on Federal Financial Assistance (see OMB Memorandum M-23-19), the Grants Quality Service Management Office (QSMO), and other governance committees.

OMB received one comment expressing support for the proposed revisions, such as including reference to the QSMO. OMB received another comment suggesting OMB require Federal agencies to report on subawards under their Federal awards. Another commenter recommended the inclusion of additional language with respect to tribal sovereignty and self-determination in this section.

OMB Response: In response to comments, the pass-through entity, not the Federal agency, is responsible for subaward reporting. *See* 2 CFR part 170, appendix A. OMB does not consider section 1.305, on Federal agency responsibilities, to be an appropriate place to address issues related to tribal sovereignty. Guidance related to tribal rights is included in other sections of the 2 CFR guidance such as section 200.101(d). OMB incorporated the proposed revisions in this section without additional changes.

Part 25—Unique Entity Identifier And System For Award Management

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Part 25 of 2 CFR provides guidance on requirements for applicants, recipients, and subrecipients to obtain a unique entity identifier (UEI), as required by statute in the Transparency Act, and for applicants and recipients to register in the System for Award Management (*SAM.gov*) website of the General Services Administration, which is the repository for standard information about applicants and recipients of Federal awards. OMB proposed to revise part 25 to ensure it properly aligns with the authorizing statutes, as amended, including the Transparency Act and the DATA Act of 2014. OMB also proposed to revise the title of part 25 to replace "universal identifier" with "unique entity identifier." OMB received no significant comments on these proposals. OMB incorporated these changes in the final guidance.

Part 25—General Comments

OMB received several general comments on 2 CFR part 25 that did not apply to a specific section. One commenter recommended that the U.S. government develop a national strategy on the use of persistent identifiers (PIDs) to articulate how they can be leveraged in the U.S. research ecosystem and globally to support American science leadership. Another commenter remarked that clarification is needed under part 25 that pass-through entities and others should not require a UEI of second-tier contractors. Another commenter asked OMB to remove barriers to access for newer and smaller organizations for low-dollar subawards, such as by removing UEI requirements.

OMB Response: The suggestion to develop a national strategy on the use of PIDs is beyond the scope of OMB's proposed revisions. Section 25.300 requires a UEI for first-tier subrecipients receiving a subaward from a recipient, as defined at section 25.400, but does not impose a requirement for a second-tier subrecipient to obtain a UEI before receiving a subaward

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

from a subrecipient. OMB finds that additional clarification is not needed within the text of the guidance on this point.

On the final comment regarding removing additional barriers for newer and smaller organizations: statutory requirements under the Transparency Act and other laws put firm limits on OMB's ability to provide additional flexibility. The exceptions provided in section 25.110 generally reflect the flexibilities permitted under controlling statutory law.

Subpart A—General

Section 25.100—Purposes of this part

OMB proposed only minor plain language revisions to section 25.100. One commenter asked OMB to align the terminology used to describe "direct" subawards in 2 CFR part 25 with the "first-tier" subaward terminology used in 2 CFR part 170 Appendix A. Specifically, the commenter asked OMB to amend this section by replacing "direct subrecipients" with "first-tier subrecipients." The commenter also asked OMB to change the reference to "subawards" at section 170.100 to "first-tier subawards."

OMB Response: In response to comments, OMB added first-tier subrecipients in a parenthetical following direct subrecipients. OMB otherwise made changes in this section as proposed.

Section 25.105—Applicability

In this section OMB proposed to clarify that the requirement to obtain a UEI does not apply to second-tier subrecipients or contractors. OMB also proposed to clarify that recipients of loan guarantees must obtain a UEI and register in *SAM.gov.* OMB also proposed to state that a Federal agency may use discretion when determining to apply the requirements to beneficiary borrowers.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In response to OMB's proposed changes, some commenters expressed concern that not requiring second-tier subrecipients to obtain a UEI could potentially put certain recipients at risk because those recipients have ultimate responsibility for monitoring all subrecipients. Some commenters stated that obtaining a UEI should be a universal requirement for subrecipients at any tier. OMB also received multiple comments expressing concern that the new proposed language, while exempting second-tier subrecipients from obtaining an UEI, did not address audit requirements, which a commenter stated may require subrecipients to have a UEI for submission. Other commenters also asked OMB to further clarify language in this section.

OMB Response: In response to comments asking OMB to make obtaining a UEI a universal requirement for all tiers of subrecipients, OMB disagrees and did not make a change. The requirements for obtaining a UEI do not flow down beyond the first-tier subawards of a Federal award. This is consistent with prior OMB guidance on this topic in the "2 CFR Frequently Asked Questions" (2 CFR FAQ) published on May 3, 2021.

In response to the comment regarding audit requirements: OMB is not requiring second-tier subrecipients to obtain a UEI under this section of the final guidance, but if a UEI is needed or likely to be needed for other purposes, second-tier subrecipients may still obtain one. If second-tier subrecipients are likely to need a UEI for other purposes, it would be best to obtain a UEI at the very start of the Federal award process. It may be infeasible to retroactively apply a UEI to awards made prior to obtaining one. After consideration of other comments requesting further clarification in this section, OMB did not make additional changes. OMB finds that this section, as revised, is sufficiently clear.

Section 25.110—Exceptions to this part

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In section 25.110, OMB proposed to clarify that, even if an exception is granted, a Federal agency remains responsible for reporting data to comply with the Transparency Act, except that it may use a generic entity identifier in the circumstances described.

Although not included in the text of the proposed revisions, OMB also stated in the preamble that it was considering other ways of reducing the administrative burden associated with obtaining a UEI and registering in *SAM.gov* for foreign organizations or foreign public entities. OMB described two potential revisions allowing expanded exceptions for these entities. The first expanded exception would have allowed an agency to grant a one-time exception from the requirement to obtain a UEI, register in *SAM.gov*, or both for foreign organizations or foreign public entities applying for or receiving an award between $25,000 and $250,000 for a project or program performed outside the U.S. This would have increased the threshold in use under the prior version of the guidance for this exception. The second exception would have expanded the existing exigent circumstances exception to provide recipients with additional time to obtain a UEI and complete *SAM.gov* registration if exigent circumstances persisted beyond 30 days. Specifically, OMB proposed to allow Federal agencies with the option to provide recipients an additional 90 days if exigent circumstances persisted. For both proposed exceptions, the preamble explained that the exceptions would only be finalized in a way that would allow agencies to continue following Transparency Act reporting requirements.

OMB received many comments in response to the proposed changes in this section. One commenter simply noted that the process to obtain a UEI number and maintain active *SAM.gov* registration is excessively complicated. Another commenter recommended that OMB grant Federal agencies the authority to exempt subrecipients from the requirement to obtain a UEI under this section. Another commenter requested OMB to allow recipients, rather than the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal agencies, to make determinations on providing exceptions for subrecipients. Other commenters noted that obtaining a UEI and registering in *SAM.gov* are major barriers for many foreign entities.

OMB also received many comments supporting the modified exceptions for obtaining a UEI and registering in *SAM.gov* described in the preamble to the proposed guidance. In general, commenters were supportive of both the modified exception that would have allowed a higher threshold of $250,000 for a project or program performed outside the U.S., and the proposed expansion of the "exigent circumstances" exception, which would have allowed recipients additional time beyond 30 days.

Commenters also provided many alternative suggestions related to raising the threshold for an exception above $25,000. For example, some commenters requested clarification on why a threshold of $25,000 is established in this section while a threshold of $30,000 is used in 2 CFR part 170 for reporting subawards. Some commenters suggested using a threshold of $30,000 for subawards in both parts for consistency. Many commenters also requested a blanket or class exemption to the UEI requirement for all entities receiving an award or subaward valued under a specified amount, with many citing $30,000 as the appropriate amount. Other commenters suggested increasing the threshold for subawards to $50,000, which they stated was the applicable threshold for subawards in certain programs under the American Rescue Plan Act of 2021 (Pub. L. 117-2).

Other commenters also requested a variety of minor clarifications and revisions to this section. For example, one commenter requested a citation be changed from "25.110(a)(2)(ii)(A)(5)" to "25.110(a)(2)(ii)(A)(4)." Another commenter requested certain language to be further clarified in paragraph (a)(1)(i). A different commenter suggested adding

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

"by section 6202 of Public Law 110–252" after "as amended" in paragraph (a)(1)(i) to provide more information to readers. One commenter requested clarification that the requirement to obtain a UEI does not apply to contractors that have a procurement relationship with a recipient.

Lastly, a commenter asked for a complete exception from obtaining a UEI for all foreign organizations or foreign public entities applying for or receiving a subaward below the Transparency Act threshold of $25,000 for a project or program performed outside the U.S. The commenter explained that establishing a *SAM.gov* user account and requesting a UEI is often extremely challenging for small foreign organizations with limited internet access or limited English proficiency.

OMB Response: In response to these comments, OMB policy on this topic is constrained by the Transparency Act, which limits what exceptions and deviations OMB can allow regarding the requirement to obtain a UEI and the timeframe in which a UEI must be obtained. In the final guidance, OMB allowed exceptions only within the parameters permitted under the statute.

Within these statutory limits, OMB made some adjustments to the proposed guidance in this section. First, OMB agrees with the comment asking OMB to allow Federal agencies to exempt subrecipients from the requirement to obtain a UEI in the circumstances described in paragraph (a)(2). Recognizing that OMB already refers to subawards in the proposed text at paragraph (a)(2)(ii), OMB made this revision to the introductory paragraph. The exceptions in this section are based on the statutory exceptions and other limited flexibilities under the Transparency Act, which generally applies in similar ways to awards and subawards.

Regarding the request to allow recipients rather than Federal agencies to make determinations on granting exceptions under this section, OMB did not make this change. OMB

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

finds that Federal agencies are able to apply a risk-based approach more consistently across their programs when evaluating exceptions.

In response to comments requesting clarification on why a threshold of $25,000 is used in this section for obtaining a UEI, while a threshold of $30,000 is used in part 170 for reporting subawards, OMB previously increased the reporting threshold for subawards under part 170 to $30,000 based on the pilot authority in section 5(b) of the Transparency Act, as amended by the Data Act of 2014. *See* Pub. L. 113-101; *see also* 85 FR 49506 (Aug. 13, 2020); 2 CFR 170.220. However, when OMB used that limited pilot authority in 2020 to revise part 170, it did not alter the separate requirement for subrecipients to obtain a UEI under section 25.300. The part 25 UEI requirement continues to use the baseline threshold for a Federal award from the Transparency Act of $25,000. The pilot authority used in part 170 is no longer active and OMB did not identify alternative statutory authority that would allow increasing the threshold above $25,000 in part 25 in the final guidance. Thus, subrecipients receiving subawards of $25,000 or more must continue to obtain a UEI before receiving an award.

In response to the many comments about UEI and *SAM.gov* registration being a barrier to foreign organizations and foreign public entities, OMB cannot allow all of the requested exceptions related to UEIs. OMB must ensure that part 25 remains aligned with statutory requirements in the Transparency Act, which place limits on what exceptions are allowable. Section 2(b) of the Transparency Act requires a unique identifier or UEI for any entity receiving a Federal award above $25,000. To comply with Section 2(c) of the Transparency Act, the UEI must be obtained, at the latest, within 30 days of the Federal award. Thus, the final guidance does not allow expanded UEI exceptions for foreign organizations beyond those that appeared in the text of the proposed guidance in October 2023. OMB did not finalize either of the expanded

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

exceptions described in the preamble to the proposed guidance because OMB has not found a way for the exceptions to be implemented consistently with the Transparency Act. The Federal award threshold in paragraph (a)(2)(ii) remains $25,000 and OMB does not expand the "exigent circumstances" exception to provide recipients additional time beyond 30 days. The "exigent circumstances" exception was paragraph (a)(2)(iii) in the proposed guidance and is now paragraph (a)(2)(iv) in the final guidance.

OMB also did not provide a complete exception from obtaining a UEI for all foreign organizations or foreign public entities applying for or receiving a subaward below the Transparency Act threshold of $25,000 for a project or program performed outside the U.S. OMB maintains the existing level of transparency for this class of Federal awards and disagrees with the commenter's suggestion. Federal agencies are provided flexibility in this section to provide UEI exceptions for these organizations in specifically defined circumstances.

For *SAM.gov* registration only, which is not specifically required by the Transparency Act, OMB provided an expanded exception applicable to foreign organizations and foreign public entities in the final guidance at paragraph (a)(2)(iii). This new exception provides that, for applicants or recipients, the Federal agency may exempt foreign organizations or foreign public entities from completing full registration in *SAM.gov* for a Federal award less than $500,000. Foreign organizations or foreign public entities exempted from registering in *SAM.gov* under this provision must still obtain a UEI. In addition, Federal agencies remain responsible for reporting under the Transparency Act in connection with the award. The Federal agency must determine this exemption on a case-by-case basis while utilizing a risk-based approach. Only OMB has authority to provide class exceptions under part 25. *See* 2 CFR 25.110(b) (as revised). To help ensure continued alignment with the Clean Contracting Act of 2008 (codified at 41 U.S.C. 2313),

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB uses a threshold of $500,000 for this exception. This exception narrows the exception proposed by OMB in the October 2023 preamble to only include *SAM.gov* registration, but increases the maximum threshold from $250,000 as initially proposed.

Regarding comments requesting that OMB allow UEI exceptions granted under part 25 to apply to subaward reporting requirements under part 170: the fact that a subrecipient is not required to obtain a UEI under part 25, does not necessarily affect reporting requirements under part 170, except that section 25.110 may allow use of a generic identifier for that reporting in certain circumstances. The ability to report using a generic identifier does not mean that reporting is not required. Specifically, section 25.110(a)(i) explains that if a Federal agency grants an exception, the Federal agency must use a generic entity identifier in the data it reports to *USAspending.gov* if reporting is required by the Transparency Act. The same principle would apply to required subaward reporting in circumstances in which an exception is granted to a subrecipient. Granting an exception under part 25 does not impact responsibility for reporting under the Transparency Act, except that a generic entity identifier may be used in the circumstances described.

The Transparency Act, at section 7 (Classified and Protected Information), provides that the Act does not "require the disclosure to the public" of information that would be exempt from disclosure under the Freedom of Information Act (codified at 5 U.S.C. 552) or protected under the Privacy Act (codified at 5 U.S.C. 552a) or section 6103 of the Internal Revenue Code of 1986 (codified at 26 U.S.C. 6103). *See* 31 U.S.C. 6101, statutory note. In cases of direct conflict between OMB's guidance and section 7 of the Transparency Act, the statutory text in the Transparency Act would prevail. *See,* for example, 2 CFR 25.105(a) and 170.105(a).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB did not find it necessary to explicitly state in part 25 that contractors with a procurement relationship with a recipient are not required to obtain UEI. The applicability section at 25.105 explains what entities must obtain a UEI. *See also* 2 CFR 25.200(b) and 25.300.

OMB accepted the suggestion to renumber paragraph (a)(2)(ii)(A)(5) as paragraph (a)(2)(ii)(A)(4). OMB made minor clarifying edits in paragraph (a)(1)(i). OMB did not find it necessary to specify which act amended the Transparency Act, which has been amended multiple times. Lastly, OMB renumbered paragraphs in this section based on the addition of a new exception at paragraph (a)(2)(iii) as discussed above. Except as noted, OMB otherwise included revisions in this section as proposed.

Subpart B—Policy

Section 25.200—Requirements for notice of funding opportunities, regulations, and application instructions

OMB did not propose significant updates to section 25.200. OMB rearranged some language to provide clarity and made plain language revisions. OMB received a comment requesting clarification on whether the requirement that a recipient be registered in *SAM.gov* prior to application is passed through to sub-recipients. This commenter also stated that sub-recipients need to register in *SAM.gov* to allow States and territories to complete reporting for Transparency Act purposes. Another commenter asked OMB to provide guidance that low-risk auditees only need to update their *SAM.gov* registrations once every three years, instead of annually, unless there is a material change that causes the auditee's *SAM.gov* registration to become outdated or otherwise inaccurate.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB also received comments requesting other minor clarifying edits in paragraph (c), which caused confusion for some commenters as initially proposed by OMB. For example, OMB received a recommendation to delete the first sentence of paragraph (c) and strike certain language from the second sentence.

OMB Response: Regarding comments requesting clarification on applicability to subrecipients, OMB finds that revisions are not needed in the guidance text. As a subrecipient does not directly apply to a Federal agency for an award, it is sufficiently clear that this provision is not addressing subrecipients. A subrecipient must only provide a UEI to the recipient in accordance with subpart C. Next, OMB does not agree with the comment stating that updating *SAM.gov* registration on an annual basis presents excessive burden and made no change to this policy. Finally, OMB agrees with commenters that paragraph (c) should be clarified. OMB made minor edits in the guidance text to clarify intent.

Section 25.205— Effect of noncompliance with a requirement to obtain a UEI or register in SAM.gov

OMB made plain language revisions and minor clarifications to this section in the proposed guidance. Specifically, OMB explained that the requirement to have an active UEI does not apply to amendments to terminate or close a Federal award. OMB received a comment requesting clarification on whether the annual *SAM.gov* registration requirement is through project closeout or the record retention period.

OMB Response: OMB finds that additional clarification is not needed in the guidance text. Section 25.200 explains that the registration requirement applies while a Federal award is "active" or "an application [is] under consideration by a Federal agency." OMB added clarifying

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

language unrelated to the comment received, but otherwise made revisions in the final guidance as proposed.

Section 25.215—Requirements for agency information systems

OMB made plain language revisions to this section and updated citations to other 2 CFR sections. OMB received a comment recommending that OMB and Federal agencies ensure that the UEI required by part 25 can be linked with global registries for PIDs.

OMB Response: OMB did not link UEIs with PIDs at this time. To do so would go beyond the scope of the changes proposed and is not necessary for this update.

Subpart C—Recipient Requirements of Subrecipients

Section 25.300— Requirement for recipients to ensure subrecipients have a unique entity identifier

OMB made plain language revisions to this section in the proposed guidance. OMB received several comments on section 25.300. First, a commenter requested OMB define "full registration" in paragraph (a), stating that there is confusion over levels of registration. Next, OMB received multiple comments on the notification requirement in paragraph (b) and Appendix A. For example, one commenter stated that the requirement that recipients must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient obtains and provides a UEI to the recipient, is unnecessary given the requirements of paragraph (a). The commenter stated this requirement imposed an unnecessary administrative burden on recipients. OMB also received a comment stating that paragraph (b) is unclear regarding whether this notification requirement applies during both the pre-award and post-award phases and to whom the notification should be provided in each case.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB Response: On the comment regarding defining "full registration" in paragraph (a), OMB did not find it necessary to further define this term in this update. With the exception of minor plain language revisions, this section remains similar to guidance as it existed before this update and OMB finds the meaning is sufficiently clear. The paragraph explains that subrecipients must obtain a UEI prior to receiving a subaward, but are not required to register in *SAM.gov*. Similarly, on the comments regarding the notification requirement in paragraph (b), this section remains similar to guidance as it existed before this update. OMB did not find it unclear or overly burdensome.

Subpart D—Definitions

Section 25.400—Definitions

In the proposed October 2023 revisions, OMB combined definitions from multiple sections within a single section at 25.400. OMB provided a definition for entity, updated and removed several other definitions, and made additional clarifying and plain language edits. Many of the revisions to this section aimed to more closely follow statutory language in the Transparency Act. OMB received comments requesting clarification on the definitions of "entity" and "Federal financial assistance." For the definition of entity, commenters specifically raised questions about the applicability of the definition to tribes, consortium organizations, and individual recipients of Federal financial assistance. Another commenter asked OMB to add a definition for "internal recipient" for situations where a government recipient, such as a State, passes funds to another agency within the government recipient. OMB also received questions asking about this section's applicability to fixed award amounts and OTA instruments. Finally, a commenter suggested that OMB consider combining the definition sections for parts 25 and part 200.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB Response: OMB made minor revisions to the definition of the term "entity" to more closely align with the statutory definition in the Transparency Act. Specifically, at paragraph (1)(x), OMB added "any subcontractor or subgrantee that is not excluded by paragraph (2)." Section 2 of the Transparency Act provides that this element of the definition applies on and after January 1, 2009. Other guidance in part 25 provides more specific information on which entities must obtain UEIs or register in *SAM.gov* in the context of this part, including the provisions at sections 25.105, 25.200(b), and 25.300. OMB also made minor technical edits to the definition of the term "entity" in the final guidance.

OMB did not add a definition for the term "internal recipient." This is beyond the scope of OMB's proposed changes for this version of the guidance, but Federal agencies may be able to provide further guidance on this question in the context of specific awards if appropriate. On the question about applicability to fixed amounts awards: a fixed amount award is a form of Federal financial assistance and subject to this part.

OMB did not combine the definitions from section 25.400 and section 200.1. Some of the definitions in section 25.400 are specifically tailored to align with the Transparency Act, while some definitions in part 200 have a broader range of applications. Regarding the definition of Federal financial assistance, OMB did not find it necessary to explicitly address whether section 25.400 applies to OTA instruments. As discussed above, Federal agencies using such authority are in the best position to answer questions and provide guidance on what specific requirements apply to OTA instruments used by that agency—including to address whether part 25 applies to them. OTA instruments, and the authorities for such instruments, provide for unique flexibilities that might not be the same across all Federal agencies.

Appendix A to Part 25—Award Term

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB proposed plain language revisions and minor clarifying edits to Appendix A to Part 25. Multiple commenters questioned OMB's usage of second-person pronouns ("you") and second-person possessive adjectives ("your") in the Appendix.

OMB Response: OMB agrees with the commenters that further clarifying edits should be made to Appendix A. Because "you" and "your" generally referred to the award recipient in the proposed Appendix, OMB now uses the term "recipient" in place of both. OMB also made other conforming edits as necessary in the final guidance. OMB is also correcting a citation for the definition of entity.

Part 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

In the proposed revisions, OMB proposed to revise the guidance in this part to ensure it properly aligns with authorizing statutes including the Transparency Act and the DATA Act of 2014. OMB proposed to clarify the specific Federal agency reporting requirements and to revise the award term to resolve issues related to which entities the award term applies to. OMB also proposed to revise certain sections to clarify their intended meaning. For example, OMB proposed to move certain requirements currently contained in section 170.110 to section 170.105, which OMB proposed to rename "Applicability."

Part 170—General Comments

OMB received multiple comments on this part that did not focus on a particular section. First, OMB received comments stating that reporting requirements should be clarified to distinguish between reporting the amount obligated by a single award, which was referred to as an "action" in Appendix A, and the new total obligated amount. Second, another commenter noted certain difficulties encountered with the FFATA Subaward Reporting System (FSRS).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB Response: Regarding the first comment, OMB added language in Appendix A to clarify that the total subaward amount under a Federal award must be reported for all reported subawards. Regarding the second comment, OMB can only update policy on reporting requirements in this part. OMB did not propose changes to FSRS through this update. This guidance is not the appropriate vehicle to address system challenges with FSRS or make changes to that system.

Subpart A—General

Section 170.100—Purpose of this part

OMB proposed plain language revisions and minor technical edits to this section. OMB did not receive any significant comments. In the final guidance, OMB made a minor technical edit, but otherwise updated the guidance as proposed.

Section 170.105—Applicability

OMB proposed to move certain requirements contained in section 170.110 to section 170.105, which OMB proposed to rename "Applicability." OMB also proposed plain language revisions and other clarifying edits. OMB further updated citations to other sections within the 2 CFR guidance.

OMB received multiple comments requesting that the guidance explicitly allow exceptions to the UEI requirement granted under 2 CFR part 25 to apply to first-tier subaward reporting requirements under 2 CFR part 170. The commenters stated that any exception to the requirement for a subrecipient to obtain a UEI under part 25 should equate to an exception to report under part 170. Similarly, OMB received a comment requesting the addition of an exception in 2 CFR part 25 for awards and subawards less than $30,000, which would align with the threshold for first-tier subaward reporting under 2 CFR part 170.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***OMB Response*:** Regarding comments requesting OMB to allow UEI exceptions granted under part 25 to apply to subaward reporting requirements under part 170: OMB's response is provided in the section of the preamble on part 25 above. In general, the fact that a recipient or subrecipient is not required to obtain a UEI under part 25 does not necessarily affect reporting requirements under part 170, except that generic identifiers may be used in defined circumstances. Certain disclosure exceptions may also be available under the statutory text of the Transparency Act, which are discussed above. *See* 31 U.S.C. 6101, statutory note. In cases of direct conflict between OMB's guidance and section 7 of the Transparency Act, the statutory text would prevail. Paragraph (a) of section 170.105 recognizes that such statutory exemptions for subaward reporting may be available in some circumstances. For example, when information is formally classified under criteria established by an Executive Order, 5 U.S.C. 552(b)(1), the statutory authority in section 7 of the Transparency Act would warrant withholding publication of information under part 170.

Regarding comments requesting that OMB create an exception in part 25 for awards and subawards less than $30,000, see discussion in this preamble above. OMB did not identify statutory authority that would allow increasing the threshold above $25,000 in part 25 in the final guidance.

Subpart B—Policy

Section 170.200 Federal agency reporting requirements

OMB proposed plain language revisions to this section and other clarifying edits. OMB did not receive any comments on this section. In the final guidance, OMB updated the prior reference to the DATA Act Information Model Schema (DAIMS). The revised reference is to the Government-wide Spending Data Model (GSDM).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Section 170.210— Requirements for notices of funding opportunities, regulations, and application instructions

OMB proposed plain language revisions to this section and added a definition for "notice of funding opportunity." OMB did not receive any comments on this section and revised the guidance as proposed.

Section 170.220—Use of award term

OMB proposed plain language revisions to this section and added certain clarifying language. A commenter suggested that it would be helpful to insert an example to illustrate the revised language in this subsection.

OMB Response: OMB made changes to clarify that the total subaward amount must be reported. OMB otherwise revised the guidance as proposed.

Subpart C—Definitions

Section 170.300—Definitions

In the proposed October 2023 revisions, OMB combined definitions from multiple sections within a single section at 170.300. OMB also proposed plain language revisions within this section, added the definition of entity, and updated or removed other definitions from the prior version of the guidance. OMB received a comment that the CFR citation in the definition for "Total Compensation" was incorrect.

OMB Response: OMB corrected the citation in the definition for "Total Compensation." OMB otherwise revised the guidance in this section as proposed.

Appendix A to Part 170—Award Term

In Appendix A to Part 170, OMB proposed changes including reordering text, revising for plain language, removing definitions or citing to relevant 2 CFR sections, and adding the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

definition of entity. OMB received multiple comments on the Appendix. One commenter requested that OMB provide clear guidance on certain inconsistencies the commenter perceived between the FSRS system and *USAspending.gov*. Another commenter suggested that rather than subrecipients reporting executive compensation to and through the pass-through entity, when applicable, the subrecipient report this data directly into FSRS.

Another commenter noted this Appendix requires reporting executive total compensation of first-tier subrecipients unless the subrecipient is exempt as provided in Section I, paragraph (d). The commenter stated that this exemption—using a threshold of $300,000 in gross income—is not necessary because a higher threshold is established elsewhere in the Appendix. Specifically, the commenter pointed to Section I, paragraph (c)(1)(ii)(B), which uses a threshold of $25,000,000 or more in annual gross revenues in the subrecipient's preceding fiscal year. The commenter further noted Section I, paragraph (d), addresses the reader directly as "you," which is inconsistent with paragraphs (b) and (c) being applicable to both recipients and subrecipients. Lastly, this commenter suggested that in Section I, paragraph (d), if OMB continues to apply the exemption to subrecipients, it should modify the language to clarify that it applies to both recipients and first-tier subrecipients.

Next, another commenter suggested adding an example to the Appendix for clarity. A commenter also requested clarification on what specific action triggers the requirement for Transparency Act subaward reporting, which requires the recipient to report a subaward action. OMB received another comment requesting a clearer definition of subaward to recognize different reporting timeframes. An additional commenter suggested that there is a lack of clarity about the amount of time recipients have to report a subrecipient's compensation information to FSRS and stated that this may lead to recipients issuing unsigned subawards.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

One commenter requested further clarification in Section I, paragraph (d), noting that the proposed language appeared to indicate that the prime recipient and the first-tier subrecipient are exempt from reporting executive compensation if their gross income from all sources is under $300,000. However, the commenter noted that paragraph (d) is referring to the reporting of subawards and executive compensation.

OMB also received a question on the significance of the changes regarding reporting subawards. The commenter noted that the current version of the Award Term required reporting "each obligating action" or "obligation" that equals or exceeds $30,000, while the proposed Award Term deleted those words and substituted "subaward" in their place.

OMB Response: Throughout Appendix A, in the final guidance OMB replaces "you" and "your" with references to the "recipient" to which the award term is addressed. OMB also made other conforming edits as necessary throughout Appendix A.

OMB also made certain clarifying edits in Section I, paragraph (d) of Appendix A in response to comments. Consistent with the rest of the Appendix, OMB clarifies that "you" refers to the recipient. Consistent with the Transparency Act, OMB also clarified that the relevant period for gross income is "the previous tax year." OMB did not add an example to this paragraph and finds the revised text is now sufficiently clear.

In response to commenters: first, regarding the question about FSRS and *USAspending.gov*, instructions on using FSRS are provided on *FSRS.gov*. Next, the comment about subrecipients reporting executive compensation directly to FSRS is beyond the scope of changes proposed by OMB. OMB did not make this change in the final guidance.

Regarding the comment maintaining that there is a discrepancy between the thresholds in Section I, paragraph (c)(1)(ii)(B) and paragraph (d) for reporting subaward information: the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

threshold in paragraph (c)(1)(ii)(B) refers to certain annual gross revenues in the subrecipient's preceding fiscal year, while the threshold in paragraph (d) refers to the recipient's gross income in the previous tax year. Because each threshold has a different subject, neither is superfluous. Both thresholds are provided by the Transparency Act.

On the question regarding the trigger for subaward reporting under the Transparency Act, OMB did not make additional changes. OMB finds the clarifying edits made throughout Appendix A sufficient to explain its intent.

On comments regarding specific Federal financial assistance programs, OMB did not make changes in part 170. OMB is unable to accommodate all requests for individual programs. The Federal agencies implementing these programs are in the best position to address program-specific questions and concerns.

Regarding the comment requesting further clarity on the timeframe recipients have to report a subrecipient's compensation information to FSRS, OMB did not make revisions to the guidance text. OMB understands that some variation may exist in the actions by which recipients obligate subawards, and that delays may occur in some circumstances. However, the Transparency Act requires reporting within 30 days of a Federal award. As a result, part 170 sets the expectation on when this information must be submitted. The recipient must determine when an action constituting a legal obligation of the subaward has occurred, which begins the reporting clock.

Finally, in response to questions about the significance of the changes in terminology regarding the reporting of subawards under the Award Term, OMB finds that the references to "subawards" are sufficiently clear when read in the context of this part and other clarifying edits in the Appendix. As noted in the preceding paragraph, recipients must still use some discretion

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

and reasonable judgement to determine when an action constituting a legal obligation of the subaward has occurred. OMB did not find it necessary to specifically address this topic in part 170.

Part 175—Award Term for Trafficking in Persons

OMB proposed to revise the guidance in part 175 to ensure it properly aligns with the authorizing statutes that have been amended since it was published. *See* the Trafficking Victims Protection Act (TVPA) of 2000, as codified at 22 U.S.C. 7101 to 7115. OMB proposed to update the policy and Award Term to ensure alignment with the current statute and to further align with the format of the guidance. For example, at section 175.105, OMB proposed adding provisions related to a compliance plan and requiring notification to Inspectors Generals under certain circumstances to further align with the TVPA.

Several commenters questioned the inclusion of the compliance plan and annual certification requirements. One commenter noted that the certification threshold is inconsistent with the threshold in the Federal Acquisition Regulation (FAR).

OMB Response: OMB appreciates the comments received on this part. The compliance plan and annual certification requirements are required by law. OMB does not have the same authority in the context of Federal financial assistance as exists under the FAR, in the context of Federal procurement, to increase statutory thresholds. *See* 41 U.S.C. 1908. OMB retained the certification threshold at $500,000, which is set by statute.

In the final guidance, OMB revised the compliance plan and certification requirements in section 175.105(b) to clarify, consistent with law, that the requirements apply to subrecipients, contractors, and subcontractors. 22 U.S.C. § 7104a. OMB also made conforming changes to the notification requirement at section 175.105(b). Next, OMB also revised section 175.105(c)(1) to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

clarify that a recipient must immediately inform the Federal agency, in addition to the Inspector General of the Federal agency, of any information it receives from any source that alleges credible information that the recipient, or any subrecipient, contractor, or subcontractor of the recipient, has engaged in conduct that is prohibited in this part.

OMB revised section 175.200(b) to clarify that a Federal agency may include the compliance plan and certification requirements in the award term when applicable—or other information consistent with statutory requirements. Finally, OMB also added a reference to the compliance plan and certification requirements in the award term. Federal agencies may decide to expand or relocate this information in the award term in appendix A to part 175 consistent with the guidance in 175.200(b).

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

OMB proposed minimal revisions to this part based on feedback received from the Interagency Suspension and Debarment Committee (ISDC) in accordance with section 180.40. Considering the role of the ISDC in recommending changes, OMB did not propose extensive plain language revisions in part 180. Sections in part 180 that OMB proposed to revise included sections 180.635 and 180.640 to clarify available administrative actions in lieu of debarment. OMB proposed amending 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. OMB proposed 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. This revision proposed to add text onto "whether your business, technical, or professional license(s) has been suspended, terminated, or revoked." OMB

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

proposed changes to this part generally in response to an ISDC recommendation to provide additional clarifications to 2 CFR to reflect current practice. OMB did not propose to establish new policy in part 180 that would negatively impact the ability of Federal agencies or recipients to adhere to this guidance.

OMB received a variety of comments and suggestions on part 180. For example, a commenter requested revisions on what individuals may be eligible to serve as "the suspending official or designee" and "the debarring official or designee." OMB also received requests to modify notice requirements, revise definitions, increase thresholds, expand the list of enumerated causes for debarment, fix references, make grammatical changes, and include other changes in this part.

***OMB Response*:** OMB appreciates the comments it received on this part, but generally considers them beyond the limited scope of the clarifying changes that OMB proposed for this update. More substantive changes will require additional engagement with the ISDC in accordance with section 180.40 to develop appropriate language. At this time, OMB finds that that the changes requested by commenters are not necessary to understand the policy under part 180. Except for a minor grammatical change, OMB made revisions in this section as proposed. OMB will consider whether additional changes to Part 180 are warranted in the future, and may consider the comments received in response to the proposed guidance.

Part 182—Government-Wide Requirements for Drug-Free Workplace (Financial Assistance)

OMB proposed limited plain language and technical revisions to this part. A commenter pointed out a minor typographical error, which OMB fixed in the final guidance. Another commenter suggested changes to how workplaces are identified in section 182.230, which OMB

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

did not find it necessary to incorporate at this time. Other than the typographical error, OMB incorporated the proposed revisions in the final guidance.

Part 183—Never Contract with the Enemy

OMB proposed limited plain language and technical revisions to this part. OMB did not receive significant comments regarding the proposed changes. OMB revised its guidance in this part as proposed.

Part 184—Buy America Preferences for Infrastructure Projects

OMB established this part on Buy America preferences for infrastructure projects through a separate process. 88 FR 57750 (Aug. 23, 2023). OMB did not propose changes to part 184 through the proposed guidance. However, in the final guidance, OMB made minor technical edits to align Part 184 with the definitions in Part 200 as revised. Specifically, OMB replaced the term "Federal awarding agency" with "Federal agency."

OMB received several comments relating to the applicability of the Build America, Buy America Act (BABA), including questions on its application to for-profit recipients. Commenters also raised concerns about the equitable application of Part 184 to different types of entities. As explained in the preamble to OMB's proposed revisions, OMB did not propose any substantive changes to BABA applicability or part 184 through this guidance-making process, and OMB did not make any substantive changes through this update on those topics.

For reasons unrelated to part 184, OMB replaced "non-Federal entity" with "recipients or subrecipients" in the revised definition of Federal financial assistance in section 200.1 discussed below. Section 70912(4) of BABA incorporates the definition of Federal financial assistance from the Uniform Guidance at 2 CFR 200.1 or successor regulations. In cases in which Federal agencies apply subparts A through E of part 200 to for-profit organizations, this revision may

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

provide further clarity on the applicability of BABA to Federal awards made to for-profit organizations. OMB did not materially change the sentence in the applicability section of the Uniform Guidance at 200.101(a)(2) providing Federal agencies with discretion on whether to apply the guidance in part 200 to for-profit organizations. Thus, OMB did not substantively change the status quo on applicability of BABA to for-profit recipients as described in the preamble for the part 184 guidance at 88 FR 57774 and in OMB Memorandum M-24-02, *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* (Oct. 25, 2023). As explained in Memorandum M-24-02, Federal agencies may consider applying BABA requirements to for-profit entities consistent with their legal authorities, but are not affirmatively required by OMB to do so. For additional information on BABA and OMB's guidance in 2 CFR part 184, see also 88 FR 55750 (Aug. 23, 2023).

Subpart A—Acronyms and Definitions

Section 200.0—Acronyms

OMB proposed to update section 200.0 to remove acronyms that either appeared only once or were used infrequently in the guidance. At the same time, OMB proposed to add several acronyms that were used more frequently, but have been omitted from this section in past updates, such as UEI. OMB received a few comments that suggested incorporating acronyms excluded from this section in the proposed guidance.

OMB Response: OMB did not find it necessary to expand on the list of acronyms. OMB only included in this section if used in multiple sections throughout the guidance. However, if multiple uses of an acronym were confined to a single section of the guidance, OMB did not find it necessary to include the acronym in this section. With the exception of simplifying the citation

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

for FFATA (the Transparency Act), OMB included acronyms in this section in the final guidance as proposed.

Section 200.1—Definitions

In section 200.1, OMB proposed to remove several definitions that were used only once or on a limited basis and instead moved such definitions to the appropriate section of the guidance where they appear. OMB also proposed deleting the definition of Federal awarding agency, which OMB incorporated within the definition of Federal agency. OMB also proposed adding several new definitions of commonly used terms including continuation funding, for-profit organization, key personnel, participant, and prior approval. OMB also proposed to revise several definitions to incorporate threshold increases referenced in other sections, such as the threshold increase for equipment to $10,000, the threshold for supplies to $10,000, and the definition of modified total direct costs, under which OMB proposed to exclude subaward costs above $50,000, as compared to $25,000 in the prior version of the guidance. OMB also proposed to revise several definitions for other reasons, including cost sharing, Federal agency, Federal award date, Federal financial assistance, financial obligations, improper payment, Indian Tribe, intangible property, participant support costs, period of performance, prior approval, questioned costs, real property, recipient, special purpose equipment, subaward, and termination.

OMB received many comments on the definitions in this section, including some suggestions for new definitions and other potential changes for future updates. OMB also received a few comments recommending the deletion of definitions and moving them to applicable sections of the guidance. Comments received on specific definitions and OMB's responses are provided below. OMB attempted to incorporate public comments where appropriate.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***Advance Payment**:* OMB received one comment suggesting that this definition exclude the reference to subrecipients as a disburser of funds. OMB disagrees with the commenter. Like recipients, subrecipients also disburse funds for program purposes. For example, subrecipients disburse cash for property and services. Accordingly, OMB finds this change is unwarranted and revised the definition as proposed.

***Advisory Council**:* OMB received a suggestion to include a definition for advisory council in this section, which is only defined in section 200.422. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Bad Debt: OMB received a suggestion to include a definition for bad debt in this section, which is only defined in section 200.426. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

***Beneficiary**:* OMB received several comments suggesting that OMB define the term beneficiary. OMB did not propose to define the term, the meaning of which can vary widely between Federal agencies as well as within agencies between assistance programs. OMB defers to Federal agencies to determine who is or is not a beneficiary under their respective programs consistent with law. The definition of participant and participant support costs in this guidance is not intended to include beneficiaries. For the reasons summarized here, OMB defers to Federal agencies on the use and meaning of this term consistent with law for their programs.

***Cognizant Agency for Audit**:* One commenter asked OMB to clarify whether there is a list of cognizant agencies for audit. The commenter noted that this information is not available on the Federal Audit Clearinghouse (FAC) website. OMB revised the definition to clarify that

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

the FAC website provides a list of Federal agency Single Audit contacts and not a list of cognizant agencies for audit.

***Conditional Title**:* A commenter asked OMB to include the definition of conditional title in section 200.1, which is currently defined in section 200.313. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

***Conference**:* Another commenter asked OMB to define the term conference in section 200.1 because it is only defined in section 200.313. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

***Construction**:* OMB received two comments requesting a definition of the term construction. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance. OMB also did not define this term in part 200 because OMB did not want to inadvertently impact the implementation of Buy America requirements under part 184, which incorporate definitions from part 200, but which are not the focus of this update.

***Contingency Provisions**:* One commenter asked OMB to include the definition of contingency provisions or costs in section 200.1. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

***Continuation Funding**:* One comment expressed concern that the proposed definition of continuation funding did not adequately capture the distinction between an agency's exercise of its discretion when making an award and subsequent determinations by the agency, pursuant to terms and conditions of the award, to provide funding for additional budget periods for that same award. In the final guidance, OMB revised the definition of continuation funding to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

simply mean "the second or subsequent budget period within an identified period of performance." The proposed reference to a "discretionary decision by a Federal agency" is no longer included in the definition. Depending on the assistance program and the terms and conditions of the Federal award, agency discretion may be involved or legally available on whether to provide continuation funding. However, considering the potential for variation among Federal agencies and programs, OMB did not find it necessary to address this topic directly in the final definition of continuation funding.

Contract: OMB made a minor revision to this term to clarify that contracts are utilized for conducting "procurement transactions" in general and are not limited to only purchasing "property and services."

Conviction*:* A commenter asked OMB to harmonize the definition of conviction across the guidance. The commenter noted that the definition of this term varies in different sections. For example, different definitions are used in sections 200.435(a)(1), 180.920, and 182.615. OMB did not add a definition for this term in part 200. OMB is limiting the definitions in section 200.1 to those terms used consistently throughout the part 200 guidance. For the purposes of this update, OMB did not find it necessary to provide a single definition of this term applicable across all parts of the OMB guidance in 2 CFR.

Cooperative Agreement*:* OMB received several comments requesting clarification on the relationship between parties under both grants and cooperative agreements. OMB agrees with commenters that additional clarity is warranted and made minor clarifying revisions in the final guidance.

Cooperative audit resolution: As proposed, OMB moved this definition to section 200.513(c), which outlines Federal agency responsibilities for audits. Considering its limited use

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

in the guidance, OMB found it easier for the reader in this case if the definition is included in the same section where the responsibilities are outlined.

Cost of Idle Facilities*:* One commenter asked OMB to insert a definition of cost of idle facilities in section 200.1 because a definition is provided in section 200.466(a)(4). OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Cost objective: OMB made a minor revision to this term by removing "((Facilities and Administration (F&A))" after "indirect" cost. The more general term "indirect costs" is not necessarily limited in all cases to the more specific F&A category. The definition of indirect cost now explains that the term facilities and administrative (F&A) cost is often used to refer to indirect costs by Institutions of Higher Education.

Cost sharing: In the proposed guidance, OMB proposed minor revisions to this term, including clarifying that cost sharing includes matching. OMB made changes to the definition as proposed.

Credible Evidence*:* At least one commenter asked OMB to provide a definition of credible evidence. OMB did not find it necessary to define the term in section 200.1. OMB intends to generally align the meaning of credible evidence under the Uniform Guidance in part 200 with the existing meaning under the FAR. *See* 73 FR 67064 (Nov. 12, 2008) (explaining reasons for selecting the term "credible evidence" including discussion of alternatives considered). This topic is discussed further in the context of section 200.113 below.

Data Management and Sharing Costs*:* One commenter asked OMB to add a definition of data management and sharing costs, which appears in section 200.455. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

throughout the guidance.

Depreciation*:* One commenter asked OMB to add a definition of depreciation, which is used in section 200.436(a). OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Disallowed Cost*:* Six commenters asked OMB to restore the version of disallowed cost under the prior version of the guidance, which is limited to costs determined to be unallowable in accordance with applicable Federal statutes, regulations, or the terms and conditions of the Federal award. OMB agrees with commenters and restored that language in the final guidance.

Encumbrance*:* Several commenters asked OMB to add a definition of encumbrance in section 200.1 in place of the proposed definitions in sections 200.311, 200.313, and 200.315. OMB discusses this topic further in those sections. Other commenters noted certain deficiencies with OMB's proposed definition included in sections 200.311, 200.313, and 200.315. For example, a commenter asked OMB to address the difference between encumbrances and "pre-existing encumbrances."

OMB did not add a definition of encumbrance in section 200.1. OMB also removed its proposed definition from the later sections of the preamble. Like the prior version of the guidance, the term "encumbrance" is not formally defined in the final guidance text. OMB's decision was based in part on comments expressing concern that the proposed definition may not fit equally well in all contexts under part 200 in which it could be applied. For the present, OMB did not attempt to revise its definition to effectively address all scenarios and potential concerns.

For future updates, OMB will again consider exploring this topic and providing a definition. OMB may consider providing a single definition of this term or providing separate

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

definitions in the specific sections in which it is used. OMB cautions, however, that its decision not to provide a definition of this term should not be interpreted to indicate any particular policy intent in the sections in which the terms "encumber" or "encumbrance" are used. For example, OMB's decision to remove the proposed definition is not based on any single comment received in response to the proposed guidance. Removing the definition also does not indicate that OMB now disagrees with its proposed definition, which may be reasonable to use in many contexts. OMB will continue to evaluate what definition, if any, should be provided in future updates to the Uniform Guidance.

Equipment*:* OMB received three comments requesting that the threshold for equipment be raised above $10,000. OMB proposed to raise the threshold to $10,000 in the proposed guidance. OMB finds that an additional increase is not warranted at this time and revised the guidance as proposed.

Expenditures*:* OMB proposed to revise this definition. One commenter asked OMB to restore a definition closer to the original, including restoring the reference to a "project or program" under a Federal award. OMB agrees with the comment and restored the use of "project or program" to the definition.

Facilities*:* A commenter asked OMB to include a definition of facilities, which is used in section 200.446(a)(1). OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Federal Agency: OMB received two comments indicating that the new definition of Federal Agency was unclear. OMB agrees with commenters that the structure of the proposed definition could cause confusion. To simplify, OMB now defines the term to mean an "agency" as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f). The definition further

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

explains that the term generally refers to the agency that provides a Federal award directly to a recipient unless the context indicates otherwise. OMB incorporated these revisions in the final guidance. Based on this change, OMB eliminated the term "Federal awarding agency," which no longer appears in the guidance text.

***Federal Award**:* One commenter suggested revising paragraphs (1)(i) and (1)(ii) using both the terms recipient and subrecipient, rather than just recipient in (1)(i) and non-Federal entity in (1)(ii). The commenter stated that this would more clearly identify the types of entities covered as well as provide flexibility should an agency wish to make subparts A through E applicable to other types of entities. OMB disagrees with the commenter that further clarification is needed for paragraph (1)(i) at this time. OMB retained the language from the proposed and prior versions of the guidance, which is widely known and understood in the Federal financial assistance community. OMB also did not further revise paragraph (1)(ii) from the proposed or prior version of the guidance, which refers to a cost-reimbursement contract under the FAR. In this case, OMB retained the original term non-Federal entity.

Another commenter asked OMB to clarify the distinction between a grant and contract based on ambiguity presented in paragraphs (1) and (3). Paragraph (3) of the definition of Federal award refers to contracts that a "Federal agency uses to buy goods or services," which generally would be governed by the FAR. However, paragraph (1)(ii) of the definition helps to clarify that a cost-reimbursement contract awarded under the FAR to a non-Federal entity may be subject to certain specified provisions under part 200. This is more specifically described in section 200.101, which is referenced in paragraph (1)(ii). This is a long-standing feature of the definition of Federal award and section 200.101, which is not newly proposed by OMB in this

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

update. OMB did not propose changes to this element of the definition and does not make any further changes in the final guidance.

Another commenter recommended that the definitions of Federal award, Federal financial assistance, Federal program, and grant agreement all be revised to specifically exclude funds and activities associated with self-determination compacts between Indian Tribes and the Federal government. The existing definitions do not provide the requested exclusion, nor did OMB propose to add the exclusion in the proposed guidance. OMB may consider this comment for future updates, but made no change in the final guidance. Section 200.101(d) provides that statutes or Federal agency regulations may govern in circumstances where they conflict with the provisions of part 200. This existing provision of the guidance recognizes that the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended (see 25 U.S.C. 5301-5423) may govern in some circumstances.

Federal awarding agency: See discussion of the term Federal agency.

Federal award date: OMB proposed minor revisions to this term, which it mostly included in the final guidance. In the final version, OMB deleted "binding agreement" following the word alternative in recognition that 31 U.S.C. 1501 does not require this in all cases. The relevant alternatives are listed in 31 U.S.C. 1501.

Federal financial assistance: OMB proposed a minor change to the definition of the term "Federal financial assistance." As with other provisions in subparts A through E, OMB proposed the term to include assistance received or administered by recipients or subrecipients—as compared to assistance received or administered by non-Federal entities in the prior version of the guidance. OMB included this change in the final guidance.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Another commenter recommended that the definitions of Federal award, Federal financial assistance, Federal program, and grant agreement all be revised to specifically exclude funds and activities associated with self-determination compacts between Indian Tribes and the Federal government. See OMB's response above under Federal award.

Federal program: One commenter recommended that the definitions of Federal award, Federal financial assistance, Federal program, and grant agreement all be revised to specifically exclude funds and activities associated with self-determination compacts between Indian Tribes and the Federal government. See OMB's response above under Federal award.

Financial obligations: A commenter asked OMB further clarify the definition of financial obligations by adding a table. OMB did not find this necessary or critical to understand the meaning of this term. In the final guidance, before the word "result," OMB added the word "will." This change simply recognizes that expenditures are not always contemporaneous with the financial obligation. Rather, an obligation will often require a future—but not immediate—expenditure or outlay of funds.

Fixed amount award*:* A commenter asked OMB to incorporate policy requirements for fixed amount awards into the definition. OMB disagrees that this is necessary in the definition section and did not make a change. Specific requirements for fixed amount awards are addressed later in the guidance.

For-profit organization: OMB proposed to add a definition of this term in the proposed guidance. That definition is included in the final guidance.

Fraud*:* A commenter asked OMB to include the definition of fraud in section 200.1 based on use of that term in 200.435. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***General Support Services**:* A commenter asked OMB to add a definition for general support services. OMB did not add a definition for this term. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Grant agreement: OMB received a couple of comments requesting further clarity on the relationship between parties under the definitions of grants and cooperative agreements. OMB agrees with the commenters and made minor clarifying revisions in the final guidance.

Another commenter recommended that the definitions of Federal award, Federal financial assistance, Federal program, and grant agreement all be revised to specifically exclude funds and activities associated with self-determination compacts between Indian Tribes and the Federal government. See OMB's response above under Federal award.

***Idle Capacity**:* A commenter suggested including a definition for idle capacity based on its use in 200.446. OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

***Idle Facilities**:* A commenter suggested including a definition for idle facilities based on its use in 200.446(a)(2). OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

***Improper Influence**:* A commenter suggested including a definition for improper influence based on its use in section 200.450(b). OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

***Improper payment**:* A few commenters asked OMB to reinstate the previous definition of improper payment. OMB disagrees. As stated in the preamble for the proposed guidance, OMB proposed to shorten the definition of "improper payment" to ensure better alignment with in

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement. OMB made changes to the definition as proposed. See also the definition of questioned costs, in which OMB clarifies that questioned costs are not considered improper until they are confirmed to be improper under A-123.

Indian Tribe: OMB proposed minor revisions to this term. It includes the revised definition in the final guidance.

Indirect cost*:* In the final guidance, OMB revised the definition of indirect cost to no longer include reference to facilities and administrative (F&A) cost directly in the name of the term itself. OMB's revision to the defined term has no substantive impact on how the term is applied under the final guidance relative to how it was applied under the prior version of the guidance. The term "indirect cost" continues to align with "F&A costs." OMB explains within the definition that F&A costs and indirect costs are often used interchangeably at Institutions of Higher Education (IHE). OMB received multiple comments requesting this revision. OMB also received one comment that recommended amending the definition of indirect cost to note that the duplication of costs is unallowable. OMB did not find the latter change necessary in the context of this definition. Allowability is addressed later in the guidance.

Indirect cost rate proposal*:* OMB received three comments that recommended adding "or subrecipient" to the definition of indirect cost rate proposal because indirect costs apply to both recipients and subrecipients. OMB acknowledges that one can be both a recipient and subrecipient and have a Federally negotiated rate. However, only recipients prepare proposals in accordance with the appendices. An organization that is exclusively a subrecipient would not negotiate a rate with a Federal agency under the appendices to this part.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Information technology systems*:* One commenter requested inclusion of cybersecurity in the definition of information technology systems. Cybersecurity may already be included in the definition if provided through listed items such as software or firmware or a related procedure or service. OMB did not find it necessary to specifically list cybersecurity in this definition.

Initial equity contribution*:* A commenter asked for a definition of initial equity contribution to be included in section 200.1 based on its use in 200.449(c)(7). OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Intangible property*:* A commenter expressed concern that the proposed inclusion of data under the definition of intangible property would make data subject to the requirements of section 200.315. OMB responds that data is included as an example under the definition of intangible property. Even under the prior definition, certain data could already have been considered intangible property and subject to section 200.315 if it met the criteria under the guidance. For example, section 200.315 refers to intangible property developed, or for which ownership was acquired, under a Federal award. With the exception of minor edits, OMB revised the definition as proposed.

Key personnel*:* OMB proposed to add a definition for this term in the proposed guidance. OMB received several comments suggesting that the new definition caused confusion or was unclear. In the final guidance, OMB removes its proposed definition of this term in response to those comments. In section 200.308(f)(2), OMB clarified that, at least in the context of that provision, key personnel includes employees and contractors.

Less-than-arm's-length*:* One commenter suggested including a definition of less-than-arm's-length in section 200.1 based on its use in 200.465(c). OMB did not add a definition for

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Loan: In the final guidance, OMB added "or subrecipient" following recipient to recognize that subrecipients may also receive or administer loans.

Local Partner*:* One commenter suggested including a definition of local partner. OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Micro-purchase*:* A commenter asked OMB to revise the definition of a micro-purchase to aggregate the purchase of supplies needed over the life of a Federal award. Another commenter asked OMB to remove the language referring to an individual procurement transaction. OMB found that neither of these changes are necessary and revised the definition as proposed.

Micro-purchase threshold: In the final guidance, OMB revised the definition of this term by revising language on the ceiling for the micro-purchase threshold. OMB received several comments noting that the definition of the micro-purchase threshold failed to recognize different ways of establishing higher rates under section 200.320. OMB agrees with commenters and revised the definition accordingly.

Modified total direct costs (MTDC)*:* A commenter suggested revising the definition to not require exclusion of the portion of each subaward above the threshold. Two commenters asked whether subcontracts would be included in the modified total direct costs definition based on earlier versions of the guidance. Several commenters sought clarification on the intended application of rental costs and patient care costs in the modified total direct cost definition and suggested that OMB define these terms. Another commenter suggested that OMB revise the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

definition of modified total direct cost to include the threshold amount for each year during the period of performance that the subaward is in effect. Several commenters also asked OMB to increase the threshold for each subaward to above $50,000.

In the final guidance, OMB revised the definition as proposed. Many of the suggestions are beyond the scope of OMB's proposed revision to this definition, which was limited to increasing the threshold for the portion of each subaward that may be included from $25,000 to $50,000. As proposed, OMB retained the exclusion of the portion of each subaward above the threshold. OMB does not include subcontracts in the revised definition, which were removed in earlier versions of the guidance. OMB leaves this policy unchanged.

Under the revised definition, only the first $50,000 of each subaward may be included—regardless of the period of performance of that subaward. OMB disagrees that recipients should be able to apply this threshold on an annual basis for subawards with longer periods of performance. OMB also disagrees with the proposal to further increase the threshold for each subaward. OMB finds that doubling the threshold, as proposed, is an appropriate increase for this update.

Notice of Funding Opportunity: A commenter asked for clarity on what a pass-through entity should call a notice of funding opportunity (NOFO) as the definition does not include pass-through entities. Another commenter stated that the reference to subrecipient in the definition should be removed because Federal agencies do not select subrecipients.

Regarding the first comment: a pass-through entity is not required to call a solicitation of subaward proposals by a specific name. On the second comment, although OMB agrees that Federal agencies do not directly select subrecipients under a NOFO, some NOFOs do provide guidance or information on how recipients should select subrecipients for a particular assistance

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

program. For this reason, OMB retained the reference to subrecipient in the definition. OMB made changes to the definition as proposed.

Participant*:* OMB proposed to add a definition of participant in the proposed guidance. OMB made a few revisions to the final definition to provide further clarification of its intent. For example, OMB restructured the definition to begin with an affirmative definition of a participant generally, before providing a negative definition of what a participant is not. The order was reversed in the proposed guidance. Other revisions are addressed below.

Initially, the definition of participant cannot account for all variations on how participants are treated or defined by different Federal agencies or under specific assistance programs. For this reason, section 200.456 of the guidance specifies that the recipient must document its policies and procedures for making participant determinations. That section also provides that participant support costs must be treated consistently across all Federal awards. See also participant support costs below.

One commenter suggested changing the reference to "exchange students" in the definition to just "students." The commenter stated this would be simpler and, in most cases, more appropriate for Federal programs. The reference to exchange students was just one potential example of a participant, but OMB made this change in the final guidance.

Another commenter stated the definition was unclear and overly broad. One commenter specifically pointed to the phrase "playing a role in the overall program activities" as overly broad and confusing. In addition to restructuring the definition, as explained above, OMB attempted to provide further clarity in the final definition. For example, OMB now begins the definition by stating that a participant is an individual participating in or attending program

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

activities—but not an individual responsible for implementing those activities under the Federal award.

Next, a commenter stated the definition should specify that individuals who attend trainings and conferences may be treated as participants. OMB agrees and included such individuals as examples of participants.

Another commenter stated that the definition should exclude project personnel and those who commit effort on the implementation of the Federal award. OMB agrees and revised the definition. Another commenter asked OMB to replace "staff member" in the proposed definition with "employee." OMB did not find this change was necessary.

One commenter stated the definition should provide that beneficiaries are also participants. OMB disagrees that this would always be true and does not consider the two terms to be equivalent or synonymous. Identification of beneficiaries is at the discretion of the Federal agency making the award to the extent consistent with authorizing law. See also discussion under the term "beneficiary" above, which is discussed in this preamble but not defined in section 200.1.

A commenter also asked OMB to clarify that the examples are provided for illustrative purposes only and that the classification is at the discretion of the recipient. Partially in response to this comment, OMB revised and restructured the definition to better identify where it is providing definitional elements of a participant and where it is just providing examples that may fit those elements. OMB also revised some of the examples provided.

Other commenters asked OMB to provide additional examples of participants within the definition. OMB finds that an exhaustive list of examples is not necessary. For example, although examples such as teachers, scholars, or scientists may be participants in some cases,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

they could also be employees, consultants, or beneficiaries in others. OMB sought an appropriate balance in the final definition by providing a few illustrative examples but not providing—or attempting to provide—an exhaustive list.

Participant Support Costs*:* One commenter asked OMB to revert to the prior definition of participant support costs. Another commenter sought clarification on whether the inclusion of stipends as an example in the definition indicates that stipends are considered participant support costs. Another comment asked OMB to provide examples of types of participants, associated with typical participant support costs. Another commenter asked for clarification on the inclusion of temporary dependent care in the participant definition. Specifically, the commenter questioned whether the use in this definition was intended to be synonymous with the use of the same term in section 200.475(c)(1).

OMB finds the proposed text for this definition was sufficiently clear and did not make significant changes. Only stipends paid to participants are considered participant support costs. OMB found that it was not necessary to specifically mention training and conferences in the definition as the costs may also be incurred in other contexts when allowed under the guidance. Participant support costs are any costs that are paid directly to or on behalf of a participant. OMB clarified the reference to "temporary" dependent care. Section 200.475 applies to dependent care for employees, not participants.

Pass-through entity*:* OMB received several comments indicating that the definitions of recipient, subrecipient, and pass-through entity were unclear. OMB proposed only minor revisions to the definition of pass-through entity and disagrees with commenters that the term is unclear. While traditionally pass-through entity specifically referred to a non-Federal entities

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

under earlier versions of the guidance, other entities may also be considered pass-through entities based on how a Federal agency implements the guidance for its programs.

In the final guidance, to address potential confusion on how the term will be applied, OMB added language to clarify that that the authority of the pass-through entity under part 200 flows through the subaward agreement between the pass-through entity and subrecipient. OMB added this language to ensure that a pass-through entity will not erroneously apply the authorities available to the Federal agency under part 200. For example, if a provision in part 200 allows "the Federal agency or pass-through entity" to provide an approval or authorization for a "recipient or subrecipient," the pass-through entity only has authority to provide the approval or authorization to its subrecipient. In this situation, the pass-through entity cannot provide the approval or authorization to itself, but rather would need to obtain approval or authorization from the Federal agency. For a more specific example, under section 200.343, the pass-through entity does not have authority to authorize its own costs for its own primary Federal award. The pass-through entity may expressly authorize these costs for subawards only.

Performance Based Payment*:* One commenter asked OMB to include a definition of performance based payment. OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Period of performance: OMB proposed revisions to this term, but now provides a simplified definition in the final guidance. The final definition reinstates some familiar language from the definition in the prior version of the guidance, which OMB had proposed to remove. As now revised, period of performance means the time interval between the start and end date of a Federal award, which may include one or more budget periods. The final definition also recognizes that identification of the period of performance in the Federal award consistent with

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

section 200.211(b)(5) does not commit the Federal agency to fund the award beyond the currently approved budget period. The period of performance is also sometimes referred to by Federal agencies as the performance period.

Personally Identifiable Information (PII): Within the definition of Personally Identifiable Information (PII), in the final guidance OMB deleted the text defining Public PII. The term "Public PII" is never used in the guidance text. OMB seeks to avoid confusion by defining a term in section 200.1 that is never used in the body of the guidance—which could potentially prompt questions on whether Public PII should be treated differently than normal PII. The deletion of this text on Public PII does not represent a substantive change to the policy in the guidance. The remaining text in the definition continues to explain that some PII can be available in public sources.

Post-retirement health plan*:* One commenter asked OMB to include a definition of post-retirement health plan in section 200.1 based on its use in 200.431(h). OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Prior approval*:* Several commenters asked OMB to clarify the definition of prior approval by adding the words "obtained in advance." Some commenters also asked OMB to clarify and specify when ratification (after the fact approval) would be permissible. One comment requested that OMB specify that approval of the project narrative or budget constitutes prior written approval. A different comment requested that the guidance limit Federal agency or pass-through entity review of requests for budget or program revisions to 15 days. Several comments questioned whether the definition may cause misunderstanding for pass-through entities and subrecipients on who can approve which action.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB added the words "obtained in advance" to the definition to clarify that, generally, obtaining approval in advance is a definitional element of prior approval, which is required where stated in the guidance. However, this change is not intended to prohibit Federal agencies from using appropriate procedures to retroactively provide prior approval, if necessary, under a Federal award in specific cases. OMB does not directly address this topic in the definition of the term, but Federal agencies may exercise reasonable discretion in providing "after the fact" prior approval when warranted on a case-by-case basis under Federal awards and otherwise consistent with law.

Guidance provided in section 200.308 is already responsive to the comment regarding circumstances in which approval of the project narrative or budget may constitute prior written approval. In response to another commenter, OMB is not establishing a specific timeframe in which an agency should provide prior approval, but may consider the recommendation of a 15-day period in future updates. Regarding commenters expressing confusion on when pass-through entities may provide prior approval, in many instances the guidance text specifically states whether the Federal agency or pass-through entity may provide the approval. In circumstances in which pass-through entities may provide prior approval, they have the same responsibility for monitoring and oversight as a Federal agency does. In some circumstances a change under a subaward will be significant enough to also require a change to the recipient's Federal award, which would also require prior approval by the Federal agency.

Program Evaluation*:* Two commenters asked OMB to define the term program evaluation to align with OMB Circular A-11. OMB did not add a definition for this term directly in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***Program Income**:* A commenter observed that usage of the phrase "under a Federal award" in the illustrative examples of program income was confusing and needed clarification. The phrase was used for some examples but not others. In response to the comment: the key definitional elements of program income are provided in the first sentence of the definition, including explaining its connection to a Federal award. But the repetition of "Federal award" in certain examples helps to provide context. For example, in relation to certain items, the examples identify program income "acquired" under Federal awards, "fabricated" under a Federal award, and "made with" Federal award funds. Deleting this language would make the examples less clear. Thus, OMB retains reference to "Federal award" in the case of some example, but not all, when it helps to provide context and explain what OMB means by the example.

Protected Personally Identifiable Information (Protected PII): In the final guidance, OMB made minor revisions to the definition of *Protected Personally Identifiable Information (Protected PII)* to more accurately reflect the meaning of this term.

***Questioned Cost**:* Multiple commenters objected to the deletion of the statement that questioned costs are not improper payments until reviewed and confirmed to be improper payments. No policy change was intended by the deletion. OMB restored the original statement within the definition of questioned cost at paragraph (6).

Two comments expressed concern about situations in which an auditor identifies questioned costs, the auditee locates additional documentation, and the auditor reports the questioned costs without considering the documentation. This comment recommended stating more specifically when adequacy of documentation should be assessed. OMB finds that it is not necessary to specifically address in the guidance the point in time at which this would occur.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Several commenters expressed concern that introducing the concept of "likely questioned costs" could put auditees at risk from speculative or unsubstantiated audit findings. OMB responds that the concept of likely questioned costs is not new. The definition now appearing at section 200.1 is from section 200.516 in prior versions of OMB's guidance. It is also based on AU-C 935.11 in the auditing standards of the American Institute of Certified Public Accountants (AICPA). The requirements associated with this concept are not new, including the requirement for auditors to consider the likely questioned costs in formulating their opinion on compliance. OMB merely moved the existing language from section 200.516 to section 200.1. Speculative or unsubstantiated audit findings would not align with the AICPA's auditing standards.

Several commenters recommended that "known questioned cost," rather than "questioned cost," should be the defined term and used as a basis for defining the related term, "likely questioned cost." OMB is not adopting this recommendation at this time. OMB did not find reason to restructure the definition in this way through this update, but may consider the suggestion in the future.

Several commenters suggested categorizing the compliance requirements in the compliance supplement (see definition in section 200.1) as monetary or non-monetary to facilitate consistent reporting of questioned costs. In paragraph (3)(ii) of the definition, OMB clarified that there is no questioned cost solely because of noncompliance with the "reporting type of compliance requirement" (as described in the compliance supplement) if this noncompliance does not affect the amount expended or received from the Federal award.

Several commenters also suggested clarifying that there is no questioned cost solely because of a misclassification of costs. OMB agrees that in some cases this may be consistent with the intent of paragraph (3)(ii), as revised, but also observes that misclassified costs may

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

sometimes affect the amount expended and thus be considered questioned costs. This may occur, for example, if the misclassification resulted in noncompliance with matching requirements.

Real Property: OMB received a comment on proposed revisions to the definition of real property. The commenter questioned the proposed addition of "legal interests in land." The commenter stated these would only be considered intangible rights or intangible property, but not real property. In response to the comment, many Federal agency regulations recognize that "real property" may include legal interests in land.[2] Black's Law Dictionary also recognizes that real property "can be either corporeal (soil and buildings) or incorporeal (easements)." (11th ed. 2019). In the final guidance, OMB decided to retain the reference to "legal interests in land" followed by a short list of examples. Relative to the proposed guidance, OMB only made minor technical edits. As applied to other sections of the guidance, the revised definition clarifies, for example, that if an easement is acquired under a Federal award, the recipient must not dispose of the easement while it is being used for the originally-authorized purpose except as provided by the Federal agency—or as otherwise allowed under relevant sections of the guidance. *See* 2 CFR 200.311(b). It is possible that not all provisions in the Uniform Guidance that apply to real property will equally apply to all legal interests in land. For example, section 200.310 on insurance coverage may have limited applicability in certain cases if insurance coverage would

[2] *See, e.g.*, the General Services Administration (GSA) regulation applicable to GSA's real property policies at 41 CFR 102-71.20 (Real property means "[a]ny interest in land, together with the improvements, structures, and fixtures located thereon … and appurtenances thereto …"). *See also*, *e.g.*, 43 CFR 423.2 ("Real property means any legal interest in land …"); 23 CFR 710.105 ("Real property … means any interest in land and any improvements thereto …"); 10 CFR 770.4 ("Real Property means all interest in land …"); 25 CFR 900.6 ("Real property means any interest in land together with the improvements, structures, and fixtures and appurtenances thereto"); 25 CFR 170.5 ("Real property means any interest in land together with the improvements, structures, fixtures and appurtenances"); 26 CFR 1.856-10 (identifying "intangible assets that are real property or interests in real property").

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

not ordinarily apply to a particular legal interest in land. Federal agencies may exercise discretion in appropriate application of the revised definition consistent with law.

***Recipient**:* Some commenters asked OMB to amend the proposed definition of recipient (and subrecipient) to explain specifically which entities are recipients (or subrecipients). OMB also received requests to further define the word entity in this and other definitions. These changes are not necessary. Applicability of the guidance is addressed separately in section 200.101. Subparts A through F always apply to Federal agencies that make Federal awards to non-Federal entities. Federal agencies may also apply subparts A through E to certain other entities as provided in section 200.101. Because the applicability will not always be the same for all Federal agencies and programs, OMB is not specifically listing which entities are recipients (or subrecipients) within the definition section. More detailed discussion on section 200.101—and the meaning of applying the guidance to certain entities—is provided in this preamble below. OMB disagrees that further definition of the word "entity" is needed to understand the meaning of the terms recipient and subrecipient under part 200. Section 200.101, on applicability, is the appropriate place to find information on the entities to which part 200 may be applied by Federal agencies.

***Renewal award**:* OMB proposed minor revisions to the definition of this term. In the final guidance, OMB revised the definition to remove language specifying that a renewal award is made "after the expiration of" a Federal award. In practice, renewal awards can be executed prior to the actual expiration of the award that they follow. The revised definition explains that the start date for a renewal award is contiguous with, or closely follows, the end of the expiring Federal award. The start date of a renewal award begins a new and distinct period of performance.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Simplified acquisition threshold*:* A commenter requested clarity on whether the capitalization of this term in sections outside of section 200.1 was intentional and indicated a different meaning. OMB did not intend for capitalization to indicate different meanings for this term within part 200. OMB removed the inconsistent capitalization in other sections of the guidance.

Special Purpose Equipment*:* OMB received a comment suggesting that the use of "other technical activities" is overly broad and could be interpreted to be overly inclusive of items that would otherwise be considered general purpose equipment. OMB changed the text to read "other similar technical activities." OMB considered referring to "other unique and specific activities" but decided that language could be too narrow because it would not necessarily apply to the listed examples of special purpose equipment, including microscopes. OMB finds the general definition and listed examples provide the information needed to exercise appropriate discretion on distinguishing between items that constitute "special purpose" and "general purpose" equipment.

Strategic Sourcing*:* A commenter suggested including a definition of strategic sourcing in section 200.1 because it appears in section 200.318. OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Subaward*:* A commenter expressed confusion regarding the statement that a subaward "may be provided through any legal agreement, including an agreement the pass-through entity considers a contract." In the final definition, OMB further clarifies its intent. OMB explains that criteria for distinguishing between subawards and contracts is provided at section 200.331. Some of this language just restored language from the prior version of the guidance.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB also received several comments recommending the definition of subaward clarify if payments to beneficiaries that are not individuals are also excluded. OMB agrees the language was potentially misleading and clarified that subawards do "not include payments to a contractor, beneficiary, or participant."

Subcontract and Subcontractor*:* Two commenters asked OMB to add definitions for subcontract and subcontractor. OMB did not add a definition for these terms in section 200.1. OMB finds that the terms are clear from the context in which they are used in the guidance and extend logically from the definition of "contract" and "contractor." Thus, additional definitions are not needed at this time.

Subrecipient: OMB received a request to clarify if only individual beneficiaries are excluded in the term subrecipient. OMB agrees this feature of the definition was potentially confusing and amended the final language to simply explain that the term "does not include a beneficiary or participant." Consistent with the definition of recipient, OMB did not add further information on the meaning of the word entity. On this topic, see further discussion in this preamble above on the meaning of recipient.

Supply: OMB proposed revisions to this term, including an increased threshold of $10,000. OMB included the revised definition in the final guidance.

Telecommunications cost: A commenter requested OMB to clarify if telecommunications cost includes the cost of using other types of devices including satellites, radio, TV, telegraphs, and others. OMB responds that the examples provided in the guidance are illustrative and not exhaustive. OMB is not adding other examples to the definition, but recognizes that other communication technologies may also fit under the definition.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Temporary dependent care cost*:* A commenter asked OMB to defined temporary dependent care cost in section 200.1 because it is defined in section 200.475(c)(1). OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Termination: A few commenters asked OMB to further clarify the meaning of "discontinue" and "discontinuing" in the proposed definition of "termination," which they stated OMB had used in different and conflicting ways. OMB simplified the definition in the final guidance. As now revised, termination means the action a Federal agency or pass-through entity takes to discontinue a Federal award, in whole or in part, at any time before the planned end date of the period of performance. The final guidance also explains that termination does not include discontinuing a Federal award due to a lack of available funds. See also discussion in this preamble below on changes OMB made to the termination provision at section 200.340 in the final guidance.

Third-party in-kind contribution: One commenter asked OMB to revise paragraph (1) of the definition by either removing "Federal award" from the sentence or adding "that is funded by a" before Federal award. Another commenter asked OMB to revise paragraph (1) to state: "Benefit a federally-assisted project or program or Federal award." OMB revised the definition based on consideration of these comments to clarify its intent.

Total cost*:* A commenter asked OMB to include a definition of total cost in section 200.1 because it is defined in section 200.402. OMB did not add a definition for this term in section 200.1. OMB is limiting the definitions to those terms used consistently throughout the guidance.

Unliquidated financial obligation*:* A commenter stated that this definition should be further clarified. OMB agrees and clarified the final sentence addressing reports prepared on an

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

accrual basis. For reports prepared on an accrual basis, the final guidance now clarifies that these are financial obligations incurred by the recipient or subrecipient but for which expenditures have not been recorded.

Subpart B—General Provisions

Section 200.100—Purpose

OMB proposed multiple clarifying and plain language revisions in this section. OMB received multiple comments requesting reinstatement of the word "inconsistent" in paragraph (a) and the "fair share" language in paragraph (c).

OMB Response: OMB does not find the changes requested by these commenters to be necessary in this section. OMB disagrees that the word "inconsistent" is needed to understand its intended policy in paragraph (a)(1). Additional requirements are only allowed as described in this paragraph. The fair share language in paragraph (c) of the prior version of the guidance recognized a general background principle used in the design of the cost principles in subpart E. This language, on its own, did not require agencies to actually take specific actions. By removing this language, OMB did not intend to indicate that Federal awards no longer need to bear their fair share of cost. Rather, OMB decided to simplify the guidance text in this section and allow the more specific and substantive cost principles in subpart E to speak for themselves on this topic. This general principle used in the design of the cost principles does not need to be stated explicitly in subpart B. In paragraph (d) of section 200.100, OMB made a minor edit to change "administering" to "expending."

Section 200.101—Applicability

In section 200.101, OMB proposed to clarify the applicability of the guidance. In OMB's proposal, all subparts of part 200 continued to apply to Federal agencies that make Federal

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

awards to "non-Federal entities." Federal agencies also retained discretion under OMB's proposal on whether to apply subparts A through E of part 200 to Federal agencies, for-profit entities, foreign public entities, or foreign organizations—which are not included in the definition of the term "non-Federal entity." OMB proposed to 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. Additionally, OMB proposed to convert the applicability table in paragraph (b) of section 200.101 into narrative form.

OMB received several comments that expressed support for proposed changes in this section and a few provided suggestions for future updates. Other commenters provided a variety of suggestions for further revisions to OMB's current update of this section. Two commenters asked whether OMB will list every program considered exempt from the 2 CFR guidance. Additionally, OMB received a comment asking if paragraph (a)(2)—calling for Federal agencies to apply the requirements to all recipients in a consistent and equitable manner—should be revised to also include subrecipients. OMB also received some questions on the application of subparts A through E by an awarding Federal agency to other Federal agencies.

One commenter sought clarification regarding whether subpart E or FAR 31.2 is the primary guide of cost principles for for-profit entities. Another commenter recommended that subpart F should not apply to fixed amount awards based on the commenter's interpretation that subparts C, D, and E do not apply to these awards. OMB received one comment suggesting that some sections should not be applied to foreign public entities or foreign organizations considering that some exemptions from the guidance are necessary for these entities. OMB

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

received a few comments suggesting restoration of an applicability table instead of presenting this information in narrative form.

OMB also received a comment inquiring about FAR contracts and how they would be included within the scope of a single audit under the current guidance. The commenter asked if this point could be clarified in section 200.101. OMB received one comment that requested the movement of the statement, "rules flow down to recipients and subrecipients" to General Applicability instead of Types of Awards. OMB received several questions inquiring as to when agencies should determine exceptions to the guidance and the date for which adoption of the guidance is enforced. OMB received a recommendation to remove the language "and procurement contracts under the FAR and subcontracts under those contracts" in paragraph (b), which the commenter stated could imply that procurement contracts are a type of Federal financial assistance. Another commenter recommended that the 2 CFR guidance be expanded to cover loans and benefits and that the title of references be changed from "Grants and Agreements" to "Federal Financial Assistance." OMB received one comment inquiring if the guidance is applicable to inter-agency agreements.

OMB Response: In the final guidance, paragraph (a) of section 200.101 generally indicates how the guidance applies to Federal agencies making awards, and paragraph (a)(2) generally indicates which entities those Federal agencies may apply the guidance to. OMB first revised paragraph (a)(1) of section 200.101 to add a sentence clarifying the applicability of the final guidance to Federal agencies making awards. In paragraph (a)(2), OMB added a sentence to clarify the broad applicability of the guidance to non-Federal entities receiving awards. The remainder of paragraph (a)(2), which explains other entities that Federal agencies may apply the guidance to, was mostly included in the final guidance as proposed. OMB did strike one sentence

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

on automatic application of the cost principles under the FAR to for-profit organizations if the Federal agency does not apply the cost principles in subpart E to that entity. This change does not imply that Federal agencies making awards to for-profit organizations do not need to apply cost principles to those awards—or that for-profit organizations are not subject to cost principles in this scenario. Rather, instead of relying on the FAR to apply automatically in this case, the Federal agency will specify which cost principles apply in the terms and conditions of the award.

OMB disagrees that further changes are needed to paragraph (a)(2). A commenter questioned whether the final sentence of that paragraph on consistent and equitable application of the guidance to all recipients should also reference subrecipients. OMB responds that the reference to recipients is sufficient for the purposes of the policy in this paragraph. In general, Federal agencies do not apply requirements in part 200 directly to subrecipients. Although OMB acknowledges Federal agencies apply the guidance indirectly to subrecipients—for example, through information contained in NOFOs, agency regulations or guidance, and the terms and conditions of Federal awards, which flow down to subrecipients—OMB did not find it necessary to include reference to subrecipients in this provision. S*ee* 2 CFR 200.101(b)(1) (as revised). The requested change could create confusion about the nature of the relationship between Federal agencies and subrecipients.

OMB also received questions on the statement in paragraph (a)(2) that Federal agencies may apply subparts A through E to other Federal agencies. This is an existing feature of the prior version of the guidance, which was added by OMB in 2020. *See* 85 FR 49506 (Aug. 13, 2020), at 49520. OMB's current plain language revisions throughout subparts A through E of part 200—replacing the term "non-Federal entity" with "recipient," "subrecipient," or both—may present additional questions on how specific provisions apply or may apply to Federal agencies.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In response to questions on this topic, OMB first reiterates, as explained above, that the revisions related to the use of the terms "non-Federal entity," "recipient," and "subrecipient" do not directly change the existing scope or applicability of the guidance. Section 200.101 continues to provide Federal agencies discretion on whether to apply subparts A through E of part 200 to other Federal agencies. Next, OMB's 2020 preamble did not affirmatively require application of part 200 to Federal agencies; rather, it clarified that the Federal agencies "*may* apply the requirements of … part 200 to other Federal agencies … *to the extent permitted by law*" and "*as appropriate*." 85 FR 49506 (Aug. 13, 2020), at 49520 (emphasis added). To the extent that applying part 200 as a whole, or a particular provision of part 200, to a Federal agency would conflict with applicable Federal law, those provisions should not be applied to the Federal agency. For example, applying both part 200 and provisions of the FAR would present certain conflicts.

OMB also clarifies that its plain language revisions replacing "non-Federal entity" with "recipient," "subrecipient," or both, are not intended to indicate that a Federal agency is a recipient of Federal financial assistance in any formal sense under Federal law when provisions of part 200 are applied to it.[3] Just as a Federal agency did not become a "non-Federal entity" when the prior version of the guidance was applied to it, a Federal agency does not actually become a recipient of Federal financial assistance when the revised version of the guidance is applied. Unlike other entities—such as non-Federal entities and for-profit organizations—

[3] *See United States DOT v. Paralyzed Veterans of Am.*, 477 U.S. 597, 612 (1986) (finding that program "owned and operated" by the United States "is not 'federal financial assistance' at all."). *See also Jacobson v. Delta Airlines*, 742 F.2d 1202, 1213 (9th Cir. 1984) (air traffic control and national weather service programs are owned and operated by the Federal government and therefore they are not recipients of federal financial assistance).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal agencies carrying out Federal program activities with Federal funds cannot fairly be described as "recipients" of Federal assistance.[4]

OMB understands commenters' desire to seek additional guidance on the applicability of various section to foreign public entities and foreign organizations. However, the application of the guidance to such entities is at the discretion of Federal agencies.

OMB also added a new paragraph (a)(4) in the final guidance. This new paragraph explains that throughout subparts A through E, when the word "or" is used between the terms "recipient" and "subrecipient," any requirements or recommendations in the relevant provisions of this part apply to the recipient, the subrecipient, or both, as applicable. The use of "or" between recipient and subrecipient does not mean that applicable requirements or recommendations only apply to one of these entities unless the context clearly indicates otherwise. OMB determined that this change was warranted to clarify its more extensive usage of these terms in part 200 in this update. In final guidance, OMB relocated the proposed paragraph (b)(1) on use of "must," "should," and "may," to a new location as paragraph (a)(3).

Regarding the applicability table in the prior version of the guidance at paragraph (b), OMB disagrees that the table provided greater clarity. OMB made some technical edits to the narrative description of applicability under this section, but did not restore the table from the prior version of the guidance in the final version.

In the final guidance, paragraphs (b) and (c) are now structured to address the applicability of part 200 to Federal financial assistance under paragraph (b) and contracts awarded under the FAR in paragraph (c). In both paragraphs, OMB generally sought to maintain

[4] *Paralyzed Veterans*, 477 U.S. at 612.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

alignment with the content of the prior version of the guidance, but did make some changes to clarify the prior guidance in some cases. The removal of the applicability table from the prior version of the guidance resulted in this restructuring. Paragraph (b) also continues to include language on requirements flowing down to recipients and subrecipients. In response to some commenters, OMB did not find the need to move this language to a different paragraph.

OMB agreed with commenters on making changes to paragraph (b) to eliminate references to procurement contracts under the FAR, which were referenced in the applicability table in the prior version of the guidance. Except on the topic of audits, OMB struck language in paragraph (b) related to procurement contracts under the FAR and relocated this guidance to paragraph (c). Paragraph (c) in the prior version of the guidance already contained cost-reimbursement contracts under the FAR, but OMB now also incorporates the guidance from the applicability table on fixed-price contracts under the FAR in slightly modified form. OMB also clarified and streamlined some of the guidance in this paragraph. The guidance provides that in cases of conflict between the requirements of applicable portions of part 200 and the terms and conditions of the contract, the terms and conditions of the contract and the FAR prevail.

In paragraph (b), OMB added guidance on applicability of the cost principles to fixed amount awards. Section 200.101(b)(4)(ii) now explains that only sections 200.400(g), 200.402 through 200.405, and 200.407(d) from subpart E apply to fixed amount awards. This topic is discussed in more detail below. In response to the comment that subpart F should not apply to fixed amount awards based on applicability of other subparts to these awards, OMB disagrees. The audit requirement under subpart F continue to apply. The commenter's interpretation that subparts C, D, and E do not apply to fixed amount awards is also incorrect—although subpart E only has limited applicability to these awards as explained in the guidance text. Fixed amount

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

awards must comply with applicable Federal statutes (including the Single Audit Act), regulations, and applicable provisions of part 200, as well as with the terms and conditions of the Federal award.

Regarding comments seeking clarification of the applicability of part 200 to specific Federal assistance programs, OMB cannot list every program that may have a statutory exception to the guidance. Federal agencies can provide information to applicants and recipients on this topic.

Section 200.102—Exceptions.

In section 200.102, OMB proposed multiple clarifying revisions to improve agency and recipient understanding of the availability and use of exceptions to, or deviations from, OMB's Uniform Guidance in part 200. A few commenters expressed support for the proposed changes.

OMB received a request to explicitly create an exception to the competition requirements and Federal clause requirements for adhesion contracts. Additionally, two commenters noted concern about explicit authority for deviations where there is no statutory prohibition. They suggested that this could make the Federal award process more challenging.

One commenter expressed concern over the removal of the requirement of maximum uniformity. Also, another commenter suggested that OMB clarify that the exception provision does not apply to Project Labor Agreement (PLA) utilization, local hire preferences, scoring methods, organizing efforts, and employee misclassification.

One commenter suggested OMB restore the text for this section from the prior version of the guidance. Another commenter suggested enhancing OMB's authority as the primary oversight entity.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB Response: In the proposed guidance, OMB did not intend to change the policy in section 200.102 in a significant way. In the final version of the guidance OMB restored some language from the prior version of the guidance, but did not make a significant change on the policy for exceptions. The final version of the guidance in this section is structured in three paragraphs: OMB class exceptions are addressed in paragraph (a), statutory and regulatory exceptions are addressed in paragraph (b), and Federal agency exceptions are addressed in paragraph (c).

OMB removed references to "deviations" in this section from the final version of the guidance. In the proposed guidance, OMB explained that a deviation would mean applying more or less restrictive requirements to Federal awards, recipients, or subrecipients. In circumstances in which OMB or a Federal agency have authority under this section to allow an exception, they also generally have authority to allow a deviation if otherwise permitted by law. In other words, an exception allowed under section 200.102 can take the form of deviation as OMB used that term—which has no official definition or meaning in the final guidance.

Section 200.103—Authorities

OMB proposed minor changes to this section to clarify authorities for the guidance. OMB revised this section in the final guidance as proposed.

Section 200.104—Supersession

In section 200.104, OMB proposed to provide a more succinct statement that part 200 supersedes previous OMB guidance issued in 2 CFR on topics including cost principles and audits for Federal financial assistance. Because part 200 has now existed for 10 years in its current format and location, OMB did not find it necessary to continue to include the detailed list identifying elements of the Uniform Guidance in part 200 previously contained in OMB

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Circulars or other parts of 2 CFR, subtitle A, chapter II. A commenter noted that a reference to chapter I should be changed to chapter II. Another commenter requested clarity on the meaning of the revised supersession provision.

OMB Response: In the final guidance, OMB corrected the mistake on the chapter number. OMB also revised the language in this section to clarify that part 200 superseded prior OMB guidance previously found in 2 CFR and OMB Circulars in the past. OMB is not again superseding the already-superseded guidance through this specific update. The supersession occurred through OMB's earlier updates. For example, OMB previously provided guidance in parts 215, 220, 225, and 230 of this title, which were superseded by part 200. See also discussion in section 1.215 in this preamble above.

Section 200.105—Effect on other issuances

OMB did not propose significant changes to this section. A commenter asked OMB to prohibit the incorporation of handbooks, manuals, and similar documents that are required to go through the rulemaking process. Another commenter suggested establishing a Research Policy Board at OMB to address implementation challenges of the guidance in 2 CFR and provide the research community with consistent and efficient policies. One commenter requested a change to the phrasing of the paragraph (a) on superseding inconsistent requirements. In particular, the commenter thought use of the words "those subparts" was unclear.

OMB Response: OMB did not significantly change the policy in this section based on the comments. OMB made a minor correction to the language in paragraph (a) to replace "those subparts" with "this part."

Section 200.106—Agency implementation

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB did not propose significant changes to this section. One commenter recommended OMB further emphasize the need for Federal agencies to update their regulations to align with the Uniform Guidance. OMB provided further discussion of agency implementation elsewhere in this preamble, such as under section 1.220 above.

Section 200.107—OMB responsibilities

OMB did not propose significant changes to this section. OMB received one comment requesting that the role of stakeholder engagement and inclusion be dedicated to either the Research Policy Board or the Council on Federal Financial Assistance. Another commenter suggested establishing a Research Policy Board at OMB to address implementation challenges and provide the research community with consistent and efficient policies. Two commenters recommended OMB include language providing that it would act as a neutral arbitrator to resolve disputes and provide oversight for the research administrative system. Lastly, another commenter suggested that section 200.107 address scenarios when recipients have concerns with agency implementation.

OMB Response: OMB did not make changes to the policy in this section. OMB considered the comments, but found they went beyond the scope of its policy aims for the current update. OMB revised this section as proposed. OMB provided further discussion of agency implementation elsewhere in this preamble, such as under section 1.220 above.

Section 200.108—Inquiries

OMB did not propose significant changes to this section. OMB received two comments regarding challenges for subrecipients in addressing the relevant Federal agency when a dispute arises between a subrecipient and pass-through entity. The comments suggested that OMB could

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

play a more formal role in resolving conflicts between subrecipients and pass-through entities; or between recipients and Federal agencies.

OMB Response: OMB appreciates the concern raised by the commenters. However, OMB finds that establishing a formal role for itself as an arbiter of these types of disputes is not warranted at this time. Federal agencies are better suited to address the concerns raised by the commenters.

Section 200.109—Review date

OMB did not propose significant changes to this section. OMB received several comments seeking clarification regarding the removal of language indicating that OMB would review the guidance every five years.

OMB Response: OMB's intent is to review and update 2 CFR when changes are warranted, which could be more frequently than every five years depending on the circumstances. OMB finds that inclusion of a specific number of years is not necessary.

Section 200.110—Effective date

OMB did not propose significant changes to this section. OMB received several comments that generally addressed agency adoption of 2 CFR overall or included specific implementation questions. For example, one commenter proposed that all Federal agencies commit to one date for adoption. Another commenter proposed that agencies be required to develop and make transparent any differences between a Federal agency's and OMB's published guidance.

OMB Response: OMB recognizes challenges potentially impacting Federal financial assistance recipients, including their concerns about the timeliness of implementation of the 2 CFR guidance by Federal agencies and potential variations in their approaches. OMB finds that

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

issuing implementation guidance within this section is not warranted at this time. OMB provided further discussion of agency implementation elsewhere in this preamble, such as under section 1.220 above.

Section 200.111—English language

In the proposed guidance, OMB proposed to permit Federal agencies to allow a language other than English, when it is appropriate for a specific program or Federal award, for example in program reports, proposals, or official communication. The intent of this policy change was to allow for more flexibility when working in international environments or in communities where English is the not the primary language. OMB received over 30 comments in support of these proposed changes. OMB also received several comments requesting that the guidance not only allow for languages other than English, but rather that agencies be required to translate materials. Another commenter questioned whether translation costs in support of proposals be allowed under a Federal award.

OMB Response: OMB appreciates the numerous comments of support and also understands potential benefits of advancing the policy even further. However, OMB finds that requiring translation more broadly would place an administrative burden on Federal agencies and programs. At this time, allowing Federal agencies discretion is more appropriate. The range of Federal programs, recipient types, and program activities is diverse and not all Federal programs would warrant or benefit from such mandatory translation requirements. Regarding translation costs, OMB did not find it necessary to address these costs in the guidance. Translation costs may be allowable if they are allocable to the Federal award and are reasonable for the effective administration of the award; however, the allowability of such costs may depend upon the program.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Section 200.112—Conflict of interest

OMB did not propose significant changes to this section. OMB received several comments requesting that the policy be moved to subpart D of part 200. Other commenters noted that the elements of the conflict of interest policy align with those established in the procurement standards.

OMB Response: OMB finds that the conflict of interest section is appropriately located in subpart B. OMB revised this section as proposed.

Section 200.113—Mandatory disclosures

In the proposed guidance, based on feedback from the oversight community, OMB proposed to revise the section on mandatory disclosure to clarify that recipients and subrecipients must promptly disclose credible evidence of a violation of Federal criminal law potentially affecting the Federal award or a violation of the civil False Claims Act (FCA) (31 U.S.C. 3729-3733). OMB also proposed to revise this section to require recipients and subrecipients to provide written disclosure to the agency's Office of Inspector General. In the proposed guidance, OMB found the proposed "credible evidence" standard more appropriate because it would not require recipients, subrecipients, and applicants to make a firm legal determination that a criminal law had been violated before they were required to make a disclosure of "credible evidence" of such a violation to the Federal agency, pass-through entity (if applicable), and the agency's Office of Inspector General.

OMB received many comments in response to the proposed policy changes. For example, one commenter suggested that no changes should be made and noted that the policy would result in an increased number of frivolous claims. Some commenters suggested that the policy should continue to refer to only a "violation" of law, rather than of "credible evidence of

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

violation." Other commenters questioned misalignment of the disclosure requirement in this section of part 200 with the parallel disclosure requirement in the FAR applicable to Federal procurement. OMB also received several comments seeking clarification on the responsibility of subrecipients to report such information. For example, a commenter questioned whether a subrecipient has to report to all three entities (Federal agency, pass-through entity, and Office of the Inspector General) or just to the pass-through entity. OMB also received a few comments suggesting the addition of a definition of credible evidence along with examples. Finally, several commenters asked OMB to revert to language from the prior version of the guidance requiring disclosure "in a timely manner," rather than "promptly."

OMB Response: In the final guidance, OMB revised this requirement to better align with the disclosure requirement under the FAR. See 48 CFR 3.1003 and 52.203-13. Requiring timely disclosure of "credible evidence" of relevant violations is important to provide assurance of the integrity of applicants for, and recipients and subrecipients of, Federal financial assistance, and to protect the Federal government from fraud, waste, and abuse.

In the final guidance, the revised provision requires an applicant, recipient, or subrecipient of a Federal award to promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729-3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable).

Based on the existing use of the term "credible evidence" in the FAR, OMB did not find it necessary to provide a definition of this term in part 200. Black's Law Dictionary defines this

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

term to mean evidence "that is worthy of belief; trustworthy evidence." (11th ed. 2019). When the term was added to the FAR, the FAR Council explained that the "term indicates a higher standard [than reasonable grounds to believe], implying that the contractor will have the opportunity to take some time for preliminary examination of the evidence to determine its credibility before deciding to disclose to the Government." 73 FR 67064, 67073 (Nov. 12, 2008). OMB intends the meaning of the term in the Uniform Guidance in part 200 to generally align with its meaning in the FAR.

Relatedly, the FAR preamble also provides some additional insight on the timing of disclosure requirements. Applied to the Uniform Guidance, the standard of "credible evidence" implies that the applicant, recipient, or subrecipient "will have the opportunity to take some time for preliminary examination of the evidence to determine its credibility before deciding to disclose to the Government." *Id.* at 67074. This does not impose "an obligation to carry out a complex investigation, but only to take reasonable steps that the [applicant, recipient, or subrecipient] considers sufficient to determine that the evidence is credible." *Id.* The use of the word "promptly" in the Uniform Guidance indicates that any such preliminary investigation should not be open-ended or extend over a longer period of time than is necessary to make a preliminary assessment of credibility. However, the use of the word "promptly" was not intended to otherwise affect this general principle on timing discussed in the FAR preamble.

Finally, a couple of commenters questioned other ways that OMB's proposed disclosure requirement misaligned with the parallel disclosure requirement in the FAR, such as failing to refer to the "commission" of a crime or specify what OMB intended by a violation "potentially affecting" the Federal award. In the final guidance, in response to such comments, OMB made

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

further minor revisions to better align the disclosure requirement with the disclosure requirement at FAR 52.203-13.

First, OMB added the phrase "the commission of" before "a violation." Similar to the FAR, on receipt of such evidence, the preliminary examination by an applicant, recipient, or subrecipient will involve a diligent (and reasonably prompt) internal effort to determine whether a violation has, in fact, occurred.

In addition, OMB replaced "potentially affecting the Federal award" with "in connection with the Federal award (including any activities or subawards thereunder)." Like the FAR, the disclosure requirement is broad, but there must be some nexus to the Federal award. The proposed text did not necessarily require disclosure of all criminal laws, as suggested by one commenter, but "violation of a Federal criminal law potentially affecting the Federal award." The final guidance, in alignment with the FAR, now refers to violations that have a "connection with" a Federal award. In many cases this will encompass relevant violations "potentially affecting the Federal award," but does not necessarily encompass all such violations with only a tenuous potential effect or connection. The term "activities" in the parenthetical includes, but is not necessarily limited to, activities described throughout OMB's guidance in part 200.

Establishing a specific mechanism for anonymous reporting is beyond the scope of the proposed changes in section 200.113, which places the responsibility on the "applicant, recipient, or subrecipient of a Federal award" to promptly make the disclosure. Anonymous reporting may also be available, but this type of reporting would not necessarily satisfy the mandatory disclosure requirement under this section if the applicant, recipient, or subrecipient could not verify that it made the required disclosure. In the new provision at section 200.217, OMB endeavored to better recognize certain legal protections for whistleblowers.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

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

Section 200.200—Purpose

One commenter noted that the sections referenced in the proposed guidance did not include the new section 200.217 on whistleblower protections.

OMB Response*:* OMB modified the final guidance to include reference to the new section 200.117.

Section 200.201—Use of grants, cooperative agreements, fixed amount awards, and contracts

In the proposed guidance, OMB revised this section to clarify certain requirements for fixed amount awards. For example, OMB clarified that 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 also clarified record retention and post award certification requirements. In addition—although no specific language was proposed—OMB sought comments on requiring additional pre-award certifications for fixed amount awards to address the potential increased risk of fraud under fixed amount awards. OMB also invited comments on appropriate pre-award certifications for fixed amount awards and noted that it may include a requirement for such certifications in the final guidance document. OMB also proposed to more specifically identify certain prior approval requirements that specifically relate to fixed amount awards.

OMB received many comments on proposed revisions related to fixed amount awards. Several comments expressed appreciation for the many clarifications OMB proposed in the draft revisions, including the clarification that program income could be generated under a fixed amount award, but would not be subject to the requirements on use of program income specified

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

in section 200.307. Commenters also approved of the clarification that recipients of fixed amount awards are entitled to any unexpended funds if the required activities were completed in accordance with the terms and conditions of the award.

OMB received comments requesting clarification on how budgets for fixed amount awards are negotiated with recipients. A commenter asked for clarification that no review of actual costs incurred by the recipient would be required. The commenter also sought clarification on whether fixed cost awards are subject to audit. Other comments requested clarification of the recordkeeping requirements for fixed amount awards. One commenter questioned the necessity of reporting activities that were not completed at the end of the award.

OMB also received several comments requesting clarification on which subparts and sections of the guidance apply to fixed amount awards. For example, several commenters requested removal of the reference to section 200.403 (on factors affecting allowability of costs) under the certification requirement. Some of these commenters observed that the section 200.101 on applicability stated that subpart E does not apply to fixed amount awards. Commenters stated this requirement in section 200.201 could substantially hinder the use of fixed amount awards and subawards by requiring reimbursement of specific items of cost.

Next, OMB also received several comments requesting clarification on when fixed amount awards may not be used. Specifically, the commenters asked for clarity on the meaning of the statement that "fixed amount awards may not be used for programs with mandatory cost sharing requirements." OMB also received several comments regarding the applicability of the guidance to OTA instruments.

Other commenters provided a variety of additional suggestions. Some commenters suggested OMB require a tiered risk assessment; that OMB encourage the use of fixed amount

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

awards; that OMB remove the prior approval requirement for fixed amount subawards; and that OMB allow for fixed amount awards when the recipient will make performance-based payments. Clarification of the prior approval requirements was requested by some commenters. Some commenters also requested the guidance maintain the language of on "the level of effort … expended" in the final certification requirement.

OMB also received several suggestions for future revisions in response to the preamble of the proposed guidance. Regarding the possibility of requiring additional pre-award certifications for fixed amount awards, one commenter cautioned that risk mitigation measures should be designed not to pose an insurmountable burden on smaller organizations and impede timely award processing. Another commenter noted that pre-award certifications are already completed as part of the UEI registration process and that due diligence is already conducted for a responsibility determination. Rather than another set of certifications, one commenter suggested that OMB should consider explicitly expanding section 200.205, on Federal agency review of risk posed by applicants, to fixed amount awards.

OMB Response*:* OMB made several changes in the final version of section 200.201. Relative to the proposed guidance, OMB revised paragraph (b)(1) to replace the word "adequate" with "accurate" with respect to cost, historical, or unit pricing data for determining budgets for fixed amount awards. This change was made to provide more specificity as to the quality of information informing the final amounts of fixed amount awards.

Paragraph (b)(1) was also revised in the final guidance to clarify that budgets for fixed amount awards are negotiated with the recipient. The final guidance also clarifies that the total amount of Federal funding is determined using information from the recipient's proposal, pricing

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

data, and subpart E. This new language supplements the first sentence of this paragraph, which had only referenced pricing information and cost principles.

OMB further revised paragraph (b)(1) in the final guidance to clarify that "routine monitoring" of the actual costs incurred is not expected—rather than "no review" as proposed. No "review" may have suggested that fixed amount awards are not subject to audit, which is not accurate.

OMB also revised the final guidance to clarify that recipients and subrecipients of fixed amount awards are subject to record keeping requirements. Paragraph (b)(1) was revised to include additional language emphasizing that records should be maintained and made available for audits. This change clarifies that fixed amount awards do not absolve the recipient of the responsibilities of making records available for review during an audit. Lastly in paragraph (b)(1), OMB added cross references to sections 200.101(b)(4)(ii) and 200.101(b)(5)(i) for clarity on how other subparts in part 200 apply to fixed amount awards, including the cost principles.

Regarding limitations on using fixed amount awards in programs that have mandatory cost sharing, OMB clarified the intent of this statement by removing the word "mandatory" before cost sharing in paragraph (b)(2). The final guidance simply states that fixed amount awards must not be used in programs that require cost sharing. To the extent cost sharing is required, this implies that the Federal agency or pass-through entity would be responsible for monitoring the recipient's or subrecipient's contributions of cost share for the purposes of verification. Therefore, financial reporting would be required, which would conflict with the provisions applicable to fixed amount awards.

OMB revised paragraph (b)(4) to require, upon conclusion of a fixed amount award, the identification of activities that were not completed. This is necessary to reduce the appropriate

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

amount of award funding if the original scope of the project was not completed. Although the recipient is entitled to any remaining funds at the end of the award that were not used to carry out a completed program, if a recipient did not complete certain program activities, the recipient must inform the Federal agency of this. Any funds associated with costs of activities that were not completed must be returned.

OMB revised paragraph (b)(6) to apply additional prior approval requirements for revisions to fixed amount awards with regards to subaward activities and cost sharing. This change was made to more accurately capture the list of prior approvals that should be required for fixed amount awards. OMB also added additional prior approval requirements for fixed amount awards enumerated in section 200.308(f) in response to a comment seeking clarification on this topic.

The prior version of the guidance specified that budgets for fixed amount awards should be negotiated "using the cost principles … as a guide." 2 CFR 200.201(b)(1) (prior version). The final guidance retains the reference to negotiating fixed amount awards using the cost principles in paragraph (b)(1), but also now clarifies in the applicability section that fixed amount awards and expenses under a fixed amount award are subject to certain cost principles in sections 200.400(g), 200.402 through 200.405, and 200.407(d). See 2 CFR 200.101(b)(4)(ii) (as revised). Considering that fixed amount awards are negotiated using the cost principles, unallowable costs should not be included in fixed amount award budgets. In addition, audit requirements in subpart F have always applied to fixed amount awards. *See* 2 CFR 200.101(b)(5)(i) (as revised; included in "Table 1 to paragraph (b)" in the prior version). The lack of reference to maintaining records in section 200.201 created the false impression for some that the recipient and subrecipient

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

would not be required to maintain records or to make them available during an audit. The final guidance now clarifies that this impression is incorrect in paragraph (b)(1) of section 200.201.

OMB finds that application of some of the basic considerations of the cost principles at sections 200.402 through 200.405—particularly during the budget negotiation process—remains consistent with the use and general meaning of fixed amount awards. For example, one reason the cost principles have not historically applied to fixed amount awards is that various prior approval requirements are contained in the general provisions for selected items of cost. Requiring prior approval for selected items of cost throughout the performance period would interfere with the efficiencies provided by this type of award. OMB did not add such prior approval requirements in the final guidance. Section 200.400(g) of the final guidance also now expressly recognizes that when the required program activities are completed in accordance with the terms and conditions of the fixed amount award, the unexpended funds retained by the recipient or subrecipient are not considered profit. Thus, the final guidance continues to recognize that accountability for fixed amount awards is based primarily on performance and results—as stated directly in the definition of the term.

Many commenters asked OMB to clarify which provisions of part 200 apply—and do not apply—to fixed amount awards. Fixed amount awards, per the definition of that term in section 200.1, are a type of grant or cooperative agreement with a fixed budget. These awards are not subject to all of the same requirements as other grants, such as certain reporting and prior approval requirements, but do not relieve recipients and subrecipients of all compliance requirements. As explained in 200.101, as a type of grant or cooperative agreement, fixed amount awards are subject to multiple subparts of 2 CFR part 200, including subparts A through D. Fixed amount awards are also subject to certain cost principles in subpart E and the audit

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

requirements in subpart F. Section 200.101(b) (as revised) now provides more specific detail. Under section 200.102, Federal agencies also retain flexibility to apply less restrictive requirements when issuing fixed amount awards, except for those requirements imposed by statute or in subpart F related to audit. Thus, certain questions posed by commenters on what requirements apply to fixed amount awards may depend on the implementation of specific Federal financial assistance programs by Federal agencies and the discretion exercised by Federal agencies under section 200.102.

In response to a question from one commenter, procurements standards in subpart D generally apply to fixed amount awards unless a Federal agency applies less restrictive requirements under section 200.102. In response to a question from another commenter: although less restrictive requirements may apply to fixed amount awards, they should not be used for unallowable activities. However, under section 200.400(g) in the final guidance, unexpended funds may be retained after satisfactory completion of the fixed amount award. In addition, under section 200.405(b), unallowable activities may receive an appropriate allocation of indirect costs in some circumstances.

Federal agencies are responsible for determining when a fixed amount award is or is not appropriate, and are also responsible for agency risk assessment procedures. Federal agencies should also exercise proper oversight of pass-through entities. For these reasons, OMB also finds that prior approval of fixed amount subawards remains appropriate. *See* 2 CFR 200.333 (as revised). In the final guidance, OMB did not completely remove a threshold for fixed amount subawards, but raised the threshold to $500,000. *Id.* (as revised). See also discussion of fixed amount subawards in section 200.333 below. OMB's policies on UEI and subaward reporting requirements are addressed separately in parts 25 and 170.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Finally, even if performance-based payments are elected, a fixed amount award must only be used if there are measurable goals and objectives and enough data is available to determine costs up front. With regards to amending the certification language to include reference to "level of effort … expended," OMB disagrees that it is necessary to amend the certification in this way relative to the proposed guidance. In the final guidance, the recipient is required to certify, among other things, that it carried out the program activities in accordance with the terms of the award without reference to a specific level of effort.

Section 200.202—Program planning and design

In the proposed guidance, OMB expanded section 200.202 on program planning and design. For example, OMB added language encouraging Federal agencies to develop programs in consultation with the communities that will benefit from or be impacted by a program. In section 200.202, OMB underscored that Federal agencies should consider all available data, evidence, and evaluation results from past programs and coordinate with other agencies during program planning and design.

The majority of comments that OMB received requested revisions to section 200.202 that could be more appropriate for Federal agencies to implement and cannot be broadly required or implemented through OMB guidance under this update. For example, these comments requested that OMB further strengthen the policy to address program sustainability, invest in capacity building, promote partnerships, reduce requirements for nonprofits, and support "continuous improvement." One comment encouraged "participatory grant-making," which would allow community members to be involved in funding decisions.

OMB also received one comment requesting OMB to require recipients—as opposed to the Federal agency—to engage members of the community that would benefit from a program.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB received several comments recommending that OMB streamline the grants process for organizations receiving Congressional earmarks. OMB received several additional comments noting that the RESTORE Act already sets forth a program design. One commenter requested that OMB encourage Federal agencies to publish results and performance frameworks and, wherever applicable, pay recipients for achievement of results against them.

***OMB Response**:* The purpose of section 200.202 is to establish key requirements and communicate the principles or best practices associated with proper program design. However, agencies are ultimately responsible for the design, innovation, and long-term development and sustainability of these programs. The final guidance encourages community engagement, but OMB finds it unnecessary to specify one method over another for all Federal agencies and Federal financial assistance programs.

With regard to Congressional earmarks, even though funding is directed by Congress, Federal agencies still have the responsibility to ensure there is proper oversight of taxpayer dollars. Thus, a different approach specific to earmarks is not appropriate. In addition, the intent of part 200 is to provide more uniform requirements. However, OMB acknowledges that specific programs often have specific, statutory requirements. Paragraph (a)(1) recognizes that program design must be "consistent with the Federal authorizing legislation of the program."

OMB disagrees with the suggestion to require Federal agencies to publish performance results at this time. This proposed agency requirement would require greater coordination across the Federal government prior to OMB implementing a policy change. OMB disagrees with the suggestion to pay recipients specifically for results achieved, as payments under grants and cooperative agreements should only support actual costs incurred and not serve as a reward for achieving results, which would constitute a profit.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB revised section 200.202(a)(5) to specify that "applicants," and not "recipients," should engage with members of the community when practicable during the design phase to encourage community engagement.

Relative to the proposed guidance, section 202.202(b) was also revised to add that Federal agencies should consider "evidence," in addition to available data and evaluation results. This change was made to align with the Evidence Act and capture more accurately the relevant considerations during the program design phase.

Section 200.203—Requirement to provide public notice of Federal financial assistance programs

In the proposed guidance, OMB revised section 200.203 on Assistance Listings to reinforce the importance of communicating in plain language and highlighting any program-related customer service initiatives.

OMB received several comments emphasizing the importance of data standards and suggesting the inclusions of data standards in this section in general. OMB also received several comments requesting that OMB require agencies to break out the program description into elements of Project Goals, Project Objectives, and Project Performance Measurements. Another commenter questioned whether "customer service initiatives" differs from "customer service experience initiatives" used elsewhere in Federal programs.

OMB Response*:* OMB continues to work in concert with Federal agencies on the development of data standards. The guidance in part 200, however, is not an appropriate vehicle for mandating agency adoption of data standards at this time, which is an ongoing and iterative process that requires continued interagency coordination. In addition, section 200.203 provides information that is essential for Assistance Listings, but agencies have the authority to break out

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

the information into more distinct categories if there is a need or benefit in doing so. OMB also revised "customer service initiatives" to "customer service experience initiatives" to align with standard Federal terminology on this topic.

Section 200.204—Notices of funding opportunities

In the proposed guidance, OMB revised section 200.204 on NOFOs in a number of ways to encourage Federal agencies to focus more on communicating requirements to the public in an accessible and comprehensible manner. For example, OMB proposed to include an Executive Summary requirement and to encourage agencies to use plain language when publishing opportunities. OMB also stipulated that Federal agencies should communicate program requirements specifically and clearly, as well as limit the length of program announcements. This is particularly important in consideration of applicants with less experience applying for Federal financial assistance, such as applicants from underserved communities.

OMB also revised this section in the proposed guidance by encouraging Federal agencies to identify all eligible applicants in the funding opportunity—for example, by providing greater specificity on different types of nonprofit organizations such as labor unions. In the proposed guidance, OMB sought to make NOFOs more consistent and transparent. OMB aimed to ensure that applicants are not unintentionally excluded from funding opportunities. Additionally, OMB proposed changes in section 200.204, such as encouraging agencies to provide an anticipated award date and providing additional clarifying guidance on the availability period for funding opportunities.

OMB received one comment requesting that agencies assess opportunities to further remove barriers for partnership with tribal entities. For example, OMB received several comments recommending requiring NOFOs to state the anticipated award date and agencies to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

adhere to the anticipated timeline. OMB also received several comments requesting that OMB break out the program description into elements of Project Goals, Project Objectives, and Project Performance Measurements. Some commenters emphasized the importance and inclusion of data standards in NOFOs as well.

OMB also received several comments regarding the Federal financial assistance application process. For example, several commenters requested that opportunities be available for 90 days rather than 60 days. Some commenters recommended that opportunities that are available for less than 30 days be approved by an agency head or delegate and that NOFOs posted for fewer than 60 days be accompanied by supporting documentation justifying the reason for the abbreviated period. Several commenters recommended that agencies offer technical assistance for the grant application process.

***OMB Response**:* OMB did not revise the guidance substantially in response to comments received. As noted, many comments and suggestions were not entirely applicable to all Federal programs. For example, adding a required "anticipated award date" would not be feasible in all cases. Its feasibility may depend on the funding status and other factors. Federal agencies can break out the information, such as Project Goals and Objectives, if it is necessary for the program, but OMB disagrees that this should be required in all NOFOs at this time.

Beyond establishing the elements of a NOFO, this guidance also does not require any specific application process. While OMB strives to encourage more uniformity and consistency in grants processes, Federal agencies may also identify opportunities to simplify their own agency process.

OMB disagrees that revisions are necessary regarding the time for posting NOFOs and finds that the recommendation of at least 60 days is sufficient. Ultimately, it is the responsibility

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

of the Federal agency to determine its process for approving opportunities that will be available for less than 30 days based on exigent circumstances.

OMB continues to support the removal of barriers for all organizations. The final guidance provides that Federal agencies may offer pre-application technical assistance or provide clarifying information for funding opportunities. Federal agencies must also ensure these resources are made accessible and widely available to all potential applicants. For example, agencies may post answers to questions and requests on *Grants.gov*.

Relative to the proposed guidance, paragraph (b) of section 202.204 was revised to state that the Federal agency may "modify" the availability period—as opposed to "extend." This change was made to capture scenarios in which it may be necessary to shorten the availability period of a NOFO.

OMB also revised section 202.204 to add "tribal organizations" as an additional example of potentially eligible applicants. This change is relevant to removing barriers for tribal organizations. *See*, for example, E.O. 14112, *Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*. With this change, the final guidance provides that the Federal agency should make every effort to identify in the NOFO all eligible applicants including tribal organizations.

Section 200.205—Federal agency review of merit of proposals

In section 200.205 of the proposed guidance, OMB clarified that a Federal agency should consider diversity when developing policies and procedures for merit review panels. OMB received several comments on the composition of merit review panels. One comment requested that the requirements of a NOFO and merit review be extended to recipients and not just for Federal peer review panelists. Commenters also suggested that the guidance require agencies to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

utilize external reviewers when the award involves technology development or acquisition. One commenter requested Federal agencies provide sufficient funding to support equitable merit review processes that truly compensate review panelists for their time and expertise. Finally, OMB received one comment suggesting that OMB require agencies to consider diversity when developing policies and procedures for merit review panels.

***OMB Response**:* Section 200.205 was revised to apply standards more uniformly to merit review panels in general, and not simply to those panels that employ "external peer reviewers." Therefore, the language limiting some of the guidance in this section to external peer reviewers was removed. Mandating external peer reviewers, as requested by some commenters, would be overly burdensome and not necessarily applicable to all Federal financial assistance programs. Federal agency discretion, consistent with law, will determine when it is appropriate to utilize external reviewers. On requiring compensation for review panelists, OMB disagreed with making this proposed change. The circumstances under which compensation could be provided for this purpose would need to be evaluated by Federal agencies for individual assistance programs. Thus, this decision may vary between Federal agencies and programs. OMB disagrees that this should be a universal requirement.

Section 200.206—Federal agency review of risk posed by applicants

In the proposed guidance, in section 200.206 OMB revised 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. OMB also clarified that agency processes may consider any risk criteria pertinent to a program, such as cybersecurity risk or impacts on local jobs and the community. OMB further clarified that an agency may modify its risk assessment at any time during the lifecycle of an award.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

One commenter suggested a modification to paragraph (d) that referenced the exclusion of parties from "receiving Federal awards [and] participating in Federal awards." OMB also received several comments on risk assessment factors in paragraph (b) and whether fraud risks are to be considered. These comments suggested that risk assessments should be limited to determining whether the recipient can adequately manage the award and not include criteria such as impacts on local jobs and communities or history of performance. Other commenters suggested that Federal agencies should be required to consider diversity when developing policies and procedures for conducting risk assessment.

***OMB Response**:* Paragraph (b) of section 202.206 was revised to add "fraud risks" to the list of examples of elements of a risk assessment to expand on the examples provided. OMB also agrees with the suggestion to clarify language in paragraph (d). OMB added a missing "or" to the final sentence, which now states "receiving Federal awards or participating in Federal awards."

OMB disagrees that section 202.206 should be revised to require agencies to consider diversity when developing policies and procedures for risk assessment. Criteria provided in section 200.206 on job impacts and history of performance are only suggestions of what may be considered and not a comprehensive list of requirements.

Section 200.207—Standard application requirements

OMB received several comments that were not relevant to proposed changes in section 200.207. The comments stated that applications often request information that is required on other forms or systems and is therefore redundant. Commenters requested that OMB simplify the application process and make it more inclusive, as well as establish a single online grant application system.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***OMB Response**:* OMB recognizes that there may be need for improvement in the application process for some assistance programs. Generally, this section of the 2 CFR guidance does not specify a particular application process, but only provides information on high-level standard application requirements. OMB added examples of standard forms, such as the SF-424 or the recently approved Biographical Sketch Common Form.

This update to the guidance is not the appropriate place for establishing a unified application system, which would go beyond the scope of OMB's proposed revisions in October 2023, and may not be feasible to implement through this section of part 200. *Grants.gov* is the primary Federal system to seek funding opportunities, but many Federal agencies, at this point in time, also have unique systems through which applicants may apply.

Section 200.208—Specific conditions

OMB received several comments inquiring whether the guidance in section 200.208 on determinations that a recipient does not have adequate financial resources only applies if an award has a cost sharing requirement. Some commenters questioned whether financial resources as a condition is too limiting.

***OMB Response**:* A Federal agency may make such a determination and apply specific conditions regardless of whether there is a cost sharing requirement. For example, specific conditions may be necessary to safeguard Federal funds if a recipient does not have sufficient funds to cover unforeseen expenses that are not related to the Federal program. OMB also changed "a determination that a recipient or subrecipient has adequate financial resources" to "a determination of whether a recipient or subrecipient has inadequate financial capability," to address scenarios that may not be limited to inadequate resources.

Section 200.209—Certifications and representations

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In the proposed guidance, OMB clarified in section 200.209 that those entities who are exempt from the requirements of 2 CFR part 25 must still complete the certifications and representations by submitting the appropriate assurance form. OMB received two comments objecting to the draft language stating that a pass-through entity is authorized to require a subrecipient to submit certifications and representations annually in *SAM.gov*.

***OMB Response**:* OMB revised section 202.209 to clarify that subrecipients do not submit certifications and representations as part of the award process. Subrecipients are neither required to register in *SAM.gov* nor submit an SF-424B. OMB agrees with the comments on this point. This was an error and OMB updated the language of the final guidance accordingly. OMB also revised the guidance to reflect that certifications and representations are updated on an annual basis.

Section 200.211—Information contained in a Federal award

In the proposed guidance, OMB made plain language and clarifying edits to this section. OMB also added that the archive of previous versions of the general terms and conditions, with effective dates, should be located on the Federal agency's website in the same place where current terms and conditions are available. OMB received several comments requesting that this section include a requirement that agencies provide information in Federal awards for loan and loan guarantee programs that specify whether or not the award has continuing compliance requirements. OMB also received several comments requesting OMB revise sections 200.211 and 200.301 to require Federal agencies to include more information in the Federal award about how performance will be assessed as well as the timing and scope of the expected performance and measurement. One of these commenters requested that OMB add language related to progress and performance as well as the timing and scope of continuing improvement efforts.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***OMB Response**:* OMB revised paragraph (d) of section 200.211 to specify that the terms and conditions of loans and loan guarantee programs must specify whether there are continuing compliance requirements. This change was made to provide more specific information to auditors. OMB agrees that information on continuing compliance requirements in this context is necessary and should be required, as compliance requirements may differ depending on the structure or type of loan.

Regarding comments asking OMB to require more information on how a Federal program will be assessed, paragraph (a) of section 200.211 already provides the basic requirements for what information must be included in a Federal award on performance goals. The topic of performance measurement is addressed further in section 200.301. OMB did not expand the information requirements in section 200.211 at this time, which could potentially increase administrative burden on Federal agencies or their recipients.

Section 200.212—Public access to Federal award information

In the proposed guidance, OMB proposed mostly plain language revisions to section 200.212. In the final guidance, section 200.212 was revised to reflect a change in the name of the DATA Act Information Model Schema (DAIMS) to Government-wide Spending Data Model (GSDM). OMB otherwise made revisions in this section as proposed.

Section 200.213—Reporting a determination that an applicant is not qualified for a Federal award.

In the proposed guidance, OMB proposed mostly plain language revisions to section 200.213. OMB received one comment requesting a change to the revised text, noting that the revision implied that the notification in *SAM.gov* should also include an explanation.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***OMB Response**:* This was not OMB's intent. OMB's policy is that the explanation need only be communicated in the notification to the recipient—not in *SAM.gov* itself. OMB revised the text to ensure the language aligns with existing policy, which is that the notification from the Federal agency should provide an explanation of the determination.

Section 200.214—Suspension and debarment

In the proposed guidance, OMB proposed mostly plain language revisions to section 200.214. One commenter observed that OMB used "non-procurement" in this section and "nonprocurement" in 2 CFR part 180.

***OMB Response**:* OMB revised the spelling of "nonprocurement" to align with 2 CFR part 180.

Section 200.215—Never contract with the enemy.

In the proposed guidance, OMB proposed mostly plain language revisions to section 200.215. OMB also revised the text to explicitly state that this section applies to "subrecipients" as well. OMB received one comment requesting a revision to the applicability of requirements in 2 CFR part 183. The commenter suggested that smaller organizations serving as pass-through entities do not have the capacity to discern which parties actively oppose the U.S.

***OMB Response**:* OMB disagrees that checking the excluded parties list contained in *SAM.gov* is overly burdensome for subrecipients, especially considering that *SAM.gov* must be checked in accordance with 2 CFR part 180 to ensure the party is not suspended or debarred. This was not a policy change, but rather a clarification to the existing use of the term "non-Federal entity."

Section 200.216—Prohibition on certain telecommunications and video surveillance equipment or services

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In the proposed guidance, OMB included several additions to section 200.216 on the prohibition of certain telecommunications and video surveillance equipment or services. OMB's proposed revisions expanded the guidance by incorporating additional information from OMB's earlier "2 CFR Frequently Asked Questions" guidance document on this topic. For example, OMB revised the text with the intent of clarifying how the guidance applies to program income, indirect costs, and cost sharing.

OMB received a comment indicating the certification requirement in this section stated that, upon signing an award, a recipient is certifying that funds "were not expended for prohibited costs." The commenter stated that the certification should read that funds "will not be expended" for that purpose. Some commenters found that newly proposed paragraph (c) imposed a "use" restriction—not just a purchase restriction—on covered telecommunications equipment or services. Commenters requested clarification that covered telecommunications and covered services may be used in program activities as long as they are not procured with Federal funds.

OMB received several comments on paragraph (d). Some commenters said the proposed revision was causing confusion on how the statutory prohibition applies to funds generated as program income, indirect cost recoveries, and funds used to satisfy cost share requirements.

One commenter requested inclusion of guidance on waivers in section 200.216. OMB also received several comments requesting that the guidance include the names of prohibited telecommunication and video surveillance equipment or services.

OMB Response*:* OMB revised paragraph (a) of section 200.216 to better align with the definition of "covered telecommunications equipment or services" in section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232). To achieve this, OMB first restored alignment with the prior version of the guidance on the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

types of Federal financial assistance the prohibition applies to under the statute in paragraph (a). Next, OMB made a few technical and structural changes to provide further clarity. OMB also moved the language on "systems that use covered telecommunications equipment or services" down to a new paragraph (c)—but maintained alignment with the prior version of the guidance on this topic.

In the final guidance, OMB deleted the proposed paragraph (c), which caused concern that OMB was imposing a "use" restriction. This change clarifies that OMB is not imposing a new "use" restriction through the final guidance. Rather, the emphasis of the policy is that such items cannot be purchased with Federal funds. Loan or grant funds may be provided to a recipient that uses the covered telecommunications equipment or services, but the Federal award must not pay for the covered telecommunications equipment or services that the recipient uses. If the Federal agency suspects that the goods or services being procured under the award may in fact be prohibited, it must take appropriate action, consistent with its policies and procedures, and in accordance with the guidance in 2 CFR part 200.

In the final guidance, OMB also removed the proposed paragraph (d). However, by not including this paragraph in the 2 CFR text, OMB is not modifying the policy contained in the earlier 2 CFR FAQ published in May 2021 on this topic. That document established that costs associated with covered telecommunications equipment or services are "unallowable costs" under the Federal award. As such, although not expressly stated in the text of the final guidance, for awards involving loan or grant funds, the prohibition described in the guidance text applies to funds generated as program income. The 2 CFR FAQ also provides further information on application of this provision to indirect cost rates and funds used to satisfy cost share

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

requirements. Because the proposed paragraph (d) was confusing to commenters, and lacked context, OMB finds that the 2 CFR FAQ is a better resource to address these topics.

OMB made a few additional clarifying edits in paragraph (e) in the final guidance in response to comments. For example, that paragraph now states that "funds will not be expended" instead of "were not expended." OMB also revised this paragraph to clarify that there is no stand-alone certification on the prohibition of telecommunications, but that other certifications that recipients or subrecipients submit throughout the life-cycle of the Federal award will serve as certifications that they understand and accept the ban on the covered telecommunications equipment and services. These existing certifications—such as those made when submitting payment requests and reports—are sufficient.

The subject of waivers is covered in paragraph (d) of section 889 of the NDAA for FY 2019 (Pub. L. 115-232). However, unlike Federal procurement, the statutory prohibition cannot be waived by Federal agencies for Federal financial assistance such as grants and loans. Finally, in response to another comment, the prohibited parties are included in the guidance text. They are also listed as excluded parties in *SAM.gov*.

Section 200.217—Whistleblower protections

In the proposed guidance, OMB included a new section 200.217 to expand on the whistleblower protections and requirements recognized in part 200 for recipients of Federal financial assistance, which had previously been referenced in section 200.300. In the final guidance, section 200.217 was revised to add a requirement that recipients and subrecipients must inform their employees in writing of Federal whistleblower protections provided by law.

Subpart D—Post Federal Award Requirements

Section 200.300—Statutory and national policy requirements.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Section 200.300 has consistently explained that Federal agencies must administer Federal awards consistent with applicable Federal law, including the provisions of the Constitution and Federal statutes and regulations that apply to any given award. Section 200.300 does not impose any new legal obligations. OMB's proposed revisions to section 200.300 were consistent with that longstanding approach. Specifically, OMB proposed to streamline section 200.300 and to reference existing nondiscrimination requirements under applicable law, including in light of the Supreme Court's decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

OMB received numerous comments on the proposed revisions to section 200.300. Many supported OMB's proposal. For example, commenters commended OMB for proposing to maintain section 200.300's guidance that, in administering Federal financial assistance programs, agencies must adhere to applicable legal requirements, including nondiscrimination requirements. Commenters highlighted the importance of applicable nondiscrimination requirements to specific populations, including LGBTQI+ populations, even while emphasizing that all people can experience discrimination. And commenters observed that OMB's proposal was consistent with Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation).

Some supportive commenters also recommended additional revisions. For example, commenters recommended that OMB require agencies to specifically enumerate the statutes that prohibit discrimination in implementing OMB's guidance. Others suggested that section 200.300 should clarify that, consistent with *Bostock*'s reasoning, Federal awards must be implemented in a way that would prohibit discrimination based on sex characteristics, including intersex traits. Finally, commenters urged OMB to ensure that nondiscrimination requirements are maintained

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

uniformly through the performance of all foreign assistance contracts, grants, and cooperative agreements provided by Federal agencies.

OMB also received many comments opposing OMB's proposed revisions to section 200.300. Some commenters maintained that *Bostock* applies only to employment decisions under Title VII of the Civil Rights Act and does not apply to other laws that prohibit sex discrimination. Another commenter maintained that because the Court in *Bostock* used the terms "transgender" or "transgender status," the Court's holding does not extend to "gender identity." This commenter requested that OMB clarify what constitutes discrimination under section 200.300. Several commenters also disagreed with *Bostock*.

With respect to proposed section 200.300(c), some commenters observed that the Fourteenth Amendment's Equal Protection Clause does not apply to the Federal government, and maintained that it neither applies to non-governmental actors nor applies heightened constitutional scrutiny to differential treatment based on sexual orientation or gender identity. On this topic, one commenter also asserted that the proposed section 200.300(c) "cherry picks" one constitutional provision and only as it concerns scrutiny with respect to sexual orientation and gender identity.

Some commenters also questioned the authority of OMB and Federal agencies implementing part 200 to impose the policy reflected in section 200.300 as a condition of the Federal award. For example, one commenter questioned whether agencies have legal authority to impose the proposed paragraphs (b) and (c) as a condition in the case of Federal statutes that do not prohibit discrimination on the basis of sexual orientation and gender identity. This commenter also maintained that agencies are prohibited from imposing substantive requirements under the Housekeeping Statute, 5 U.S.C. 301. Another commenter claimed that, under the major

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

questions doctrine, Congress has not clearly delegated authority to OMB to impose nondiscrimination requirements with respect to all Federal financial assistance programs.

OMB also received many comments asserting that the proposed section 200.300 would inadequately protect free speech and religious liberty. For example, commenters criticized OMB for proposing to delete language noting that, among other illustrative examples, in administering Federal awards consistent with applicable law Federal agencies must adhere to laws protecting free speech and religious liberty. One commenter suggested that OMB's proposed revisions were "singling out" or "favoring" only certain constitutional protections. Another maintained that the proposed section 200.300 would "threaten[] compulsory speech upon creative professionals."

On the topic of religious liberty, commenters expressed concern that OMB's proposed revisions may violate the Constitution's First Amendment or the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb *et seq*. Related to this concern, commenters noted that *Bostock* recognized religious liberty protections that can be relevant to claims of sex discrimination under Title VII. Additional commenters suggested that the proposed section 200.300 would make it more difficult for faith-based organizations to receive Federal financial assistance, and others suggested adding a new paragraph to section 200.300 recognizing constitutional protections for religious liberty.

OMB Response: OMB appreciates all of the comments received on the proposed section 200.300 and is finalizing it with clarifying revisions. Because many commenters, supportive and otherwise, misperceived the effect of section 200.300 and the proposed revisions, OMB emphasizes two points at the outset. First, the structure of 2 CFR part 200 generally requires Federal agencies to implement all of its provisions, including section 200.300, consistent with their legal authority and the particular statutes and regulations governing each of their Federal

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

financial assistance programs. *See* 2 C.F.R. 200.106. 200.101(d); *see also* 78 FR 78590, 78619 (Dec. 26, 2013). Second, section 200.300 in particular does not impose any new legal requirements. Rather, its scope is limited to explaining that Federal agencies must implement their Federal financial assistance programs consistent with other, *existing* legal requirements that apply of their own force to the agency's programs. *See* 88 FR 69395; *see also* 88 FR 69391. For example, paragraph (a) refers to "*applicable* Federal statutes" (emphasis added); paragraph (b) refers to "Federal awards *that are subject to* Federal statutes prohibiting discrimination based on sex" and to "administer[ing]" programs "in a way that does not *unlawfully* discriminate based on sexual orientation or gender identity" (emphases added); and paragraph (c) refers to "the heightened constitutional scrutiny *that may apply*" in certain contexts (emphasis added)—all references to preexisting legal requirements.

The fact that agencies will implement section 200.300 consistent with their authorities and that section 200.300 imposes no new legal requirements is responsive to a wide range of comments, including those urging OMB to revise section 200.300 so as to extend nondiscrimination requirements to foreign assistance; maintaining that OMB lacks legal authority to impose a nondiscrimination policy with respect to all Federal financial assistance programs; requesting that OMB clarify what constitutes discrimination under section 200.300; questioning agencies' authority to impose provisions of section 200.300 as specific conditions in programs that are not subject to a statute prohibiting discrimination based on sexual orientation and gender identity; arguing that agencies may not impose substantive requirements pursuant to the Housekeeping Statute; and asserting that the Constitution does not protect against differential treatment based on sexual orientation or gender identity. All of these comments are premised on the misimpression that section 200.300 creates or imposes new nondiscrimination requirements.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

It does not. The determination of whether any kind of discrimination is prohibited in any individual Federal financial assistance program depends on the laws applicable to that program, not section 200.300(b), and agencies will make relevant assessments on a program-by-program basis.

Thus, contrary to some comments, section 200.300(b)'s reference to discrimination based on sexual orientation and gender identity does not impose any new nondiscrimination requirements. Section 200.300(b) merely explains that, *if* a statute prohibits discrimination based on sex, and *if* the statute's prohibition on sex discrimination encompasses discrimination based on sexual orientation and gender identity consistent with the Supreme Court's reasoning in *Bostock*, then 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 and gender identity. OMB has revised section 200.300(b) to make the scope of the section clearer in this respect.

Comments asserting that *Bostock* was wrongly decided are outside the scope of these revisions, but OMB disagrees with those arguing that *Bostock*'s reasoning applies only to employment decisions under Title VII, or to "transgender status" and not "gender identity." Several courts of appeals have held, and the Department of Justice's Civil Rights Division has concluded, that under *Bostock*'s reasoning a number of sex discrimination statutes prohibit discrimination on the basis of gender identity, sexual orientation, and sex characteristics.[5] Again,

[5] *See, e.g.*, *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir. 2023); *Grabowski v. Arizona Bd. of Regents*, 69 F.4th 1110, 1116-17 (9th Cir. 2023); *Doe v. Snyder*, 28 F.4th 103, 113-14 (9th Cir. 2022); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, 141 S. Ct. 2878 (2020) (mem.); Department of Justice, Civil Rights Division, *Interpretation of* Bostock v. Clayton County *regarding the nondiscrimination provisions of the Safe Streets Act, the Juvenile Justice and Delinquency Prevention Act, the Victims of Crime Act, and the Violence Against Women Act*, (Mar. 10, 2022), https://www.justice.gov/crt/page/file/1481776/download; Department of Justice, Civil Rights Division,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

though, given the structure of part 200 and the scope of section 200.300, for any particular Federal financial assistance program subject to a law prohibiting discrimination based on sex, the agency administering the program will assess the law as appropriate to determine whether, consistent with *Bostock*'s reasoning, the law prohibits discrimination based on gender identity and sexual orientation. In section 200.300, OMB is not purporting to interpret any particular sex discrimination statute.

Regarding comments observing that OMB proposed to explicitly reference certain protections while removing explicit examples of others, including free speech and religious liberty, OMB intended to streamline and is not deemphasizing laws establishing those latter protections. Rather, paragraph (a) states that Federal financial assistance programs must comply with all applicable Federal laws. Concerns that particular applications of section 200.300 would run afoul of protections for free speech or religious liberty in the Constitution and other Federal laws, including RFRA, cannot be squared with paragraph (a)'s text. But to eliminate any confusion and allay concerns that OMB was singling out certain protections, in paragraph (a) OMB has retained the references to free speech, religious liberty, and other examples of potentially relevant and applicable protections, all of which are illustrative only. Relatedly, with respect to paragraph (b), OMB acknowledges that in *Bostock* the Court noted that it was not addressing how certain "doctrines protecting religious liberty interact with Title VII," leaving those questions "for future cases," 140 S. Ct. at 1754; agencies will apply the law on these issues at it develops. And OMB has revised paragraph (c) to refer to all characteristics that may give

---

Memorandum on Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972 (Mar. 26, 2021), https://www.justice.gov/crt/page/file/1383026/download; Department of Justice, Civil Rights Division, Title IX Legal Manual, https://www.justice.gov/crt/title-ix (Editor's Note). *But see, e.g.*, *L. W. by & through Williams v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023); *Pelcha v. MW Bancrop, Inc.*, 988 F.3d 318, 324 (6th Cir. 2021); *but cf. Adams v. School Bd. of St. Johns Cnty*, 57 F.4th 791, 811-15 (11th Cir. 2022) (en banc).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

rise to heightened constitutional scrutiny under equal protection principles, including race, religion, sex, sexual orientation, gender identity, sex characteristics, and others.

Comments asserting that section 200.300 will make it more difficult for faith-based organizations to receive Federal financial assistance and requesting that OMB provide a mechanism for those organizations to seek religious accommodations are misplaced given the structure of part 200 and scope of section 200.300, as explained above. Because section 200.300 does not impose any new legal obligations, it will not affect faith-based organizations' participation in agencies' Federal financial assistance programs, and any requests for accommodations are appropriately addressed to the agency administering the particular program. As stated in section 200.300(a), awards must be implemented in full accordance with applicable provisions of the Constitution and Federal statutes and regulations, including those protecting religious liberty such as the First Amendment's Free Exercise and Establishment clauses and RFRA.

Finally, in response to comments pointing out that the Fourteenth Amendment's Equal Protection Clause does not apply to the Federal government, OMB has revised section 200.300(c) to confirm that it is referring to the Fifth Amendment's equal protection guarantee, which does apply to the Federal government. *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). Related comments questioning how section 200.300(c) can apply to recipients ignore that part 200 provides guidance to Federal agencies, not recipients. Indeed, section 200.300(c) states what "the Federal agency" must do: in administering awards in accordance with the Constitution, they must take account of heightened scrutiny that may apply.

Section 200.301—Performance measurement

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB did not propose significant changes to this section. Many commenters expressed support for OMB's clarification that Federal agencies should not require additional information that is not necessary for measuring program performance. One commenter requested that OMB require Federal agencies to consult with recipients on the proposed measurement, reporting, and evaluation framework and requirements before finalizing them in a Federal award. Another asked OMB to clarify what is meant by "promising practices." Several commenters requested that OMB reinstate the examples of expected outcomes in paragraph (b). Lastly, some commenters requested that the section be revised to require Federal agencies to include information in the Federal award about how performance will be measured. These commenters also requested OMB to expand the measurement of performance to specifically include measuring the recipient's progress, which they stated may support continuous improvement of the recipient's performance.

OMB Response: OMB did not find it necessary to require Federal agencies to consult with recipients on the proposed measurement, reporting, and evaluation framework before a Federal award is finalized in all cases. This recommendation could be a best practice for agencies to consider, but OMB finds that mandating this practice is not appropriate in part 200 at this time. The term "promising practices" may vary by Federal agency and program.

OMB agrees with the commenters on reinstating the examples of expected outcomes in paragraph (b). These examples are again included in the text of the final guidance. Finally, Federal agencies are already required to include information on how performance will be measured in section 200.211(a). OMB disagrees with the commenters that this section needs to be expanded further through this update.

Section 200.302—Financial Management

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB did not propose significant changes to this section. One commenter stated that it is not possible to reasonably assess the financial management systems of foreign subrecipients. Another commenter stated that OMB's plain language revisions diluted the requirement to identify all Federal awards. One commenter requested that this section be revised to exclude fixed amount awards. Several commenters stated that the inclusion of the term "Federal award year" was causing confusion.

OMB Response: This section does not directly require recipients to assess the financial management systems of subrecipients, but states the requirements that the subrecipient must meet. OMB agrees with a commenter that the proposed revision in paragraph (b) was confusing. OMB first clarified in the final guidance that the financial management systems of recipients *and* subrecipients must meet the requirements that follow. OMB also restored more of the language from the prior version of guidance in paragraph (b)(1), which may have been obscured by OMB's proposed revisions. OMB also made minor clarifying edits in paragraph (b)(3) in the final guidance. OMB disagrees with the commenters that this section should not apply to fixed amount awards and did not make a change related to those comments.

Section 200.303—Internal Controls.

In the proposed guidance, OMB added a requirement in paragraph (e) of section 200.303 that recipient and subrecipient internal controls include cybersecurity and other measures to safeguard information. OMB also proposed other minor clarifying edits.

OMB received several comments requesting that the guidance specify what constitutes proper documentation of internal controls under paragraph (a). The same commenters also noted that paragraph (a) of section 200.303 indicated that internal controls should "comply" with the listed practices, which the commenter stated was overly prescriptive. Some commenters objected

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

to the inclusion of the requirement to "document" internal controls. Many commenters stated that the guidance should be revised to incorporate the requirements of NIST SP 800-53 or other existing frameworks in paragraph (e) to ensure that the internal control requirements are not onerous and a barrier to participation. Commenters also requested that OMB reinstate the word "reasonable" in paragraph (e).

OMB Response: In section 200.303(a), OMB agrees with commenters that internal controls should "align" rather than "comply" with guidance in the listed standards. The word "align" more accurately reflects OMB's policy intent for this section.

Several commenters also expressed concerns about the addition of the word "document" in paragraph (a). OMB does not consider this a policy change but rather clarification of the existing policy already contained within the guidance. The prior version of the guidance already stated that internal controls should comply with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Both include guidance on documenting internal controls. It is reasonable to expect that if a recipient has established internal controls, some form of written documentation should exist for them. However, it was not OMB's intent to require a specific level of documentation. As recognized in the Standards for Internal Control in the Federal Government, the recipient or subrecipient may use some judgment in determining the extent of documentation that is needed. The level and nature of documentation may vary based on the size of the recipient or subrecipient and the complexity of the operational processes it performs.

For the purposes of this update, OMB disagrees with commenters on requiring a specific framework for cybersecurity and other measures used to safeguard information. OMB did not

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

propose changes to establish a specific framework in the guidance and generally maintains the guidance in paragraph (e) as proposed. However, OMB will continue to evaluate whether to implement a specific framework on a government-wide basis in the future. OMB agrees with commenters that this is a topic worthy of consideration for future updates. In the interim, Federal agencies may consider providing more specific guidance on this topic as appropriate for their Federal financial assistance programs.

OMB did make two minor changes to paragraph (e). First, OMB agrees with commenters to maintain the word "reasonable" from the prior version of the guidance when describing actions necessary to safeguard information. OMB added the word "reasonable" back to the guidance text in place of "as appropriate," which appeared later in the sentence as proposed. However, OMB does not intend to signal a substantive policy change by this modest revision to restore the word "reasonable" from the prior version of the guidance text as requested by commenters. This merely recognizes, as the guidance text implies, that the recipient and subrecipient have some reasonable discretion on the appropriate framework for safeguarding information as required by this section.

Next in paragraph (e), OMB restored the phrase "and other types of information" following protected PII. This language is consistent with the prior version of the guidance and recognizes that not only protected PII must be safeguarded.

Section 200.304—Bonds

OMB did not propose significant revisions to section 200.304. OMB made a minor change to correct its proposed plain language revision. The word "entity" was removed after "recipient."

Section 200.305—Federal payment.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In section 200.305 on Federal payment, OMB proposed to provide additional flexibilities for recipients when interest bearing accounts are not accessible in a foreign country; and to provide a specific link for returning funds to the Payment Management System, rather than including the more extensive instructions in the guidance itself.

OMB received several comments requesting that the guidance promote up-front payments. OMB also received one comment regarding paragraph (b)(1) and inquiring what is meant by "minimum amounts needed." OMB received another comment regarding the use of "may" and "must" in paragraph (b)(4).

Next, OMB also received a comment requesting that subrecipients be removed from the section on advance payments. The same commenter requested that paragraph (b)(2) be revised to state that payments "may be consolidated." This commenter also requested that the recipient be provided with a 30-day notice before a withholding action is taken due to a debt to the government. The commenter also requested that aspects of the compliance supplement that impact section 200.305 be incorporated in the guidance text. Another commenter also requested that OMB increase the amount of interest a recipient or subrecipient be permitted to retain to $1,000. Other comments requested additional options for recipients and subrecipients to not use interest bearing accounts as a result of conflict or disaster. Finally, OMB received multiple comments about the use of "and" and "or" for recipients and subrecipients.

OMB Response: Regarding comments requesting that the guidance promote up-front payments, the guidance in section 200.305 already recognizes advance payments as the default payment method for recipients and subrecipients, other than States, when the relevant criteria can be met. Paragraph (b)(1) explains that the "recipient or subrecipient must be paid in advance, provided it maintains or demonstrates the willingness to maintain written procedures" meeting

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

the relevant criteria. OMB finds it is appropriate to retain the policy that advance payments must only be for actual, immediate cash requirements in carrying out the purpose of the approved program or project—except as otherwise provided in this paragraph and section of the guidance.

On comments requesting further clarification of paragraph (b) and some of the sub-paragraphs that follow, OMB made some clarifying edits in the final version of the guidance. Some of these edits reincorporate language from the prior version of the guidance, which OMB proposed to remove in the course of its plain language revisions. Upon review, particularly in paragraph (b)(1), OMB found that some of the language proposed for removal provided useful context and clarity on the meaning of the guidance. Thus, OMB restored much of the language in paragraph (b)(1).

Next, for comments on paragraph (b)(2), the prior version of the guidance already provided some flexibility by framing the sentence with "whenever possible." Thus, advance payment requests by the recipient or subrecipient must be consolidated as described, but some flexibility is allowed if this is not possible under the circumstances.

On the comment regarding the use of "may" and "must" in paragraph (b)(4), OMB finds that these terms are used appropriately. They also remain consistent with the prior version of the guidance.

Regarding Paragraph (b)(6)(ii), OMB disagrees that specifying a timeframe before taking a withholding action is necessary. Reasonable notice is still required but—as in the prior version of the guidance—OMB does not specifically define a standard for what notice is reasonable within the guidance. OMB also made minor revisions to correct confusion caused by OMB's plain language revisions in this paragraph. As proposed, it was not clear which party was supposed to withhold payments, which OMB has now clarified.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Regarding the comment requesting removal of subrecipients from the paragraphs on advance payments: subrecipients were always to be paid in advance if they meet the requirements of this section. Next, on comments requesting OMB increase the amount of interest a recipient or subrecipient is permitted to retain to $1,000, OMB disagrees. For this update, OMB retained the level at $500.

In response to comments asking for additional options other than interest bearing accounts for recipients and subrecipients to use in circumstances involving conflict or disaster, such options may already exist under paragraph (b)(11)(v) depending on the circumstances involved. That provision allows an exception when an interest-bearing account is not readily accessible. The example in the parenthetical is illustrative only. Lastly, OMB reviewed its use of "and" and "or" for recipients and subrecipients. The language in the final guidance reflects OMB's intent on how specific requirements apply. However, OMB added additional clarifying guidance on this topic in section 200.101(a)(4).

Section 200.306—Cost sharing

OMB proposed to 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. OMB also proposed to provide additional guidance on voluntary uncommitted cost sharing for institutes of higher education. OMB received several comments expressing support for the proposed changes.

OMB received several comments requesting that OMB maintain the use of the word "matching" throughout, citing for example, that this change would require additional updates to other policies, such as the compliance supplement. OMB also received several comments

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

requesting that the topic of cost share should only be included in the NOFO when cost share is mandated by the program.

Regarding paragraph (a), several commenters suggested that "may" should be changed to "must." The same commenters suggested that pass-through entities should also be referenced in paragraph (a). Commenters also recommended that OMB revise the policy to state that voluntary committed cost share is not expected in the case of all Federal financial assistance—not just in the case of Federal research grants. Commenters also requested that OMB remove the guidance stating that cost share may be required if permitted by agency regulations and specified in the NOFO.

OMB also received several comments requesting a policy requiring agencies to consider proposed financial matches made by outside investors, philanthropists, corporations, or other organizations to count as a cost share or leverage towards the project. Several comments also inquired about the use of cost sharing over matching. Other commenters asked OMB to discourage or prohibit matching requirements. One commenter asked OMB to amend the guidance to include language that would not require an applicant to have secured commitments for all cost share prior to the Federal award. Another comment recommended paragraphs (d) through (g) be combined to create a single fair market value approach for all items. Another commenter asked OMB to remove paragraph (b)(5) in section 200.306 and paragraph (f) in 200.403. Finally, OMB received several comments requesting clarification and changes to paragraph (k) in section 200.306.

OMB Response: Regarding comments on the elimination of the term "matching," OMB disagrees and maintains that this change is appropriate. "Matching" is a type of cost share, as provided in the definition in section 200.1. OMB acknowledges that certain supplemental

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

materials, such as the compliance supplement, may need revision to ensure consistency with the updated guidance.

On comments asking OMB to further discourage or prohibit cost sharing for Federal financial assistance in general, cost sharing requirements may vary on a program-by-program basis. For example, mandatory cost sharing requirements may be imposed based on a program's authorizing statute or at the discretion of the Federal agency, consistent with its legal authorities, through a NOFO. OMB did not make significant changes on cost sharing requirements through this update.

In the case of voluntary cost sharing, however, since 2013, paragraph (a) of section 200.306 has already prohibited Federal agencies from using voluntary committed cost sharing as a factor during the merit review of applications or proposals for Federal research grants unless authorized by Federal statutes or agency regulations and specified in the NOFO. *See* 78 FR 78590 (Dec. 26, 2013). OMB now includes language in the final guidance stating that Federal agencies are also discouraged—but not prohibited—from using voluntary committed cost sharing as a factor during the merit review of applications for other non-research Federal financial assistance programs. While the existing provision on Federal research awards serves to provide a more level playing field in that context—allowing more applicants to compete for research awards—OMB is uncertain of what impact such a prohibition could have on Federal agency practice or other assistance programs if implemented more broadly for non-research awards. Thus, through this update, OMB only discourages the practice of using voluntary cost sharing as a factor during the merit review of applications or proposals for non-research Federal financial assistance programs, but leaves Federal agencies with discretion, consistent with their legal authorities, on this topic. OMB may consider comments on this topic for future updates.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB disagrees with commenters that paragraph (a) should be applied to pass-through entities. Based on its references to notices of funding opportunity, the paragraph is structured to apply to Federal agencies, not to pass-through entities, which are not required to conduct the same form of merit reviews.

OMB also did not remove guidance in paragraph (a) stating that voluntary committed cost sharing for research awards may be considered in merit review if permitted by agency regulations and specified in the NOFO. OMB leaves Federal agencies with discretion, consistent with law, on this topic.

On comments regarding paragraph (b), OMB revised the guidance to clarify that a Federal agency or pass-through entity must accept any cost sharing funds—including cash and third-party in-kind contributions, and also including funds committed by the recipient, subrecipient, or third parties—as part of the recipient's or subrecipient's contributions to a program when the funds meet the conditions listed in this paragraph. For the comments asking OMB to require agencies to consider proposed financial matches made by third parties, such matches would be recognized if they meet the conditions in paragraph (b).

Next, regarding the comment suggesting combination of paragraphs (d) through (g), OMB did not propose a policy change to these paragraphs. OMB may consider this suggestion for future updates.

OMB did not agree with the commenter suggesting removal of paragraph (b)(5) in section 200.306 and paragraph (f) in 200.403 through this update. In this final guidance, OMB retained the default restriction on a recipient proposing to use funds from another Federal award as cost share unless the program's authorizing statute specifically allows doing so. OMB may consider this suggestion for future updates.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB reverted to the prior version of the guidance in paragraph (f) in section 200.306. The proposed revision inadvertently impacted the policy for this provision, which was not OMB's intent.

On comments requesting changes and clarification to paragraph (k), OMB maintained the reference to voluntary uncommitted cost sharing only with respect to IHEs in alignment with OMB Memorandum M-01-06. The different treatment referenced in both the memorandum and guidance text is related specifically to IHEs. OMB also agrees with commenters that voluntary uncommitted cost sharing consists of more than just faculty donated time and clarified the section to indicate that it includes, but is not limited to, faculty donated time.

Section 200.307—Program income

OMB proposed to revise section 200.307 on program income by clarifying paragraph (a) regarding the use and expenditure of program income, including allowing the use of program income for certain closeout costs. OMB also proposed to revise and clarify guidance in paragraph (b) for each of the three methods for use of program income. OMB received several comments expressing support for the proposed changes.

OMB received one comment requesting clarification on how program income should be handled if earned after the period of performance. OMB also received several comments questioning the policy that program income be expended prior to requesting additional Federal funds. Commenters questioned whether this policy should continue to be included in the guidance.

Commenters also requested revisions to paragraphs (b) and (b)(2). Commenters stated there was a conflict in the language as to what method should be applied when no program income method is selected by an agency.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB also received a comment requesting clarification on whether more than one method of program income may be used under an award. OMB received several comments requesting clarification on what closeout costs may be paid for by program income. OMB also received several comments requesting the guidance to provide agencies with the ability to allow recipients to retain program income balances after the period of performance has ended.

One commenter also requested that the default method for program income be "addition." The commenter also requested OMB remove the prior approval requirement for calculation of program income based on "net" program income, rather than gross program income. Another commenter asked OMB to change the default program income method from the deduction method to the cost sharing method. Finally, OMB received one comment suggesting that the guidance on program income be removed in its entirety.

OMB Response: OMB disagrees with comments questioning the policy under paragraph (a) that program income be expended prior to requesting additional Federal funds. This is a long-standing feature of section 200.307 on program income, which OMB did not propose to change through this update.

In response to comments requesting that "addition" or "cost sharing" be the default method for program income, the default method in this paragraph is only used when a method is not specified by the Federal agency. Thus, the default method in the final guidance is not necessarily the default method that will be used in practice by all agencies for specific programs or awards. OMB disagrees, however, with changing the default method from the deduction method when an agency does not specify. OMB did not change the policy in paragraph (d) on the cost of generating program income.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Regarding the comment requesting clarity on whether more than one method of program income may be used under an award, OMB made a minor revision in paragraph (b) to clarify that the Federal agency must specify in the terms and conditions what "method(s)" must be followed. This change recognizes that more than one may be used for different aspects of a project or program if specified by the Federal agency.

On comments requesting revisions to paragraphs (b), (b)(2), and (b)(3), OMB revised all three provisions for clarity. The prior approval requirement for using the addition or cost sharing methods is now explained only in the top-level paragraph (b).

On comments requesting clarity on what closeout costs may be paid for by program income, OMB included a reference in paragraph (a) to the guidance on allowable closeout costs in section 200.742(b). On the comment requesting guidance on how program income should be handled if earned after the period of performance: this topic is addressed in paragraph (c).

In response to comments requesting flexibility for Federal agencies to allow recipients to retain program income balances after the period of performance has ended, OMB appreciates the commenters' suggestions. While OMB made no change through this final guidance document, it may consider the suggestion for future updates. Finally, in response to the comments suggesting that the guidance prohibit program income, eliminate certain other provisions on program income OMB retained from the last guidance, or remove the guidance on program income altogether, OMB disagrees that such changes are appropriate.

Section 200.308—Revision of budget and program plans

OMB proposed changes to section 200.308 on revision of budget and program plans by combining the requirements for construction and non-construction awards to provide greater uniformity in the requirements for all award types. OMB proposed to clarify that recipients do

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

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. A Federal agency may also require prior approval of subrecipients through the terms and conditions of a Federal award. OMB proposed to further clarify that agencies should not require approval of a change in a proposed subrecipient unless the initial inclusion of a subrecipient was a determining factor in the agency's merit review process. This change was proposed to reinforce the role of the recipient as responsible for the efficient and effective administration of the Federal award including the selection of a qualified and capable subrecipient. OMB also proposed to identify other items requiring prior approval, including requesting additional funds, transferring funds, and no-cost extensions. OMB proposed to clarify that no-cost extensions are different from one-time extensions, which an agency is permitted to authorize a recipient to do without prior approval. OMB received several comments expressing support for the proposed changes.

OMB received several comments requesting separate distinctions be made for construction and non-construction awards and to provide a definition of construction awards. One commenter requested OMB to revise paragraph (a) to reflect the definition of budget in section 200.1. Another commenter asked for clarification of the term deviation in paragraph (b). OMB received a recommendation from several commenters to improve the language of paragraph (c). The same commenters suggested that OMB extend the notification requirement in paragraph (d) from 30 days to 60 days. Another commenter asked that paragraph (e) be clarified.

OMB also received several comments suggesting that the guidance permit an agency to waive all prior approval requirements in 200.308. OMB received another comment requesting clarification that prior approval is not needed for the addition of subrecipient organizations under paragraph (f).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Several comments requested clarity on when a change in key personnel is needed under paragraph (f)(2). OMB received another comment requesting that OMB define key personnel as those named in the Federal award and subaward. Commenters also asked OMB to clarify in paragraph (f)(3) of the guidance if prior approval is necessary for the disengagement of a principal investigator by 25 percent or more than 25 percent. The same commenters also requested that paragraph (f)(3) be revised to state: "Key personnel are not required during a period of no cost time extension to commit additional effort beyond that which was originally approved in an award notice."

Several commenters asked OMB to clarify paragraph (f)(4). OMB received one comment suggesting that paragraph (f)(4) does not lessen the administrative burden felt by recipients. OMB received one comment requesting that the prior approval for transferring between participant support costs to other budget categories in paragraph (f)(5) be removed.

Other commenters requested OMB clarify the intention of paragraph (f)(6) by this language: "This requirement does not apply to acquiring equipment, supplies, or general support services." Commenters also requested OMB revise the guidance in paragraph (f)(6) to indicate that, if agencies relied on the subrecipient partner as part of its merit review, the agency should state this in the terms and conditions of the Federal award. OMB received several comments requesting clarification on subaward prior approval under paragraph (f)(6). Several commenters also asked OMB to remove language from section paragraph (f)(6) limiting when prior approval of a change to a subrecipient should be required to circumstances when "the inclusion was a determining factor in the merit review or eligibility process." OMB received one comment requesting OMB remove aspects of paragraph (f)(6) that enable an agency to approve a different subrecipient partner. A commenter also requested that OMB remove certain language from

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

paragraph (f)(6) regarding whether the "inclusion [of a subrecipient] was a determining factor in the merit review or eligibility process."

Next, a commenter asked OMB to remove the "total" out of "total approved cost share" in paragraph (f)(7) and revert to the original language. OMB received one comment requesting the guidance clarify the difference between construction and non-construction work in paragraph (f)(9). OMB also received a comment requesting clarity on what is meant by an extension of time that requires no additional funds under paragraph (f)(10). Another comment requested clarity on the parameters of no-cost extensions under paragraphs (f)(10) and (g)(2) and whether the requirements apply to pass-through entities.

OMB received a request to clarify that allowable costs incurred prior to the start of the next budget period are not pre-award costs under paragraph (g)(1). OMB received one comment requesting OMB encourage Federal agencies to simplify and streamline the process for no-cost extension pre-approvals where they are necessary. The commenter also recommended that OMB consider extending the guidance in paragraph (h) to State governments.

Lastly, OMB received one comment requesting that the guidance specify where agencies must indicate that they are restricting transfers in accordance of paragraph (i).

OMB Response: OMB revised paragraph (a) of section 200.308 to clarify that the approved budget may include the Federal share and non-Federal share, or only the Federal share, as determined by the Federal agency or pass-through entity. On this change, OMB agrees with a commenter requesting that paragraph (a) reflect the definition of budget in section 200.1.

OMB revised paragraph (c) to permit Federal agencies to approve alternative formats for receiving budget revisions. OMB also provided some examples of alternative formats, and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

specified the need to document such alternative forms of request. This broadens the flexibility available under the prior version of the guidance, which only mentioned a letter of request.

OMB disagrees with the comment requesting extension of the notification requirement in paragraph (d) to 60 days. OMB made a revision, however, to indicate the agency or pass-through entity "should" provide notice within 30 days. This change was made to account for conflicts where Federal agency approval is also necessary.

Regarding the comment requesting clarification to paragraph (e), OMB agrees and revised the sentence to more clearly state the policy. OMB revised paragraph (f)(2) to clarify that a change in key personnel is only required for those who are identified in the Federal award. OMB agrees with comments asking for clarity on this point. OMB disagrees with comments asking for a specific definition of key personnel. In the context of this provision, however, OMB provides illustrative examples of key personnel.

On the comments asking for clarity on disengagement by a principal investigator under paragraph (f)(3), the guidance references "a 25 percent reduction in time and effort devoted to the Federal award." Revising to "more than" 25 percent in this update would make a marginal difference, which OMB did not find necessary. OMB also disagrees with commenters suggesting further revisions to paragraph (f)(3); the current text reflects OMB's policy intent.

OMB revised paragraph (f)(4) to restore text from the prior version of the guidance. OMB was concerned that proposed plain language revisions may have altered the meaning of this provision, and reverted back to the prior text. OMB disagrees with comments suggesting that paragraph (f)(4) may present excessive administrative burden.

In response to a comment, OMB revised paragraph (f)(6) to clarify that the provision does not apply to procurement transactions for goods and services. However, OMB disagrees

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

that further revisions are necessary in response to comments suggesting that the terms and conditions of a Federal award should state whether an agency relied on a subrecipient partner as part of the merit review. In this context, the current language is already responsive to this comment. In response to the comments requesting that OMB remove language from paragraph (f)(6) limiting when prior approval of a change to a subrecipient should be required, this is recommended guidance to Federal agencies to relieve the burden on recipients. In response to another comment on this paragraph, the requirement for prior approval is needed if a portion of the programmatic activities that were to be performed by a recipient will now be performed by a subrecipient. The change in a subrecipient partner, however, is not required unless approval is required in the terms and conditions of the Federal award.

OMB disagrees with the comment suggesting removal of the word "total" from "total approved cost share" in paragraph (f)(7). The inclusion of "total" better reflects the intent of the prior approval requirement. On the comment asking OMB to provide further guidance to differentiate between construction and non-construction work in paragraph (f)(9), this decision is often made at a programmatic level by a Federal agency. Federal agencies may provide further guidance on the categories in the terms and conditions of a Federal award. OMB revised paragraph (f)(10) to clarify that a no-cost extension means an extension of time that does not require the obligation of additional Federal funds.

OMB disagrees with the comment suggesting extension of the guidance in paragraph (h) to State governments. This provision does not apply specifically to any particular recipient group, but rather is based on the nature of the work being conducted—research awards. OMB disagrees with the comment asking OMB to specify where agencies must indicate that they are

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

restricting transfers in accordance of paragraph (i). Federal agencies may elect to include the restriction in the Federal award or their standard terms and conditions.

On the comment requesting clarification on the term deviation under this section, OMB did not find that additional clarification is necessary in the guidance text. It is up to the Federal agency and recipient to ascertain what may or may not be considered an action that departs from the standard course for a given program.

On the comment requesting clarification that prior approval is not needed for the addition of subrecipient organizations, OMB finds that further clarification is unnecessary. It is left to the discretion of the Federal agency to include such a term in the Federal award.

OMB disagrees with the comment requesting that the prior approval for transferring between participant support costs to other budget categories be removed. OMB does not make a change. OMB also disagrees with the comment suggesting that a Federal agency be permitted to waive all prior approval requirements. OMB finds this would not be an appropriate revision.

On the comment asking OMB to encourage Federal agencies to simplify and streamline the process for no-cost extension pre-approval, the process for approvals is not specified by OMB's guidance. OMB did not revise the guidance to address this topic at this time.

On the comment asking OMB to clarify that allowable costs incurred prior to the start of the next budget period are not pre-award costs, OMB finds this clarification is unnecessary. The start of a new budget period does not constitute a new award and therefore would not be considered pre-award costs by definition.

In response to a comment asking for clarity on the parameters of no-cost extensions and whether the requirements apply to pass-through entities, the guidance on no-cost extension

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

applies strictly to Federal agencies. The parameters for no-cost extensions are at the discretion of the agency.

Section 200.309—Modifications to Period of Performance

In section 200.309 on modifications to the period of performance, OMB proposed to provide additional clarification that when an agency decides not to continue an award with multiple budget periods, the period of performance should be amended to end at the completion of the currently authorized budget period. OMB also proposed to incorporate the definition of "renewal award" in this section.

OMB received a comment suggesting that the proposed revision may have the unintended consequence of allowing a Federal agency or pass-through entity to unilaterally extend an award. Another comment suggested that the proposed revisions implied that an agency may terminate an award for convenience.

OMB Response: OMB's proposed revisions in this section were not intended to allow a Federal agency or pass-through entity to unilaterally extend an award. As such, OMB clarified in the final guidance that the role of the Federal agency and pass-through entity is to approve an extension to a Federal award.

In response to the comment suggesting that OMB's proposed revisions to this section would allow a termination by convenience by the Federal agency: the guidance in this section merely provides direction for how to adjust the period of performance based on actions addressed more specifically in other sections of the guidance, such as extending or terminating a Federal award. In the final version, OMB removed proposed text from this section on how to amend the period of performance in circumstances in which a Federal agency decides not to continue a Federal award with multiple budget periods. The final guidance continues to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

recognize that the start date of a renewal award begins a new and distinct period of performance. OMB's guidance on termination is provided in section 200.340 and discussed in this preamble below.

Section 200.310—Insurance coverage

OMB did not propose significant changes to this section. One commenter asked OMB to revise this section to indicate that what is required is like treatment of like items, not like treatment of all items.

OMB Response: OMB finds the intent of the guidance is sufficiently clear. A recipient or subrecipient must, at a minimum, provide equivalent insurance coverage for real property and equipment paid for with Federal funds, as they would provide for real property equipment that they purchased with their own funds.

Section 200.311—Real property

In section 200.311, addressing real property, OMB proposed to include a new paragraph on appraisals to introduce additional guidance on standards for conducting independent appraisals consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) except as provided in the implementing regulations at 49 CFR part 24, "Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs." OMB also proposed to include a definition of the term "encumbrance" in sections 200.311, 200.313, and 200.315.

A commenter asked OMB to allow Indian Tribes to place on-reservation real property acquired in a Federal award in trust for general Tribal governmental purposes and use the property as such during the fee-to-trust process. Other commenters asked for further clarification on what is meant by the statement that "real property must be used for the originally-authorized

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

purpose as long as it is needed for that purpose" and how the guidance applies to various Federal programs. OMB also received several comments requesting the addition of a definition for encumbrance in section 200.1 and the removal of the text from sections 200.311, 200.313, and 200.315. Another comment asked OMB to revise the definition of encumbrance to include that a Federal agency should not require subordination of any pre-existing encumbrance. One commenter asked OMB to revise the guidance to prevent Federal agencies from directing recipients to sell real property even if a recipient prefers to retain the property and compensate the agency. OMB also received a comment suggesting that the real property guidance in this section include additional flexibilities similar to those provided for equipment.

OMB Response: OMB revised paragraph (b) of section 200.311 to remove the proposed definition of encumbrance and clarify that easements that benefit real property are not considered an encumbrance. OMB did not include a specific definition of encumbrance in section 200.1 for the reasons explained in subpart A of this preamble above. OMB finds that the term "encumber" is sufficiently clear in context in which it is used in this section without OMB providing a specific definition. See also discussion of the term "encumbrance" in this preamble above. OMB elected not to define that term in part 200.

A commenter asked OMB to clarify that ordinary and necessary easements in favor of utility, cable and other service providers that benefit the real property will not be deemed an encumbrance. OMB agrees with this suggestion and incorporated similar language in section 200.311 of the final guidance. OMB recognizes that utility related easements are routinely granted, typically enhance rather than diminish the value of property, and may facilitate development for authorized purposes under the Federal award.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB revised paragraph (c) of section 200.311 to clarify that the requirements of this provision only apply when an appraisal of real property is required under the Federal award. On the comment regarding real property acquired by Indian Tribes, OMB may consider providing additional guidance on this topic in future updates, but did not propose substantive changes to the policy as it relates to this comment in its proposed revisions.

OMB may also consider providing other additional guidance on, or clarifying edits to, section 200.311 in future updates, but did not make further substantive changes to the policy. For example, the policy that real property must be used for the originally-authorized purpose as long as it is needed for that purpose—which received many comments—remains unchanged. The policy on vesting of real property "acquired improved under a Federal award" also remains the same as it appeared in the proposed revisions. While there may be some variations between Federal agencies and programs in implementation of this section—such as in the context of Federal financial assistance provided in response to disasters—OMB cannot address all possible scenarios in the government-wide guidance, which remains substantially similar to the guidance initially provided in this section in 2013 on this topic.

OMB disagrees with the comment asking OMB to prevent Federal agencies from directing recipients to sell real property in accordance with this section. Such decisions are left to the discretion, consistent with law, of the Federal agency.

OMB did not make a policy change in response to the comment asking for additional flexibilities under this section similar to those in the section on equipment. Although not included in this update, OMB may consider this suggestion for additional updates in the future.

Section 200.312—Federally-owned and exempt property

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB did not propose significant changes to this section. OMB received one comment requesting that Indian Tribes be allowed to acquire excess Federally-owned property at fair market value.

OMB Response: OMB may consider providing additional guidance on property acquired by Indian Tribes in future updates, but did not include substantive changes to the policy as it relates to the above comment in the final guidance.

Section 200.313—Equipment

In section 200.313, relating to equipment, OMB proposed to increase the threshold value for equipment from $5,000 to $10,000 and to provide additional guidance on the meaning of a "conditional title." Consistent with proposals in sections 200.311 and 200.315, OMB also proposed a definition of the term "encumbrance." Consistent with the existing requirements for States, OMB also proposed to allow Indian Tribes to dispose of equipment in accordance with tribal law. OMB also proposed to clarify that agencies may permit the recipient to retain equipment with no further obligation to the Federal government when it is not prohibited by Federal statue or regulation. OMB also proposed to reinforce the responsibility of recipients to maintain updated records regarding equipment. OMB received several comments expressing support for the proposed changes.

OMB received several comments requesting the addition of a definition for encumbrance in section 200.1 and the removal of the text from 200.311, 200.313, and 200.315. One commenter suggested that section 200.313 be revised to include language on leasehold improvements.

One commenter asked OMB to update paragraph (b) to include language regarding subrecipients for consistency with other sections. Another commenter asked OMB to update

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

guidance in paragraph (c)(2) to clarify that Federal agencies should not require the use of equipment on other programs supported by the Federal Government. The commenter stated that additional use would cause additional or accelerated wear and tear. OMB received several comments regarding paragraph (d)(3), including on OMB's use of "must" in that paragraph.

OMB also received several comments requesting that the threshold for equipment in paragraph (e) be raised above $10,000. Another commenter opposed raising the threshold for equipment to $10,000. This commenter requested OMB incorporate usage and accountability requirements for items between $5,000 and $10,00 that are considered "attractive" or subject to misappropriation. One commenter also noted that paragraph (e)(2)—related to proceeds from selling equipment—should be revised to "$1,000" instead of "$1,000 or 10 percent (whichever is less)." Several commenters also asked OMB to expand paragraph (f) to refer to subrecipients.

OMB Response: OMB revised paragraph (a)(2) of section 200.313 to remove the proposed definition of encumbrance. OMB did not include a specific definition of encumbrance in section 200.1 for the reasons explained in subpart A of this preamble above.

OMB revised paragraph (b) to clarify that recipients and subrecipients other than States and Indian Tribes, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of section 200.313.

OMB did not revise paragraph (c)(2) relative to what was proposed. On the comment asking about the requirement under paragraph (c)(2) to make equipment available for use on other programs supported by the Federal Government, this requirement is generally implemented at the discretion of the Federal agency, which may assess whether use on other projects would interfere with the purpose for which it was originally acquired.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB made no change to paragraph (c)(3). The paragraph already recognizes that a Federal authorizing statute would prevail in cases of conflict. *See also* 2 CFR 200.101(d) (as revised).

OMB made a minor edit in paragraph (d) to use "replacement equipment" in place of "replacing equipment." OMB revised paragraph (d)(1) to clarify that a subrecipient is also responsible for maintaining and updating property records. OMB revised paragraph (d)(3) to modify the proposed reporting requirement for equipment loss, damage, or theft that will impact a program to a notification requirement.

OMB did not make changes to paragraph (e)(1). In response to the comments asking OMB to raise the threshold for equipment above $10,000, OMB does not find this warranted at this time and did not make a change. Regarding the comment suggesting additional requirements for equipment valued between $5,000 and $10,000, OMB finds this request would be overly burdensome to recipients. OMB did not make a change.

OMB revised paragraph (e)(2) to clarify that recipients or subrecipients may be permitted to retain, from the Federal share, $1,000 of the proceeds to cover expenses associated with the selling and handling of the equipment. OMB agrees with commenters that "$1,000 or 10 percent (whichever is less)" should be revised to just state "$1,000." Based on the updated threshold for equipment under paragraph (e), there would not be a circumstance in which 10 percent would be lower than $1,000.

OMB revised paragraph (f) to clarify that Federal agencies may authorize pass-through entities to allow subrecipients to retain equipment. OMB agrees with some of the commenters on this topic. In the final guidance, OMB allows the pass-through entity to receive permission from Federal agencies to allow subrecipients to retain equipment without further obligation. The

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

provision specifies, however, that permission must be included by the Federal agency in the terms and conditions of the award. Thus, a pass-through entity could not exercise this flexibility independently.

In response to the comment requesting the addition of language on leasehold improvements, OMB made no policy change to this section on that topic through this final guidance. OMB may consider the comment for additional updates in the future.

Section 200.314—Supplies

OMB proposed to revise section 200.314 on supplies to raise the threshold from $5,000 to $10,000. OMB also proposed to clarify that the requirements for unused supplies apply to the aggregate value of all supply types, and not just like-item supplies. OMB also proposed to include a definition of "unused supplies" in section 200.314. OMB received several comments expressing support for the proposed changes.

OMB received one comment asking OMB to clarify the meaning of unused supplies that are in new condition. OMB also received several comments requesting that the threshold for equipment and supplies be raised above $10,000. One commenter noted that OMB's guidance on the proceeds for selling unused supplies should be revised to refer to "$1,000" and not "$500 or 10 percent (whichever is less)" to be consistent with the requirements for equipment. Several commenters also asked OMB to revise the guidance to allow for unused supplies to be retained.

OMB Response: OMB revised paragraph (a) of section 200.314 in the final guidance to clarify that recipients or subrecipients may be permitted to retain, from the Federal share, $1,000 of the proceeds to cover expenses associated with the selling and handling of the supplies. OMB agrees with the commenter who recommended revising the guidance this way. OMB also made a minor edit to delete a duplicated word.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

On the comment requesting clarity on the meaning of unused supplies that are in new condition, OMB finds the guidance to be sufficiently clear. New condition means not having been used or opened before.

On comments asking OMB to raise the threshold for supplies above $10,000, OMB does not find this warranted in this update. OMB did not make a change at this time.

On comments asking OMB to allow unused supplies to be retained, OMB does not agree that this should be the government-wide default. OMB did not make a change in this update, but may consider this recommendation for future updates. Even under the structure of the current guidance, however, Federal agencies would have authority under section 200.102(c) to exercise reasonable discretion in providing case-by-case exceptions to allow retention of unused supplies.

Section 200.315—Intangible property

In section 200.315 on intangible property, OMB proposed 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, OMB also proposed a definition of the term "encumbrance."

OMB received several comments requesting the addition of a definition for encumbrance in section 200.1 and the removal of the text from sections 200.311, 200.313, and 200.315.

Commenters also asked OMB to revise guidance in 200.315 to state that copyright in works voluntarily created by a recipient or subrecipient are not considered acquired under a Federal award.

Several commenters also supported OMB's proposed guidance to make intangible property publicly available on agency-designated websites. A few of the commenters requested additional clarification on this topic.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Lastly, several commenters noted that access to Federally funded data is a priority for a variety of reasons, including transparency, regulatory review, impact analysis, and program evaluation. For example, one commenter called for greater data transparency for the purposes of regulatory review of impact analysis; another commenter called for greater access to Federally funded data for the purposes of administrative evaluation and policy development; another commenter drew attention to data quality issues and the need for greater transparency; another commenter emphasized the importance of data gathering program evaluation and transparency; and another commenter stated that agencies sometimes use FOIA and FOIA exemptions to inhibit access to information by outside stakeholders.

OMB Response: OMB revised paragraph (a) of section 200.315 to remove the proposed definition of encumbrance. To avoid any confusion, OMB removed the definition of encumbrance from sections 200.311, 200.313, and 200.315. OMB did not include a specific definition of encumbrance in section 200.1 for the reasons explained in subpart A of this preamble above.

OMB did not revise paragraph (b) of section 200.315 in response to comments requesting recognition of a new category of "voluntarily created works," which would not be considered "acquired" under a Federal award. The suggestion would create confusion and unnecessary regulatory burden by inserting an unclear distinction between "voluntarily created" works and "acquired" works. It would also be unclear whether title to such "voluntarily created works" would vest in the Federal government, the recipient, the subrecipient, or some other entity. Section 200.315(b) reserves certain rights of the Federal government for works acquired or developed under a Federal award, including "a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for the government's purposes and to authorize

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

others to do so." This license limits the ability of the recipient or subrecipient to exercise certain rights—which are subject to the Federal government's license against the government or those authorized by the government. Inclusion of the new language proposed by commenters on "voluntarily created works" would create confusion regarding the scope of the government's license, which is a long-standing feature of OMB's government-wide guidance on this topic. OMB did not propose substantial changes to the license through the proposed guidance issued in October 2023 and did not make any such changes in the final guidance.

The term "work" in paragraph (b) is a term of art in copyright. This term is better fitted under paragraph (b), which speaks only to copyright and not all intangible property. Paragraph (b) also refers to works "developed" or "acquired" under a Federal award. This removes the burden of attempting to determine whether a "work" was "voluntarily" created or not.

If commenters' concerns on this topic were based on the newly proposed definition of "encumbrance" in this section, that definition is not included as part of the final guidance text. Although OMB made minor revisions, it generally aimed to preserve the status quo on the government's license and other provisions in paragraphs (a) and (b) relative to the prior version of the guidance.

OMB added a new paragraph (f) in the final guidance in response to comments noting that access to Federally funded data is a priority for a variety of reasons. The new paragraph reminds agencies of their responsibilities to provide public access to research data, possibly through exerting their Federal purpose licenses when needed, with appropriate privacy and confidentiality protections. The new language also reminds agencies to rely on FOIA to provide access only as a last resort. Specifically, the new paragraph (f) states that Federal agencies should work with recipients to maximize public access to Federally funded research results and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

data in a manner that protects data providers' confidentiality, privacy, and security. The new paragraph also states that agencies should provide guidance to recipients to make restricted-access data available through a variety of mechanisms. Finally, the new paragraph states that FOIA may not be the most appropriate mechanism for providing access to intangible property, including federally funded research results and data.

Section 200.316—Property trust relationship

OMB did not propose significant changes to this section. OMB received several comments pertaining to this section. A few commenters requested the section be deleted in full while others requested the section be clarified.

OMB Response: OMB did not make any changes to this section. OMB appreciates the feedback and may consider comments for future updates. Any significant revisions to section 200.316 would go beyond the scope of OMB's proposed update.

Section 200.317—Procurements by States and Indian Tribes

OMB proposed several revisions to the procurement standards in the Uniform Guidance. In recognition of Tribal sovereignty, and consistent with the existing requirements for States, in section 200.317, OMB proposed to allow Indian Tribes to follow their own policies and procedures. OMB received several comments expressing support for the proposed changes in this section.

One commenter requested a revision of the guidance to allow for local governments to follow their own procurement standards, rather than those in section 200.318. Another commenter requested revision of the guidance to acknowledge that some recipients or subrecipients might be subject to the procurement standards of a State or Indian Tribe.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB Response: Under the final version of section 200.317, OMB states that, except for States and Indian Tribes, all other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in sections 200.318 through 200.327.

On the comment requesting OMB to allow local governments to follow their own procurement standards, rather than those in section 200.318, OMB did not make a change through this update of the guidance. Beyond extending the provision to Indian Tribes, OMB did not propose a further expansion for public comment.

OMB also disagrees with a commenter suggesting that it was necessary to also permit other recipients and subrecipients, which are not States or Indian Tribes, to apply this provision if subject to procurement standards of a State or Indian Tribe. Recipients and subrecipients subject to procurement standards of a State or Indian Tribe should not, in most cases, be precluded from following them under the general procurement standards in section 200.318 (as revised). If conflicts arise in particular cases, a recipient or subrecipient may request a case-by-case exception from the Federal agency under section 200.102(c) (as revised). OMB declines, however, to further expand the types of recipients and subrecipients that section 200.317 applies to in the way proposed by the commenter. OMB updated this section in the final guidance as proposed.

Section 200.318—General procurement standards

OMB also proposed to revise the procurement standards in section 200.318. These proposed revisions included providing additional guidance that contractors appropriately classify employees consistent with the Fair Labor Standards Act. *See* the Fair Labor Standards Act at 29 U.S.C. chapter 8.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB also proposed adding a new paragraph (l) in section 200.318 to clarify 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 as defined by the Justice40 Initiative OMB Memorandum M-21-28, or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located, consistent with the policies and procedures of the recipient or subrecipient, provided that a recipient or subrecipient may not prohibit interstate hiring; requiring commitments or goals to individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24)), including women and people from underserved communities as defined by Executive Order 13985; using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or offering employees of a predecessor contractor rights of first refusal under a new contract. The proposed paragraph explains that Federal agencies may consider allowing recipients or subrecipients to use such practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the Federal financial assistance program, and other requirements of part 200. For example, OMB explained in its proposal that any hiring preference for a class or groups of persons would be permissible only to the extent that it is consistent with the equal protection requirement of the U.S. Constitution.

OMB received several comments expressing support for the proposed changes in section 200.318. OMB received a few comments requesting that reference to local governments be retained in paragraph (c)(2). Other comments expressed some concerns with paragraph (l) and made suggestions for revisions. Some commenters observed that while the guidance does not

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

prohibit the listed labor practices, the final sentence seems to indicate that use of the practices remains contingent on Federal agencies allowing recipients to use them.

OMB also received several comments requesting numerous changes that were not proposed for public comment. For example, some commenters requested that the guidance include new language stating that it is permissible for recipients to take steps to ensure that employees of contractors are paid a living wage.

OMB Response: OMB revised paragraph (c)(1) to add reference to a "board member" in the context of conflicts of interest. OMB revised paragraph (c)(2) to restore the reference to local governments. OMB agrees with the comments asking OMB to retain the reference from the prior version of the guidance to local governments in this paragraph.

OMB removed the proposed sentence in paragraph (k) stating that proper oversight "does not relieve the recipient or subrecipient of any of its contractual responsibilities." Commenters suggested that OMB may have changed the meaning of the sentence by introducing the concept of "proper oversight." OMB recognizes commenters' concerns and reverted to language stating that these "standards do not relieve the recipient or subrecipient of any contractual responsibilities under its contracts."

OMB revised paragraph (l) of section 200.318 to clarify that recipients and subrecipients "may use" the listed practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part. However, OMB's revision is not necessarily intended to prevent Federal agencies from having any role in assessing whether the listed practices are consistent with the standard in what is now paragraph (l)(2). For example, a Federal agency may be in the best position to determine if use of one of the listed practices would be

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

consistent with authorizing laws that apply to that agency's programs or the objectives and purposes of those programs.

Aside from minor edits to fix the structure of the section and other typographical changes, OMB did not make further changes, but appreciates the commenters' additional feedback, which OMB will consider for future revisions. The labor and employment practices listed in paragraph (l) are intended as illustrative examples of practices that are not prohibited by the procurement standards in subpart D. It is not feasible for OMB to provide an exhaustive list of all such practices, but the fact that an alternative practice is not expressly included in the list in paragraph (l) does not necessarily mean that it is prohibited.

Section 200.319—Competition

In section 200.319, OMB proposed to remove the prohibition in the Uniform Guidance on using geographic preference requirements. In the same section, OMB also proposed to 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. In its proposed guidance, OMB cautioned, however, that any geographic preferences or scoring mechanisms must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award. OMB also proposed to clarify that any such scoring mechanism must be consistent with established practices and legal requirements applicable to the recipient or subrecipient. OMB received several comments expressing support for the proposed changes.

One commenter opposed the removal of the prohibition on using geographic preferences. This commenter stated that it may cause confusion among the recipients or subrecipients of the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal award. The commenter stated that the guidance should retain clear parameters on when geographic preferences may be used.

Similar to section 200.318, OMB also received several comments requesting numerous changes that were not proposed for public comment. For example, some commenters requested that the guidance include new language stating that it is permissible for recipients to take steps to ensure that employees of contractors are paid a living wage. OMB also received several comments questioning removal of the word “develop” and insertion of the word "assist” in paragraph (b).

OMB Response: OMB revised paragraph (b) of section 200.319 to clarify that contractors that “develop or draft” specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements. OMB agrees with comments on this topic and replaced the word “assist” with “develop or draft.”

Relative to the proposed guidance, OMB revised paragraph (c) to replace “examples of requirements” with “examples of situations.” This revision restored the reference to “situations” in the prior version of the guidance.

On the comment opposing the removal of the prohibition on using geographic preferences, section 200.300 is relevant to the commenters’ concerns. As discussed above, that section provides that the Federal agency or pass-through entity must manage and administer the Federal award in a manner that ensures implementation in full accordance with the U.S. Constitution and applicable Federal statutes and regulations. Thus, any geographic preferences used under a Federal award must be consistent with governing law outside of part 200. At least in some circumstances, Federal agencies may retain an important role in working with the recipient on reviewing the permissibility of geographic preferences under a Federal award.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB did not make any further changes to this section, but appreciates the commenters' additional feedback, which OMB may consider for future revisions.

Section 200.320—Procurement Methods

In section 200.320 on procurement methods, OMB proposed to change "small purchases" to "simplified acquisitions" to further align with standard terminology. In paragraph (a), OMB proposed to clarify that "micro-purchases" and "simplified acquisitions" are types of "informal procurement methods for small purchases." OMB also proposed to remove the requirements that local and tribal governments must open sealed bids in public. OMB received several comments expressing support for the proposed changes.

Several commenters questioned why OMB removed the requirement for sealed bids to be publicly opened by Indian Tribes but not local governments. One commenter questioned why OMB removed the documentation requirement for micro-purchase awards.

Other comments questioned the changes in terms from "small purchases" to "simplified acquisitions" in the proposed guidance and requested additional clarifications for why the change was made.

OMB Response: OMB revised paragraph (a)(1)(ii) of section 200.320 to clarify that a recipient or subrecipient must maintain documents to support its conclusion when awarding micro-purchase awards without soliciting competitive price or rate quotations. OMB made this change in response to comments questioning why OMB removed the documentation requirement for micro-purchase awards. OMB reinserted language similar to the language used in the prior version of the guidance on documenting the decision.

On comments questioning why OMB proposed to remove the requirement for sealed bids to be opened publicly by Indian Tribes but not local governments, OMB will consider this

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

feedback for future updates. A change of this nature to a long-standing and government-wide public policy warrants an opportunity for public comment and careful review before reversing in the final guidance. OMB sought public comment on this change only for Indian Tribes, but not local governments. At this time, OMB only made the change for Indian Tribes as proposed.

Regarding references to an adequate number of bids in this section, OMB clarified in the guidance text that the recipient or subrecipient may exercise judgment in determining what number is adequate unless specified by a Federal agency. For example, a Federal agency may specify what number is adequate in the terms and conditions of a Federal award.

OMB appreciates the additional comments received on this section and may consider them for future updates.

Section 200.321—Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms

In section 200.321, OMB proposed to add "veteran-owned business" to the types of businesses that recipients and subrecipients are encouraged to consider for procurement contracts under a Federal award. Additionally, OMB proposed plain language and clarifying revisions. OMB received several comments expressing support for the proposed changes. OMB incorporated revisions in the final guidance in this section as proposed.

Section 200.322—Domestic preferences for procurements

OMB did not propose significant changes to this section. OMB received several comments on this section requesting additional clarification regarding infrastructure awards. The guidance on this topic can be found in 2 CFR part 184 and the associated preamble for that part. 88 FR 57750 (Aug. 23, 2023). *See also* OMB Memorandum M-24-02.

Section 200.323—Procurement of recovered materials

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB proposed to add a new paragraph (b) in section 200.323 and proposed minor technical edits in paragraph (a). Regarding the proposed paragraph (b), Executive Order 14057 of December 8, 2021 ("Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability") established that it is the policy of this Administration to lead by example and pursue a whole-of-government approach on sustainability and expanding American technologies, industries, and jobs that support sustainability and climate resilience. The Executive Order tasks the Federal government with pursuing new strategies to improve the Nation's preparedness and resilience to the effects of a changing climate, including financial management strategies. In support of this policy, OMB proposed to add a new paragraph (b) in section 200.323 encouraging Federal award recipients and subrecipients, 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. OMB received several comments expressing support for the proposed changes.

Other comments requested OMB clarify whether its "encouragement" means that recipients can specify these types of characteristics in Federally-funded procurements and potentially pay more than they would for products that do not meet sustainability specifications.

OMB Response: OMB finds that additional clarification is unnecessary in paragraph (b). The practice in paragraph (b) is encouraged to the greatest extent practicable and consistent with law, but not required. OMB included this paragraph in the final guidance text as proposed.

Section 200.324—Contract cost and price

OMB proposed to 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

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

employees. OMB also sought comment on its proposal to delete the existing paragraph (b), requiring the recipient to negotiate profit as a separate element of the price for each contract in which there is no price competition. OMB received several comments expressing support for the proposed changes.

Several commenters asked OMB to permit the use of "cost plus a percentage of cost" and "percentage of construction costs" methods of contracting. Another commenter asked OMB to provide a definition of cost-benefit analysis in this section. Next, a commenter asked OMB to reinstate the provision requiring recipients to negotiate profit as a separate element of the price for each contract in which there is no price competition. Another comment asked for clarification on why the word "independent" was struck in paragraph (a).

OMB Response: OMB revised paragraph (a) of section 200.324 to clarify that the recipient or subrecipient must make independent estimates before receiving bids or proposals. OMB agrees with the commenters that this revision—restoring the term used in the prior version of the guidance—would clarify the proposed language.

OMB also made minor typographical fixes in paragraph (a) and changed "may" to "must" in paragraph (c). OMB otherwise made the revisions in this section as proposed. OMB disagrees with the commenter asking OMB to reinstate the provision requiring recipients to negotiate profit as a separate element of the price for each contract in which there is no price competition. While this practice is no longer expressly required by the guidance, this does not prohibit a recipient from taking such action if deemed necessary in instances when there is no price competition.

OMB did not find it necessary to add a definition of cost-benefit analysis in this section. OMB also did not permit the use of "cost plus a percentage of cost" and "percentage of

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

construction costs" methods of contracting. OMB concluded that this would not be appropriate and presents both legal and policy concerns. OMB did not make a change in the final guidance.

Section 200.326—Bonding requirements

OMB did not propose significant changes to this section. OMB received a few comments requesting expansion of this section. Specifically, commenters asked OMB to expand this section to address specific programs such as those authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).

OMB Response: OMB did not find it warranted at this time to expand this section, as requested by commenters. Some of the suggested revisions may be more appropriate for agency- or program-specific guidance. In any case, before significantly expanding this section, OMB would want to propose revised language for public comment.

Relative to the proposed text, OMB made a minor revision in paragraph (a) of section 200.326 to replace the word "obligations" with "documents," which restored the policy from the prior version of the guidance. After review, OMB concluded that the prior version of the guidance used the correct term. In the context of this provision, at the point when a bid guarantee is provided, no contract yet exists, and there are no contractual obligations to "execute." OMB also made a minor revision to fix a typographical error.

Section 200.328—Financial reporting

In section 200.328, OMB proposed to provide changes to clarify required deadlines for financial reporting to align with progress reporting requirements. OMB received several comments expressing support for the proposed changes.

Several comments suggested that quarterly financial reports should be due 60 days after the close of a quarter. Other comments suggested emphasizing that Federal agencies must not

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

require additional financial reporting data elements, aside from those approved by OMB. Other commenters asked OMB to include a process by which agencies and OMB will both request and approve additional data elements for financial reports. One comment suggested reverting to language in the prior version of the guidance, allowing Federal agencies to require more frequent financial reporting "in unusual circumstances."

OMB Response: OMB disagrees with comments asking OMB to include a process in the guidance text by which agencies and OMB will both request and approve additional data elements for financial reports. OMB did not include such a process within this section.

In response to comments suggesting that quarterly financial reports should be due 60 days after the close of a quarter, OMB disagrees and did not make a change. OMB also disagrees that it is necessary to revert back to language in the prior version of this section referring to more frequent reporting in "unusual circumstances." However, Federal agencies and pass-through entities may require more frequent or detailed financial reporting in accordance with section 200.208 when circumstances warrant and consistent with the guidance.

Section 200.329—Monitoring and reporting program performance

In section 200.329, OMB proposed to revise the reporting of program performance section to remind agencies of the importance of not requiring information in programmatic reports that is not necessary for the effective monitoring of the award. OMB also proposed additional language that emphasizes the importance of measuring customer experience as well as considering evaluation plans when outlining reporting requirements. OMB further proposed to clarify that programmatic reporting may not be required more frequently than quarterly, unless specific conditions have been applied to the award in accordance with section 200.208. OMB received several comments expressing support for the proposed changes.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB received several comments requesting that the research performance progress reports be reinserted as an example of an OMB-approved common information collection. Several comments also stated that performance reports should not be collected with financial reports. Commenters observed that often different business areas of an entity are completing the reports.

OMB Response: OMB revised the heading of paragraph (a) of section 200.329 to clarify that it also applies to subrecipients. OMB revised paragraph (b) of section 200.329 to clarify that, to the extent practicable, the Federal agency or pass-through entity should "align the due dates of" performance reports and financial reports. It was not OMB's intent to require that performance reports always be submitted together with the financial reports. The reports do not need to be submitted together in all cases. However, when practicable, Federal agencies should align the due dates. The different reports provide a more comprehensive view of the progress made on a Federal award when reviewed together.

Further, in paragraph (b), OMB also agrees with commenters who suggested reinserting "research performance progress reports" as an example of an OMB-approved common information collection. OMB incorporated this change in the final guidance.

OMB also removed the proposed requirement in paragraph (b) that Federal agencies only require OMB approved government-wide data elements. This provision may have significantly restricted information that could be collected to report performance. It is not feasible to create a data standard for every piece of information collected on performance across all programs, which was not OMB's intent when it originally proposed that language.

Relative to the proposed guidance, in paragraphs (c) through (e), OMB also made minor plain language revisions and other revisions intended to address grammatical problems or further

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

clarify the guidance text. These changes were not intended to substantively change the policy in these paragraphs as proposed—but may provide further clarity on OMB's intent.

Section 200.330—Reporting on real property

OMB did not propose significant changes to this section. One commenter noted that plain language revisions may have unintentionally impacted the frequency that reporting is required. The commenter suggested that the revision could be interpreted to result in a change from requiring reports "at least annually" to an "annual report." Another commenter requested clarification on the information that must be included in real property reports. The same commenter requested that OMB provide an exception for cases where the Federal Government has only a minor interest in real property.

OMB Response: OMB removed the reference to "at least annual" reports in this section and clarified in a separate sentence that such reports "must be submitted at least annually." It was not OMB's intent to change the meaning of the guidance on this issue. The information included in real property reports should be set by the Federal agency and included on the SF-429 series of forms. OMB did not make a change to this section to provide an exception for cases where the Federal Government has only a minor interest in real property, but appreciates the comment and may consider it for future revisions.

Section 200.331—Subrecipient and contractor determinations

In section 200.331 on subrecipient and contractor determinations, OMB proposed additional language emphasizing that Federal agencies do not have a direct legal relationship with subrecipients and contractors of pass-through entities. OMB also proposed to clarify that the characteristics indicative of a subrecipient or contractor determination are not limited to the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

sample characteristics currently provided in the guidance. OMB received several comments expressing support for the proposed changes.

Several commenters asked OMB to reinstate language from the prior version of the guidance. A commenter asked OMB to clarify that the Federal agency or pass-through entity may require the recipient or subrecipient to comply with additional guidance to make subaward and contractor determinations, provided such guidance does not conflict with this section. Several commenters requested clarity on the proposed language stating that the Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier. OMB also received several comments requesting that section 200.331 include information on beneficiary determinations.

OMB Response: OMB revised section 200.331 to restore language from the prior version of the guidance, which commenters and Federal agencies indicated was important to understand the guidance. For example, OMB revised the introductory paragraph to clarify that the Federal agency "or pass-through entity" may require the recipient or subrecipient to comply with additional guidance to make subaward and contractor determinations "provided such guidance does not conflict with this section." A commenter raised these points and OMB agrees. Based on another comment, OMB also revised this section to clarify that no single factor or combination of factors contained in this section is necessarily determinative. OMB also restored guidance explaining that the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. Lastly, OMB also revised the introductory paragraph in section 200.331 to clarify that, while a Federal agency does not have a direct legal relationship with subrecipients, the Federal agency is still responsible for monitoring the pass-through

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

entity's oversight of first-tier subrecipients. This revision was not based on text from the prior version of the guidance, but intended to provide further clarity.

OMB disagrees that including information on making beneficiary determinations would be appropriate in this section. The identification of beneficiaries can vary between agencies and even between programs within an agency. OMB did not make a change.

Section 200.332—Requirements for pass-through entities

Based on feedback from the Federal financial assistance community, OMB proposed to 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. OMB received several comments expressing support for the proposed changes.

Several comments noted that the proposed language was inconsistent with language in 2 CFR 180.300. OMB also received several comments opposing the notification requirement in paragraph (d), which would require a pass-through entity to notify the Federal agency if a specific condition is included in a subaward. OMB also received several comments recommending that the guidance ensure appropriate overhead costs of the subrecipient are not unreasonably excluded.

OMB Response: OMB revised paragraph (a) of section 200.332 to clarify that confirming a subrecipient is not excluded in *SAM.gov* is just one of the verification methods available to pass-through entities under section 180.300. OMB agrees with commenters that the proposed text could be, or appear to be, inconsistent with language in 2 CFR 180.300. OMB revised the text to address these concerns.

OMB revised paragraph (b) of section 200.332 to clarify that a pass-through entity must provide the unavailable information when it is obtained. OMB revised paragraph (c) of section

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

200.332 to clarify that pass-through entities must evaluate a subrecipient's fraud risk in addition to its risk of noncompliance with a subaward. OMB also revised paragraph (c)(3) to remove the expansion of the existing policy. OMB agrees with commenters that it is not feasible to assess whether a subrecipient has new or substantially changed policies or procedures. Next, OMB revised paragraph (c)(4) of section 200.332 to clarify that pass-through entities should consider the extent and results of any Federal agency monitoring when evaluating subrecipient risk.

OMB disagrees with commenters that the notification provision in paragraph (d) related to specific conditions is overly burdensome. OMB finds this guidance is warranted to allow a Federal agency to conduct effective oversight of the pass-through entity in fulfilling its monitoring responsibilities. OMB fixed a minor grammatical error in paragraph (d).

OMB also clarified in paragraph (e) of section 200.332 that a subrecipient, not a subaward, is the focus in this provision. In response to a comment, OMB also restored the words "as necessary" from the prior version of the guidance. Next, OMB revised paragraph (e)(4) of section 200.332 to use the proper term "cross-cutting audit finding." The proposed term "cross-cutting finding" is not otherwise used in the guidance.

Lastly, OMB revised paragraph (h) of section 200.332 to use the term "site visits," which is used throughout the guidance, in place of the term "on site reviews." OMB finds the guidance already meets the request to ensure appropriate overhead costs of the subrecipient are not unreasonably excluded. The guidance in this section states the methods by which pass-through entities and subrecipients negotiate rates.

Section 200.333—Fixed amount subawards

In section 200.333, OMB proposed removing the current simplified acquisition threshold limit for fixed amount subawards to provide agencies and recipients with increased flexibility in

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

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. OMB received several comments expressing support for the proposed changes. One commenter asked OMB to remove the prior approval requirement for fixed amount subawards.

OMB Response: Upon further analysis, OMB determined that a threshold for fixed amount subawards remains warranted. Instead of removing the threshold entirely, OMB doubled the prior threshold to $500,000. OMB may continue to evaluate what threshold is appropriate in future updates to the guidance. OMB disagrees with commenters requesting removal of the prior approval requirement for fixed amount subawards. OMB finds that prior approval is a necessary oversight function of Federal agencies for these subawards.

Section 200.334—Record retention requirements

OMB did not propose significant changes to this section. OMB received several comments requesting clarifications related to OMB's proposed plain language revisions in this section. For example, a commenter stated that the proposed changes gave the appearance that a pass-through entity and subrecipient had the same three-year record retention period.

OMB Response: OMB agrees with commenters that minor clarifying revisions were warranted in this section. Thus, OMB made minor clarifying revisions, including adjusting its use of "and" and "or" between listed entities.

Section 200.336—Methods for collection, transmission, and storage of information

OMB did not propose significant changes to this section. Several commenters suggested that OMB changed the meaning of the guidance with its plain language revisions. The

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

commenters were specifically concerned about preserving the language in the prior version of the guidance on collecting, transmitting, and storing Federal award-related information in "open and machine-readable formats."

OMB Response: OMB revised section 200.336 to clarify that Federal award information must be collected, transmitted, and stored in "open and machine-readable formats." OMB agrees with the commenters on restoring the reference to "open and machine-readable formats" without adding extra language.

Section 200.337—Access to records

OMB did not propose significant changes to this section. OMB received one comment requesting that the guidance be strengthened to clarify that other PII, beyond simply the names of victims, should also be protected.

OMB Response: OMB did not make a policy change to this section but appreciates the comment and may consider it for future revisions. Other provisions in the guidance—such as sections 200.303 and 200.338—directly address restrictions on PII. As discussed in this preamble above, OMB further clarified the definitions of PII and Protected PII within part 200.

Section 200.338—Restrictions on public access to records

OMB did not propose significant changes to this section. OMB received several comments indicating that proposed plain language revisions in this section may have caused a conflict. Specifically, commenters observed that the guidance was expanded to prevent a pass-through entity from placing restrictions on subrecipients that would limit public access. OMB also removed repeated words.

OMB Response: OMB revised section 200.338 to clarify that it applies to Federal agencies. This change to the proposed guidance is consistent with the prior version of the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

guidance. OMB recognized the concern from commenters that such a restriction on a pass-through entity might prevent the pass-through entity from enforcing the laws of a State or Indian Tribe. OMB made a change to clarify it is the Federal agency who may not place further restrictions.

Section 200.339—Remedies for noncompliance

OMB did not propose significant changes to this section. Several commenters requested clarification with regards to the use of "may" and "must" in this section.

OMB Response: The word "may" is used appropriately in this section to convey that a Federal agency or pass-through entity has discretion in both implementing specific conditions or taking any of the actions listed. To avoid confusion, OMB removed the word "must" from paragraph (d) and further revised the sentence to clarify intent. The provision is simply stating that a pass-through entity recommends suspension or debarment to the Federal agency. Only a Federal agency may initiate the suspension or debarment action. OMB does not intend to signal a change in policy by this change.

Section 200.340—Termination

OMB proposed to revise and clarify the guidance pertaining to termination and closeout requirements in sections 200.340 through 200.344. On termination, in section 200.340(a)(2), OMB had proposed to remove 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." 2 CFR 200.340(a)(2) (prior version). This revision was intended to remove unnecessary language because section 200.340 still allowed agencies to terminate a Federal award according to the terms and conditions of the award. Thus, an agency could specify the conditions upon which an award could be terminated in the terms and conditions of the award, including, for example,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

when an award no longer effectuates the program goals or agency priorities. The proposed guidance also proposed to change the definition of termination in section 200.1 and provided a new paragraph (e) in 200.340 providing that a Federal agency's determination not to provide continuation funding does not constitute a termination.

Several commenters supported removing paragraph (a)(2) of section 200.340 from the prior version of the guidance. For example, one commenter maintained that its removal would prevent agencies from terminating high-performing projects based on shifting agency priorities. Another commenter stated that removing the prior (a)(2) would eliminate a vague standard for award termination and serve OMB's goal of clarifying a section that could be interpreted in a variety of different ways.

Other commenters asked OMB to reinstate paragraph (a)(2) from the prior version of the guidance. One commenter argued that it was important for pass-through entities to maintain the ability for unilateral termination based on changes in program goals or agency priorities. Another commenter suggested that, even if the prior (a)(2) were deleted, a pass-through entity that included a "termination for convenience" clause in its subaward should still be able to terminate based on that clause.

Other commenters expressed concerns regarding the proposed paragraph (e) and suggested removing it. Proposed paragraph (e) provided that a Federal agency determination to not award continuation funding does not constitute a termination. One commenter observed that an agency decision to not provide continuation funding under a Federal award would have impacts similar to a termination on the recipient or subrecipient, including the need to discontinue program activities and potential financial liabilities. This commenter expressed concerns about a lack of due process for awards discontinued under paragraph (e). The

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

commenter recommended either deleting the proposed paragraph (e) or supplementing it with a requirement for the Federal agency to notify the recipient or subrecipient no less than 6 months in advance of the end of the budget period. On the same topic, another commenter expressed concern that the proposed paragraph (e) may cause confusion with respect to authorizing statutes that have explicit termination provisions, including continuation funding. The same commenter stated that OMB failed to adequately explain the distinction between an agency's exercise of its discretion when making an award and subsequent determinations by the agency, pursuant to terms and conditions of the award, to provide funding for additional budget periods for that same award. For awards discontinued at the end of a budget period in a multi-year award, this commenter questioned what, if any, due process would be provided, such as notice, reasons, or opportunity to correct.

OMB Response: OMB revised paragraph (a)(4) in section 200.340 in the final guidance. The new paragraph (a)(4) continues to provide that a Federal award may be terminated by the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award. The revised version of paragraph (a)(4) also explains that this may include a term and condition allowing termination by the Federal agency or pass-through entity, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities. Provided that the language is included in the terms and condition of the award, the revised termination provision at section 200.340 continues to allow Federal agencies and pass-through entities with authority to terminate an award in the circumstances described in paragraph (a)(2) in the prior version of the guidance. The prior version of section 200.340(b) and the proposed version both directed Federal agencies and pass-through entities to clearly and unambiguously specify all termination provisions in the terms and conditions of the award. As such, OMB finds the final version of the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

guidance provides greater clarity on the policy for termination of awards by the Federal agency or pass-through entity by underscoring the need for agencies and pass-through entities to clearly and unambiguously communicate termination conditions in the terms and conditions of the award.

OMB also removed the proposed paragraph (e) from the final version of the guidance. Other than the change described above in paragraph (a), OMB reverted back to a version of section 200.340 more aligned with the prior version of the guidance. After considering comments, OMB decided not to specifically address the topic of continuation funding in this section, but may evaluate this topic further in future updates. As a result, OMB deleted the proposed sentence in the definition of termination in section 200.1 providing that a determination not to issue continuation funding is not a termination. OMB also made minor technical and grammatical edits in the final version of the guidance in this section.

On comments regarding due process when terminating an award, section 200.342 in the final guidance, discussed below, requires Federal agencies to provide administrative appeal rights for recipients upon initiating a remedy for noncompliance, including in cases in which Federal awards are terminated for that reason. Administrative appeal rights may also be required in other circumstances by applicable statutes or agency regulations. Federal agencies must maintain written procedures for processing objections, hearings, and appeals. The comments OMB received on this topic were generally focused on the proposed paragraph (e), which OMB decided not to include in the final version of the guidance.

Section 200.341—Notification of termination requirement

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In section 200.341, OMB proposed to clarify requirements that must be included in a notice of termination. One commenter asked OMB to further clarify the requirements of this section. The commenter noted that the section was confusing.

OMB Response: OMB agrees with a commenter that the proposed guidance in this section was potentially confusing—particularly paragraph (b)(3). In the final version of paragraph (b)(3), OMB reverted to the text from the prior version of the guidance. After review, OMB found that the prior version of the guidance more clearly stated the policy for this paragraph than its proposed restatement.

Section 200.342—Opportunities to object, hearings, and appeals

OMB did not propose significant changes to this section. Several commenters noted that OMB's plain language revision expanded the policy of this section to require a pass-through entity to maintain documented procedures for objections, hearings, and appeals, as well as providing subrecipients an opportunity to object to and challenge an action.

OMB Response: OMB revised section 200.342 to clarify that the paragraph applies to Federal agencies. It was not OMB's intent to change the policy in this section in a substantive way. OMB made a few changes to clarify. Consistent with the prior version of the guidance, OMB retained one reference to pass-through entities in the final sentence stating that pass-through entity must comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient or subrecipient is entitled under any statute or regulation applicable to the action involved. However, the other requirements in this section do not apply to pass-through entities.

The policy in section 200.342 is otherwise unchanged relative to the proposed and prior versions of the guidance. Specifically, it continues to require Federal agencies to provide

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

administrative appeal rights for recipients upon initiating a remedy for noncompliance, and to maintain written procedures for processing objections, hearings, and appeals.

Section 200.344—Closeout

In section 200.344 on closeout, OMB proposed to 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 proposed to clarify that an additional final report must be submitted when the indirect cost rate is finalized. OMB also proposed to provide additional flexibilities for agencies and recipients to closeout Federal awards in a timely manner. OMB proposed to allow an agency and recipient to mutually agree upon a final indirect cost rate for an individual award. This proposed revision was not intended to grant agencies additional authorities to negotiate rates over cognizant agencies for indirect rates; rather, it simply proposed to affirm 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. OMB received several comments expressing support for the proposed changes.

OMB received one comment opposing the change of the word "promptly" to "immediately" in paragraph (e). Another comment asked OMB to revise this section to reiterate and clarify that both parties must mutually agree to use a provisional indirect rate to support a timely or earlier close-out of an award or subaward, prior to an organization receiving their final NICRA rate. Several other comments requested clarification on when revised final financial reports must be submitted under paragraph (b).

OMB Response: OMB agrees with the commenter questioning the proposed change from "promptly" to "immediately" in paragraph (e). OMB reverted to using the word "promptly" in the final guidance in paragraph (e).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Paragraph (h) of the proposed guidance already addresses situations in which an indirect cost rate has not been finalized. The paragraph states that both parties must "mutually agree" to close an award using the current or most recently negotiated rate. On questions regarding when revised final financial reports must be submitted under paragraph (b), OMB finds the guidance is clear that a revised final financial report must be submitted when all applicable indirect cost rates have been finalized.

Section 200.346—Collection of amounts due

OMB did not propose significant changes to this section. One comment stated that the removal of language from the prior guidance that provided an opportunity for Federal agencies to reduce recipient or subrecipient debt would limit the flexibility for Federal agencies to handle such debt on a case-by-case basis. The commenter stated that the proposed change removed the option for Federal agencies to withhold advance payments otherwise due to the non-Federal entity to reduce the debt.

OMB Response: OMB did not intend to limit the flexibility of Federal agencies by removing language in this section. Rather, OMB revised the guidance text to simply refer to the authoritative regulatory source on the administrative collection of debt at 31 CFR part 901. As was already recognized in the prior version of the guidance, Federal agencies will follow those authoritative standards when collecting amounts due.

Subpart E—Cost Principles

Section 200.400—Policy guide

OMB did not propose significant changes to this section. OMB received several comments suggesting the guidance in section 200.400 include a statement that residual unexpended funds under fixed amount awards is not considered profit. Another comment

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

suggested that OMB require agencies to regularly update their guidance to recipients to enable grantees to leverage new technology and governance approaches that can utilize cost allocation to improve the cost-effectiveness of Federal investments.

***OMB Response**:* OMB revised paragraphs (a) through (d) of section 200.400 to refer to the "recipient and subrecipient" rather than to the "recipient or subrecipient." This revision further clarifies OMB's intent on how these provisions will be applied.

In paragraph (e), however, OMB clarified that the policy on indirect rates refers to "recipients" and not "subrecipients," as subrecipients may not always negotiate indirect rates. OMB also made minor clarifying and plain language revisions in paragraph (e) relative to the proposed guidance.

OMB revised paragraph (g) of section 200.400 to add language clarifying that any funds remaining upon conclusion of a fixed amount award is not considered profit. This was added to clarify that the requirements governing the use of fixed amount awards do not conflict with the prohibition on profit contained in 200.400(g). OMB agrees with commenters on this point.

OMB considers the recommendation that OMB require Federal agencies to regularly update their guidance to leverage technology and governance approaches to be outside the scope of the revisions. This was not proposed for public comment, but OMB appreciates the comment and may consider it for future updates.

Section 200.401—Application

In the proposed guidance in section 200.401, OMB clarified that the cost principles in subpart E do not apply to grants and cooperative agreements for food commodities.

OMB received several comments requesting clarification and changes to paragraph (a)(2), which addresses capitation awards to IHEs. One comment requested that the sentence

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

referencing that the cost principles must also be used "as a guide in pricing fixed-price contracts and subcontracts" be revised to read "fixed-price awards and subawards." OMB also received a comment seeking clarification on the applicability of the cost principles to "food commodities."

***OMB Response**:* OMB revised paragraph (a)(2) of section 200.401 to include all capitation awards in the applicability section, not only capitation awards to IHEs, in order to be more inclusive of other types of recipients. OMB agrees with the commenters that the cost principles should not apply to capitation awards based on case counts or number of beneficiaries regardless of the type of recipient. OMB revised the guidance to apply this policy to all types of recipients. For example, other types of educational institutions exist that are not strictly IHEs.

OMB revised paragraph (a)(3) of section 200.401 to include a cross-reference to section 200.101, which provides further information on the applicability of the cost principles to fixed amount awards. OMB clarified that the cost principles do not apply to fixed amount awards, except as provided in section 200.101(b). OMB revised paragraph (a)(5) of section 200.401 to clarify that the cost principles do not apply to the specific portion of an award associated with the provision of food commodities themselves. This change was made to recognize that certain awards that issue food commodities also involve other activities ancillary to the food commodities themselves. The cost principles do apply to costs for those other activities under an award beyond the food commodities themselves.

Section 200.403—Factors affecting allowability of costs

In the proposed guidance, OMB revised section 200.403 to add language clarifying when allowable administrative closeout costs may be incurred in paragraph (h).

OMB received several comments pointing out a perceived discrepancy in the policy that, while administrative closeout costs are allowable after the end date of a Federal award, no costs

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

are allowable after the termination of a Federal award. OMB also received several comments on the period of allowability of costs during closeout, with some commenters requesting that certain costs associated with data and compliance be allowable for an undefined period after the final reports are submitted.

OMB received a comment requesting that certain prospective costs—that would occur after the due date of the final report—be allowable. Some commenters requested a policy change to provide additional clarification about how the administrative closeout cost allowability applies to subrecipients. The commenters also requested OMB make the policy retroactive for past programs, to clarify how these costs are impacted by agency rules on obligating funds and agency prior approvals, and to specify that closeout costs cannot "include cost share from other Federal programs."

***OMB Response**:* The proposed guidance in this section was included in the final revisions, with a minor clarifying edit to paragraph (d). In response to some comments focused on costs associated with termination: these costs are allowable if specified in a termination notice by the agency. Section 200.472(b) addresses the allowability of closeout costs after an award is terminated. The period during which closeout costs can be charged to an award ends on the due date of the final reports. Allowing for a longer period would be inappropriate and could potentially impact the timeline closeout of Federal awards. OMB finds that the revised policy sufficiently provides for the allowability of specific administrative costs during a limited, defined period. OMB did not find the guidance needs to be expanded further.

Section 200.404—Reasonable costs

OMB did not propose significant changes to this section. OMB received many comments in support of the inclusion of certain administrative costs for closeout activities. OMB received

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

one comment that suggested the phrasing related to determining whether a cost was allowable as related to deviations from written policies and procedures was too vague.

***OMB Response**:* OMB agrees the proposed language left room for differing interpretations and was potentially confusing. To address this, OMB revised paragraph (e) to now call for consideration of "*whether* the cost represents a deviation from the recipient's or subrecipient's established written policies and procedures for incurring costs" (emphasis added), instead of "the degree to which" it does so. Section 200.404 contains only a list of factors to consider. OMB did not find that it necessary to specify further.

Section 200.405—Allocable costs

OMB did not propose significant changes to this section. One commenter took issue with the word "shifting" in relation to costs.

***OMB Response**:* OMB revised paragraph (a) of section 200.405 to reinsert "or other cost objective." This change was made to recognize costs that are allocable to a particular cost objective as already recognized under the prior guidance, and to retain alignment with usage of this term throughout other sections of subpart E, including sections 200.412, 200.413, and 200.431. OMB finds that "shifting costs" is an adequately understood term when speaking of budget line items. OMB is retaining the language. OMB also made some minor clarifying revisions to paragraph (e).

Section 200.406—Applicable credits

OMB did not propose significant changes to this section. OMB received several comments requesting that OMB specify the treatment of credits when such credits cannot be identified to a Federal award, suggesting for example, that such credits offset indirect costs.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***OMB Response**:* OMB did not propose policy changes to this section. OMB did not make additional changes to section 200.406 in response to the above comments, which it does not find warrant implementation at this time. Aside from a small grammatical revision, OMB made revisions in this section as proposed.

Section 200.407—Prior written approval (prior approval)

In the proposed guidance, OMB revised section 200.407 to remove 10 items from the prior written approval requirements to reduce Federal agency and recipient burden. These proposed revisions included no longer requiring prior written approval for certain requirements related to items such as real property, equipment, direct costs, entertainment costs, memberships, participant support costs, selling and marketing costs, and taxes.

OMB received one comment suggesting that OMB remove the remainder of the policy on prior approval contained in section 200.308. OMB also received a comment requesting clarification on whether the inclusion of items in an approved budget still requires separate prior written approval. Some commenters requested clarification on prior approvals for real property and equipment. Finally, OMB received a couple of comments requesting the reinstatement of the of all prior approval requirements OMB proposed to remove.

***OMB Response**:* OMB disagrees with the commenter who suggested that reinstating prior approval requirements that OMB proposed to remove was necessary to address the risk of subsequent disallowance of costs. The commenter stated that reducing burden associated with prior approval would result in elevated risk of later disallowance for the associated costs. OMB did not find that the elevated risk is so great that it must reverse its earlier proposal. OMB cautions, however, that recipients and subrecipients must still follow applicable cost principles

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

under subpart E even in cases in which prior approval is not required. The requirement to apply the cost principles is unaffected by changes to this section.

To further clarify the guidance under this section as it relates to real property and equipment, OMB revised the list of prior approval requirements in section 200.407 to remove reference to the real property and equipment provisions in section 200.311 and 200.313. Other requirements to obtain instructions or approval from the Federal agency—such as requirements to request disposition instructions—remain in place in those sections and are unaffected by the changes to section 200.407. Section 200.439—which remains included in the list of prior written approvals in section 200.407 and is specifically referenced in section 200.313—continues to describe circumstances in which prior written approval is required for allowability of equipment and other capital expenditures. For example, when equipment disposal is directed by a Federal agency under the process described in section 200.313, section 200.439 continues to recognize that this Federal agency action is needed before the costs are allowable. Section 200.439 also describes other circumstances when prior written approval is necessary for the allowability of equipment and capital expenditures, including for general purpose equipment, buildings, and land; and improvements to land, buildings, or equipment that materially increase their value or useful life.

In section 200.407, OMB restored one item to the list from the prior version of the guidance, which it previously proposed to delete. As discussed in more detail below, OMB restored the reference to exchange rates in section 200.440. More information on the specific circumstances in which prior approval is required is generally provided in the sections listed in section 200.407, including in the restored reference to section 200.440 on exchange rates.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Section 200.411—Adjustment of previously negotiated indirect cost rates containing unallowable costs

OMB did not propose significant changes to this section. OMB received several comments requesting significant additional information regarding the adjustments of negotiated indirect cost rates. For example, commenters requested that OMB add a new section that speaks to informing stakeholders if unallowable costs are included in indirect rates, determining the legitimacy of the finding in conjunction with OMB, and establishing a different process for reimbursing the Federal government.

***OMB Response**:* OMB did not propose policy changes for section 200.411 and considers the new suggestions received by commenters to be outside of the scope for the final version of the guidance. OMB appreciates the comments and may consider them for future updates. OMB made a minor update to paragraph (a) to remove the word "Federal."

Section 200.413—Direct costs

OMB did not propose significant policy changes to this section, but did propose extensive plain language revisions. OMB received one comment of support for the changes in this section. OMB received several comments requesting clarification on the use of the term "procurement transaction" in paragraph (b), which had replaced "goods and services" from the prior version. The same commenters indicated that a change from employee and fringe benefits to "staff" represented a change in policy. OMB received several comments stating that revisions to paragraph (e) changed the standard for unallowable indirect costs and was confusing.

OMB received several comments requesting that paragraph (c) include the following language: "Direct charging of these costs may be appropriate, where unlike circumstances exist, only if they meet all of the following conditions." Several comments addressed issues related to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

direct costs, but were not pertinent to any proposed revisions to the guidance, including issues such as how administrative and clerical staff costs are treated, or the need to invest in data infrastructure.

***OMB Response**:* OMB revised paragraph (b) of section 200.413 to improve the accuracy of the statement describing direct costs. OMB retained the statement that the "association of costs with a Federal award" determine their nature, but removed "rather than the nature of the procurement transaction," which was too limiting, as not all costs in an award are necessarily procurement transactions. OMB agrees with commenters on clarifying this point.

OMB also revised paragraph (b) of section 200.413 to provide a more accurate example of staff costs that are considered direct costs. Rather than simply saying "staff salaries," OMB revised this to "employee salaries and fringe benefits," which more accurately reflects all costs associated with paying an employee directly charged to a specific award.

OMB disagrees with commenters that adding "where unlike circumstances exist" is necessary in paragraph (c). OMB made some more clarifying edits to paragraph (d) to improve the readability of the sentence. OMB revised paragraph (d) to replace "minor direct cost" with a "direct cost of a minor amount," which is the intended meaning. OMB also finds that "for reasons of practicality" more clearly communicates the intended policy in this paragraph than "when it is practical to do so."

OMB agrees with comments suggesting that proposed revisions to paragraph (e) changed the standard for treatment of unallowable costs in determining indirect cost rates. OMB reverted to the original language from the prior version of the guidance with minor grammatical changes. OMB made other minor clarifying edits to the list of examples in paragraph (f).

Section 200.414—Indirect costs

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In the proposed guidance in section 200.414, OMB revised several aspects of the guidance pertaining to indirect costs. OMB proposed to 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 rate. OMB also proposed to revise the guidance to clarify that pass-through entities must accept all federally negotiated indirect cost rates for subrecipients.

In the same section, in response to feedback from the Federal financial assistance community, OMB proposed to raise the *de minimis* rate from 10 percent to 15 percent. OMB explained that this change would allow for a more reasonable and realistic recovery of indirect costs, particularly for new or inexperienced organizations that may not have the capacity to undergo a formal rate negotiation, but still deserve to be fully compensated for their overhead costs. OMB also explained that the changes still allow recipients and subrecipients to apply a rate lower than 15 percent at their own discretion. At the same time, the proposed guidance clarified 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. OMB also clarified 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.

Finally, OMB also proposed to 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—but noted that this may be revisited when applicable systems are updated to allow for the posting of indirect cost rates. OMB sought comments that include analysis on the advantages and disadvantages of raising the *de minimis* rate in the way proposed.

OMB received over 250 comments expressing support for the increase in the *de minimis* rate to 15 percent. Several commenters urged OMB to increase the *de minimis* rate to 20 percent

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

or more. Another commenter asked OMB to allow a *de minimis* rate of up to 15 percent over direct labor instead of modified total direct costs. OMB also received several comments objecting to the language that "the recipient or subrecipient is authorized to determine the appropriate rate up to this limit," suggesting that it could be a barrier for entry for some organizations. Commenters also suggested that the policy could be misinterpreted to imply that the pass-through entity could decide for the subrecipient which percentage would apply.

OMB also received several comments requesting that OMB allow pass-through entities to waive the policy in section paragraph (d) that "pass-through entities are subject to the requirements in 2 CFR 200.332(b) and must accept all active federally negotiated indirect costs rates for subrecipients." Several comments asked OMB to add a qualifying phrase to allow pass-through entities flexibility on their acceptance of federally negotiated indirect rates such as adding "unless otherwise provided in the grant agreement." OMB also received several comments indicating that paragraph (f) would require subrecipients to submit indirect cost proposals in accordance with the appropriate Appendix to pass-through entities.

Several commenters voiced concern over Federal agencies' reported refusal to recognize formally negotiated rates. The commenters urged OMB to add language to propose OMB action in the event that Federal agencies refuse to apply or allow recipients or subrecipients to use their federally negotiated indirect cost rate.

There were several comments from the IHE community requesting that OMB retain the use of "F&A" in relation to negotiated indirect rates, stating that this term is "necessary for IHEs" or is widely used and understood. OMB also received comments on certain language proposed in paragraph (f) stating: "A governmental department or agency that receives more than $35 million in direct Federal funding during its fiscal year may not elect to use the *de*

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

minimis rate (see Appendix VII, paragraph D.1.b.)." OMB also received several comments requesting OMB increase the threshold above $50,000, as proposed, for recovering indirect costs from subawards.

***OMB Response**:* OMB revised paragraph (b) of section 200.414 to improve the accuracy of the statement describing indirect costs of nonprofit organizations. OMB retained the statement that the "association of a cost with a Federal award" determines its nature, but removed "rather than the nature of the procurement transactions," which was too limiting, as not all costs in an award are necessarily procurement transactions.

OMB revised paragraph (c)(1) to simplify the reference to Federal agencies using a different rate "based on documented justification described in paragraph (c)(3)." OMB replaced the text with "in accordance with paragraph (c)(3)." OMB also moved "in the notice of funding opportunity" from the end of paragraph (c)(4) to the beginning of the same paragraph to make the requirement easier to read and understand.

OMB revised paragraph (f) of section 200.414 to clarify that neither Federal agencies nor pass-through entities may require recipients and subrecipients to use a *de minimis* rate lower than this standard unless required by Federal statute or regulation. This does not limit the recipient or subrecipient from electing to use a lower rate than the *de minimis* rate. OMB also removed the reference to recipients and subrecipients submitting cost proposals in accordance with the appropriate appendix if they chose not to use the *de minimis* rate. Other sections of the guidance adequately explain that recipients and subrecipients have a right to negotiate a rate, rather than using the *de minimis* rate.

OMB also removed the proposed language from paragraph (f) stating that governmental or department entities receiving more than $35 million are not allowed to use the *de minimis* rate.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Appendix VII to part 200 addresses this topic. It explains that a governmental department or agency receiving more than $35 million in direct Federal funding during its fiscal year must submit its indirect cost rate proposal to its cognizant agency for indirect costs.

Regarding the *de minimis* rate, in the proposed language OMB referred to the rate as "up to" 15 percent in order to allow flexibility for the recipient or subrecipient to elect to apply a lower rate for their own organizations or if a program statue or agency regulations required a lower rate. The phrasing "up to" is not intended to interfere with recipients or subrecipients applying the 15 percent rate if they are not prohibited by an authorizing statute or agency regulation. Rather, the "up to" language is only intended to reflect the fact that, in some cases, a lower *de minimis* may be applied.

OMB understands that there have been disagreements over the negotiation of indirect rates, whether related to the length of time taken to finalize them, or the rate that was established. In the proposed guidance, OMB included additional language in section 200.414(c)(2) that recipients or subrecipients may contact OMB in the event of indirect rate disputes. OMB includes that guidance in the final revision. However, OMB did not establish itself as a formal arbiter of indirect cost rate disputes.

The guidance also states in section 200.414(c)(1) that agencies do not have the authority to set their own indirect rates without justification or support in statute or regulation. However, OMB disagrees with the comments requesting OMB waive requirements for pass-through entities. The same requirements that apply to Federal agencies should also apply to pass-through entities in this context. OMB retained the language.

In response to comments on the elimination of "F&A," the term "F&A" was often used in the guidance in parentheses after the word "indirect" in terms including "indirect cost" and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

"indirect cost rate." This implied that "F&A" was generally interchangeable with the word "indirect" in those terms. In practice, the term "F&A" may not in all cases be used interchangeably with the word "indirect" in the context of negotiated indirect cost rates. OMB does not, however, consider there to be a substantial benefit derived from formally maintaining this phrasing for indirect costs and indirect cost rates whenever referenced by repeating "F&A" after "indirect" throughout part 200. The policy that IHEs must classify their indirect costs into these two categories is still in place, and the removal of this term does not impact the use of the term "F&A" throughout the community of IHEs. OMB also discusses this change in the definition of "indirect cost" in subpart A of this preamble above.

In response to commenters urging OMB to increase the *de minimis* rate to 20 percent or higher: OMB determined to maintain the *de minimis* rate at 15 percent as proposed. Regarding the increased threshold for calculating modified total direct costs, OMB disagrees that a threshold increase higher than $50,000 was necessary and did not further increase the threshold at this time. OMB also did not create a mechanism allowing a *de minimis* rate of up to 15 percent over direct labor, but may consider this and other suggestions on the *de minimis* rate for future updates. OMB also made a few stylistic and clarifying revisions to paragraph (g) in section 200.414.

Section 200.415—Required certifications

In the proposed guidance, OMB revised section 200.415 to require that subrecipients must certify to pass-through entities that financial information submitted to the pass-through entity is complete and accurate. OMB received one comment of support for this proposed change in policy. OMB also received two comments requesting clarifications that certifications apply to "financial" reports and that indirect cost proposals are not necessarily "annual."

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***OMB Response**:* OMB revised section 200.415 to remove the phrase "and payment requests under federal awards." OMB removed this phrase because the certification language provided in the section refers only to the certification associated with the financial report. The previous version that applied to payment requests as well was technically inaccurate. The standard payment request form contains a different certification. This section now specifies that only financial reports require the certification that is specified in this text. Additionally, OMB revised paragraph (e) to remove the word "annual."

Section 200.416—Cost allocation plans and indirect cost proposals

OMB did not propose significant changes to this section. OMB received two comments requesting additional examples of centralized service costs to include, for example, computer centers, integrated data systems, central analytics capacity, and cloud computing infrastructure.

***OMB Response**:* OMB did not find it necessary to include additional items of centralized services in this guidance. The types of service costs provided are illustrative only and are not meant to be a comprehensive list.

Section 200.417—Interagency service

OMB did not propose significant changes to this section. OMB received several comments requesting that OMB increase the indirect rate agencies can apply for interagency services from 10 percent to 15 percent to be consistent with the increase in the *de minimis* rate.

***OMB Response**:* OMB revised section 200.417 to increase the percentage of costs that an operating department may charge to cover the costs of providing services to another operating department. While the type of rate is different (interagency service versus *de minimis*), OMB agrees that aligning these rates is sensible and increased the rate in this section to 15 percent in

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

response to the comments. OMB finds that the *de minimis* rate for services should align with the increase in the *de minimis* rate allowed under Federal awards.

Section 200.419—Cost accounting standards

In the proposed guidance, based on feedback from both IHEs and Federal agencies, OMB removed the requirement in section 200.419 for an IHE that receives an aggregate total of $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 received many comments in support of the removal of the DS-2 requirement, which was required to be submitted to the cognizant agency for indirect costs. OMB also received many comments expressing appreciation for the proposed removal of this requirement and highlighting the reduction in burden it would provide if finalized. In reference to the usefulness of this form to the audit community, some commenters suggested that IHEs could provide the information to the audit entity upon request, if needed, because relevant information contained in the DS-2 is often readily available at IHEs. One comment requested that OMB add language stating that IHEs subject to the DS-2 requirement should continue to submit a DS-2 to their cognizant agency for indirect cost.

***OMB Response**:* In the final guidance, OMB made revisions in this section as proposed. OMB did not make a change to this section in response to the comment requesting OMB to require submission of the DS-2 to the cognizant agency for indirect cost. Removal of the DS-2 requirement was intended to provide more consistent requirements for all types of recipients. The commenter's proposal would not align with that intent.

Section 200.420—Considerations for selected items of cost

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In the proposed guidance, OMB made several revisions to the general provisions for items of costs. Specifically, in section 200.420, OMB added further 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 it is allowable or unallowable. OMB revised this section as proposed.

Section 200.421—Advertising and public relations

OMB did not propose significant changes to this section. OMB received a comment requesting OMB amend paragraph (b)(1) of section 200.421 to clarify the scope of the allowability of recruitment costs to include "project participants" in addition to "personnel." OMB also received one comment recommending language that specifically includes interpretation and translation of documents, websites, presentations, and recordings in the list of costs.

OMB Response*:* OMB revised section 200.421 to include "recruiting project participants" as an example of "program outreach." This change was made for the sake of clarifying that type of activity. OMB agrees that including project participants in the scope of allowable recruitment costs would be a helpful clarification and revised the guidance text accordingly. However, OMB disagrees that adding language to specifically identify costs associated with "language and interpretation" was necessary. The absence of any one cost does not mean it is allowable or unallowable. Rather, the analysis depends on the programmatic need consistent with other principles and provisions under subpart D.

Section 200.422—Advisory councils

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In the proposed guidance, OMB revised section 200.422 to incorporate the definition of an "advisory council or committee." OMB received two comments asking OMB to clarify the intent of this section, citing that advisory councils can be internal or external to a recipient.

***OMB Response**:* OMB revised section 200.422 in the final guidance to clarify that the term advisory councils is intended to be inclusive of internal and external councils and committees. OMB also made minor clarifying edits.

Section 200.425—Audit services

OMB did not propose significant changes to this section. OMB received one comment that objected to the removal of "types of" from "Type of Compliance Requirements" so that it reads "Compliance Requirements." The commenter noted that this would permit pass-through entities to indirectly include other types of compliance requirements for which non-compliance may cause a cost not to be allowable to the award. For example, one commenter stated the section appears to make any costs for audits that are not required by and performed in accordance with the Single Audit Act unallowable. Another commenter objected to the prohibition on a reasonably proportionate share of other audit services.

***OMB Response**:* In paragraphs (a)(1) and (a)(2) of section 200.425, OMB reverted to the original language in the prior version of the guidance. OMB decided that the original language better communicated the requirements and its intent. In paragraph (c)(3) of section 200.425, OMB also reverted to the original language of "types of compliance requirements."

OMB finds that other commenters raised issues beyond the scope of changes that OMB had proposed or that do not align with its policy intent for the update to this section. OMB appreciates the other comments it received on this section, but was not able to address them in the final version. Lastly, OMB reverted the heading of this section back to "Audit services."

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Section 200.427—Bonding costs

OMB did not propose significant changes to this section, nor did it receive significant comments. In the final version of section 200.427, OMB added "subrecipient" to make the provision applicable to both recipients and subrecipients. This more accurately conveys the policy intent. OMB also changed "Bonding costs" to "Costs of bonding" in paragraphs (b) and (c). This is a more precise formulation in the context of these provisions.

Section 200.430—Compensation—personal services

OMB proposed a variety of plain language and clarifying revisions to this section. Additionally, OMB also proposed to relocate some of the guidance within this section. OMB received a comment indicating that a citation in this section was out of date. Next, OMB received several comments requesting additional clarification on aspects of the guidance in which OMB did not propose a policy change, such as making approximations in allocating actual personnel costs. OMB also received several comments requesting OMB to address the increased costs of complying with overtime pay, which was related to a recently proposed U.S. Department of Labor (DOL) overtime rule. Lastly, OMB also received one comment indicating that the propose guidance does not explicitly permit recipients to provide a living wage.

***OMB Response**:* In paragraph (d)(2) of section 200.430, OMB agrees with the comment stating that 10 U.S.C. 2324(e)(1)(P) was repealed. OMB updated the guidance to reference the recodified statute at 10 U.S.C. 3744(a)(16).[6]

In paragraph (i)(7)(ii) OMB restored language from the prior version of the guidance, which was inadvertently muddled by OMB's proposed revisions. OMB also replaced "recipient"

[6] Pub. L. 116-283 transferred 10 U.S.C. 2324(e)(1)(P) to appear in 10 U.S.C. 3744(a)(16).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

with "IHE" in paragraph (i)(8) because the policy contained in paragraph (i) only pertains to IHEs.

In response to requested changes in part 200 to reflect DOL's new rule, the policies in the DOL rule are beyond the scope of proposed changes in OMB's 2 CFR guidance update. OMB did not make changes on this topic in its current update of the 2 CFR text. Regarding the comment on changing the policy to "provide a living wage," OMB did not propose such a change, and does not have the authority to establish such a government-wide mandate on that topic through this update.

Section 200.431—Compensation—fringe benefits

In the proposed guidance, OMB proposed revising section 200.431 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. Based on feedback from the oversight community, OMB also clarified that recipients and subrecipients 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. Also in section 200.431, OMB proposed additional clarifying guidance on pension plan costs and post-retirement health plans.

OMB received numerous comments expressing significant concerns about additional language that OMB proposed under paragraphs (g) and (h) addressing pension costs and post-retirement health plan costs. Many commenters objected to the potential impacts of this policy change on State and local governments. A number of commenters maintained that the proposed language lacked clarity and could lead to unintended consequences, including inconsistent outcomes as applied in practice and increasing agency and recipient burden. Commenters also

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

suggested that the proposed guidance in these paragraphs would be inconsistent with established pension methodologies and standards. Commenters emphasized that both paragraph (g) on unfunded pension costs and paragraph (h) on post-retirement health plans needed further clarification from OMB in the final guidance.

Some commenters noted that the proposed revisions appeared to limit pension and other postemployment costs charged directly to Federal awards to the normal cost without recognizing the unfunded accrued liability (UAL) component of pension rates. Another commenter noted that use of the term "current pension cost" needed to be further clarified as it could potentially be interpreted as only "normal pension cost" and exclude "unfunded liability amortization." The commenter noted that this could create an undue burden on State and local governments to fund this additional component. Another commenter noted that State pension systems use a rate that includes both normal pension costs as well the unfunded liability amortization. Some commenters specifically identified the change in paragraph (g)(6)(iii) from "in excess of the actuarily determined amount" to "in excess of the costs calculated using an actuarial cost-based method recognized by GAAP."

OMB also received a comment requesting removal of the requirement in paragraph (g)(6)(vi) that recipients or subrecipients provide the Federal government an equitable share of any previously allowed pension costs that the recipient or subrecipient receives through a refund, withdrawal, or other credit.

OMB also received several comments on the parenthetical reference in paragraph (a) associated with the cost of leave—(vacation, sick, family, or military). Commenters argued that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable.

In paragraph (b)(3), a couple of commenters asked OMB to further clarify the distinction between subparagraph (i) on the cash basis of accounting versus subparagraph (ii) on the accrual basis, including further clarifying how to determine the basis of accounting. A commenter also requested a definition of general administrative expenses in paragraph (b)(3)(i).

One commenter noted that OMB has not consistently changed the word "family-related" to just “family.” This commenter recommended deleting "-related” after family in paragraph (b).

***OMB Response**:* OMB appreciates all of the comments it received on proposed changes to section 200.431. After carefully reviewing the comments, OMB removed significant portions of the proposed language from paragraph (g) on pension plan costs and paragraph (h) on post-retirement health. In both paragraphs, OMB initially proposed language providing that costs may not exceed the contribution rate of the employee’s current pension costs in one case and current health benefit costs in the other. In both paragraphs, OMB also proposed additional approval and notification requirements. OMB’s intent for the proposed revisions was only to underscore that pension plan and post-retirement health plan costs cannot be charged to an award for employees that are not associated with the award. OMB removed the additional language from both paragraphs and left only the statement related to allocability. OMB agrees with the commenters that the proposed revisions would potentially result in unintended burden or confusion. Based on careful consideration of the comments on this topic, OMB substantially scaled back its proposed revisions to section 200.431 as further detailed below.

OMB revised paragraph (a) of section 200.431 to remove the parenthetical reference to types of leave. The reference contained only some of the types of leave—family, vacation, sick,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

or military—whereas paragraph (b) provides a more complete list of types of leave. The reference to "family-related" leave in paragraph (b) is also just an example of types of leave. OMB did not revise this term, but did remove the parenthetical in the preceding paragraph, which may have appeared to use inconsistent terms.

OMB revised paragraph (b)(3)(i) of section 200.431 to remove the requirement that agencies must include certain costs in fringe benefit rates only with the approval of the cognizant agency for indirect costs. OMB recognizes that some recipients might not have a cognizant agency for indirect costs. OMB received numerous comments on this proposed requirement, which is removed from the final guidance. OMB otherwise finds paragraph (b)(3) sufficiently clear and similar to the policy in the prior version of the guidance. In response to comments asking OMB to further clarify the distinction between the cash basis of accounting versus the accrual basis, OMB did not insert additional guidance on this topic. OMB may consider doing so in the future, but was not prepared to do so through this update. OMB also did not find it necessary to provide a definition of general administrative expenses at this time.

OMB revised paragraph (g)(6)(iii) of section 200.431 to revert to the prior language that amounts funded by the recipient or subrecipient in excess of the "actuarially determined amount" for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods. The language included in the draft revisions had inadvertently changed the meaning.

OMB also substantially revised paragraph (g)(6)(v) of section 200.431, which was the focus of many comments, to remove much of the additional language that was proposed. OMB removed guidance stating that "payments for unfunded pension costs may not exceed the contribution rate of the employee's current pension costs" in response to numerous public comments objecting to this change. OMB also removed other newly proposed language

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

following that sentence in response to concerns expressed by commenters. Through the proposed updates, OMB only sought to clarify that payments for unfunded pension costs must be charged in accordance with the allocation principles of subpart E. Specifically, the recipient or subrecipient may not charge unfunded pensions costs directly to a Federal award if they are not allocable to that award. OMB deleted additional proposed guidance on unfunded pension costs that caused significant concern to commenters.

OMB revised paragraph (g)(6)(vi) of section 200.431 to revert to previous language stating that the recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed pension costs "that revert or inure to the recipient or subrecipient." OMB proposed to refer to pension costs that the recipient or subrecipient "receives." OMB did not intend to change the meaning and reverted to the prior guidance text.

Under paragraph (h) of section 200.431 on post-retirement health, OMB revised paragraph (h)(3) to revert to the prior language, which stated that amounts "funded by the recipient or subrecipient in excess of the actuarially determined amount for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods." The language included in the draft revisions inadvertently changed the meaning.

OMB revised paragraph (h)(5) of section 200.431 to remove a significant portion of the newly proposed language. OMB only sought to clarify that payments for unfunded post-retirement health plan (PRHP) costs must be charged in accordance with the allocation principles of subpart E. Specifically, the recipient or subrecipient may not charge unfunded PHRP costs directly to a Federal award if they are not allocable to that award. OMB deleted additional proposed guidance on unfunded PHRP costs that caused significant concern to commenters.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB revised paragraph (h)(7) of section 200.431 to revert to the original language stating the recipient must provide the Federal government with an equitable share of costs that "revert or inure" to the recipient, rather than the previous formulation describing costs "received" by the recipient. OMB considers the original language to be more precise and appropriate in this context.

OMB revised paragraph (i)(5) of section 200.431 to clarify circumstances in which severance payments to foreign nationals need approval by the Federal agency. To the extent these payments would be required by foreign law, OMB did not find the Federal agency approval requirement was warranted. However, OMB retained the Federal agency approval requirement for payments under this paragraph deemed "necessary for the performance of Federal programs." OMB generally retained the language as proposed, but slightly restructured the paragraph to make this distinction clear.

OMB revised paragraph (k) to relocate a clarifying statement to a new paragraph (k)(2). That relocated provision at (k)(2) states that the "allowability of these costs for the IHE does not depend on whether they are recorded in the accounting records of the IHE."

OMB did not propose any changes related to unused leave in section 200.431. In paragraphs (g)(6)(vi) and (h)(7), OMB disagrees with comments suggesting that the requirement to provide the Federal government with an equitable share of costs should be changed, even if the amount could potentially be small.

Section 200.432—Conferences

In the proposed guidance, OMB clarified the description of conferences in section 200.432 to remove any limitations provided by the specific types of events listed in the guidance currently.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB also allowed for dependent-care costs associated with participants' attending or partaking in program-related conferences.

OMB received many comments in support of the changes to this section, in particular noting that the proposal to allow for dependent-care costs associated with participants' attending or participating in program-related conferences in particular would enable more employees of lesser means to participate in educational programming that will benefit their performance. OMB received one comment requesting the guidance in 200.432 to also specifically include costs for attending conferences as allowable costs.

***OMB Response**:* OMB revised section 200.432 to remove language specifying that allowable conference costs may only include those paid by the recipient or subrecipient as a sponsor of the conference. OMB recognizes that some program activities include conference costs sponsored by another party. OMB also clarified that these costs can include attendance fees.

Section 200.433—Contingency provisions

OMB did not propose significant changes to this section. In the final guidance, section 200.433 was revised to change contingency "costs" to contingency "amounts." This better reflects that the policy relates not to the "costs" themselves, but rather to the "amount" of costs. OMB also clarified that the costs for major project scope changes, unforeseen risks, or extraordinary events "must not be included in the proposed budget estimates for a Federal award," even if they are in fact allowable should they arise.

Section 200.434—Contributions and donations

OMB did not propose significant changes to this section. OMB received one comment requesting that the guidance clarify that the value of the donations of personal property and use

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

of space may be used to meet cost sharing of nonprofit corporations. Another comment requested that OMB remove the stipulation for nonprofits that the cost of volunteer services often "must be allocated a proportionate share of applicable indirect costs."

***OMB Response**:* OMB revised paragraph (g)(2) of section 200.434 to clarify that the value of donation of "personal property and use of space" are allowable as cost share. This clarifies that the guidance does not mean the value of donations in general.

OMB did not propose a change to the policy in paragraph (e) applicable to nonprofit organizations. OMB considers the comment on this provision out of scope relative to the proposed changes to the guidance. OMB finds that the requested change to the "proportionate share" requirement is not warranted in this update.

Section 200.435—Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements

OMB did not propose significant changes to this section. In the final guidance, OMB made some minor clarifying and grammatical edits in this section, including correcting a paragraph heading. In paragraph (a)(2), OMB also revised the definition of "costs" applicable in section 200.435. The revised definition explains earlier in the paragraph that costs "include the services that bear a direct relationship to a judicial or administrative proceeding." OMB finds this change clarifies the policy in this section.

Section 200.438—Entertainment and prizes

In the proposed guidance, OMB included prizes in this section. Guidance on prizes was located in subpart B in the prior version of the guidance despite the fact that prizes are an item of cost. OMB received several comments expressing support for the proposed revisions made to section 200.438. Several commenters also requested that OMB incorporate language from OMB

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Memorandum M-10-11, *Guidance on the Use of Challenges and Prizes to Promote Open Government*, into the guidance.

***OMB Response**:* With minor edits, OMB otherwise incorporated the revisions in this section as proposed. OMB agrees, however, that OMB Memorandum M-10-11, as referenced by commenters, remains a relevant source of information providing additional guidance to Federal agencies on this topic.

Section 200.439—Equipment and other capital expenditures

In the proposed guidance, OMB revised paragraph (b)(2) of section 200.439 to adjust the dollar value for special purpose equipment requiring prior approval from $5,000 to $10,000. Other sections of the guidance provide that equipment refers to items over $10,000. In the final guidance, OMB made additional clarifying edits—including replacing "direct charges" with "direct costs" in two places—but otherwise made changes in this section as proposed.

Section 200.440—Exchange rates

In the proposed guidance, OMB removed the requirement for prior approval of fluctuations of exchange rates. OMB explained that while a recipient or subrecipient would still need prior approval for additional Federal funding, no approval is required because an exchange rate has fluctuated and resulted in a necessary charge to available funding. OMB received one comment supporting this change.

OMB Response: In the final guidance, OMB reverted to the prior version of the guidance on exchange rates. The circumstances when prior written approval is needed in relation to fluctuations in exchange rates are narrowly defined within the prior version of the guidance in section 200.440—which OMB restored. Prior approval is only needed when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

reduce the scope of the project. Because prior approval remained necessary in these circumstances in both the prior and proposed versions of the guidance, OMB decided it would clarify the policy to retain the reference to this provision in section 200.407 and continue to explain circumstances in which prior approval is needed within section 200.440.

Section 200.442—Fund raising and investment management costs

OMB did not propose significant changes to this section. OMB received one comment recommending that OMB revert to the prior language of OMB Circular A-122.

OMB Response*:* OMB disagrees that a change was necessary. OMB finds that the suggestion to revert to the earlier circular was out of scope relative to the proposed revisions to the final guidance. In the final guidance, OMB included revisions in this section as proposed.

Section 200.443—Gains and losses on the disposition of depreciable assets.

OMB did not propose any significant changes to this section. In the final guidance, OMB made a minor change from "individual basis" to "case-by-case basis."

Section 200.445—Goods or services for personal use

OMB revised section 200.445(b) to clarify that the housing costs refer to those costs as associated with a recipient's or subrecipient's employees. In addition, OMB removed the reference to the costs being allowable "regardless of whether [they are] reported as taxable income to the employees." Upon further review, OMB considered this to be an unnecessary clarification. It is sufficient to state that such costs are only allowable as direct costs and must be approved by the Federal agency.

Section 200.447—Insurance and indemnification

OMB did not propose significant changes to this section. OMB received one comment that suggested OMB incorporate additional guidance on medical liability insurance and include

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

"general liability" as an example of contributions to a self-insurance program. The commenter also requested a change to the title of section 200.447.

***OMB Response**:* OMB did not make changes to section 200.447 in response to the comment. The additional policy on medical liability insurance suggested by a commenter fell outside the scope of OMB's proposed changes. OMB also decided that providing the additional example of "general liability" was unnecessary.

OMB made a minor revision to paragraph (d)(3)(ii) of section 200.447 to insert "levels described in paragraph (d)(3)(i)" in place of the "above-mentioned value." OMB found the revised text to be more precise. OMB also removed the header on paragraph (b)(6) and added a clarification to that paragraph. Lastly, OMB made a typographical fix to paragraph (d)(1).

Section 200.448—Intellectual property

OMB did not propose significant changes to this section. OMB received one comment requesting changes to address royalties received on a patent or copyright.

***OMB Response**:* OMB did not make any policy changes to this section. OMB considered the comment on royalties to be out of scope of its proposed revisions for this update and did not make a change.

Section 200.452—Maintenance and repair costs

OMB did not propose significant changes to this section. OMB received several comments asking OMB to clarify allowability of maintenance warranties. The commenters noted that this section specifically states that costs intended to keep buildings and equipment in efficient operation are allowable, but does not address warranties.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***OMB Response**:* OMB disagrees that costs related to maintenance warrantees and other related costs need to be included in this section. This would constitute a significant policy change and such changes were not proposed for comment.

Section 200.454—Memberships, subscriptions, and professional activity costs

In the proposed guidance, OMB revised section 200.454 to remove prior approval requirements for the cost of membership in any civic or community organization. OMB updated the final guidance as proposed.

Section 200.455—Organization costs

In the proposed guidance, OMB revised section 200.455 to clarify that any costs associated with either persuading or dissuading employees from collective bargaining and related activities are not allowable under Federal awards. OMB also added clarifying language that certain costs related to data, evaluation, and other related organization costs are allowable.

OMB received a number of comments expressing appreciation for the increased clarity for allowable organization costs. However, some commenters requested the inclusions of many additional types of activities—and even new subsections—related to organization costs. Examples of these activities included community engagement, outreach activities, personnel, materials, cloud-based services, and cyber security measures related to effectively building and using evidence and evaluation for program design, administration, or improvement.

One comment objected to the inclusion of new language related to costs associated with either persuading or dissuading employees from collective bargaining and related activities, citing that it is redundant as it is already covered under the National Labor Relations Act (NLRA). OMB received one comment that section 200.455(b) was difficult to understand the way it was presented.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

***OMB Response**:* OMB made a minor revision to paragraph (b) of section 200.455 by moving the phrase the "costs of any of the following activities are unallowable" to the beginning of the paragraph. OMB made this change to improve readability in response to a comment.

OMB revised paragraph (c) of section 200.455 to clarify that some of the proposed language addressed data costs. OMB's revisions to the final guidance now provide additional information on evaluation costs.

In response to comments, OMB observes that various costs related to program design, monitoring, and evaluation can be allowable costs. OMB disagrees, however, that this section should include all of the additions suggested by commenters. In applying the cost principles in subpart D, the absence of any particular costs in the general provisions for selected items of cost does not imply that such costs are necessarily unallowable. *See* 2 CFR 200.420(b). OMB also disagrees that referencing the NLRA was redundant and retained the language. It is helpful to clarify for both agencies and recipients.

Section 200.456—Participant support costs

In the proposed guidance, OMB removed from section 200.456 the prior approval requirement of participant support costs. OMB received several comments in support of the proposed changes to section 200.456. OMB also received one comment requesting additional clarity on whether written policies and procedures needed to be developed on the subject of participant support costs.

***OMB Response**:* OMB disagrees that it was necessary to establish any specific format or requirements for policies and procedures regarding participant support costs. For this update, OMB decided that establishing additional requirements was not necessary.

Section 200.458—Pre-award costs

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB did not propose significant changes to this section. OMB received several comments objecting to the policy requiring prior written approval for pre-award costs, noting that this would constitute a possibly unintended policy change. OMB also received several specific comments regarding pre-award costs—requesting, for example, that OMB expand the pre-award costs description to specifically state that the recipient or subrecipient would be allowed to "achieve outcomes" prior to the award dates. Another commenter requested that OMB state affirmatively that pre-award costs apply to all types of assistance, including discretionary grants.

***OMB Response**:* OMB agrees with the comment pointing out that the requirement for "prior written approval" could constitute an unintended policy change. OMB removed the word "prior" in the final text. OMB emphasizes, however, that written approval is still required for pre-award costs. OMB did not incorporate additional policy changes in response to the comments relating to specific costs, activities, or award types. The description of pre-award costs only provides general guidance on the allowability of and general process for such costs.

Section 200.460—Proposal costs

OMB did not propose significant changes to this section. OMB received one comment requesting that OMB provide guidance to agencies, including elaborating on the need for Federal agencies to make efforts to reduce requirements requested at the proposal development stage.

***OMB Response**:* OMB did not revise the guidance in response to this comment. Generally, OMB considers this to be an agency-specific issue that is not appropriate for resolution through policy guidance in this section.

Section 200.461—Publication and printing costs

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In the proposed guidance, OMB revised section 200.461 to add additional clarifying guidance on publication and printing costs by adding reference to "article processing charges" or "similar open access fees."

OMB received one comment supporting the proposed revisions. OMB received several comments requesting that section 200.461 refer to article publishing charges (APCs) and not "processing charges." The same commenters also requested that OMB change the policy regarding how charges are levied by a journal. Several other commenters submitted recommendations to make additional changes that would be out of scope of the proposed changes, or were deemed unnecessary. For example, OMB received comments underscoring that researchers are permitted to budget for the costs of managing and sharing research data, software, code, and other open science outputs resulting from a Federal award; or addressing costs related to the making available of software or data and the curation, metadata tagging, hosting, preservation, and other charges related to open science. Finally, one comment recommended replacing "developed under a Federal award" with "resulting from research performed under a Federal award" for clarification.

***OMB Response**:* OMB revised paragraph (b) of section 200.461 to refer to "similar fees such as open access fees," rather than "similar open access fees." The prior formulation was revised because it implied that the preceding terms, such as "page charges," were "open access fees." OMB also clarified that these charges can be "resulting from a Federal award," as opposed to "developed under" a Federal award. OMB recognizes that, in some cases, it may be possible for charges to result from a Federal award, but not necessarily be developed under the award.

OMB did not make substantial changes to this section to include multiple examples of costs but appreciated the comments for future consideration.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Section 200.463—Recruiting costs

OMB revised Paragraph (d) of section 200.463 to restructure the sentence on short-term visa costs for the sake of clarity. OMB considers the revised language to flow better than the previously proposed language.

Section 200.465—Rental costs of real property and equipment

OMB did not propose significant changes to this section. OMB received one comment requesting that OMB remove the word "workspace" from the reference to "right-of-use operating lease asset," citing that it is unclear what would be considered an "operating lease workspace asset" as opposed to what would be considered an "operating lease asset." Further, one comment requested that OMB reinstate the term "FASB standards" in relation to leases, since both the financial reporting frameworks of the "GASB" and "FASB" are considered generally accepted accounting principles (GAAP). One commenter requested language pertaining to the application of the cost principles for Subscription Based Information Technology Arrangements be included.

***OMB Response**:* OMB revised paragraph (c)(2) of section 200.465 to clarify that the arms-length leases under common control refer to those between a recipient or subrecipient "and another entity" and not between the recipient and subrecipient.

OMB revised paragraphs (d) and (e) of section 200.465 to revert to the existing language that referenced FASB standards instead of GAAP standards. OMB also revised paragraph (e) to remove "workspace" before "asset." OMB considered the comment on Subscription Based Information Technology Arrangements to be out of the scope of this update.

Section 200.466—Scholarships, student aid costs, and tuition remission

OMB did not propose significant changes to this section. OMB received one comment requesting that OMB divide paragraph (a) into two paragraphs to address "tuition remission"

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

separately. The commenter also asked OMB to revise the title to include mention of tuition remission, which the commenter stated would better reflect the current policy. OMB also received multiple comments requesting clarification as to whether various restrictions that apply to IHE's should also apply to other comparable degree issuing organizations.

***OMB Response**:* In response to the comment on tuition remission, OMB restructured the first paragraph to break it in two. OMB also added "tuition remission" to the section header. OMB did not make revisions in response to the other comments received on this section. OMB finds the section presents policy on scholarships and student aid costs adequately and appropriately. While OMB is not proposing a change at this time to address the application of policy to other degree-issuing organizations, OMB appreciates the comments for future consideration.

Section 200.467—Selling and marketing costs

In the proposed guidance, OMB removed 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. OMB included revisions to this section as proposed in the final guidance.

Section 200.468—Specialized service facilities

OMB did not propose significant changes to this section. OMB received one comment requesting clarification that the costs of services include the acquisition cost of necessary equipment and also to add to the additional examples of the types of facilities. Another commenter also requested that OMB address other service facilities.

***OMB Response**:* The "acquisition cost of necessary equipment" is not in the same category as a "cost of service." Additionally, the types of facilities provided are merely

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

examples of facilities and intended to be illustrative. OMB did not find these suggestions warranted changes at this time and did not make additional revisions. OMB did not propose to expand the information in section 200.468 to address other types of service facilities and is not revising the guidance in response to this comment.

Section 200.470—Taxes (including Value Added Tax)

OMB did not propose significant changes to this section. OMB received one comment requesting that OMB clarify that these costs include payments made by tax exempt institutions to local governments to offset the loss of taxes and that are commensurate with the local government services received.

***OMB Response**:* OMB did not agree that a clarification was necessary and did not make a change to this section based on this comment.

Section 200.472—Termination and standard closeout costs

OMB proposed to revise the section on termination costs at section 200.472 to include closeout costs. Specifically, OMB proposed to include guidance for recipients and subrecipients to charge administrative costs specifically associated with the closeout of a Federal award.

OMB received many comments supporting the clarification that specific administrative closeout costs are allowable. OMB received feedback from the Federal financial assistance community that the exclusion of closeout costs in the Uniform Guidance has been problematic as recipients and subrecipients have been unable to charge actual costs associated with closeout actions, such as certain administrative or staff costs not covered through indirect cost recoveries. OMB received several comments requesting specific clarifications, as well as suggesting modification to existing policy. For example, OMB received one comment seeking clarification on the allowability of indirect costs. OMB received several comments suggesting that closeout

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

costs have a longer liquidation period than the 120 days provided by OMB guidance and that costs should therefore be covered beyond the period of the due date of the final report. Finally, OMB received one comment requesting that we specify that termination is "prior to its stated expiration date" and requesting that OMB qualify that closeout costs refer to "normal closeout costs." The commenter also requested that OMB add "data management and sharing" and "compliance" costs.

OMB Response: OMB revised paragraph (a)(4) of section 200.472 to restructure the paragraph in refence to rental costs. Specifically, the phrase "less the residual value of such leases" and the sentence referring to costs of alteration and restoration were moved for clarity.

OMB revised paragraph (b) of section 200.472 to include indirect costs in examples of allowable administrative close-out costs. This change was intended to clarify that indirect costs are often associated with the closeout activity. For example, they may include administrative staff expenses.

The list of closeout costs provided in paragraph (b) are only examples and not exhaustive of all types of closeout activities. OMB thus elected not to expand this paragraph further with terms such as "data management and sharing."

In response to the comments requesting a longer liquidation period, OMB disagrees that a longer liquidation period is necessary. OMB did not revise the guidance to accommodate comments on this topic in this section. In the final guidance, sections 200.328(d) and 200.344(b) continue to recognize a period of 120 days.

Finally, in response to the comment suggesting that OMB clarify that termination occurs before the stated expiration date, a termination date is always before the stated expiration date of the award. In response to the request to clarify that standard closeout costs are "normal closeout

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

costs," the title of the section itself refers to "standard closeout costs." OMB considers it critical that closeout costs under this section be specifically related to the closeout of the award—and not compliance or other activities, which are not "standard" or normal closeout costs. OMB finds that the text of the guidance is sufficiently clear on this point and does not make a change.

Section 200.475—Travel costs

OMB did not propose significant changes to this section. OMB received one comment that requested OMB incorporate government travel regulations into section 200.475.

OMB Response*:* OMB did not make a change in response to this comment. It is beyond the scope of the proposed changes to section 200.475. Recipients are ultimately responsible for adhering to the cost principles of this subpart, but not necessarily to the government travel regulations. OMB made certain clarifying edits to paragraph (c) of section 200.475.

Subpart F—Audit Requirements

General Comments on Subpart F

Specific proposed changes to subpart F are discussed section-by-section below; however, some commenters provided comments on the subpart generally. Several commenters asked OMB to revise this subpart to use the terms "recipient" and "subrecipient" in the same way that OMB had proposed revisions in other subparts. Other comments recommended expanding subpart F to explicitly apply to for-profit organizations.

OMB Response: OMB must ensure that its guidance throughout part 200 is consistent with authorizing statutes. The Single Audit Act, as amended, only applies to non-Federal entities as that term is defined in the Act and section 200.1 of OMB's guidance. OMB finds using the terms "recipient" and "subrecipient" throughout OMB's implementing guidance for the Single Audit Act in subpart F of part 200 would create unnecessary confusion on the applicability of the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Act. OMB does not have authority to expand the applicability of the statute. OMB appreciates the commenters' suggestions on developing separate audit requirements applicable to for-profit organizations and will consider these recommendations for future updates to OMB's guidance. This could potentially involve establishing a separate subpart with audit requirements applicable to for-profit organizations or a separate division of subpart F, which would not impact OMB's implementation of the Single Audit Act for non-Federal entities. In the final guidance, OMB continues to only apply subpart F to "non-Federal entities."

Section 200.501—Audit Requirements

In this section, OMB proposed to raise the audit threshold from $750,000 to $1,000,000. Every two years, the Director of OMB is authorized to adjust the dollar amount of this threshold consistent with the purposes of the Single Audit Act, provided the Director does not make such adjustments below $300,000. 31 U.S.C. 7502.

OMB received numerous comments supporting the increase in the threshold to $1,000,000. A few commenters also opposed the change. They stated that the increase posed a significant risk to the oversight of Federal awards that would outweigh any benefits. Other commenters stated that the increase would place a greater burden on pass-through entities to monitor subrecipients. Conversely, several comments suggested that OMB should increase the audit threshold even higher than $1,000,000.

A few commenters requested further clarification in paragraph (h)—explaining circumstances in which the auditee is responsible for ensuring compliance for procurement transactions. Commenters observed that OMB's use of passive voice in this provision caused confusion on which party OMB intended to be responsible for program compliance. One commenter stated that OMB should revise paragraph (g) of section 200.501 to clarify that

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal awards expended as a recipient or subrecipient may not be subject to subpart F if there is a statutory exemption. Multiple commenters stated that this section should be revised to state that payments received as a beneficiary are not subject to subpart F.

OMB Response: OMB appreciates all of the comments received on its proposed increase to the audit threshold from $750,000 to $1,000,000. As discussed above, numerous comments expressed strong support for the increase, but other commenters explained some concerns. In determining the appropriate increase, OMB evaluated the number of entities that would benefit from the increase in connection with the types of auditor opinions issued and the number of questioned costs. OMB disagrees with the comments suggesting that the increase in the threshold poses a significant risk to oversight. The increase in the threshold should not materially increase the burden related to monitoring subrecipients; the requirement to have an audit conducted is not a substitute for proper monitoring. Regardless of whether audit requirements apply, pass-through entities should monitor subrecipients consistent with requirements in part 200. The increased threshold represents the smallest percentage increase to the threshold to date. The increase also aligns closely with the Consumer Price Index since the last increase in 2014. OMB appreciates commenters' concerns but has decided to maintain the proposed increase to the audit threshold.

After updating the threshold in paragraph (a), OMB also revised paragraph (b) of subpart F to clarify that Single Audit requirements apply to a non-Federal entity "that expends $1,000,000 or more in Federal awards during the non-Federal entity's fiscal year."

OMB revised paragraph (g) of section 200.501 to clarify that Federal awards expended as a recipient or a subrecipient are subject to audit under subpart F unless a program is exempted by a Federal statute. OMB agrees with the request from commenters to provide this clarification in the guidance text.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In the final guidance, OMB revised paragraph (h), which explains circumstances in which the auditee is responsible for ensuring compliance for procurement transactions. OMB's proposed revisions to this paragraph prompted questions from commenters. In the final guidance, OMB explains that, for procurement transactions in which the contractor is made responsible for meeting program requirements, the auditee must ensure those requirements are met, including by clearly stating the contractor's responsibilities within the contract and reviewing the contractor's records to determine compliance. In other words, an auditee may not simply rely on procurement transactions to achieve program compliance—or outsource the function of complying with a Federal program requirement to a third-party contractor without monitoring the activities of the contractor to ensure compliance. The responsibility for program compliance continues to belong to the auditee. In the final guidance, OMB also included cross-references between sections 200.318(b) and 200.501(h), as requested by a commenter.

OMB received some questions on possible misalignment between the subject heading and first sentence of paragraph (i). Although the subject heading and subsequent text in the paragraph refer to for-profit subrecipients, the first sentence more broadly states that subpart F does not apply to for-profit organizations. OMB considered revising the sentence to only refer to for-profit subrecipients, but did not want to create confusion on whether the subpart applies to other for-profit organizations such as recipients. Thus, although the remainder of the paragraph discusses for-profit subrecipients, OMB retained the original statement that the subpart does not apply to for-profit organizations in general, which is also accurate.

OMB reviewed comments requesting clarification on whether or not subpart F applies to program beneficiaries. As explained above in this preamble in the context of definitions in section 200.1, OMB did not provide a government-wide definition of the term "beneficiary"

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

through this update. The meaning of the term beneficiary can vary widely between Federal agencies and even within agencies between assistance programs. Many Federal programs may have different definitions and requirements applicable to beneficiaries in their authorizing statutes or agency regulations and guidance. For these reasons, OMB does not provide government-wide guidance on the applicability of subpart F to beneficiaries, which is not a defined term in part 200. Individual Federal agencies may provide further guidance on this topic for their assistance programs provided that any such guidance is consistent with the statutory requirements in the Single Audit Act. Federal agencies should also include information in their compliance supplement drafts on whether or not payments received as a beneficiary are subject to audit requirements.

Section 200.502—Basis for determining Federal awards expended

In section 200.502, OMB proposed to clarify that, 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 in statute or Federal agency regulations. Multiple commenters stated that the proposed language could cause confusion. The comments suggested that some individuals may interpret the language to mean that there are always continuing compliance requirements. OMB also received a question on language in the preamble to the proposed guidance discussing proposed changes to the schedule of expenditures of Federal Awards immediately after discussion of proposed changes to section 200.502. OMB's final guidance on the schedule of expenditures of Federal Awards is discussed and clarified under section 200.510 below, not under section 200.502.

OMB Response: OMB revised paragraph (b) of section 200.502 to avoid potential confusion. OMB removed the proposed language stating that loans and loan guarantees retain

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

their Federal character through the end of the period of performance. While the statement is accurate, it is not essential to include within the guidance in this paragraph on calculating the value of Federal awards expended under loan programs. Inclusion of this statement in this paragraph of the guidance is also not essential in determining whether or not a loan or loan guarantee has continuing compliance requirements.

Section 200.504—Frequency of audits

OMB did not propose significant changes to this section. One commenter asked OMB to address situations that result in partial audit periods. For example, partial audit periods could result from a fiscal year change or mergers and acquisitions. Another commenter questioned whether the dates associated with biennial audits are still necessary.

OMB Response: OMB revised section 200.504 to clarify that annual audits are required unless biennial audits are permitted under paragraphs (a) or (b). OMB also clarified that biennial audits must cover both fiscal years within the biennial period. The ability to conduct biennial audits is recognized in certain circumstances under the Single Audit Act. Relevant provisions of the Single Audit Act as codified at 31 U.S.C. 7502 and OMB's implementing guidance in this section explain the circumstances in which biennial audits are permitted.

OMB did not find it necessary to specify how partial audit periods should be handled through this update. The circumstances of a merger or acquisition, or change in fiscal year, can present many variations, which OMB is not prepared to address at this time. Under section 200.513(a)(4)(x), it is the responsibility of the cognizant agency for audit to provide guidance on changes in the fiscal year. Under section 200.513(a)(4)(i), the cognizant agency for audit may also provide technical audit advice and liaison assistance on other variations, which should be addressed in a manner consistent with the framework provided by subpart F.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Section 200.505—Remedies for audit noncompliance

OMB did not propose significant changes to the content of this section, but proposed changing its heading from "Sanctions" to "Remedies for noncompliance." One commenter observed that, based on this proposed change, both sections 200.505 and 200.339 in the proposed guidance had the same heading. The commenter suggested changing the heading for this section to "remedies for not being audited."

OMB Response: In response to comments, OMB revised the heading of section 200.505 from "Remedies for noncompliance" to "Remedies for *audit* noncompliance" (emphasis added).

Section 200.507—Program-specific audits

OMB did not propose significant changes to this section. One commenter recommended several revisions to this section, such as changing the type of engagement for program-specific audits to a compliance examination engagement.

OMB Response: While OMB did not propose a change for public comment, OMB appreciates the comments received and may consider them for future updates. Some of the requests would require further analysis to determine whether they would be consistent with authorizing law and OMB policy. Other than minor grammatical fixes, OMB did not make a change at this time. OMB made minor clarifying edits to the header of paragraph (c)(1) to ensure proper alignment with the content of the paragraph. OMB also made other minor clarifying edits in this section, such as updating references to the submission and reporting package.

Section 200.508—Auditee responsibilities

OMB did not propose significant changes to this section. One commenter asked OMB to revise this section to add the auditee's responsibility to prepare the auditee sections of the data collection form and to make the submission to the Federal Audit Clearinghouse (FAC).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB Response. Section 200.508(a) states that an auditee is required to ensure the audit is properly submitted in accordance with section 200.512. In the final guidance, OMB included the minor changes to this section as proposed. OMB did not make any further edits to this section in the final guidance.

Section 200.509—Auditor selection

OMB did not propose significant changes to this section. One commenter stated that OMB should consider easing the restriction on selecting an auditor who prepares the indirect cost proposal or cost allocation plan. Another commenter suggested that auditees should be allowed to procure an auditor using their own procurement policy, instead of the existing requirements.

OMB Response: While OMB did not propose a change to the policy, OMB appreciates the comments on this section. OMB did not make a change to the threshold to restrict certain auditors from being selected to perform an audit. OMB finds the threshold is appropriate and a critical safeguard to ensure there are no conflicts of interest. OMB understands the commenter's concerns regarding the method of procurement of an auditor. However, even though the Federal Government does not directly procure the Single Audit, it is required by Federal law and paid for with Federal funds. OMB finds the existing requirements are appropriate.

Section 200.510—Financial Statements

In section 200.510, at paragraph (b), OMB proposed 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. Several commenters opposed this change. They indicated that it would be overly burdensome and that it added extraneous information, which is not necessary for the users of the Schedule of Federal Expenditures (SEFA).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB Response: OMB removed the proposed language in paragraph (b)(2) from the final guidance. OMB intends to look for alternative means of making the information available in a manner that would be less burdensome for auditees and auditors. OMB renumbered the subparagraphs in the final guidance appropriately.

Section 200.511—Audit findings follow-up

OMB did not propose significant changes to this section. Several commenters stated that OMB should revise the guidance to clarify that corrective action plans must be on auditee letterhead and that OMB require a specific timeframe for corrective action completion and verification.

OMB Response: The guidance does not require a corrective action plan on auditee letterhead. This confusion results from a frequently asked questions document, which OMB may address separately outside of this guidance-making process. OMB did not find it necessary to establish a specific timeframe for completing corrective action because the nature and degree of audit findings and the corrective action required can vary significantly. It is the responsibility of the auditee to promptly take corrective action. *See* 2 CFR 200.508(c) (as revised). The auditee is also responsible for establishing an anticipated completion date. *See* 2 CFR 200.511(c) (as revised). OMB did not make any changes based on these comments, but made minor clarifying edits to this section in the final guidance.

Section 200.512—Report Submission

OMB proposed some clarifying revisions to this section. Several commenters suggested OMB specify how the FAC should follow up with known auditees that have not submitted the required data collection form and reporting packages. One commenter stated that OMB should remove the requirement that auditees make copies available for public inspection. Next, another

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

commenter stated that a revision made to paragraph (a)(1) made it appear that the data collection form is a part of the audit itself. That same commenter stated that the required statements do not align with the required certifications in the FAC.

OMB Response: OMB revised paragraph (a) of section 200.512 to more accurately reflect the provisions of the Single Audit Act with respect to the report submission deadline. This paragraph now recognizes that a cognizant agency for audit or oversight agency for audit (in the absence of a cognizant agency for audit) may authorize extensions for Single Audit submissions when the nine-month timeframe would place an undue burden on the auditee. OMB also made a few clarifying and plain language revisions in paragraphs (a), (b), (e), and (g) of section 200.512 unrelated to authorizing extensions of the report submission deadline.

OMB did not add procedures on how the FAC follows up with known auditees. In response to another comment, the requirement for auditees to make copies of an audit available for public inspection is essential to Federal funding transparency. OMB understands the commenter's concerns about redundancy. However, the public may not be aware of the existence of the FAC and OMB finds it is still necessary for auditees to make copies available for public inspection. Lastly, OMB finds that the auditee and auditor certification statements are appropriately aligned to the guidance.

Section 200.513—Responsibilities

In section 200.513, OMB proposed to revise the responsibilities of Federal agencies. Specifically, OMB proposed to encourage Federal agencies to engage with external audit stakeholders and the Federal agency's Office of Inspector General, and the National Single Audit Coordinator (NSAC) prior to submitting compliance supplement drafts to OMB. In the same section OMB also proposed to clarify that a Federal agency's key management single audit

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

liaison must also coordinate with the agency's Office of Inspector General and the NSAC, when appropriate.

OMB received many comments supporting the proposed revisions to this section. A few commenters also recommended that the guidance not just recommend but affirmatively require Federal agencies to engage with external stakeholders. One commenter requested that OMB reinstate language providing that OMB would conduct a government-wide audit analysis every six years. Other commenters stated that the change from "higher-risk" to "high-risk" in paragraph (c)(6)(ii) changed the meaning of the responsibility. One commenter asked OMB to revise the guidance to change the meaning of cross-cutting audit findings from findings that affect all Federal awards to those that "may affect a large proportion of all Federal awards."

OMB Response: OMB revised paragraph (a)(4)(i) of section 200.513 to correct an unintended plain language revision. The word "liaison" was restored to the guidance text. Cognizant agencies for audit must provide technical advice and liaison assistance to auditees and auditors. Removing the word liaison was not intended to expand or otherwise alter the scope of cognizant agency responsibility.

In paragraph (a)(4)(iii) of section 200.513, OMB disagrees that the government-wide analysis requires a fixed interval. Instead, OMB finds that the government-wide analysis should be conducted on an as-warranted basis at intervals determined by OMB. OMB made clarifying edits to paragraph (a)(4)(viii) of section 200.513. OMB also provided an example of a cross-cutting audit finding.

OMB revised paragraph (c)(4) of section 200.513 to clarify that agencies "should" engage with external stakeholders, the Federal agency's Office of Inspector General (OIG), and the National Single Audit Coordinator (NSAC) prior to submitting compliance supplement drafts

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

to OMB. OMB's edits also clarify that coordination with NSAC is not included within coordination with the agency's OIG; they are distinct items in the list. OMB understands the commenters' desire to require Federal agencies to engage with external stakeholders when submitting compliance supplement drafts. However, this may not be appropriate or feasible in all circumstances. OMB replaced "are encouraged to engage" with "should engage," but generally maintained the proposed language on this topic. In the final guidance, OMB does not require engagement or specifically define what this engagement should involve.

OMB made a change at paragraph (c)(6)(ii). OMB agrees with the commenters that the proposed revision unintentionally changed the meaning of the guidance. OMB restored the reference to "higher risk" non-Federal entities.

OMB revised paragraph (c)(6)(vi) of section 200.513 to correct an unintended policy change made during OMB's plain language rewrite. The liaison is not responsible for managing a Federal agency's process for following up on cross-cutting audit findings. Rather, the liaison is responsible for ensuring the agency fulfills its responsibilities to coordinate a management decision for cross-cutting audit findings. In the final guidance, OMB also made other minor clarifying revisions in paragraphs (a) and (c) of this section.

OMB disagrees with commenters on changing the meaning of cross-cutting audit findings at this stage. This proposal would require further analysis to determine if a change could have unintended consequences. For example, OMB would need to evaluate further whether any such change could impact OMB's implementation of the Single Audit Act under this subpart.

Section 200.514—Standards and scope of audit

In section 200.514, on standards and scope of audit, OMB proposed to revise compliance requirements to specify that compliance testing must include a test of transactions and other

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

auditing procedures necessary to provide the auditor with sufficient evidence to support an opinion on compliance.

One commenter stated that paragraph (b) should be revised because the Uniform Guidance does not set a basis of accounting for the financial statements prepared by the auditee. Several commenters stated that paragraph (d)(4) should be revised to remove the requirement that compliance testing include a test of transactions, as this may not be the most appropriate or effective methodology for every situation and compliance requirement. Another comment recommended that "sufficient audit evidence" be revised to "sufficient appropriate audit evidence" to better align with terminology used by the audit community.

OMB Response: OMB agrees with a comment on paragraph (b) of section 200.514 maintaining that part 200 does not set a basis of accounting for the financial statements prepared by the auditee. To recognize this, OMB added a parenthetical to paragraph (b) stating: "or a special purpose framework such as cash, modified cash, or regulatory as required by State law."

OMB also agrees with commenters that testing of transactions may not always be the most appropriate method for every situation. Thus, OMB revised paragraph (d)(4) to state that compliance testing must include a test of transactions "or" other necessary auditing procedures. Lastly, OMB revised paragraph (d)(4) to reference "sufficient appropriate audit evidence" as requested by a commenter.

Section 200.516—Audit findings

In section 200.516, based on feedback OMB received from the Federal financial assistance community, OMB proposed to revise the definitions of known questioned costs and likely questioned costs and provide further clarity on how they are identified in an audit report. Several commenters submitted comments regarding these proposed definitions.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB Response: OMB addressed comments regarding definitions under subpart A of this preamble. OMB made only minor clarifying edits in the final guidance in section 200.516.

§ 200.517 Audit documentation

Section 200.518—Major program determination

OMB did not propose significant changes to this section. Several commenters questioned whether OMB should revise the table for Type A thresholds in light of the increase to the Single Audit threshold.

OMB Response: OMB revised paragraph (b)(1) of section 200.518 to adjust the thresholds for determining Type A programs. OMB increased the threshold to $1,000,000 for non-Federal entities with total Federal awards expended that are equal to or exceed $1,000,000 but less than $34 million. OMB also made minor clarifications to paragraphs (b)(3) and (c).

200.519—Criteria for Federal program risk

Section 200.520—Criteria for a low-risk auditee

OMB did not propose significant changes to this section. OMB received several comments suggesting that plain language revisions to paragraph (b) of section 200.520 changed the meaning of the policy.

OMB Response: OMB agrees with some of the comments on paragraph (b) and reverted the language to be more consistent with the policy in the prior version of the guidance. OMB also clarified that the financial statements should be prepared in accordance with GAAP "or a special purpose framework such as cash, modified cash, or regulatory as required by State law." This addition was made to ensure consistency throughout the subpart including with sections 200.514 and 200.515.

Section 200.521—Management decisions

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB did not propose significant changes to this section. A few commenters asked OMB to revise the guidance to clarify that a corrective action plan will be considered accepted without exception if an agency does not issue a management decision within six months. Another commenter asked OMB to correct a cross-reference in this section from 200.332(d) to 200.332(e). This commenter also asked OMB to add an exception to paragraph 200.521(c) on the pass-through entity's responsibility for issuing a management decision in this section. The commenter requested an exception for findings that are of a cross-cutting or systemic nature such that they will be resolved by the cognizant agency for audit.

OMB Response: While OMB did not propose a change for public comment, OMB considered and appreciates the comments expressing concerns about Federal agencies issuing timely management decisions. OMB may consider these comments for future updates. In response to the other commenter, OMB corrected the cross-reference in this section to reference the correct provision at section 200.332(e). OMB may also consider the suggestion to add an exception for findings that are of a cross-cutting or systemic nature for future updates, but did not include that language in the final guidance. OMB recognizes the exception available under the prior version of the guidance at section 200.332(e)(4). See 85 FR 49506, 49519 (Nov. 12, 2020). OMB did not propose to modify that exception, which remains available in the final version of the guidance. The relevant paragraph of section 200.332 is now referenced in section 200.521. OMB finds that it would be useful to obtain further information on how the existing exception works in certain circumstances before making additional changes to the guidance on this topic outside of section 200.332.

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

General Comments on Appendix I

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB proposed to revise this appendix in its entirety in support of the goal of simplifying and clarifying the grant solicitation and application process, which is a key objective under Executive Order 14058 on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government. The proposed changes to the NOFO in Appendix I were intended to improve the quality and accessibility of funding opportunities. Specifically, the proposed revisions to Appendix I intend to: (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.

A significant number of commenters supported the proposed changes. Other commenters recommended that OMB maintain the existing language in Appendix I to Part 200. Several other commenters requested that OMB revise paragraph (b)(6)(ii)(A)(*4*), which they stated was in conflict with section 200.306. Several commenters also requested that certain sections be renamed or provide further examples for illustrative purposes.

OMB Response: OMB appreciates the comments and support for the proposed changes to Appendix I. OMB disagrees with the comments recommending OMB maintain the existing text of the appendix. OMB finds the proposed revisions will simplify NOFOs in alignment with OMB's stated intent for the proposed revisions.

OMB revised paragraph (b)(3)(ii) of Appendix I to add a new paragraph (C). The new paragraph states that the program description section may also include, for infrastructure projects

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

subject to Build America, Buy America requirements, "information on key items anticipated to be purchased under the program, and any related domestic sourcing concerns based on market research."

Based on the final version of section 200.306, OMB disagrees with comments suggesting that paragraph (b)(6)(ii)(A)(*4*) conflicts with section 200.306. Thus, OMB maintains this paragraph in Appendix I permitting a Federal agency to consider proposed cost sharing in the review process even if it is not an eligibility criterion. However, the Federal agency may only include such language in a NOFO if consistent with the current guidance provided by OMB in section 200.306.

OMB appreciates the comments suggesting ideas for renaming paragraphs in the appendix and providing additional examples. The appendix is only a template that outlines basic requirements for uniformity. Federal agencies retain discretion in certain areas to include additional information as necessary for a particular Federal financial assistance program. In the final guidance, OMB also made other minor clarifying edits in this appendix.

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

OMB proposed to update this appendix to adjust the exclusion threshold of subawards from $25,000 to $50,000 for modified total direct costs. OMB did not receive any substantive comments regarding the proposed change. OMB did not make significant changes to Appendix III to Part 200 relative to the proposed guidance.

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB proposed to update this appendix to adjust the exclusion threshold of subawards from $25,000 to $50,000 for modified total direct costs. OMB also proposed to clarify that under the direct cost allocation method, joint costs include costs for information technology. One commenter stated that there should be no exclusion for subawards unless it distorts the modified total direct cost base. The commenter also stated that recipients should be permitted to take a *de minimis* rate of 10 percent on all subawards to reduce administrative costs and to appropriately reimburse prime recipients for the appropriate costs required to manage and monitor subawards.

OMB Response: OMB disagrees with the commenter and finds the proposed increase is appropriate. OMB did not make significant changes to Appendix IV to Part 200 relative to the proposed guidance. In the final guidance, OMB did clarify that the Federal agency's review should be limited to ensuring the proposal is consistent with the principles of this part.

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

OMB proposed to update this appendix to adjust the exclusion threshold of subawards from $25,000 to $50,000 under modified total direct costs. OMB also proposed to clarify the meaning of "department or agency" for State and local governments.

OMB also proposed a revision to underscore that Federal agencies must accept indirect cost proposals developed by State or local departments or agencies receiving less than $35 million in their fiscal year. The proposed revision to this appendix also provides that Federal agencies cannot compel these State or local governmental departments or agencies to accept the *de minimis* rate, or any other rate established by the Federal agency, in place of their indirect cost proposals. In the preamble to the proposed guidance, OMB emphasized, however, that any such

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

indirect cost proposals must be developed in accordance with the requirements of part 200 and maintained for audit—along with related supporting documentation.

One commenter asked OMB to revise and clarify the guidance to permit an awarding Federal agency to request that a governmental department or agency that receives $35 million or less in direct Federal funding during its fiscal year submit its indirect cost proposal for review.

OMB Response: OMB agrees with the comment described above. OMB revised paragraph (D)(1)(c) of Appendix VII to clarify that an awarding Federal agency may request that a governmental department or agency that receives $35 million or less in direct Federal funding during its fiscal year submit its indirect cost proposal for review. OMB also added language explaining that the Federal agency's review should be limited to ensuring the proposal is consistent with the principles of part 200.

Appendix X to Part 200—Data Collection Form

OMB proposed to revise this appendix to clarify where audit submission instructions are located. OMB did not receive any substantive comments regarding the proposed change. OMB made minor changes to Appendix X to revise the heading and incorporate minor clarifications.

Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

OMB proposed to revise this award term to be consistent with the statutory obligation and to reflect the appropriate location (responsibility and qualification records) in *SAM.gov* for reporting integrity and performance matters. OMB proposed to renumber the award term to align to the requirements of the standard organization of the CFR. OMB did not receive any substantive comments regarding the proposed change. OMB did not make significant changes to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Appendix XII to Part 200 relative to the proposed guidance. OMB made changes in the final version of this appendix as proposed.

General Comments on 2 CFR

Several commenters requested that OMB simplify the process for organizations and service providers to apply for U.S. government funding. Other commenters asked OMB to center funding around what communities say they need and reduce recipient burden so that recipients of government grants can focus more on driving long-term impact. Commenters also asked OMB to make it easier for Federal officials to issue awards that deliver results, rather than focus on specific activities.

Some comments expressed appreciation for OMB's proposed use of terms such as "Federal agency," "pass-through entity," "recipient," and "subrecipient." Other commenters noted their appreciation of OMB's more specific use of connectors such as "and" and "or" to provide specificity on application of the policies in the guidance to Federal agencies, pass-through entities, applicants, recipients, and subrecipients. Conversely, some commenters opposed these changes and preferred the use of "non-Federal entity" throughout the prior version of the guidance.

Other comments discussed the need for more flexibility on indirect cost rates and for specific entities, such as Indian Tribes. Other commenters requested more training, webinars, FAQs, checklists, templates, and technical assistance. Other comments discussed the need for improved metrics, more access to data, rural impact analysis, supporting capacity building, and increased collaboration with organizations and among Federal agencies.

Lastly, OMB also received many comments offering general support for the proposed updates to 2 CFR without providing specific details on what the commenter supported. OMB

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

also received some comments generally opposing the proposed changes without specifically indicating what the commenter opposed.

OMB Response: OMB appreciates the general feedback submitted on the revisions to 2 CFR. OMB will strive to continue to support the proper implementation and oversight of Federal financial assistance, including potentially through additional training, guidance, and supporting information. However, it is also incumbent on Federal agencies to address specific processes, data sharing, and coordination for their respective Federal financial assistance programs, as applicable. Federal agencies provide regulations, processes, and guidance documents, which are specific to their agencies and programs. While OMB strives to improve consistency across Federal programs, there are inherent limitations to the extent to which all processes can be uniform—such as variations in authorizing statutes.

Comments on 2 CFR Related to Process and Implementation

OMB received several comments on agency processes for implementing the final guidance. For example, some commenters questioned when the guidance would be applied to specific Federal agency programs. Other commenters had specific recommendations for the effective date of the final guidance and processes by which OMB and Federal agencies should work to implement it. OMB also received several questions on whether recipients may independently adopt or apply certain provisions of the guidance earlier than the guidance's effective date or prior to implementation by Federal agencies. A few commenters also requested either an extended comment period on OMB's proposed revisions or an opportunity to comment on OMB's final revisions.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Other commenters suggested that indirect cost rates could be affected by the increases in thresholds in the final guidance. Some of these commenters requested additional guidance on options for revising or renegotiating indirect cost rates to align with the final guidance.

Another commenter argued that OMB should have characterized the revision of the 2 CFR guidance as a significant regulatory action under Executive Order 12866 and accordingly undertaken a regulatory impact analysis. The commenter acknowledged that the guidance would be implemented by Federal agencies, but noted that implementation would occur government-wide.

OMB Response: OMB appreciates the comments suggesting specific processes for implementation and information provided by commenters on the potential effects of implementation processes. As discussed above in the preamble on sections of the OMB guidance related to its implementation, OMB did not make substantial changes to the long-standing structure of agency implementation of OMB's guidance in 2 CFR. Federal agencies are responsible for implementing the guidance for their Federal awards. *See, e.g.*, 2 CFR 1.105(c), 1.110, 1.220, 200.106. Concurrently with the final guidance, OMB is issuing a memorandum to agencies with implementation guidance. OMB is not providing any additional guidance in relation to indirect cost rates beyond that already provided in the preamble above or the text of the final guidance. OMB also did not provide an additional or secondary comment period. OMB provided a 60-day comment period on the proposed guidance even though it was not required to do so by the Administrative Procedure Act, and commenters did not adequately explain why that was insufficient. And although OMB is not inviting comments on the final guidance at this time, OMB will consult with stakeholders as appropriate in considering any further revisions to it. Finally, because Federal agencies are responsible for implementing the guidance, the guidance

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

itself is not significant regulatory action within the meaning of E.O. 12866 section 3(f). E.O. 12866's requirements regarding a regulatory impact analysis do not apply.

Commenter Suggestions for Future Updates

In the preamble to the proposed guidance, OMB shared that it may consider additional revisions for potential future updates. Specifically, OMB sought additional comments from the public on potential future revisions to the guidance currently under consideration. The topics OMB mentioned in this context included:

- Establishing specific audit requirements for for-profit entities, which are not subject to the requirements of Subpart F;
- Incorporating the requirements of National Security Presidential Management (NSPM)-33 on research security requirements;
- Providing additional guidance in 2 CFR concerning the relationship of specific aspects of the guidance to loans and loan guarantees;
- Establishing mechanisms to automatically adjust certain thresholds due to inflation or other triggering events (where permitted by law);
- Removing additional prior approval requirements;
- Challenges related to negotiating indirect costs, working with cognizant agencies, or any other topics related to indirect costs that could be addressed in future updates; and
- Expanding the guidance in Subpart F to include more specific requirements on the scope of an audit ("proper perspective") so that agencies have additional contextual information to guide them in resolving audit findings.

OMB received approximately 60 comments reacting to these general proposals under

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

consideration. Many commenters stated that additional policy changes were needed to improve the process of negotiating indirect cost rates. Some commenters requested more information on the actual process for indirect cost rate negotiations, while other commenters recommended that OMB consider changes to improve the process and timeliness associated with negotiating rates. Specifically, one commenter shared that indirect cost rate delays negatively impact organizations. The commenter also suggested that recipients might be able to pay a fee to ensure that agencies have the appropriate resources for the timely negotiation of rates. A few comments spoke to specific issues, such as eliminating the 26 percent cap on rates for IHEs.

Difficulties with obtaining a UEI and registering in *SAM.gov* received considerable feedback as well. Several commenters expressed support for providing recipients with additional time to obtain a UEI and complete *SAM.gov* registration if exigent circumstances persist beyond 30 days. Other comments suggested allowing additional exemptions for certain applicants including foreign organizations, in particular. Other comments recommended allowing certain thresholds to be increased automatically to account for inflation.

OMB received several comments concerning audits. For example, several commenters suggested clarifying that the auditor "may" report likely questioned costs to help provide proper perspective for known questioned costs, and several commenters suggested clarifying whether the auditor "is expected" to do so. OMB also received several comments requesting that the guidance be expanded in sections that apply to IHEs to also apply to nonprofit degree-granting research institutions. Some comments also suggested OMB provide additional guidance on the treatment of loan and loan guarantees in a single audit; and defining "continuing compliance requirements."

OMB also received many additional comments on various topics such as pre-award

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

certification for Fixed Amount Awards. Some comments indicated that pre-award certifications are already completed as part of the UEI registration process. Other commenters objected to the increased burden that pre-award certification for Fixed Amount Awards would place on recipients. Several comments underscored the importance of increasing thresholds and recommended continued attention to this topic by OMB in the future. Other commenters requested specific changes to Appendix II and III, including, for example, listing specifically which contract provisions should be included in contracts under Federal financial assistance. Some commenters requested that OMB remove additional prior approval requirements; continue to reduce administrative burden; and define more terms such as "base period" and "infrastructure costs."

OMB Response: OMB greatly appreciates the many suggestions for potential future revisions to 2 CFR. OMB will explore these comments further in the context of future updates. There are certain legal limitations on threshold increases. Some thresholds are expressly provided in statutory law. OMB will also consider additional changes in response to the feedback on audits, including in response to comments on "proper perspective" and potential audit or compliance requirements applicable to for-profit organizations.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)

Executive Orders (EOs) 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The OMB Guidance for Federal

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Financial Assistance published in subtitle A of 2 CFR is guidance to Federal agencies and not regulation. 2 CFR 1.100(b). OMB thus determined that the revision of 2 CFR is not a significant regulatory action under E.O. 12866, as amended.

Regulatory Flexibility Act

This guidance is exempt from the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), because it is guidance to Federal agencies and not regulation. Moreover, even if this guidance were otherwise subject to 5 U.S.C. 553, it would be exempt from the notice and comment requirement as a matter related to grants. *See* 5 U.S.C. 553(a)(2). OMB nonetheless provided the following information for the public in the proposed guidance, which it restates here. For a rule subject to the notice-and-comment provisions of the APA, the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.,* requires that an agency provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Based on the nature of the revisions in this document, OMB does not expect this guidance to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. There are some revisions that may impose a non-significant burden; however, there are more revisions that reduce burden to small entities. When reviewing all revisions, the burden that will be reduced for recipients is much greater than the burden imposed.

Unfunded Mandates Reform Act of 1995

The guidance will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48). The revisions to the guidance will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $168 million or more in any one year (2 U.S.C. 1532).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Executive Order 13132 (Federalism Assessment)

This guidance has been analyzed in accordance with the principles and criteria contained in E.O. 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999). OMB has determined that this guidance will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The guidance in 2 CFR is inherently national in scope and significance. Regardless, in accordance with section 4(d) of E.O. 13132, OMB consulted with appropriate State and local officials that may be affected by Federal agencies' implementation of OMB's final guidance by means of posting the RFI prior to proposing revisions and requesting comments on proposed changes. OMB weighed carefully the interests of those who submitted comments in response to the RFI and proposed guidance in finalizing revisions to the guidance, which balances the State interests with the need to provide Federal agencies with consistent, uniform, efficient, and transparent guidance, which is consistent with authorizing law.

Paperwork Reduction Act

This guidance does not contain a new requirement for information collection. Rather, it streamlines requirements in specific sections. Thus, the Paperwork Reduction Act does not apply.

Executive Order 13175 (Tribal Consultation)

OMB has analyzed this guidance in accordance with the principles and criteria contained in E.O. 13175, "Consultation and Coordination with Indian Tribal Governments" 65 FR 67249 (Nov. 9, 2000). On March 7, 2023, OMB held a two-hour Tribal consultation to solicit feedback from Tribal representatives. OMB provides greater flexibility to Tribal governments in the final guidance centered on procurement standards and disposition of equipment. OMB also clarifies the definition of Indian Tribes.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

List of Subjects

2 CFR Part 1

Administration of Federal financial assistance; Administrative practice and procedure; Federal financial assistance programs

2 CFR Part 25

Administrative practice and procedure; Grant programs; Grants administration; Loan programs

2 CFR Part 170

Colleges and universities; Grant programs; Hospitals; International organizations; Loan programs; Reporting and recordkeeping requirements

2 CFR Part 175

Administrative practice and procedures; Grant programs; Indians-tribal government; Nonprofit organizations; State and local governments

2 CFR Part 180

Administrative practice and procedure; Grant programs; Loan programs; Reporting and recordkeeping requirements

2 CFR Part 182

Administrative practice and procedure; Drug abuse; Grant programs; Reporting and recordkeeping requirements

2 CFR Part 183

Foreign aid; Grants administration; Grant programs; International organizations; Reporting and recordkeeping requirements

2 CFR Part 184

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Administration of Federal financial assistance; Administrative practice and procedure; Federal financial assistance programs

2 CFR Part 200

Administration of Federal financial assistance; Administrative practice and procedure; Federal financial assistance programs

For the reasons stated in the preamble, the Office of Management and Budget amends title 2, subtitle A, chapters I and II of the Code of Federal Regulations as follows:

1. Revise the heading of title 2 to read as follows:

TITLE 2—FEDERAL FINANCIAL ASSISTANCE

2. Revise the heading of subtitle A of title 2 to read as follows:

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR FEDERAL FINANCIAL ASSISTANCE

3. Revise part 1, consisting of §§ 1.100 through 1.305, to read as follows:

PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A

Sec.

Subpart A—Introduction to Title 2 of the CFR
1.100 Content of this title.
1.105 Organization and subtitle content.
1.110 Issuing authorities.
Subpart B—Introduction to Subtitle A
1.200 Purpose of chapters I and II.
1.205 Applicability to Federal financial assistance.
1.210 Applicability to Federal agencies and others.
1.215 Relationship to previous issuances.
1.220 Federal agency implementation of this subtitle.
1.230 Maintenance of this subtitle.
1.231 Severability.
Subpart C—Responsibilities of OMB and Federal Agencies
1.300 OMB responsibilities.
1.305 Federal agency responsibilities.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 31 U.S.C. 6307; 41 U.S.C. 1121; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737.

Subpart A—Introduction to Title 2 of the CFR

§ 1.100 Content of this title.

This title contains:

(a) Office of Management and Budget (OMB) guidance to Federal agencies on government-wide policies for the award and administration of Federal financial assistance; and

(b) Federal agency regulations implementing that OMB guidance.

§ 1.105 Organization and subtitle content.

(a) This title is organized into two subtitles.

(b) The OMB guidance described in § 1.100(a) is published in subtitle A. Publication of the OMB guidance in the CFR does not change its nature—it is guidance, not regulation.

(c) Each Federal agency that awards Federal financial assistance has a chapter in subtitle B in which it issues those regulations. The Federal agency regulations in subtitle B differ in nature from the OMB guidance in subtitle A because the OMB guidance is not regulatory. Federal agency regulations in subtitle B may give regulatory effect to the OMB guidance, to the extent that the agency regulations require compliance with all or portions of the OMB guidance. *See also* § 1.220.

§ 1.110 Issuing authorities.

OMB issues this subtitle. Each Federal agency that has a chapter in subtitle B of this title issues that chapter.

Subpart B—Introduction to Subtitle A

§ 1.200 Purpose of chapters I and II.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Chapters I and II of subtitle A provide OMB guidance to Federal agencies that helps ensure consistent and uniform government-wide policies and procedures for the management of the agencies' Federal financial assistance.

§ 1.205 Applicability to Federal financial assistance.

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another. All portions of the guidance apply to grants and cooperative agreements, and some portions also apply to other types of Federal financial assistance.

§ 1.210 Applicability to Federal agencies and others.

(a) This subtitle contains guidance that directly applies only to Federal agencies.

(b) The guidance in this subtitle may affect other entities through each Federal agency's implementation of the guidance, portions of which may apply to:

(1) The agency's awarding or administering officials;

(2) Recipients and subrecipients that receive or apply for the agency's Federal financial assistance or receive subawards under grants or cooperative agreements; or

(3) Any other entities involved in agency transactions subject to the guidance in this chapter.

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR.

§ 1.220 Federal agency implementation of this subtitle.

A Federal agency that awards Federal financial assistance subject to the OMB guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and in

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

guidance documents, policy documents, and procedural issuances, such as internal instructions to the agency's awarding and administering officials. An applicant, recipient, or subrecipient would see the effect of that implementation in the organization and content of the agency's announcements of funding opportunities and in its award terms and conditions.

§ 1.230 Maintenance of this subtitle.

OMB issues guidance in this subtitle after publication in the Federal Register. Any portion of the guidance that has a potential impact on the public is published with an opportunity for public comment.

§ 1.231 Severability.

The provisions of this subtitle are separate and severable from one another. If any provision of this subtitle is held invalid or unenforceable as applied to a particular person or circumstance, the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of this subtitle, which should remain in effect.

Subpart C—Responsibilities of OMB and Federal Agencies

§ 1.300 OMB responsibilities.

OMB is responsible for:

(a) Issuing and maintaining the guidance in this subtitle, as described in § 1.230;

(b) Interpreting the policy requirements in this subtitle;

(c) Reviewing Federal agency regulations implementing the requirements of this subtitle, as required by Executive Order 12866;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) Conducting broad oversight of government-wide compliance with the guidance in this subtitle; and

(e) Performing other OMB functions specified in this subtitle.

§ 1.305 Federal agency responsibilities.

The head of each Federal agency that awards and administers Federal financial assistance subject to the guidance in this subtitle is responsible for:

(a) Implementing the guidance in this subtitle;

(b) Ensuring that the Federal agency complies with their implementation of the guidance;

(c) Coordinating with the Council on Federal Financial Assistance, the Grants Quality Service Management Office, and other governance committees as appropriate; and

(d) Performing other functions specified in this subtitle.

4. Revise the heading of chapter I of subtitle A of title 2 to read as follows:

CHAPTER I—OFFICE OF MANAGEMENT AND BUDGET GOVERNMENT-WIDE GUIDANCE FOR FEDERAL FINANCIAL ASSISTANCE

5. Revise part 25, consisting of §25.100 through appendix A to part 25, to read as follows:

PART 25—UNIQUE ENTITY IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

Sec.

Subpart A—General
25.100 Purpose of this part.
25.105 Applicability.
25.110 Exceptions to this part.
Subpart B—Policy
25.200 Requirements for notice of funding opportunities, regulations, and application instructions.
25.205 Effect of noncompliance with a requirement to obtain a UEI or register in SAM.gov.
25.210 Authority to modify agency application forms or formats.
25.215 Requirements for agency information systems.
25.220 Use of award term.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Subpart C—Recipient Requirements of Subrecipients
25.300 Requirement for recipients to ensure subrecipients have a unique entity identifier.
Subpart D—Definitions.
25.400 Definitions
Appendix A to Part 25
Award Term

Authority: 31 U.S.C. 503; 31 U.S.C. 6101 note; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 109-282; Pub. L. 110-252, Pub. L. 113-101, Pub. L. 117-40.

Subpart A—General

§ 25.100 Purpose of this part.

This part provides guidance to Federal agencies that:

(a) The unique entity identifier (UEI) is the universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients (first-tier subrecipients), and;

(b) The System for Award Management (SAM.gov) is the repository for standard information about applicants and recipients.

§ 25.105 Applicability.

(a) This part applies to a Federal agency's Federal financial assistance as defined in § 25.400. This part applies to all applicants for and recipients of Federal financial assistance unless exempted by Federal statute or §25.110.

(b) Subrecipients are required to obtain a UEI in accordance with subpart C. This part does not apply to subrecipients of subrecipients (second-tier subrecipients) or contractors under Federal awards.

(c) This part does not apply to an individual who applies for or receives Federal financial assistance as a natural person (unrelated to any business or nonprofit organization an individual owns or operates).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) Because this part applies to loan guarantees and other guaranteed programs, recipients of the guarantee from the Federal agency (for example, lenders of guaranteed loans) are required to complete entity validations and acquire a UEI. Additionally, at the Federal agency's discretion, non-individual beneficiary borrowers (for example, small businesses or corporations) may be required by the Federal agency to obtain a UEI or register in SAM.gov.

§ 25.110 Exceptions to this part.

(a) *General exceptions.* (1) Under a condition identified in paragraph (a)(2) of this section, a Federal agency may exempt an applicant or recipient of Federal financial assistance from the requirement to obtain a UEI, register in SAM.gov, or both.

(i) If a Federal agency grants an exception under paragraph (a)(2) of this section, the Federal agency must use a generic entity identifier in the data it reports to *USAspending.gov* if reporting for a prime award of Federal financial assistance to the recipient is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109-282, as amended, hereafter cited as "Transparency Act"). Granting an exception under paragraph (a)(2) of this section does not impact a Federal agency's responsibility for reporting under the Transparency Act, except that it may use a generic entity identifier in the circumstances described.

(ii) Federal agencies should use generic entity identifiers rarely as it prevents recipients from fulfilling reporting requirements such as subaward or executive compensation reporting required by the Transparency Act.

(2) A Federal agency may exempt an applicant, recipient, or subrecipient when:

(i) The Federal agency determines that it must protect information about the entity from disclosure in the national security or foreign policy interests of the United States or to avoid jeopardizing the personal safety of the entity's staff, partners, beneficiaries, and participants;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) (A) All of the following conditions are met:

(*1*) the entity is a foreign organization or foreign public entity;

(*2*) the Federal award or subaward will be performed outside the United States;

(*3*) the Federal award or subaward will be less than $25,000; and

(*4*) the Federal agency deems it to be impractical for the entity to comply with the requirements of this part.

(B) The Federal agency must determine this exemption on a case-by-case basis while utilizing a risk-based approach;

(iii) For applicants or recipients, the Federal agency may exempt foreign organizations or foreign public entities from completing full registration in SAM.gov for a Federal award less than $500,000. Foreign organizations or foreign public entities exempted from registering in SAM.gov under this provision must still obtain a UEI. The Federal agency must determine this exemption on a case-by-case basis while utilizing a risk-based approach; or

(iv) For applicants, the Federal agency determines that there are exigent circumstances that prohibit the applicant from receiving a UEI and registering in SAM.gov before receiving a Federal award. In these instances, Federal agencies must require the recipient to obtain a UEI and complete registration in SAM.gov within 30 days of the Federal award date.

(b) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards, applicants, or recipients subject to the requirements of this part when exceptions are not prohibited by statute.

Subpart B—Policy

§ 25.200 Requirements for notice of funding opportunities, regulations, and application instructions.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) A Federal agency that issues Federal financial assistance (see § 25.400) must include the requirements of paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants that is issued on or after the effective date of this guidance. A notice of funding opportunity is any paper or electronic issuance that a Federal agency uses to announce a funding opportunity, whether it is called a "program announcement," "notice of funding availability," "broad agency announcement," "research announcement," "solicitation," or any other term.

(b) The notice of funding opportunity, regulation, or other issuance must require each applicant that does not have an exemption under § 25.110 to:

(1) Be registered in SAM.gov before submitting an application;

(2) Maintain a current and active registration in SAM.gov at all times during which it has an active Federal award as a recipient or an application under consideration by a Federal agency. The applicant or recipient must review and update its information in SAM.gov annually from the date of initial registration or subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the applicant's or recipient's immediate and highest-level owner and subsidiaries, as well as providing information on all predecessors that have received a Federal award or contract within the last three years; and

(3) Include its UEI in each application it submits to the Federal agency.

(c) For the purposes of this policy, the applicant must meet the Federal agency's eligibility criteria and have the legal authority to apply for and receive the Federal award. For example, if a consortium applies for a Federal award to be made to the consortium as the recipient, the consortium must have a UEI. If a consortium is eligible to receive funding under a

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal agency program, but the agency's policy is to make the Federal award to a lead entity for the consortium, the UEI of the lead applicant must be used.

§ 25.205 Effect of noncompliance with a requirement to obtain a UEI or register in SAM.gov.

(a) Unless an entity is exempt under § 25.110, a Federal agency may not issue a Federal award or amend an existing Federal award to provide additional Federal funds if the entity is not in compliance with the requirements of this part. This does not apply to amendments to terminate or close out a Federal award.

(b) At the time a Federal agency is ready to make a Federal award, if the intended recipient has not complied with the requirements to obtain a UEI and maintain an active registration in SAM.gov with current information, the Federal agency may make a Federal award to another applicant.

§ 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, a Federal agency may add a UEI field to information collections previously approved by OMB, with no further approval required.

§ 25.215 Requirements for agency information systems.

Each Federal agency that awards Federal financial assistance (see § 25.400) must ensure that its information systems are able to both accept and transmit the UEI as the universal identifier for Federal financial assistance applicants and recipients.

§ 25.220 Use of award term.

(a) A Federal agency must include the award term in Appendix A in all Federal financial assistance agreements (see § 25.400) to accomplish the purpose of § 25.100.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

Subpart C—Recipient Requirements of Subrecipients

§ 25.300 Requirement for recipients to ensure subrecipients have a unique entity identifier.

(a) A recipient may not make a subaward to a subrecipient that has not obtained a UEI and provided it to the recipient. Subrecipients are not required to complete full registration in SAM.gov to obtain a UEI.

(b) A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient obtains and provides a UEI to the recipient.

Subpart D—Definitions

§ 25.400 Definitions.

Terms not defined in this part have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Applicant means any entity that applies for a Federal award directly to a Federal agency.

Entity includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(vii) Any other legal business entity;

(viii) Any other grantee or contractor that is not excluded by paragraph (2);

(ix) Any State or locality; and

(x) any subcontractor or subgrantee that is not excluded by paragraph (2);

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

Federal Award means an award of Federal financial assistance that an entity receives from a Federal agency.

Federal financial assistance:

(1) Means assistance that entities receive or administer in the form of a:

(i) Grant;

(ii) Cooperative agreement (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a);

(iii) Loan;

(iv) Loan guarantee;

(v) Subsidy;

(vi) Insurance;

(vii) Food commodity;

(viii) Direct appropriation;

(ix) Assessed or voluntary contribution; or

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(x) Any other financial assistance transaction that authorizes the entity's expenditure of Federal funds.

(2) For the purposes of this part, the term "Federal financial assistance" does not include:

(i) Technical assistance that provides services in lieu of money; and

(ii) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant.

Recipient means an entity that receives or administers a Federal Award directly from a Federal agency.

System for Award Management (SAM.gov) means the Federal repository into which an entity must provide the information required for the conduct of business as a recipient.

Unique entity identifier means the universal identifier assigned by SAM.gov to uniquely identify an entity.

Appendix A to Part 25—Award Term

I. System for Award Management (SAM.gov) and Universal Identifier Requirements

(a) *Requirement for System for Award Management*.

(1) Unless exempt from this requirement under 2 CFR 25.110, the recipient must maintain a current and active registration in SAM.gov. The recipient's registration must always be current and active until the recipient submits all final reports required under this Federal award or receives the final payment, whichever is later. The recipient must review and update its information in SAM.gov at least annually from the date of its initial registration or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the recipient's immediate and highest-level owner and subsidiaries and providing

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

information about the recipient's predecessors that have received a Federal award or contract within the last three years.

(b) *Requirement for Unique Entity Identifier (UEI).* (1) If the recipient is authorized to make subawards under this Federal award, the recipient:

(i) Must notify potential subrecipients that no entity may receive a subaward until the entity has provided its UEI to the recipient.

(ii) Must not make a subaward to an entity unless the entity has provided its UEI to the recipient. Subrecipients are not required to complete full registration in SAM.gov to obtain a UEI.

(c) *Definitions.* For the purposes of this award term:

System for Award Management (SAM.gov) means the Federal repository into which a recipient must provide the information required for the conduct of business as a recipient. Additional information about registration procedures may be found in SAM.gov (currently at *https://www.sam.gov*).

Unique entity identifier means the universal identifier assigned by SAM.gov to uniquely identify an entity.

Entity is defined at 2 CFR 25.400 and includes all of the following types as defined in 2 CFR 200.1:

(1) Non-Federal entity;

(2) Foreign organization;

(3) Foreign public entity;

(4) Domestic for-profit organization; and

(5) Federal agency.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Subaward has the meaning given in 2 CFR 200.1.

Subrecipient has the meaning given in 2 CFR 200.1.

6. Revise part 170 to read as follows:

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

Sec.
Subpart A—General
170.100 Purpose of this part.
170.105 Applicability.
Subpart B—Policy
170.200 Federal agency reporting requirements.
170.210 Requirements for notices of funding opportunities, regulations, and application instructions.
170.220 Use of award term.
Subpart C—Definitions
170.300 Definitions.
Appendix A to Part 170
Award term

Authority: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 109-282; Pub. L. 110-252, Pub. L. 113-101, Pub. L. 117-40.

Subpart A—General

§ 170.100 Purpose of this part.

This part provides guidance to Federal agencies on establishing requirements for recipients of Federal awards to report information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by the Digital Accountability and Transparency Act of 2014 (Public Law 113-101) and other Public Laws, hereafter referred to as the "Transparency Act."

§ 170.105 Applicability.

(a) *Applicability in general*. This part applies to a Federal agency's Federal financial assistance as defined in § 170.300. This part applies to all recipients and subrecipients of Federal

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

awards who meet the reporting requirements of paragraph (c) of this section, unless exempt under Federal statute or by paragraph (d) of this section.

(b) *Non-applicability to individuals*. This part does not apply to an individual who applies for or receives Federal financial assistance as a natural person (that is, unrelated to any business or nonprofit organization an individual owns or operates).

(c) *Reporting Requirements*. (1) The names and total compensation of an entity's five most highly compensated executives must be reported if:

(i) In the entity's preceding fiscal year, it received:

(A) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act, as defined at § 170.300; and

(B) $25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act, as defined at § 170.300; and

(ii) The public does not have access to information about the compensation of senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(d) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards or recipients when not prohibited by Federal statute.

Subpart B—Policy

§ 170.200 Federal agency reporting requirements.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) Federal agencies must publicly report Federal awards that equal or exceed the micro-purchase threshold (see 2 CFR 200.1). Federal agencies must publish the required Federal award information on *USAspending.gov* in accordance with the guidance provided by OMB and the U.S. Department of the Treasury's Government-wide Spending Data Model (GSDM).

(b) Federal agencies should ensure that their agency-specific requirements do not require recipients to submit data that is the same as or similar to data required by the Transparency Act during a given reporting period.

§ 170.210 Requirements for notices of funding opportunities, regulations, and application instructions.

(a) A Federal agency that makes Federal awards subject to the Transparency Act must include the requirements of paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants under which Federal awards may be made that are subject to Transparency Act reporting requirements. A notice of funding opportunity is any paper or electronic issuance that a Federal agency uses to announce a funding opportunity, whether it is called a "program announcement," "notice of funding availability," "broad agency announcement," "research announcement," "solicitation," or any other term.

(b) The notice of funding opportunity, regulation, or other issuance must require each applicant, to which this part applies, to have the necessary processes and systems in place to comply with this part if they receive a Federal award.

§ 170.220 Use of award term.

(a) A Federal agency must include the award term in Appendix A to this part in each Federal award to a recipient under which the total funding is anticipated to equal or exceed $30,000 in Federal funding.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) Consistent with paragraph (a) of this section, a Federal agency is not required to include the award term in Appendix A of this part if the total amount of Federal funding under the Federal award will not equal or exceed $30,000. However, the Federal agency must subsequently add the award term if increases to the Federal funding result in the award equaling or exceeding $30,000.

(c) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

Subpart C - Definitions

§ 170.300 Definitions

Terms not defined in this part have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Applicant means any entity that applies for a Federal award directly from a Federal agency.

Entity includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or contractor that is not excluded by subparagraph (2) or (3); and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ix) Any State or locality;

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

Federal Award means an award of Federal financial assistance that an entity receives from a Federal agency.

Executive means an officer, managing partner, or any other employee holding a management position.

Federal financial assistance:

(1) Means assistance that entities receive or administer in the form of a:

(i) Grant;

(ii) Cooperative agreement (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a);

(iii) Loan;

(iv) Loan guarantee;

(v) Subsidy;

(vi) Insurance;

(vii) Food commodity;

(viii) Direct appropriation;

(ix) Assessed or voluntary contribution; or

(x) Any other financial assistance transaction that authorizes the entity's expenditure of Federal funds.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) For the purposes of this part, the term "Federal financial assistance" does not include:

(i) Technical assistance that provides services in lieu of money;

(ii) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant;

(iii) Any classified Federal award; or

(iv) Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

Recipient means an entity that receives or administers a Federal Award directly from a Federal agency.

Total Compensation means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 229.402(c)(2).

Appendix A to Part 170—Award Term

I. Reporting Subawards and Executive Compensation

(a) Reporting of first-tier subawards—(1) *Applicability***.** Unless the recipient is exempt as provided in paragraph (d) of this award term, the recipient must report each subaward that equals or exceeds $30,000 in Federal funds for a subaward to an entity or Federal agency. The recipient must also report a subaward if a modification increases the Federal funding to an amount that equals or exceeds $30,000. All reported subawards should reflect the total amount of the subaward.

(2) *Reporting Requirements.* (i) The entity or Federal agency must report each subaward described in paragraph (a)(1) of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at http://www.fsrs.gov.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) For subaward information, report no later than the end of the month following the month in which the subaward was issued. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025).

(b) *Reporting total compensation of recipient executives for entities*—(1) *Applicability.* The recipient must report the total compensation for each of the recipient's five most highly compensated executives for the preceding completed fiscal year if:

(i) The total Federal funding authorized to date under this Federal award equals or exceeds $30,000;

(ii) in the preceding fiscal year, the recipient received:

(A) 80 percent or more of the recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 after receiving this subaward. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

(2) Reporting Requirements. The recipient must report executive total compensation described in paragraph (b)(1) of this appendix:

(i) As part of the recipient's registration profile at https://www.sam.gov.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) No later than the month following the month in which this Federal award is made, and annually after that. (For example, if this Federal award was made on November 7, 2025, the executive total compensation must be reported by no later than December 31, 2025.)

(c) Reporting of total compensation of subrecipient executives—(1) Applicability. Unless a first-tier subrecipient is exempt as provided in paragraph (d) of this appendix, the recipient must report the executive total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

(i) The total Federal funding authorized to date under the subaward equals or exceeds $30,000;

(ii) In the subrecipient's preceding fiscal year, the subrecipient received:

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal awards (and subawards) subject to the Transparency Act; and

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986after receiving this subaward. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

(2) Reporting Requirements. Subrecipients must report to the recipient their executive total compensation described in paragraph (c)(1) of this appendix. The recipient is required to submit this information to the Federal Funding Accountability and Transparency Act Subaward

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Reporting System (FSRS) at http://www.fsrs.gov no later than the end of the month following the month in which the subaward was made. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025).

(d) Exemptions. (1) A recipient with gross income under $300,000 in the previous tax year is exempt from the requirements to report:

(i) Subawards, and

(ii) The total compensation of the five most highly compensated executives of any subrecipient.

(e) *Definitions.*

For purposes of this award term:

Entity includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or contractor that is not excluded by subparagraph (2); and

(ix) Any State or locality;

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) A Federal employee.

Executive means an officer, managing partner, or any other employee holding a management position.

Subaward has the meaning given in 2 CFR 200.1.

Subrecipient has the meaning given in 2 CFR 200.1.

Total Compensation means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 229.402(c)(2).

7. Revise part 175 to read as follows:

PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS

Sec.
Subpart A—General
175.100 Purpose of this part.
175.105 Statutory requirement.
Subpart B—Guidance
175.200 Use of award term.
175.205 Referral.
Subpart C—Definitions
175.300 Definitions.
Appendix A to Part 175
Award term

Authority: 22 U.S.C. 7104(g); 22 U.S.C. 7104a; 22 U.S.C. 7104b; 22 U.S.C. 7104c; 31 U.S.C. 503; 31 U.S.C. 6307; 31 U.S.C. 1111; 41 U.S.C. 1121; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737.

Subpart A—General

§ 175.100 Purpose of this part.

This part establishes a Federal award term for grants and cooperative agreements to implement the requirements in 22 U.S.C. 7104(g); 22 U.S.C. 7104a; 22 U.S.C. 7104b; and 22 U.S.C. 7104c.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 175.105 Statutory requirement.

(a) Federal agencies are required to include in each Federal grant or cooperative agreement a condition that authorizes the Federal agency to terminate the award or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if a private entity receiving funds under the award as a recipient or subrecipient engages in:

(1) Severe forms of trafficking in persons;

(2) The procurement of a commercial sex act during the period of time that the grant or cooperative agreement is in effect;

(3) The use of forced labor in the performance of the grant or cooperative agreement; or

(4) Acts that directly support or advance trafficking in persons, including the following acts:

(i) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(ii) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(A) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(B) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iii) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

(iv) Charging recruited employees a placement or recruitment fee; or

(v) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(b) Compliance plan and certification requirement.

(1) *Certification*. Prior to receiving a grant or cooperative agreement, if the estimated value of services required to be performed under the grant or cooperative agreement outside the United States exceeds $500,000, a recipient must certify that:

(i) The recipient has implemented a plan to prevent the activities described in paragraph (a) of this section, and is in compliance with this plan;

(ii) The recipient has implemented procedures to prevent any activities described in paragraph (a) of this section and to monitor, detect, and terminate any subrecipient, contractor, subcontractor, or employee of the recipient engaging in any activities described in paragraph (a) of this section; and

(iii) To the best of the recipient's knowledge, neither the recipient, nor any subrecipient, contractor, or subcontractor of the recipient or any agent of the recipient or of such a subrecipient, contractor, or subcontractor, is engaged in any of the activities described in paragraph (a) of this section.

(2) *Annual certification.* The recipient must submit an annual certification consistent with paragraph (b)(1) of this section for each year the award is in effect.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) *Compliance plan*. Any plan or procedures implemented pursuant to paragraph (b) must be appropriate to the size and complexity of the grant or cooperative agreement and to the nature and scope of its activities, including the number of non-United States citizens expected to be employed.

(4) *Copies of the compliance plan*. The recipient must provide a copy of the plan to the grant officer upon request, and as appropriate, must post the useful and relevant contents of the plan or related materials on its website and at the workplace.

(5) *Minimum requirements of the compliance plan.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform recipient employees about the Government's policy prohibiting trafficking-related activities described in paragraph (a) of this section, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the recipient, subrecipient, contractor, or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(v) Procedures to prevent agents, subrecipients, contractors, or subcontractors at any tier and at any dollar value from engaging in trafficking in persons, including activities in paragraph (a) of this section, and to monitor, detect, and terminate any agents, subgrants, or subrecipient, contractor, or subcontractor employees that have engaged in such activities.

(c) Notification to Inspectors General and cooperation with government. The head of a Federal agency making or awarding a grant or cooperative agreement must require that the recipient of the grant or cooperative agreement:

(1) Immediately inform the Federal agency and Inspector General of the Federal agency of any information it receives from any source that alleges credible information that the recipient, any subrecipient, contractor, or subcontractor of the recipient, or any agent of the recipient or of such a subrecipient, contractor, or subcontractor, has engaged in conduct described in paragraph (a) of this section; and

(2) Fully cooperate with any Federal agencies responsible for audits, investigations, or corrective actions relating to trafficking in persons.

Subpart B—Guidance

§ 175.200 Use of award term.

(a) To implement the requirements of 22 U.S.C. 7104(g) a Federal agency must include the award term in Appendix A of this part for the following Federal awards:

(1) A grant or cooperative agreement to a private entity, as defined in § 175.300; and

(2) A grant or cooperative agreement to a State, local government, Indian Tribe, foreign public entity, or any other recipient if funding under the award could be provided to a subrecipient that is a private entity.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term. A Federal agency may also include additional information in the award term, consistent with the statutory authority of this part, such as further information on the compliance plan and certification requirements in § 175.105(b).

§ 175.205 Referral.

A Federal agency official should inform the agency's suspension and debarment official if an award is terminated based on a violation of a prohibition in the award term under Appendix A.

Subpart C—Definitions

§ 175.300 Definitions.

Terms not defined in this part have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Abuse or threatened abuse of law or legal process means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

Coercion means:

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Involuntary servitude includes a condition of servitude induced by means of:

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Private Entity means any entity, including for-profit organizations, nonprofit organizations, institutes of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.

Recruitment Fee means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for:

(i) Advertising;

(ii) Obtaining permanent or temporary labor certification, including any associated fees;

(iii) Processing applications and petitions;

(iv) Acquiring visas, including any associated fees;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(v) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vi) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(vii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(viii) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(ix) Government-mandated fees, such as border crossing fees, levies, or worker welfare fund;

(x) Transportation and subsistence costs:

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xi) Security deposits, bonds, and insurance; and

(xii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is:

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to:

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

Severe forms of trafficking in persons means:

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

Appendix A to Part 175—Award Term

I. Trafficking in persons.

(a) *Provisions applicable to a recipient that is a private entity.* (1) Under this award, the recipient, its employees, subrecipients under this award, and subrecipient's employees must not engage in:

(i) Severe forms of trafficking in persons;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) The procurement of a commercial sex act during the period of time that this award or any subaward is in effect;

(iii) The use of forced labor in the performance of this award or any subaward; or

(iv) Acts that directly support or advance trafficking in persons, including the following acts:

(A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(1) Exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(2) The employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

(D) Charging recruited employees a placement or recruitment fee; or

(E) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(2) The Federal agency may unilaterally terminate this award or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if any private entity under this award:

(i) Is determined to have violated a prohibition in paragraph (a)(1) of this appendix; or

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Has an employee that is determined to have violated a prohibition in paragraph (a)(1) of this this appendix through conduct that is either:

(A) Associated with the performance under this award; or

(B) Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at [agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (for example, "2 CFR part XX")].

(b) *Provision applicable to a recipient other than a private entity.* (1) The Federal agency may unilaterally terminate this award or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if a subrecipient that is a private entity under this award:

(i) Is determined to have violated a prohibition in paragraph (a)(1) of this appendix; or

(ii) Has an employee that is determined to have violated a prohibition in paragraph (a)(1) of this appendix through conduct that is either:

(A) Associated with the performance under this award; or

(B) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at [agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (for example, "2 CFR part XX")].

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) *Provisions applicable to any recipient.* (1) The recipient must inform the Federal agency and the Inspector General of the Federal agency immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a)(1) of this appendix.

(2) The Federal agency's right to unilaterally terminate this award as described in paragraphs (a)(2) or (b)(1) of this appendix:

(i) Implements the requirements of 22 U.S.C. 78, and

(ii) Is in addition to all other remedies for noncompliance that are available to the Federal agency under this award.

(3) The recipient must include the requirements of paragraph (a)(1) of this award term in any subaward it makes to a private entity.

(4) If applicable, the recipient must also comply with the compliance plan and certification requirements in 2 CFR 175.105(b).

(d) *Definitions.* For purposes of this award term:

Employee means either:

(1) An individual employed by the recipient or a subrecipient who is engaged in the performance of the project or program under this award; or

(2) Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing requirements.

Private Entity means any entity, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

The terms “severe forms of trafficking in persons,” “commercial sex act,” “sex trafficking,” “Abuse or threatened abuse of law or legal process,” “coercion,” “debt bondage,” and “involuntary servitude” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

8. Revise part 180 to read as follows:

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

180.5 What does this part do?
180.10 How is this part organized?
180.15 To whom does the guidance apply?
180.20 What must a Federal agency do to implement these guidelines?
180.25 What must a Federal agency address in its implementation of the guidance?
180.30 Where does a Federal agency implement these guidelines?
180.40 How are these guidelines maintained?
180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?
Subpart A—General
180.100 How are subparts A through I organized?
180.105 How is this part written?
180.110 Do terms in this part have special meanings?
180.115 What do subparts A through I of this part do?
180.120 Do subparts A through I of this part apply to me?
180.125 What is the purpose of the nonprocurement debarment and suspension system?
180.130 How does an exclusion restrict a person's involvement in covered transactions?
180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?
180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
180.150 Against whom may a Federal agency take an exclusion action?
180.155 How do I know if a person is excluded?
Subpart B—Covered Transactions
180.200 What is a covered transaction?
180.205 Why is it important if a particular transaction is a covered transaction?
180.210 Which nonprocurement transactions are covered transactions?
180.215 Which nonprocurement transactions are not covered transactions?
180.220 Are any procurement contracts included as covered transactions?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

180.225 How do I know if a transaction in which I may participate is a covered transaction?
Subpart C— Responsibilities of Participants Regarding Transactions Doing Business With Other Persons
180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
180.305 May I enter into a covered transaction with an excluded or disqualified person?
180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
180.315 May I use the services of an excluded person as a principal under a covered transaction?
180.320 Must I verify that principals of my covered transactions are eligible to participate?
180.325 What happens if I do business with an excluded person in a covered transaction?
180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?
Disclosing Information—Primary Tier Participants
180.335 What information must I provide before entering into a covered transaction with a Federal agency?
180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?
180.345 What happens if I fail to disclose information required under § 180.335?
180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?
Disclosing Information—Lower Tier Participants
180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
180.360 What happens if I fail to disclose information required under § 180.355?
180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?
Subpart D— Responsibilities of Federal Agency Officials Regarding Transactions
180.400 May I enter into a transaction with an excluded or disqualified person?
180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
180.410 May I approve a participant's use of the services of an excluded person?
180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
180.425 When do I check to see if a person is excluded or disqualified?
180.430 How do I check to see if a person is excluded or disqualified?
180.435 What must I require of a primary tier participant?
180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?
180.450 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?
Subpart E— System for Award Management (SAM.gov) Exclusions

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

180.500 What is the purpose of the System for Award Management (SAM.gov) Exclusions?
180.505 Who uses SAM.gov Exclusions?
180.510 Who maintains SAM.gov Exclusions?
180.515 What specific information is in SAM.gov Exclusions?
180.520 Who places the information into SAM.gov Exclusions?
180.525 Whom do I ask if I have questions about a person in SAM.gov Exclusions?
180.530 Where can I find SAM.gov Exclusions?
Subpart F— General Principles Relating to Suspension and Debarment Actions
180.600 How do suspension and debarment actions start?
180.605 How does suspension differ from debarment?
180.610 What procedures does a Federal agency use in suspension and debarment actions?
180.615 How does a Federal agency notify a person of a suspension or debarment action?
180.620 Do Federal agencies coordinate suspension and debarment actions?
180.625 What is the scope of a suspension or debarment?
180.630 May a Federal agency impute the conduct of one person to another?
180.635 May a Federal agency resolve an administrative action in lieu of debarment or suspension?
180.640 May a settlement include a voluntary exclusion?
180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?
180.650 May an administrative agreement be the result of a settlement?
180.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?
180.660 Will administrative agreement information about me in SAM.gov be corrected or updated?
Subpart G—Suspension
180.700 When may the suspending official issue a suspension?
180.705 What does the suspending official consider in issuing a suspension?
180.710 When does a suspension take effect?
180.715 What notice does the suspending official give me if I am suspended?
180.720 How may I contest a suspension?
180.725 How much time do I have to contest a suspension?
180.730 What information must I provide to the suspending official if I contest the suspension?
180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
180.740 Are suspension proceedings formal?
180.745 How is fact-finding conducted?
180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
180.755 When will I know whether the suspension is continued or terminated?
180.760 How long may my suspension last?
Subpart H—Debarment
180.800 What are the causes for debarment?
180.805 What notice does the debarring official give me if I am proposed for debarment?
180.810 When does a debarment take effect?
180.815 How may I contest a proposed debarment?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

180.820 How much time do I have to contest a proposed debarment?
180.825 What information must I provide to the debarring official if I contest the proposed debarment?
180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
180.835 Are debarment proceedings formal?
180.840 How is fact-finding conducted?
180.845 What does the debarring official consider in deciding whether to debar me?
180.850 What is the standard of proof in a debarment action?
180.855 Who has the burden of proof in a debarment action?
180.860 What factors may influence the debarring official's decision?
180.865 How long may my debarment last?
180.870 When do I know if the debarring official debars me?
180.875 May I ask the debarring official to reconsider a decision to debar me?
180.880 What factors may influence the debarring official during reconsideration?
180.885 May the debarring official extend a debarment?
Subpart I—Definitions
180.900 Adequate evidence.
180.905 Affiliate.
180.910 Agent or representative.
180.915 Civil judgment.
180.920 Conviction.
180.925 Debarment.
180.930 Debarring official.
180.935 Disqualified.
180.940 Excluded or exclusion.
180.945 System for Award Management Exclusions (SAM.gov) Exclusions.
180.950 Federal agency.
180.955 Indictment.
180.960 Ineligible or ineligibility.
180.965 Legal proceedings.
180.970 Nonprocurement transaction.
180.975 Notice.
180.980 Participant.
180.985 Person.
180.990 Preponderance of the evidence.
180.995 Principal.
180.1000 Respondent.
180.1005 State.
180.1010 Suspending official.
180.1015 Suspension.
180.1020 Voluntary exclusion or voluntarily excluded.
Appendix A to Part 180
Covered Transactions

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Authority: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 103-355; Pub. L. 109-282; Pub. L. 110-252; Pub. L. 111-84; Pub. L. 113-101Pub. L. 115-232; Pub. L. 117-40; E.O. 12549; E.O. 12689.

§ 180.5 What does this part do?

This part provides guidance for Federal agencies on how to implement the government-wide debarment and suspension system for nonprocurement programs and activities.

§ 180.10 How is this part organized?

This part is organized into two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I.

(b) Subparts A through I contain uniform government-wide standards that Federal agencies are to use to specify:

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the government-wide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

§ 180.15 To whom does the guidance apply?

This part provides guidance to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of this guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.20 What must a Federal agency do to implement these guidelines?

As Section 3 of Executive Order 12549 requires, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

§ 180.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency's implementing regulation:

(a) Must establish policies and procedures for that Federal agency's nonprocurement debarment and suspension programs and activities consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect on that Federal agency's programs and activities.

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must:

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under § 180.135 to let an excluded person participate in a covered transaction.

(2) State whether the Federal agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under § 180.220(c).

(3) Identify the method(s) a Federal agency official may use when entering into a covered transaction with a primary tier participant to communicate to the participant the requirements described in § 180.435. Examples of methods are an award term that requires compliance as a condition of the award, an assurance of compliance obtained at the time of application, or a certification.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) State whether the Federal agency specifies a particular method that participants must use to communicate compliance requirements to lower tier participants, as described in § 180.330(a). If there is a specified method, the regulation must require Federal agency officials to communicate that requirement when entering into covered transactions with primary tier participants.

(c) May also, at the Federal agency's option:

(1) Identify any specific types of transactions the Federal agency includes as "nonprocurement transactions" in addition to the examples provided in § 180.970.

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under § 180.215(g)(2).

(3) Identify specific examples of types of individuals who would be "principals" under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described in § 180.995.

(4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.

(5) Identify by title the officials designated by the Federal agency head as debarring officials under § 180.930 or suspending officials under § 180.1010.

(6) Include a subpart covering disqualifications, as authorized in § 180.45.

(7) Include any provisions authorized by OMB.

§ 180.30 Where does a Federal agency implement these guidelines?

Each Federal agency that participates in the government-wide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension, established by section 4 of Executive Order 12549, recommends to the OMB any needed revisions to the guidelines in this part. The OMB publishes proposed changes to the guidelines in the Federal Register for public comment, considers comments with the help of the Interagency Committee on Debarment and Suspension, and issues the final guidelines.

§ 180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

A Federal agency may add a subpart covering disqualifications to its regulation implementing these guidelines, but the guidelines in subparts A through I:

(a) Address disqualified persons only to:

(1) Provide for their inclusion in the System for Award Management (SAM.gov) Exclusions; and

(2) State the responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Do not specify the:

(1) Transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal agency takes and may include special procedures.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Subpart A—General

§ 180.100 How are subparts A through I organized?

(a) Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in table 1:

Table 1 to paragraph (a)

In subpart . . .	You will find provisions related to . . .
A	general information about Subparts A through I.
B	the types of transactions that are covered by the government-wide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of Federal agency officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for entering information into SAM.gov Exclusions.
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) Table 2 shows which subparts may be of special interest to you, depending on who you are:

Table 2 to paragraph (b)

If you are . . .	See Subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction	A, B, C and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, E, F, G and I.
(5) a debarring official	A, B, D, F, H and I.
(6) a Federal agency official authorized to enter into a covered transaction	A, B, D, E and I.

§ 180.105 How is this part written?

(a) This part uses a "plain language" format to make it easier for the general public and business community. The section headings and text must be read together, as they are often in the form of questions and answers.

(b) Pronouns used within this part, such as "I" and "you," change from subpart to subpart depending on the audience being addressed.

(c) The "Covered Transactions" diagram in the appendix to this part shows the levels or "tiers" at which a Federal agency may enforce an exclusion.

§ 180.110 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meanings. Those terms are defined in subpart I. For example, three important terms are:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) *Exclusion or excluded,* which refers only to discretionary actions taken by a suspending or debarring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition Regulations (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified,* which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of a Federal agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible,* which generally refers to a person who is either excluded or disqualified.

§ 180.115 What do subparts A through I of this part do?

Subparts A through I provide for the reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulations and provide for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order or other legal authority.

§ 180.120 Do subparts A through I of this part apply to me?

Portions of subparts A through I (see table at § 180.100(b)) apply to you if you are a:

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom a Federal agency has initiated a debarment for suspension action);

(c) Federal agency debarring or suspending official; or

(d) Federal agency official who is authorized to enter into covered transactions with non-Federal parties.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.125 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude persons who are not presently responsible from Federal programs.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 180.130 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ 180.135, 315, and 420, a person who is excluded by any Federal agency may not:

(a) Be a participant in a Federal agency transaction that is a covered transaction; or

(b) Act as a principal of a person participating in one of those covered transactions.

§ 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?

(a) A Federal agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Federal agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

(b) An exception granted by one Federal agency for an excluded person does not extend to the covered transactions of another Federal agency.

§ 180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

When a Federal agency excludes a person under Executive Order 12549 or Executive Order 12689 on or after August 25, 1995, the excluded person is also ineligible for Federal procurement transactions under the Federal Acquisition Regulations. Therefore, an exclusion under this part has a reciprocal effect on Federal procurement transactions.

§ 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

When a Federal agency excludes a person under the Federal Acquisition Regulations (FAR) on or after August 25, 1995, the excluded person is also ineligible to participate in Federal agencies' nonprocurement covered transactions. Therefore, an exclusion under the FAR has a reciprocal effect on Federal nonprocurement transactions.

§ 180.150 Against whom may a Federal agency take an exclusion action?

Given a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.

§ 180.155 How do I know if a person is excluded?

Check the System for Award Management (SAM.gov) Exclusions to determine whether a person is excluded. The General Services Administration (GSA) maintains SAM.gov Exclusions and makes it available, as detailed in subpart E. When a Federal agency takes action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into SAM.gov Exclusions.

Subpart B—Covered Transactions

§ 180.200 What is a covered transaction?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

A covered transaction is a nonprocurement or procurement transaction subject to this part's prohibitions. It may be a transaction at:

(a) The primary tier, between a Federal agency and a person (see Appendix to this part); or

(b) A lower tier between a participant in a covered transaction and another person.

§ 180.205 Why is it important if a particular transaction is a covered transaction?

The importance of whether a transaction is a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless:

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 180.310 or § 180.415; or

(2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under § 180.135.

§ 180.210 Which nonprocurement transactions are covered transactions?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

All nonprocurement transactions, as defined in § 180.970, are covered transactions unless listed in the exemptions under § 180.215.

§ 180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to:

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, when a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.,* those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that a Federal agency needs to respond to a national or agency recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) The application of an exclusion to the transaction is prohibited by law; or

(2) A Federal agency's regulation exempts it from coverage under this part.

(h) Notwithstanding paragraph (a) of this section, covered transactions must include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements, or commitments with the United States. Federal agencies and primary tier non-procurement recipients must not award, renew, or extend a non-procurement transaction or procurement transaction, regardless of amount or tier, with any entity listed in SAM.gov Exclusions on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements, or commitments with the United States (see section 1290 of the National Defense Authorization Act for Fiscal Year 2017). The head of a Federal agency may grant an exception to this requirement under 2 CFR 180.135 and with the concurrence of the OMB Director.

§ 180.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part:

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded under nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction covered under § 180.210, and the contract amount is expected to equal or exceed $25,000.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract is always a covered transaction regardless of the amount or who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the Appendix to this part.

(3) The contract is for Federally-required audit services.

(c) A subcontract also is a covered transaction if:

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the Appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed $25,000.

§ 180.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because of the Federal agency regulations governing the transaction. The appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

§ 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking SAM.gov Exclusions; or

(b) Collecting a certification from that person; or

(c) Adding a clause or condition to the covered transaction with that person.

§ 180.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) As a participant, you may not enter into a covered transaction with an excluded person unless the Federal agency responsible for the transaction grants an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction unless you have obtained an exception under the disqualifying statute, Executive Order, or regulation.

§ 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) As a participant, you may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person unless the Federal agency responsible for the transaction grants an exception under § 180.135.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) As a participant, you may continue to use the services of an excluded person as a principal under a covered transaction if you were using that person's services in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should decide whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.320 Must I verify that principals of my covered transactions are eligible to participate?

(a) Yes. As a participant, you are responsible for determining whether your principals of your covered transactions are excluded or disqualified from participating in the transaction.

(b) You may decide the method and frequency by which you do so. You may, but are not required to check SAM.gov Exclusions.

§ 180.325 What happens if I do business with an excluded person in a covered transaction?

As a participant, if you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to:

(a) Comply with this subpart as a condition of participating in the transaction. You may do so using any method(s) unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person the participant enters into a covered transaction at the next lower tier.

Disclosing Information—Primary Tier Participants

§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you, as the participant, must notify the Federal agency office that is entering into the transaction with you if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with the commission of any of the offenses listed in § 180.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?

As a primary tier participant, disclosing unfavorable information about yourself or a principal under § 180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The Federal agency will consider the information when determining whether to enter into the covered transaction. The Federal agency will also consider any additional information or explanation you elect to submit with the disclosed information.

§ 180.345 What happens if I fail to disclose information required under § 180.335?

If a Federal agency later determines that you failed to disclose information under § 180.335 that you knew at the time you entered into the covered transaction, the Federal agency may:

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that:

(a) You failed to disclose information earlier, as required by § 180.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.335.

Disclosing Information—Lower Tier Participants

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you, as a lower tier participant, must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 180.360 What happens if I fail to disclose information required under § 180.355?

When a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

§ 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that:

(a) You failed to disclose information earlier, as required by § 180.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 180.400 May I enter into a transaction with an excluded or disqualified person?

(a) As a Federal agency official, you may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.

(b) You may not enter into any transaction with a person disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded unless you obtain an exception under § 180.135.

§ 180.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you, as a Federal agency official, may not approve a participant's use of an excluded person as a principal under that transaction unless you obtain an exception under § 180.135.

§ 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) As a Federal agency official, you may continue covered transactions with an excluded person or under which an excluded person is a principal if the transactions were in existence when the person was excluded. However, you are not required to continue the transactions, and you may consider termination. You should decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person or under which an excluded person is a principal unless you obtain an exception under § 180.135.

§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

If a transaction at a lower tier is subject to your approval, you, as a Federal agency official, may not approve:

(a) A covered transaction with a person who is currently excluded unless you obtain an exception under § 180.135; or

(b) A transaction with a person who is disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

§ 180.425 When do I check to see if a person is excluded or disqualified?

As a Federal agency official, you must check to see if a person is excluded or disqualified before you:

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if your Federal agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your Federal agency's approval of the principal is required.

§ 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) As a Federal agency official, you must check SAM.gov Exclusions when you take any action listed in § 180.425.

(b) You must review the information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.

§ 180.435 What must I require of a primary tier participant?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

As a Federal agency official, you must require each participant in a primary tier covered transaction to:

(a) Comply with subpart C as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with subpart C to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you, as a Federal agency official, may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?

As a Federal agency official, if you determine that a participant failed to disclose information, as required by § 180.335, at the time it entered into a covered transaction with you, you may:

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 180.450 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?

As a Federal agency official, if you determine that a lower tier participant failed to disclose information, as required by § 180.355, at the time it entered into a covered transaction

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E— System for Award Management (SAM.gov) Exclusions

§ 180.500 What is the purpose of the System for Award Management (SAM.gov) Exclusions?

The SAM.gov Exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 180.505 Who uses SAM.gov Exclusions?

(a) Federal agency officials use SAM.gov Exclusions to determine whether to enter into a transaction with a person, as required under § 180.430.

(b) Participants also may, but are not required to, use SAM.gov Exclusions to determine if:

(1) Principals of their transactions are excluded or disqualified, as required under § 180.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The SAM.gov Exclusions are available to the general public.

§ 180.510 Who maintains SAM.gov Exclusions?

GSA maintains SAM.gov Exclusions. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into SAM.gov Exclusions.

§ 180.515 What specific information is in SAM.gov Exclusions?

(a) At a minimum, SAM.gov Exclusions indicate:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross-references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The unique entity identifier approved by the GSA of the excluded or disqualified person, if available.

(b)(1) The SAM.gov Exclusions includes a field for the Taxpayer Identification Number (TIN), or the social security number (SSN) for an individual, of an excluded or disqualified person.

(2) Agencies disclose an individual's SSN to verify an individual's identity only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 180.520 Who places the information into SAM.gov Exclusions?

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into SAM.gov Exclusions:

(a) Information required by § 180.515(a);

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under the law;

(c) Information about an excluded or disqualified person, within three business days, after:

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ 180.525 Whom do I ask if I have questions about a person in SAM.gov Exclusions?

If you have questions about a listed person in SAM.gov Exclusions, ask the point of contact for the Federal agency that placed the person's name into SAM.gov Exclusions. You may find the Federal agency point of contact from SAM.gov Exclusions.

§ 180.530 Where can I find SAM.gov Exclusions?

You may access SAM.gov Exclusions through the Internet, currently at *https://www.sam.gov*.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 180.600 How do suspension and debarment actions start?

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it, and the agency will investigate. The officials refer the question of whether to suspend or debar you to their suspending or debarring official for consideration, if appropriate.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.605 How does suspension differ from debarment?

Suspension differs from debarment in that:

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal or debarment proceeding	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must:	
(1) Have *adequate evidence* that there may be a cause for debarment of a person; and	
(2) Conclude that *immediate action* is necessary to protect the Federal interest	Must conclude, based on a *preponderance of the evidence,* that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension *first,* and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted	Imposes debarment *after* giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 180.610 What procedures does a Federal agency use in suspension and debarment actions?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and subpart G.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and subpart H.

§ 180.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of:

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 180.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one Federal agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 180.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions unless the suspension or debarment decision is limited:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official:

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ 180.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, corporation, company, or similar arrangement or with the organization's knowledge, approval, or acquiescence, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

§ 180.635 May a Federal agency resolve an administrative action in lieu of debarment or suspension?

Yes. A Federal agency may resolve an administrative action in lieu of debarment or suspension by entering into an agreement at any time if it is in the Federal Government's best interest.

§ 180.640 May an agreement to resolve an administrative action include a voluntary exclusion?

Yes. If a Federal agency enters into an agreement to resolve an administrative action with you in which you agree to be excluded, it is called a voluntary exclusion and has a government-wide effect.

§ 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

(a) Yes. The Federal agency agreeing to the voluntary exclusion enters information about it into SAM.gov Exclusions.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.650 May an administrative agreement be the result of a settlement?

Yes. A Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

§ 180.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement in SAM.gov within three business days after entering into the agreement. The suspending and debarring official must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

§ 180.660 Will administrative agreement information about me in SAM.gov be corrected or updated?

Yes. The suspending or debarring official who entered information into SAM.gov about an administrative agreement with you:

(a) Must correct the information within three business days if the official subsequently learn that any information is erroneous.

(b) Must correct in SAM.gov, within three business days, the ending date of the period during which the agreement is in effect if the agreement is amended to extend that period.

(c) Must report any other modification to the administrative agreement in SAM.gov within three business days.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) Is strongly encouraged to amend the information in SAM.gov in a timely way to incorporate any update that the official obtains and that could be helpful to Federal agencies who must use the system.

Subpart G—Suspension

§ 180.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that:

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 180.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under § 180.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ 180.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(b) In making this determination, the suspending official may examine:

(1) The basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents;

(2) An indictment, criminal information, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual or legal matters constitutes adequate evidence for purposes of suspension actions; and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) Other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 180.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 180.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you:

(a) That you have been suspended;

(b) That your suspension is based on:

(1) An indictment;

(2) A criminal information;

(3) A conviction;

(4) A civil judgment;

(5) Other adequate evidence that you have committed irregularities that seriously reflect on the propriety of further Federal Government dealings with you; or

(6) Conduct of another person that has been imputed to you or your affiliation with a suspended or debarred person;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) Of any other irregularities supporting your suspension in terms sufficient to put you on notice without disclosing certain evidence in the Federal Government's pending or contemplated legal proceedings;

(d) Of the cause(s) upon which the suspending official relied under § 180.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, subpart F, and any other Federal agency procedures governing suspension decision-making; and

(g) Of the government-wide effect of your suspension from procurement and nonprocurement programs and activities.

§ 180.720 How may I contest a suspension?

As a respondent, if you wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.725 How much time do I have to contest a suspension?

(a) As a respondent, you or your representative must either send or make arrangements to appear and present the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) The Federal agency taking the action considers the notice to be received by you:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

§ 180.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent, your submission to the suspending official must identify:

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) Your submission must also identify any of the paragraphs in § 180.730(a) that do not apply to you.

(c) If you fail to disclose this information or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) As a respondent, you will not have an additional opportunity to challenge the facts if the suspending official determines that:

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other findings by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are no material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) As a respondent, you or your representative must submit any documentary evidence you want the suspending official to consider.

§ 180.745 How is fact-finding conducted?

(a) If fact-finding is conducted:

(1) You may present witnesses and other evidence and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you, as a respondent, and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes:

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 180.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information, and findings of fact, if any. The suspending official may extend that period for good cause.

§ 180.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of or during your suspension, the suspension may continue until the conclusion of those proceedings. However, a suspension may not exceed 12 months if proceedings are not initiated.

(b) The suspending official may extend the 12-month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other Federal, State, or local responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12-month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ 180.800 What are the causes for debarment?

A Federal agency may debar a person for:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, violating Federal criminal tax laws, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of a Federal agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) Knowingly doing business with an ineligible person, except as permitted under § 180.135;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 180.640 or of any other agreement that resolves a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause that is so serious or compelling in nature that it affects your present responsibility.

§ 180.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 180.800, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 180.615, advising you:

(a) That the debarring official is considering debarring you;

(b) The reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) The cause(s) under § 180.800 upon which the debarring official relied for proposing your debarment;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) The applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing debarment; and

(e) The government-wide effect of a debarment from procurement and nonprocurement programs and activities.

§ 180.810 When does a debarment take effect?

Unlike a suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ 180.815 How may I contest a proposed debarment?

As a respondent, if you wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.820 How much time do I have to contest a proposed debarment?

(a) As a respondent, you or your representative must either send or make arrangements to appear and present the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) The Federal agency taking the action considers the Notice of Proposed Debarment to be received by you:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

§ 180.825 What information must I provide to the debarring official if I contest the proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent, your submission to the debarring official must identify:

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

§ 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) As a respondent, you will not have an additional opportunity to challenge the facts if the debarring official determines that:

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ 180.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you, as a respondent, to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision on whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 180.840 How is fact-finding conducted?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) If fact-finding is conducted:

(1) You may present witnesses and other evidence and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made unless you, as a respondent, and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 180.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 180.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes:

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 180.850 What is the standard of proof in a debarment action?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) In any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 180.855 Who has the burden of proof in a debarment action?

(a) The Federal agency has the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 180.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not government-wide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or implemented remedial or protective measures in the form of procedures, policies, and programs to effectively address the activity cited as a basis for the debarment.

(m) Whether your principals tolerated the offense.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Whether your business, technical, or professional license(s) has been suspended, terminated, or revoked.

(t) Other factors that are appropriate to the circumstances of a particular case.

§ 180.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § 180.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information, and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § 180.615, that the official decided either:

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulations (48 CFR chapter 1) throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 180.875 May I ask the debarring official to reconsider a decision to debar me?

Yes. As a debarred person, you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must submit your request in writing and support it with documentation.

§ 180.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on:

(a) Newly discovered material evidence;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ 180.885 May the debarring official extend a debarment?

(a) Yes. The debarring official may extend a debarment for an additional period if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F, to extend the debarment.

Subpart I—Definitions

§ 180.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 180.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways a Federal agency may determine control include, but are not limited to:

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) Common use of employees; or

(e) A business entity organized following the exclusion of a person with the same or similar management, ownership, or principal employees as the excluded person.

§ 180.910 Agent or representative.

Agent or representative means any person who acts on behalf of or who is authorized to commit a participant in a covered transaction.

§ 180.915 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, or other disposition which creates a civil liability for the complained of wrongful acts or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

§ 180.920 Conviction.

Conviction means:

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

§ 180.925 Debarment.

Debarment means an action taken by a debarring official under Subpart H to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1). A person so excluded is debarred.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 180.930 Debarring official.

Debarring official means a Federal agency official who is authorized to impose debarment. A debarring official is either:

(a) The agency head; or

(b) An official designated by the agency head.

§ 180.935 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689), or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 3142);

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368), and Executive Order 11738 (38 FR 25161).

§ 180.940 Excluded or exclusion.

Excluded or exclusion means:

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ 180.945 System for Award Management (SAM.gov) Exclusions.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

System for Award Management (SAM.gov) Exclusions means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about ineligible persons.

§ 180.950 Federal agency.

Federal agency means any United States executive department, military department, defense agency, or any other executive branch agency. For the purposes of this part, other agencies of the Federal Government are not considered "agencies" unless they issue regulations adopting the government-wide Debarment and Suspension system under Executive Orders 12549 and 12689.

§ 180.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense will be given the same effect as an indictment.

§ 180.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ 180.965 Legal proceedings.

Legal proceeding means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ 180.970 Nonprocurement transaction.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to, the following:

(1) Grants;

(2) Cooperative agreements;

(3) Scholarships;

(4) Fellowships;

(5) Contracts of assistance;

(6) Loans;

(7) Loan guarantees;

(8) Subsidies;

(9) Insurances;

(10) Payments for specified uses; and

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ 180.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 180.615.)

§ 180.980 Participant.

Participant means any person who submits a proposal for or enters into a covered transaction, including an agent or representative of a participant.

§ 180.985 Person.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, regardless of how organized.

§ 180.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 180.995 Principal.

Principal means:

(a) An officer, director, owner, partner, principal investigator, or another person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who:

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

§ 180.1000 Respondent.

Respondent means a person against whom a Federal agency has initiated a debarment or suspension action.

§ 180.1005 State.

(a) *State* means:

(1) Any of the states of the United States;

(2) The District of Columbia;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a State.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ 180.1010 Suspending official.

(a) *Suspending official* means a Federal agency official authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

§ 180.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1) for a temporary period, pending completion of a Federal agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ 180.1020 Voluntary exclusion or voluntarily excluded.

(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have a government-wide effect.

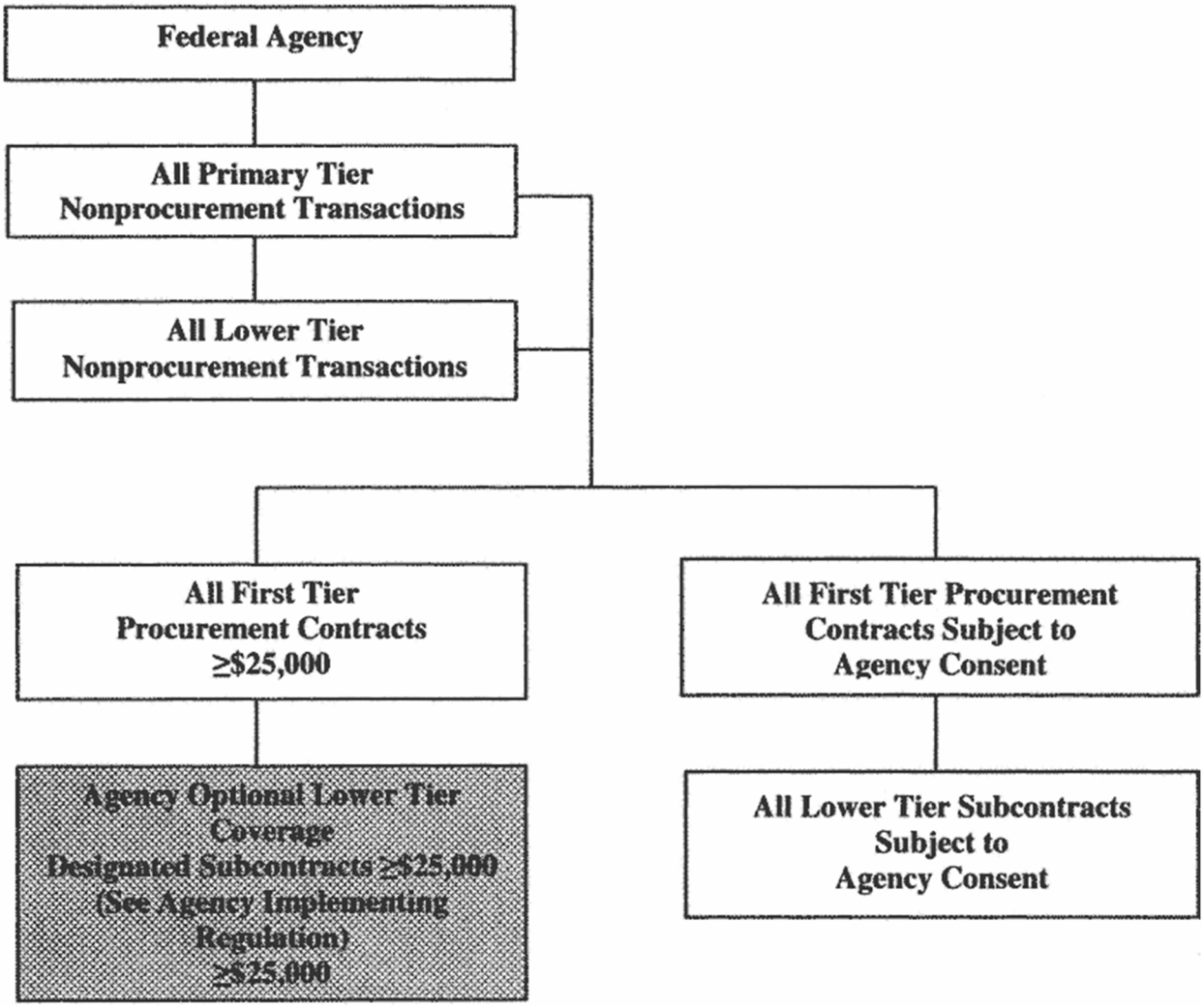
(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

Appendix A to Part 180—Covered Transactions

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Appendix to Part 180___- Covered Transactions

COVERED TRANSACTIONS



This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

9. Revise part 182 to read as follows:

PART 182—GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

182.5 What does this part do?
182.10 How is this part organized?
182.15 To whom does the guidance apply?
182.20 What must a Federal agency do to implement the guidance?
182.25 What must a Federal agency address in its implementation of the guidance?
182.30 Where does a Federal agency implement the guidance?
182.40 How is the guidance maintained?
Subpart A—Purpose and Coverage
182.100 How is this part written?
182.105 Do terms in this part have special meanings?
182.110 What do subparts A through F of this part do?
182.115 Does this part apply to me?
182.120 Are any of my Federal assistance awards exempt from this part?
182.125 Does this part affect the Federal contracts that I receive?
Subpart B—Requirements for Recipients Other Than Individuals
182.200 What must I do to comply with this part?
182.205 What must I include in my drug-free workplace statement?
182.210 To whom must I distribute my drug-free workplace statement?
182.215 What must I include in my drug-free awareness program?
182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
182.230 How and when must I identify workplaces?
Subpart C—Requirements for Recipients Who Are Individuals
182.300 What must I do to comply with this part if I am an individual recipient?
Subpart D— Responsibilities of Agency Awarding Officials
182.400 What are my responsibilities as an agency awarding official?
Subpart E— Violations of This Part and Consequences
182.500 How are violations of this part determined for recipients other than individuals?
182.505 How are violations of this part determined for recipients who are individuals?
182.510 What actions will the Federal Government take against a recipient determined to have violated this part?
182.515 Are there any exceptions to those actions?
Subpart F— Definitions
182.605 Award.
182.610 Controlled substance.
182.615 Conviction.
182.620 Cooperative agreement.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

182.625 Criminal drug statute.
182.630 Debarment.
182.635 Drug-free workplace.
182.640 Employee.
182.645 Federal agency or agency.
182.650 Grant.
182.655 Individual.
182.660 Recipient.
182.665 State.
182.670 Suspension.

Authority: 41 U.S.C. 8101-8106; 31 U.S.C. 503; 31 U.S.C. 6307.

§ 182.5 What does this part do?

This part provides guidance for Federal agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101-8106, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 182.10 How is this part organized?

This part is organized into two segments.

(a) Sections 182.5 through 182.40 contain general policy direction for Federal agencies' use of the uniform policies and procedures in subparts A through F.

(b) Subparts A through F contain uniform government-wide policies and procedures for Federal agency use to specify the:

(1) Types of awards that are covered by drug-free workplace requirements;

(2) Drug-free workplace requirements with which a recipient must comply;

(3) Actions required of a Federal agency awarding official; and

(4) Consequences of a violation of drug-free workplace requirements.

§ 182.15 To whom does the guidance apply?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

This part provides guidance to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of this guidance governs the rights and responsibilities of other persons affected by the drug-free workplace requirements.

§ 182.20 What must a Federal agency do to implement the guidance?

To comply with the requirement in 41 U.S.C. 8106 for government-wide regulations, each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace requirements in subparts A through F of the guidance must issue a regulation consistent with those subparts.

§ 182.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency's implementing regulation:

(a) Must establish drug-free workplace policies and procedures for that Federal agency's Federal awards consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect on that Federal agency's awards.

(b) Must address some matters for which the guidance in this part gives the Federal agency discretion. Specifically, the regulation must:

(1) State whether the Federal agency:

(i) Has a central point to which a recipient may send the notification of a conviction that is required under § 182.225(a) or § 182.300(b); or

(ii) Requires the recipient to send the notification to the Federal agency awarding official or their designee for each Federal award.

(2) Either:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(i) State that the Federal agency head is the official authorized to determine under § 182.500 or § 182.505 that a recipient has violated the drug-free workplace requirements; or

(ii) Provide the title of the official designated to make that determination.

(c) May also, at the Federal agency's option, identify any specific types of financial assistance awards, in addition to grants and cooperative agreements, to which the Federal agency makes this guidance applicable.

§ 182.30 Where does a Federal agency implement the guidance?

Each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace guidance in this part must issue a regulation implementing the guidance within its chapter in subtitle B of this title of the Code of Federal Regulations.

§ 182.40 How is the guidance maintained?

The OMB publishes proposed changes to the guidance in the Federal Register for public comment, considers comments with the help of appropriate interagency working groups, and then issues any changes to the guidance in final form.

Subpart A—Purpose and Coverage

§ 182.100 How is this part written?

(a) This part uses a “plain language” format to make it easier for the general public and business community to use and understand. The section headings and text must be read together, as they are often in the form of questions and answers.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed.

§ 182.105 Do terms in this part have special meanings?

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

This part uses terms that have special meanings. Those terms are defined in subpart F.

§ 182.110 What do subparts A through F of this part do?

Subparts A through F specify standard policies and procedures to carry out the Drug-Free Workplace Act of 1988 for financial assistance awards.

§ 182.115 Does this part apply to me?

(a) Portions of this part apply to you if you are either:

(1) A recipient of a Federal assistance award (see definitions of award and recipient in §§ 182.605 and 182.660, respectively); or

(2) A Federal agency awarding official.

(b) The following table shows the subparts that apply to you:

If you are * * *	See subparts * * *
(1) a recipient who is not an individual	A, B and E.
(2) a recipient who is an individual	A, C and E.
(3) a Federal agency awarding official	A, D and E.

§ 182.120 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award to which the Federal agency head, or their designee, determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 182.125 Does this part affect the Federal contracts that I receive?

This part will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 182.510(c). However, this part does

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in Chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 182.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to:

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 182.205 through 182.220); and

(2) Take actions concerning employees convicted of violating drug statutes in the workplace (see § 182.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 182.230).

§ 182.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) Lets each employee know that, as a condition of employment under any award, the employee:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if the employee is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 182.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 182.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 182.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 182.205 and an ongoing awareness program as described in § 182.215, you must publish the statement and establish the program by the time given in the following table:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

If * * *	Then you * * *
(a) The performance period of the award is less than 30 days	Must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed
(b) The performance period of the award is 30 days or more	Must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program	May ask the Federal agency awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the Federal agency awarding official.

§ 182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 182.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must:

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every Federal agency awarding official or their designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either:

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State, or local health, law enforcement, or another appropriate agency.

§ 182.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Federal agency award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces:

(1) To the Federal agency awarding official that is making the Federal award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the Federal award, in which case you must make the information available for inspection upon request by agency officials or their designated representatives.

(b) Your workplace identification for a Federal award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Categorical descriptions may be used (for example, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Federal agency awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the Federal award, you must inform the Federal agency awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 182.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a Federal award, if you are an individual recipient, you must agree that:

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the Federal award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any Federal award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Federal agency awarding official or their designee for each Federal award that you currently have, unless the agency designates a central point for the receipt of the notices, either in the award document or its regulation implementing the guidance in this part. When notice is made to a central point, it must include the identification number(s) of each affected Federal award.

Subpart D—Responsibilities of Federal Agency Awarding Officials

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 182.400 What are my responsibilities as a Federal agency awarding official?

As a Federal agency awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in:

(a) Subpart B, if the recipient is not an individual; or

(b) Subpart C, if the recipient is an individual.

Subpart E—Violations of This Part and Consequences

§ 182.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Federal agency head or their designee determines, in writing, that:

(a) The recipient has violated the requirements of subpart B; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good-faith effort to provide a drug-free workplace.

§ 182.505 How are violations of this part determined for recipients who are individuals?

A recipient who is an individual is in violation of the requirements of this part if the Federal agency head or their designee determines, in writing, that:

(a) The recipient has violated the requirements of subpart C; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 182.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 182.500 or § 182.505, the Federal agency may take one or more of the following actions:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under the Federal agency's regulation implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180) for a period not to exceed five years.

§ 182.515 Are there any exceptions to those actions?

For a particular award, the Federal agency head may waive, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 182.605 Award.

Award means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the government-wide rule that implements OMB Circular A–102 (for availability of OMB circulars, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (that is, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ 182.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 182.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 182.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 182.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 182.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 182.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689).

§ 182.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 182.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including:

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (for example, volunteers, even if used to meet a cost sharing requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 182.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government-controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 182.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 182.655 Individual.

Individual means a natural person.

§ 182.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency), or legal entity, regardless of how it is organized, that receives an award directly from a Federal agency.

§ 182.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 182.670 Suspension.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689). Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

10. Revise part 183 to read as follows:

PART 183—NEVER CONTRACT WITH THE ENEMY

Sec.
183.5 Purpose of this part.
183.10 Applicability.
183.15 Responsibilities of Federal agencies.
183.20 Reporting responsibilities of Federal agencies.
183.25 Responsibilities of recipients.
183.30 Access to records.
183.35 Definitions.
Appendix A to Part 183
Award Terms for Never Contract with the Enemy
Authority: Pub. L. 113-291, as amended by Pub. L. 115-232, Pub. L. 116-92, Pub. L. 116-283, Pub. L. 117-263; 31 U.S.C. 503; 31 U.S.C. 6307.

§ 183.5 Purpose of this part.

This part provides guidance to Federal agencies on the implementation of the Never Contract with the Enemy requirements applicable to certain grants and cooperative agreements, as specified in subtitle E, title VIII of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291), as amended by Sec. 820 of the National Defense

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Authorization Act for Fiscal Year 2023 (Pub. L. 117-263), hereafter cited as "Never Contract with the Enemy").

§ 183.10 Applicability.

(a) This part applies only to grants and cooperative agreements that are expected to exceed $50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

(b) All elements of this part are applicable until the date of expiration as provided in law.

§ 183.15 Responsibilities of Federal agencies.

(a) Prior to making an award for a covered grant or cooperative agreement (see also § 183.35), the Federal agency must check the current list of prohibited or restricted persons or entities in the System for Award Management (SAM.gov) Exclusions.

(b) The Federal agency may include the award term provided in appendix A in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy.

(c) A Federal agency may become aware of a person or entity that:

(1) Provides funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency directly or indirectly to covered persons or entities; or

(2) Fails to exercise due diligence to ensure that no funds, including goods and services, received under an executive agency's covered grant or cooperative agreement are provided directly or indirectly to covered persons or entities.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) When a Federal agency becomes aware of such a person or entity, it may do any of the following actions:

(1) Restrict the future award of all Federal contracts, grants, and cooperative agreements to the person or entity based upon concerns that Federal awards to the entity would provide grant funds directly or indirectly to a covered person or entity.

(2) Terminate any grant, cooperative agreement, or contract to a covered person or entity upon becoming aware that the recipient has failed to exercise due diligence to ensure that no award funds are provided directly or indirectly to a covered person or entity.

(3) Void in whole or in part any grant, cooperative agreement, or contracts of the executive agency concerned upon a written determination by the head of contracting activity or another appropriate official that the grant or cooperative agreement provides funds directly or indirectly to a covered person or entity.

(e) The Federal agency must notify recipients in writing regarding its decision to restrict all future awards, terminate or void a grant or cooperative agreement, or both. The agency must also notify the recipient in writing about the recipient's right to request an administrative review (using the agency's procedures) of the restriction, termination, or void of the grant or cooperative agreement within 30 days of receiving notification.

§ 183.20 Reporting responsibilities of Federal agencies.

(a) If a Federal agency restricts all future awards to a covered person or entity, it must enter information on the ineligible person or entity into SAM.gov Exclusions as a prohibited or restricted source pursuant to Never Contract with the Enemy.

(b) When a Federal agency terminates or voids a grant or cooperative agreement due to Never Contract with the Enemy, it must report the action as a termination for material failure to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

comply in SAM.gov. Federal agencies must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov.

(c) The Federal agency must document and report to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies):

(1) Any action to restrict all future awards or to terminate or void an award with a covered person or entity.

(2) Any decision not to restrict all future awards, terminate, or void an award along with the agency's reasoning for not taking one of these actions after the agency became aware that a person or entity is a prohibited or restricted source.

(d) Each report referenced in paragraph (c)(1) of this section must include the following:

(1) The executive agency taking such action.

(2) An explanation of the basis for the action taken.

(3) The value of the terminated or voided grant or cooperative agreement.

(4) The value of all grants and cooperative agreements of the executive agency with the person or entity concerned at the time the grant or cooperative agreement was terminated or voided.

(e) Each report referenced in paragraph (c)(2) of this section must include the following:

(1) The executive agency concerned.

(2) An explanation of the basis for not taking the action.

(f) For each instance in which an executive agency exercised the additional authority to examine recipient and lower tier entity (for example, subrecipient or contractor) records, the agency must report in writing to the head of the executive agency concerned (or the designee of

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

such head) and the commander of the covered combatant command concerned (or specific deputies) the following:

(1) An explanation of the basis for the action taken; and

(2) A summary of the results of any examination of records.

§ 183.25 Responsibilities of recipients.

(a) Recipients of covered grants or cooperative agreements must fulfill the requirements outlined in the award term provided in Appendix A to this part.

(b) Recipients must also flow down the provisions in award terms covered in Appendix A to this part to all contracts and subawards under the award.

§ 183.30 Access to records.

In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards, to the extent necessary, to ensure that funds, including supplies and services, received under a covered grant or cooperative agreement (see § 183.35) are not provided directly or indirectly to a covered person or entity in accordance with Never Contract with the Enemy. The Federal agency may only exercise this authority upon a written determination by the Federal agency that relies on a finding by the commander of a covered combatant command that there is reason to believe that funds, including supplies and services, received under the grant or cooperative agreement may have been provided directly or indirectly to a covered person or entity.

§ 183.35 Definitions.

Terms used in this part are defined as follows:

Contingency operation, as defined in 10 U.S.C. 101(a)(13), means a military operation that:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301(a), 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. 3713 or any other provision of law during a war or during a national emergency declared by the President or Congress.

Covered combatant command means the following:

(1) The United States Africa Command.

(2) The United States Central Command.

(3) The United States European Command.

(4) The United States Pacific Command.

(5) The United States Southern Command.

(6) The United States Transportation Command.

Covered grant or cooperative agreement means a grant or cooperative agreement, as defined in 2 CFR 200.1 with an estimated value in excess of $50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. Except for U.S. Department of Defense grants and cooperative agreements that were awarded on or before December 19, 2017, that will be performed in the United States Central Command, where the estimated value is in excess of $100,000.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Covered person or entity means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

Appendix A to Part 183—Award Terms for Never Contract With the Enemy

Federal agencies may include the following award terms in all awards for covered grants and cooperative agreements in accordance with Never Contract with the Enemy:

I. *Term 1— Prohibition on Providing Funds to the Enemy*

(a) You must:

(1) Exercise due diligence to ensure that no funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR 180.300 prior to issuing a subaward or contract and;

(2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in the System for Award Management (SAM.gov) as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal agency provides written approval to continue the subaward or contract.

(b) You may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

(c) The Federal agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal agency becomes aware that you have failed to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

exercise due diligence as required by paragraph (a) of this clause or if the Federal agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(End of term)

II. *Term 2— Additional Access to Recipient Records*

(a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any of your records and the records of your subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017, that will be performed in the United States Central Command (USCENTCOM) theater of operations.

(b) The substance of this clause, including this paragraph (b), must be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

(End of term)

11. In part 184, remove the text “Federal awarding agency” and “Federal Awarding Agency”, wherever it appears, and add, in its place, the text “Federal agency”.

12. In part 184, remove the text “Federal awarding agencies”, wherever it appears, and add, in its place, the text “Federal agencies”.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

13. Revise the authority citation for part 200 to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

14. Amend part 200 by revising subparts A through F to read as follows:

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions
Acronyms
Sec.
200.0 Acronyms.
200.1 Definitions.

Subpart B—General Provisions
200.100 Purpose.
200.101 Applicability.
200.102 Exceptions.
200.103 Authorities.
200.104 Supersession.
200.105 Effect on other issuances.
200.106 Agency implementation.
200.107 OMB responsibilities.
200.108 Inquiries.
200.109 Review date.
200.110 Effective date.
200.111 English language.
200.112 Conflict of interest.
200.113 Mandatory disclosures.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards
Sec.
200.200 Purpose.
200.201 Use of grants, cooperative agreements, fixed amount awards, and contracts.
200.202 Program planning and design.
200.203 Requirement to provide public notice of Federal financial assistance programs.
200.204 Notices of funding opportunities.
200.205 Federal agency review of merit of proposals.
200.206 Federal agency review of risk posed by applicants.
200.207 Standard application requirements.
200.208 Specific conditions.
200.209 Certifications and representations.
200.210 Pre-award costs.
200.211 Information contained in a Federal award.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

200.212 Public access to Federal award information.
200.213 Reporting a determination that an applicant is not qualified for a Federal award.
200.214 Suspension and debarment.
200.215 Never contract with the enemy.
200.216 Prohibition on certain telecommunications and video surveillance equipment or services.
200.217 Whistleblower Protections

Subpart D—Post Federal Award Requirements
200.300 Statutory and national policy requirements.
200.301 Performance measurement.
200.302 Financial management.
200.303 Internal controls.
200.304 Bonds.
200.305 Federal payment.
200.306 Cost sharing.
200.307 Program income.
200.308 Revision of budget and program plans.
200.309 Modifications to Period of Performance.
Property Standards
200.310 Insurance coverage.
200.311 Real property.
200.312 Federally-owned and exempt property.
200.313 Equipment.
200.314 Supplies.
200.315 Intangible property.
200.316 Property trust relationship.
Procurement Standards
200.317 Procurements by states and Indian Tribes.
200.318 General procurement standards.
200.319 Competition.
200.320 Procurement Methods.
200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.
200.322 Domestic preferences for procurements.
200.323 Procurement of recovered materials.
200.324 Contract cost and price.
200.325 Federal agency or pass-through entity review.
200.326 Bonding requirements.
200.327 Contract provisions.
Performance and Financial Monitoring and Reporting
200.328 Financial reporting.
200.329 Monitoring and reporting program performance.
200.330 Reporting on real property.
Subrecipient Monitoring and Management

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

200.331 Subrecipient and contractor determinations.
200.332 Requirements for pass-through entities.
200.333 Fixed amount subawards.
Record Retention and Access
200.334 Record retention requirements.
200.335 Requests for transfer of records.
200.336 Methods for collection, transmission, and storage of information.
200.337 Access to records.
200.338 Restrictions on public access to records.
Remedies for Noncompliance
200.339 Remedies for noncompliance.
200.340 Termination.
200.341 Notification of termination requirement.
200.342 Opportunities to object, hearings, and appeals.
200.343 Effects of suspension and termination.
Closeout
200.344 Closeout.
Post-Closeout Adjustments and Continuing Responsibilities
200.345 Post-closeout adjustments and continuing responsibilities.
Collection of Amounts Due
200.346 Collection of amounts due.

Subpart E—Cost Principles
General Provisions
200.400 Policy guide.
200.401 Application.
Basic Considerations
200.402 Composition of costs.
200.403 Factors affecting allowability of costs.
200.404 Reasonable costs.
200.405 Allocable costs.
200.406 Applicable credits.
200.407 Prior written approval (prior approval).
200.408 Limitation on allowance of costs.
200.409 Special considerations.
200.410 Collection of unallowable costs.
200.411 Adjustment of previously negotiated indirect cost rates containing unallowable costs.
Direct and Indirect Costs
200.412 Classification of costs.
200.413 Direct costs.
200.414 Indirect costs.
200.415 Required certifications.
Special Considerations for States, Local Governments and Indian Tribes
200.416 Cost allocation plans and indirect cost proposals.
200.417 Interagency service.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Special Considerations for Institutions of Higher Education
200.418 Costs incurred by states and local governments.
200.419 Cost accounting standards.
General Provisions for Selected Items of Cost
200.420 Considerations for selected items of cost.
200.421 Advertising and public relations.
200.422 Advisory councils.
200.423 Alcoholic beverages.
200.424 Alumni activities.
200.425 Audit services.
200.426 Bad debts.
200.427 Bonding costs.
200.428 Collections of improper payments.
200.429 Commencement and convocation costs.
200.430 Compensation—personal services.
200.431 Compensation—fringe benefits.
200.432 Conferences.
200.433 Contingency provisions.
200.434 Contributions and donations.
200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.
200.436 Depreciation.
200.437 Employee health and welfare costs.
200.438 Entertainment and prizes.
200.439 Equipment and other capital expenditures.
200.440 Exchange rates.
200.441 Fines, penalties, damages and other settlements.
200.442 Fund raising and investment management costs.
200.443 Gains and losses on the disposition of depreciable assets.
200.444 General costs of government.
200.445 Goods or services for personal use.
200.446 Idle facilities and idle capacity.
200.447 Insurance and indemnification.
200.448 Intellectual property.
200.449 Interest.
200.450 Lobbying.
200.451 Losses on other awards or contracts.
200.452 Maintenance and repair costs.
200.453 Materials and supplies costs, including costs of computing devices.
200.454 Memberships, subscriptions, and professional activity costs.
200.455 Organization costs.
200.456 Participant support costs.
200.457 Plant and security costs.
200.458 Pre-award costs.
200.459 Professional service costs.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

200.460 Proposal costs.
200.461 Publication and printing costs.
200.462 Rearrangement and reconversion costs.
200.463 Recruiting costs.
200.464 Relocation costs of employees.
200.465 Rental costs of real property and equipment.
200.466 Scholarships, student aid costs, and tuition remission.
200.467 Selling and marketing costs.
200.468 Specialized service facilities.
200.469 Student activity costs.
200.470 Taxes (including Value Added Tax).
200.471 Telecommunication and video surveillance costs.
200.472 Termination and standard closeout costs.
200.473 Training and education costs.
200.474 Transportation costs.
200.475 Travel costs.
200.476 Trustees.

Subpart F—Audit Requirements
General
200.500 Purpose.
Audits
200.501 Audit requirements.
200.502 Basis for determining Federal awards expended.
200.503 Relation to other audit requirements.
200.504 Frequency of audits.
200.505 Remedies for audit noncompliance.
200.506 Audit costs.
200.507 Program-specific audits.
Auditees
200.508 Auditee responsibilities.
200.509 Auditor selection.
200.510 Financial statements.
200.511 Audit findings follow-up.
200.512 Report submission.
Federal Agencies
200.513 Responsibilities.
Auditors
200.514 Standards and scope of audit.
200.515 Audit reporting.
200.516 Audit findings.
200.517 Audit documentation.
200.518 Major program determination.
200.519 Criteria for Federal program risk.
200.520 Criteria for a low-risk auditee.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Management Decisions
200.521 Management decisions.

Subpart A - Acronyms and Definitions

Acronyms

§ 200.0 Acronyms.

(a) CAS Cost Accounting Standards

(b) CFR Code of Federal Regulations

(c) F&A Facilities and Administration

(d) FAC Federal Audit Clearinghouse

(e) FAIN Federal Award Identification Number

(f) FAR Federal Acquisition Regulation

(g) FASB Financial Accounting Standards Board

(h) FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act, Public Law 109-282, as amended (See 31 U.S.C. 6101, statutory note)

(i) FOIA Freedom of Information Act

(j) FR Federal Register

(k) GAAP Generally Accepted Accounting Principles

(l) GAGAS Generally Accepted Government Auditing Standards

(m) GASB Government Accounting Standards Board

(n) GAO Government Accountability Office

(o) GSA General Services Administration

(p) IBS Institutional Base Salary

(q) IHE Institutions of Higher Education

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(r) IRC Internal Revenue Code

(s) ISDEAA Indian Self-Determination and Education and Assistance Act

(t) MTC Modified Total Cost

(u) MTDC Modified Total Direct Cost

(v) NFE Non-Federal Entity

(w) NOFO Notice of Funding Opportunity

(x) OMB Office of Management and Budget

(y) PII Personally Identifiable Information

(z) PMS Payment Management System

(aa) SAM System for Award Management (*SAM.gov*)

(bb) UEI Unique Entity Identifier

(cc) U.S.C. United States Code

(dd) VAT Value Added Tax

§ 200.1 Definitions.

The following is a list of definitions of key terms frequently used in 2 CFR part 200. Definitions found in Federal statutes or regulations that apply to particular programs take precedence over the following definitions. However, where the following definitions implement specific statutory requirements that apply government-wide, such as the Single Audit Act, the following definitions take precedence over Federal regulations. For purposes of this part, the following definitions apply—

Acquisition cost means the (total) cost of the asset including the cost to ready the asset for its intended use. For example, acquisition cost for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software include those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.

Advance payment means a payment that a Federal agency or pass-through entity makes by any appropriate payment mechanism and payment method before the recipient or subrecipient disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Assistance Listings refer to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration (GSA) at SAM.gov.

Assistance Listing number means a unique number assigned to identify an Assistance Listing.

Assistance Listing program title means the title that corresponds to the Assistance Listing number.

Audit finding means deficiencies which the auditor is required to report in the schedule of findings and questioned costs. (See § 200.516(a))

Auditee means any non-Federal entity that must be audited under this part. (See § 200.501)

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Auditor means an auditor who is a public accountant or a Federal, State, local government, or Indian Tribe audit organization that meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Budget means the financial plan for the Federal award that the Federal agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal agency or pass-through entity.

Budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion, during which recipients and subrecipients are authorized to incur financial obligations of the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

Capital assets means:

(1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(i) Land, buildings (facilities), equipment, and intellectual property (including software), whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and

(ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property or equipment for a period of time under a lease contract. See § 200.465.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a State, local government, or Indian Tribe to its departments and agencies on a centralized basis. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

(1) A written demand or assertion by one of the parties to a Federal award seeking as a matter of right:

(i) The payment of money;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of recipient or group of recipients to which specific provisions or exceptions may apply.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

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.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are defined by OMB in the compliance supplement or designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating "other clusters," a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.332. A cluster of programs must be considered one program when determining major programs as described in § 200.518, and with the exception of R&D as described in § 200.501(d), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of Federal agency Single Audit contacts can be found on the Federal Audit Clearinghouse (FAC) website.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies, see the following:

(1) For Institutions of Higher Education (IHEs): Appendix III, paragraph C.11.

(2) For nonprofit organizations: Appendix IV, paragraph C.2.a.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) For State and local governments: Appendix V, paragraph F.1.

(4) For Indian Tribes: Appendix VII, paragraph D.1.

Compliance supplement means an annually updated authoritative source of information for auditors that identifies existing important compliance requirements that the Federal Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.

Computing devices means machines that acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also the definitions of *supplies* and *information technology systems* in this section.

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient conducts procurement transactions under a Federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of *subaward* in this section.

Contractor means an entity that receives a contract.

Continuation funding means the second or subsequent budget period within an identified period of performance.

Cooperative agreement means a legal instrument of financial assistance between a Federal agency and a recipient or between a pass-through entity and subrecipient, consistent with 31 U.S.C. 6302-6305:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement of the Federal agency or pass-through entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means a central service or public assistance cost allocation plan.

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 of processes, products, jobs, and capital projects. A cost

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

objective may be a major function of the recipient or subrecipient, a particular service or project, a Federal award, or an indirect cost activity, as described in subpart E. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

Cost sharing means the portion of project costs not paid by Federal funds or contributions (unless authorized by Federal statute). This term includes *matching*, which refers to required levels of cost share that must be provided. See § 200.306.

Disallowed cost means charges to a Federal award that the Federal agency or pass-through entity determines to be unallowable in accordance with applicable Federal statutes, regulations, the provisions of this part, or the terms and conditions of the Federal award.

Discretionary award means an award in which the Federal agency, in keeping with specific statutory authority that enables the agency to exercise judgment ("discretion"), selects the recipient or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or $10,000. See this section's definitions of *capital assets, computing devices, general purpose equipment, information technology systems, special purpose equipment,* and *supplies*.

Expenditures means charges made by a recipient or subrecipient to a project or program for which a Federal award is received.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) The charges may be reported on a cash or accrual basis as long as the methodology is disclosed and consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense charged;

(iii) The value of third-party in-kind contributions applied; and

(iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense incurred;

(iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the recipient or subrecipient for:

(A) Goods and other property received;

(B) Services performed by employees, contractors, subrecipients, and other payees; and

(C) Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

Federal agency means an "agency" as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f). The term generally refers to the agency that provides a Federal award directly to a recipient unless the context indicates otherwise. See also definitions of Federal award and recipient.

Federal Audit Clearinghouse (FAC) means the repository of record designated by OMB where non-Federal entities must transmit the information required by subpart F.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)(i) The Federal financial assistance that a recipient receives directly from a Federal agency or indirectly from a pass-through entity, as described in § 200.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulation that a non-Federal entity receives directly from a Federal agency or indirectly from a pass-through entity, as described in § 200.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate government-owned, contractor-operated (GOCO) facilities.

(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal award date means the date when the authorized official of the Federal agency signed (physically or digitally) the Federal award or when an alternative, consistent with the requirements of 31 U.S.C. 1501, is reached with the recipient.

Federal financial assistance means:

(1) Assistance that recipients or subrecipients receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).

(2) For § 200.203 and subpart F of this part, *Federal financial assistance* also includes assistance that recipients or subrecipients receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(3) For § 200.216, Federal financial assistance includes assistance that recipients or subrecipients receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Loans; and

(iv) Loan Guarantees.

(4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

Federal interest means, for purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

(1) All Federal awards which are assigned a single Assistance Listings Number.

(2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) "Other clusters," as described in the definition of *cluster of programs* in this section.

Federal share means the portion of the Federal award costs paid using Federal funds.

Final cost objective means a cost objective that has allocated to it both direct and indirect costs and, in the recipient's or subrecipient's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a recipient or subrecipient. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

Financial obligations means orders placed for property and services, contracts and subawards made, and similar transactions that require payment by a recipient or subrecipient under a Federal award that will result in expenditures by a recipient or subrecipient under a Federal award.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Fixed amount award means a type of grant or cooperative agreement pursuant to which the Federal agency or pass-through entity provides a specific amount of funding without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the recipient or subrecipient and the Federal agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.101(b), 200.201(b), and 200.333.

For-profit organization generally means an organization or entity organized for the purpose of earning a profit. The term includes but is not limited to:

(1) An "S corporation" incorporated under Subchapter S of the Internal Revenue Code;

(2) A corporation incorporated under another authority;

(3) A partnership;

(4) A limited liability company or partnership; and

(5) A sole proprietorship.

Foreign organization means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax-exempt under the laws of the country where it is registered and is not a university, college, accredited degree-granting institution of education, private foundation,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

hospital, an organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a foreign public entity.

Foreign public entity means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

General purpose equipment means equipment that is not limited to research, medical, scientific, or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of *equipment* and *special purpose equipment* in this section.

Generally accepted accounting principles (GAAP) has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

Generally accepted government auditing standards (GAGAS), also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which apply to financial audits.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Grant agreement or grant means a legal instrument of financial assistance between a Federal agency and a recipient or between a pass-through entity and a subrecipient, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship, the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal agency in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(vi) A loan guarantee; or

(v) Insurance.

Highest-level owner means the entity that owns or controls an immediate owner of an applicant or that owns or controls one or more entities that control an immediate owner of an applicant. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204-17).

Hospital means a facility licensed as a hospital under the law of any State or a facility operated as a hospital by the United States, a State, or a subdivision of a State.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Improper payment means a payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. 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. See OMB Circular A-123 Appendix C, *Requirements for Payment Integrity Improvement* for additional definitions and guidance on the requirements for payment integrity.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 5304(e). This includes any Indian Tribe identified in the annually published Bureau of Indian Affairs list of "*Indian Entities Recognized and Eligible to Receive Services*" and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.

Indirect cost means those costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. It may be necessary to establish multiple pools of indirect costs to facilitate equitable distribution of indirect expenses to the cost objectives served. Indirect cost pools must be distributed to benefitted cost objectives on basis that will produce an equitable result in consideration of relative benefits derived. For Institutions

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

of Higher Education (IHE), the term facilities and administrative (F&A) cost is often used to refer to indirect costs.

Indirect cost rate proposal means the documentation prepared by a recipient to substantiate its request to establish an indirect cost rate as described in appendices III through VII and Appendix IX to this part.

Information technology systems means computing devices, ancillary equipment, software, firmware, and related procedures, services (including support services), and resources. See also the definitions of *computing devices* and *equipment* in this section.

Institution of Higher Education (IHE) is defined at 20 U.S.C. 1001.

Intangible property means property having no physical existence, such as trademarks, copyrights, data (including data licenses), websites, IP licenses, trade secrets, patents, patent applications, and property such as loans, notes and other debt instruments, lease agreements, stocks and other instruments of property ownership of either tangible or intangible property, such as intellectual property, software, or software subscriptions or licenses. *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See this section's definitions of *cost objective* and *final cost objective*.

Internal control for recipients and subrecipients means processes designed and implemented by recipients and subrecipients to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of reporting for internal and external use; and

(3) Compliance with applicable laws and regulations.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Loan means a Federal loan or loan guarantee received or administered by a recipient or subrecipient, except as used in this section's definition of *program income*.

(1) The term "direct loan" means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term "direct loan obligation" means a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term "loan guarantee" means any Federal Government guarantee, insurance, or other pledges for the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term "loan guarantee commitment" means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a State, including a:

(1) County;

(2) Borough;

(3) Municipality;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) City;

(5) Town;

(6) Township;

(7) Parish;

(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(9) Special district;

(10) School district;

(11) Intrastate district;

(12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 200.503(e).

Management decision means the Federal agency's or pass-through entity's written determination, provided to the auditee, of the adequacy of the auditee's proposed corrective actions to address the findings based on its evaluation of the audit findings and proposed corrective actions.

Micro-purchase means an individual procurement transaction for supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

comprise a subset of a recipient's or subrecipient's small purchases using informal procurement methods as set forth in § 200.320.

Micro-purchase threshold means the dollar amount at or below which a recipient or subrecipient may purchase property, or services using micro-purchase procedures (see § 200.320). Generally, except as provided in § 200.320, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the recipient or subrecipient and approved by the cognizant agency for indirect costs.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $50,000 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 $50,000. 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.

Non-discretionary award means an award made by the Federal agency to specific recipients in accordance with statutory, eligibility, and compliance requirements, such that in keeping with specific statutory authority, the Federal agency cannot exercise judgment ("discretion"). A non-discretionary award amount could be specifically determined or by formula.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Non-Federal entity (NFE) means 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.

Nonprofit organization means any organization that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit;

(3) Uses net proceeds to maintain, improve, or expand the organization's operations; and

(4) Is not an IHE.

Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal agency. The notice of funding opportunity provides information on the award, such as who is eligible to apply, the evaluation criteria for selecting a recipient or subrecipient, the required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a "program announcement," "notice of funding availability," "broad agency announcement," "research announcement," "solicitation," or some other term.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see § 200.510(b)) to a recipient or subrecipient unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal expenditures (as direct and sub-awards) by the recipient or subrecipient, then the Federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the Federal agency that is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

Participant generally means an individual participating in or attending program activities under a Federal award, such as trainings or conferences, but who is not responsible for implementation of the Federal award. Individuals committing effort to the development or delivery of program activities under a Federal award (such as consultants, project personnel, or staff members for a recipient or subrecipient) are not participants. Examples of participants may include community members participating in a community outreach program, members of the public whose perspectives or input are sought as part of a program, students, or conference attendees.

Participant support costs means direct costs that support participants (see definition for *Participant* in § 200.1) and their involvement in a Federal award, such as stipends, subsistence allowances, travel allowances, registration fees, temporary dependent care, and per diem paid directly to or on behalf of participants.

Pass-through entity means a recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity under this part flows through the subaward agreement between the pass-through entity and subrecipient.

Performance goal means a measurable target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

goal expressed as a quantitative standard, value, or rate. In some instances (for example, discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the time interval between the start and end date of a Federal award, which may include one or more budget periods. Identification of the period of performance in the Federal award consistent with § 200.211(b)(5) does not commit the Federal agency to fund the award beyond the currently approved budget period.

Personal property means property other than real property. It may be tangible or intangible.

Personally Identifiable Information (PII) means 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. Some PII is available in public sources such as telephone books, websites, and university listings. The definition of PII is not attached to any single category of information or technology. Instead, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that could be used to identify an individual when combined with other available information.

Prior approval means the written approval obtained in advance by an authorized official of a Federal agency or pass-through entity of certain costs or programmatic decisions.

Program income means gross income earned by the recipient or subrecipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(c). Program income includes but is not

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees, and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See § 200.407. See also 35 U.S.C. 200-212 "Disposition of Rights in Educational Awards," which applies to inventions made under Federal awards.

Project cost means total allowable costs incurred under a Federal award and all cost sharing, including third-party contributions.

Property means real property or personal property. See this section's definitions of *real property* and *personal property*.

Protected Personally Identifiable Information (Protected PII) means PII (see definition in this section), except for PII that must be disclosed by law. Examples of PII include, but are not limited to, social security number; passport number; credit card numbers; clearances, bank numbers; biometrics; date and place of birth; mother's maiden name; criminal, medical and financial records; and educational transcripts.

Questioned cost has the meaning given in paragraphs (1) through (3).

(1) *Questioned cost* means an amount, expended or received from a Federal award, that in the auditor's judgment:

(i) Is noncompliant or suspected noncompliant with Federal statutes, regulations, or the terms and conditions of the Federal award;

(ii) At the time of the audit, lacked adequate documentation to support compliance; or

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iii) Appeared unreasonable and did not reflect the actions a prudent person would take in the circumstances.

(2) The questioned cost amount under (1)(ii) is calculated as if the portion of a transaction that lacked adequate documentation were confirmed noncompliant.

(3) There is no questioned cost solely because of:

(i) Deficiencies in internal control; or

(ii) Noncompliance with the reporting type of compliance requirement (described in the compliance supplement) if this noncompliance does not affect the amount expended or received from the Federal award.

(4) *Known questioned cost* means a questioned cost specifically identified by the auditor. Known questioned costs are a subset of likely questioned costs.

(5) *Likely questioned cost* means the auditor's best estimate of total questioned costs, not just the known questioned costs. Likely questioned costs are developed by extrapolating from audit evidence obtained, for example, by projecting known questioned costs identified in an audit sample to the entire population from which the sample was drawn. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the likely questioned costs, not just the known questioned costs.

(6) Questioned costs are not improper payments until reviewed and confirmed to be improper payments as defined in OMB Circular A–123 Appendix C.

Real property means land, including land improvements, structures, and appurtenances thereto, and legal interests in land, including fee interest, licenses, rights of way, and easements. Real property excludes moveable machinery and equipment.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Recipient means an entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award.

Renewal award means a Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. The start date of a renewal award begins a new and distinct period of performance.

Research and Development (R&D) means all basic and applied research activities and all development activities performed by a recipient or subrecipient. The term research also includes activities involving the training of individuals in research techniques where such activities use the same facilities as other research and development activities and where such activities are not included in the instruction function. "Research" is the systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research to produce useful materials, devices, systems, or methods, including designing and developing prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a recipient or subrecipient may purchase property or services using small purchase methods (see § 200.320). Recipients and subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold set in the FAR at 48 CFR part 2, subpart 2.1 is used in this part as the simplified acquisition threshold for secondary procurement activities administered under Federal awards. The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold, which is less than or equal to the dollar value established in the FAR, based on internal controls, an evaluation of risk, and its documented procurement procedures. Recipients and subrecipients

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

should also determine if local government purchasing laws apply. This threshold must never exceed the dollar value established in the FAR.

Special purpose equipment means equipment that is used only for research, medical, scientific, or other similar technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, spectrometers, and associated software. See also the definitions of *equipment* and *general purpose equipment* in this section.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070-1099d), which the U.S. Department of Education administers, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. It does not include payments to a contractor, beneficiary, or participant. A subaward may be provided through any form of legal agreement consistent with criteria in with § 200.331, including an agreement the pass-through entity considers a contract.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Subrecipient means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency.

Subsidiary means an entity in which more than 50 percent of the entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.

Supply means all tangible personal property other than those described in the *equipment* definition. A computing device is a supply if the acquisition cost is below the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes or $10,000, regardless of the length of its useful life. See this section's definitions of *computing devices* and *equipment*.

Telecommunications cost means the cost of using communication technologies such as mobile phones, landlines, and the internet.

Termination means the action a Federal agency or pass-through entity takes to discontinue a Federal award, in whole or in part, at any time before the planned end date of the period of performance. Termination does not include discontinuing a Federal award due to a lack of available funds.

Third-party in-kind contributions means the value of non-cash contributions (*meaning,* property or services) that:

(1) Benefit a project or program funded by a Federal award; and

(2) Are contributed by non-Federal third parties, without charge, to a recipient or subrecipient under a Federal award.

Unliquidated financial obligation means financial obligations incurred by the recipient or subrecipient but not paid (liquidated) for financial reports prepared on a cash basis. For reports

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

prepared on an accrual basis, these are financial obligations incurred by the recipient or subrecipient but for which expenditures have not been recorded.

Unobligated balance means the amount of funds under a Federal award that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated financial obligations and expenditures under the Federal award from the cumulative amount of funds the Federal agency or pass-through entity authorized the recipient or subrecipient to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged voluntarily in the proposal's budget on the part of the recipient or subrecipient, which becomes a binding requirement of the Federal award. See § 200.306.

Subpart B - General Provisions

§ 200.100 Purpose.

(a) *Purpose.* (1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards. Federal agencies must not impose additional requirements except as allowed in §§ 200.102, 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides Federal agencies with the policy for collecting and submitting information on all Federal financial assistance programs to the Office of Management and Budget (OMB) and communicating this information to the public. It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It also sets forth how the General Services Administration (GSA), OMB, and Federal agencies implement the Federal Program Information Act (31 U.S.C. 6101-6106).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) *Administrative requirements.* Subparts B through D set forth the uniform administrative requirements for Federal financial assistance. This includes establishing requirements for Federal agencies management of Federal financial assistance programs before a Federal award is made, and requirements that Federal agencies may impose on recipients and subrecipients throughout the lifecycle of a Federal award.

(c) *Cost principles.* Subpart E establishes principles for determining allowable costs incurred by recipients and subrecipients under Federal awards. These principles are for the purpose of cost determination. They do not address the circumstances nor dictate the extent of Federal Government funding of a particular program or project.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F is issued pursuant to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507). Subpart F sets forth the standards for achieving consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. Subpart F also provides the policies and procedures for Federal agencies or pass-through entities when using the results of these audits.

§ 200.101 Applicability.

(a) *General applicability to Federal agencies.* (1) Subparts A through F apply to Federal agencies that make Federal awards to non-Federal entities. As provided in paragraph (a)(2), subparts A through E may also apply to Federal agencies that make Federal awards to other entities.

(2) Federal agencies must apply subparts A though F of this part to non-Federal entities unless a particular section of this part or Federal statute provides otherwise. Federal agencies may apply subparts A through E of this part to Federal agencies, for-profit organizations, foreign public entities, or foreign organizations as permitted in agency regulations or program statutes,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

except when a Federal agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the laws of a foreign government. Subpart F only applies to non-Federal entities as defined in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507). Federal agencies should apply the requirements to all recipients in a consistent and equitable manner to the extent permitted within applicable statutes, regulations, and policies.

(3) Throughout subparts A through F, the word "must" indicates a requirement. The words "should" or "may" indicate a recommended approach and permit discretion.

(4) Throughout subparts A through E, when the word "or" is used between the terms "recipient" and "subrecipient," any requirements or recommendations in the relevant provisions of this part apply to the recipient, the subrecipient, or both, as applicable. The use of "or" between recipient and subrecipient does not mean that applicable requirements or recommendations only apply to one of these entities unless the context clearly indicates otherwise.

(b) *Applicability to Federal financial assistance.* (1) Paragraphs (b)(2) through (b)(5) of this section describe what portions of this part apply to specific types of Federal financial assistance. Paragraphs (d) and (e) of this section explain additional exceptions related to governing provisions and Federal program applicability. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. Pass-through entities must comply with the requirements described in subpart D, §§ 200.331 through 200.333, and any other sections of this part addressing pass-through entities.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) Subpart A (Acronyms and Definitions) and subpart B (General Provisions) apply to all Federal financial assistance, except that §§ 200.111 (English language), 200.112 (conflict of interest), and 200.113 (mandatory disclosures) do not apply to agreements for loans, loan guarantees, interest subsidies, and insurance.

(3) Subpart C (Pre-Federal Award Requirements and Contents of Federal Awards) and subpart D (Post Federal Award Requirements) only apply to grants and cooperative agreements with the following exceptions:

(i) Section 200.203 (Requirement to Provide Public Notice of Federal Financial Assistance Programs) also applies to agreements for loans, loan guarantees, interest subsidies, and insurance;

(ii) Section 200.216 (Prohibition on Certain Telecommunications and Video Surveillance Equipment or Services) applies to loans and grants (see Pub. L. 115-232, Div. A, Title VIII, § 889, as amended); and

(iii) Sections 200.303 (Internal Controls) and 200.331 through 200.333 (Subrecipient Monitoring and Management) also apply to all types of Federal financial assistance.

(4) Subpart E (Cost Principles) applies to grants and cooperative agreements, but does not apply to the following:

(i) Food commodities provided through grants and cooperative agreements;

(ii) Fixed amount awards, except for §§ 200.400(g), 200.402 through 200.405, and 200.407(d), which do apply;

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance; and

(iv) Federal awards to hospitals (see Appendix IX – Hospital Cost Principles).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(5) Subpart F (Audit Requirements) only applies to the following items when awarded to a non-Federal entity:

(i) Grants and cooperative agreements (including fixed amount awards);

(ii) Contracts and subcontracts awarded under the FAR (except for fixed price contracts and subcontracts);

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance; and

(iv) Any other form of Federal financial assistance as defined by the Single Audit Act Amendment of 1996 (codified at 31 U.S.C. 7501-7507).

(c) *Applicability to different types of contracts and subcontracts awarded by a Federal agency to a non-Federal entity under the Federal Acquisition Regulations (FAR).* (1) Paragraphs (c)(2) and (c)(3) of this section describe what portions of this part apply to specific types of contracts and subcontracts awarded by a Federal agency to a non-Federal entity. See also paragraph (b)(5)(ii) on audit requirements. For both paragraphs (c)(2) and (c)(3):

(i) In cases of conflict between the requirements of applicable portions of this part and the terms and conditions of the contract, the terms and conditions of the contract and the FAR prevail.

(ii) When the Cost Accounting Standards (CAS) are applicable to the contract or subcontract, they also take precedence over this part.

(iii) In addition, costs that are identified as unallowable under 41 U.S.C. 4304(a) and as stated in the FAR (48 CFR part 31, subpart 31.2, and 48 CFR 31.603) are always unallowable.

(2) *Cost-reimbursement contract under the FAR awarded to a non-Federal entity.* When a non-Federal entity is awarded a cost-reimbursement contract under the FAR, only subpart D, §§ 200.331 through 200.333, and subparts E and F are applicable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) *Fixed-price contract or subcontract under the FAR awarded to a non-Federal entity.* When a non-Federal entity is awarded a fixed-price contract or subcontract under the FAR, only subpart A, subpart B (except for §§ 200.111, 200.112, and 200.113), subpart D (only at § 200.303 and §§ 200.331 through 200.333), and subpart E are applicable to the contract, except that subpart E is not applicable to fixed-price contracts and subcontracts that are not negotiated.

(d) *Governing provisions.* With the exception of subpart F, which is required by the Single Audit Act, Federal statutes or regulations govern in any circumstances where they conflict with the provisions of this part. For agreements with Indian Tribes, this includes the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended (see 25 U.S.C. 5301-5423).

(e) *Program applicability.* Except for §§ 200.203, 200.216, and 200.331 through 200.333, the requirements in subparts C, D, and E do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that subpart E apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);

(2) Federal awards to local education agencies under 20 U.S.C. 7702-7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858).

(f) *Additional program applicability.* Except for §§ 200.203 and 200.216, the guidance in subpart C does not apply to the following programs:

(1) Entitlement Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance for Needy Families (Title IV-A of the Social Security Act, 42 U.S.C. 601-619);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Social Security Act, 42 U.S.C. 651-669b);

(iii) Federal Payments for Foster Care, Prevention, and Permanency (Title IV-E of the Act, 42 U.S.C. 670-679c);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (Title XIX of the Act, 42 U.S.C. 1396-1396w-5) not including the State Medicaid Fraud Control program authorized by Section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (Title XXI of the Act, 42 U.S.C. 1397aa-1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (f)(1) of this section.

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Public Law 96-422, 94 Stat.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e)).

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (Section 4 of the Act, 42 U.S.C. 1753);

(ii) Commodity Assistance (Section 6 of the Act, 42 U.S.C. 1755);

(iii) Special Meal Assistance (Section 11 of the Act, 42 U.S.C. 1759a);

(iv) Summer Food Service Program for Children (Section 13 of the Act, 42 U.S.C. 1761); and

(v) Child and Adult Care Food Program (Section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (Section 3 of the Act, 42 U.S.C. 1772);

(ii) School Breakfast Program (Section 4 of the Act, 42 U.S.C. 1773); and

(iii) State Administrative Expenses (Section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (Section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (Section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (Section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.102 Exceptions.

(a) *OMB class exceptions.* Except for subpart F, OMB may allow exceptions from requirements of this part for classes of Federal awards, recipients, or subrecipients when the exceptions are not prohibited by statute. For example, Federal agencies may request exceptions in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. See also § 200.206. Federal agencies may also request exceptions in emergency situations. When OMB allows an exception to requirements of this part, the Federal agency remains responsible for ensuring the exception is applied to Federal awards in a manner consistent with Federal statutes and regulations.

(b) *Statutory and regulatory exceptions.* A Federal agency may adjust requirements to a class of Federal awards, recipients, or subrecipients when required by Federal statutes or regulations, except for the requirements in subpart F. Except for provisions in subpart F, when a Federal statute requires exceptions to requirements of this part for a class of Federal awards, recipients, or subrecipients, a Federal agency does not need OMB approval to allow those exceptions. See also § 200.106.

(c) *Federal agency exceptions.* Federal agencies may allow exceptions to requirements of this part on a case-by-case basis for individual Federal awards, recipients, or subrecipients, except when the exceptions are prohibited by law or other approval is expressly required by this part. Only the cognizant agency for indirect costs may authorize exceptions related to cost allocation plans or indirect cost rate proposals. A Federal agency may also apply less restrictive requirements when issuing fixed amount awards (see § 200.1), except for those requirements imposed by statute or in subpart F.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.103 Authorities.

This part is issued under the following authorities.

(a) Subparts B through D are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management); the Federal Program Information Act (Public Law 95-220 and Public Law 98-169, as amended, codified at 31 U.S.C. 6101-6106); the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224, as amended, codified at 31 U.S.C. 6301-6309); 41 U.S.C. 1101-1131 (the Office of Federal Procurement Policy Act); Reorganization Plan No. 2 of 1970 and Executive Order 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President"); and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507).

(b) Subpart E is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101-1126); the Chief Financial Officers Act of 1990 (31 U.S.C. 503-504); Reorganization Plan No. 2 of 1970; and Executive Order 11541, "Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President." OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.

(c) Subpart F is authorized under the Single Audit Act Amendments of 1996 (codified at 31 U.S.C. 7501-7507). OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.

§ 200.104 Supersession.

This part superseded previous OMB guidance issued under Title 2, subtitle A, chapter II of the Code of Federal Regulations and certain OMB circulars related to uniform administrative requirements, cost principles, and audit requirements for Federal awards.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.105 Effect on other issuances.

(a) *Superseding inconsistent requirements.* For Federal awards made subject to this part by a Federal agency, this part takes precedence over any administrative requirements, program manuals, handbooks, and other non-regulatory materials that are inconsistent with the requirements of this part upon implementation by the Federal agency, except to the extent that they are required by statute or authorized in accordance with § 200.102.

(b) *Imposition of requirements on recipients.* Agencies may only impose legally binding requirements on recipients and subrecipients through:

(1) Notice and public comment procedures through an approved agency process, including as authorized by this part, other statutes, or regulations; or

(2) Incorporating requirements into the terms and conditions of a Federal award as permitted by Federal statute, regulation, or this part.

§ 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies, non-Federal entities, recipients, and subrecipients are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

§ 200.107 OMB responsibilities.

OMB will review Federal agency regulations and implementation of this part. OMB will provide interpretations of policy requirements and assistance to ensure effective, efficient, and consistent implementation. Any exceptions will be subject to approval by OMB and only with adequate justification from the Federal agency.

§ 200.108 Inquiries.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Inquiries from Federal agencies concerning this part may be directed to OMB. Inquiries from recipients or subrecipients should be addressed to the Federal agency, the cognizant agency for indirect costs, the cognizant agency for audit, or the pass-through entity as appropriate.

§ 200.109 Review date.

OMB will review this part periodically.

§ 200.110 Effective date.

(a) The standards set forth in this part affecting the administration of Federal awards by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this part becomes final.

(b) Existing negotiated indirect cost rates will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date a newly re-negotiated rate goes into effect for the recipient's or subrecipient's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revisions to this part (as of the publication date for revisions to this guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

§ 200.111 English language.

(a) All Federal financial assistance announcements, applications, and Federal award information should be in the English language and must be in terms of U.S. dollars. However, Federal agencies, recipients, and subrecipients may issue or translate a Federal award or other documents into another language. A Federal agency may translate formal or informal announcements of the availability of Federal funding through a financial assistance program, such as a notice of funding opportunity, when translations may serve to increase the pool of applicants or the participation of a specific community (for example, programs administered in

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

foreign countries where the primary language is not English). Federal agencies must maintain an official controlling English version of the Federal financial assistance announcement and the Federal award, including the terms and conditions.(b) Applications, reports, and official correspondence may be submitted in languages other than English if specified in the notice of funding opportunity or the terms and conditions of the Federal award.

(c) In the event of inconsistency between English and another language, the English language meaning will control. When a significant portion of the recipient's or subrecipient's employees administering a Federal award are not fluent in English, the Federal award should be provided in English and the language(s) with which employees are more familiar.

§ 200.112 Conflict of interest.

Federal agencies must establish conflict of interest policies for Federal awards. A recipient or subrecipient must disclose in writing any potential conflict of interest to the Federal agency or pass-through entity in accordance with the established Federal agency policies.

§ 200.113 Mandatory disclosures.

An applicant, recipient, or subrecipient of a Federal award must promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable). Recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with Appendix XII of this

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

part. Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

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

§ 200.200 Purpose.

Sections 200.201 through 200.217 prescribe instructions and other pre-award matters to be used by Federal agencies in the program planning, announcement, application, and award processes.

§ 200.201 Use of grants, cooperative agreements, fixed amount awards, and contracts.

(a) *Federal awards.* The Federal agency or pass-through entity must decide on the appropriate type of agreement for a Federal award (for example, a grant, cooperative agreement, subaward, or contract) in accordance with this guidance. See the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-6309).

(b) *Fixed amount awards.* The Federal agency or pass-through entity (see § 200.333) may use fixed amount awards (see the definition of *fixed amount awards* in § 200.1) for which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. See § 200.101(b)(4)(ii) for further information on which provisions in subpart E (cost principles) apply to fixed amount awards. The Federal agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if accurate cost, historical, or unit pricing data is available to establish a fixed budget based on a reasonable estimate of actual costs. Budgets for fixed amount awards are negotiated with the recipient or subrecipient and the total amount of Federal funding is determined in accordance with the recipient's or subrecipient's proposal, available pricing data, and subpart E.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Accountability must be based on performance and results, which can be communicated in performance reports or through routine monitoring. There is no expected routine monitoring 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 recipient or subrecipient from the record retention requirements contained in §§ 200.334 through 200.338; nor does it absolve the recipient or subrecipient of the responsibilities of making records available for review during an audit. See § 200.101(b)(5)(i). Payments must be based on meeting specific requirements of the Federal award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments. The amount of each payment as well as the "milestone" or event triggering the payment, should be agreed to in advance and included in the Federal award;

(ii) On a unit price basis. The defined unit(s) or price(s) should be agreed to in advance and included in the Federal award; or

(iii) In one payment at the completion of the Federal award.

(2) A fixed amount award must not be used in programs that require cost sharing.

(3) A fixed amount award may generate and use program income in accordance with the terms and conditions of the Federal award; however, the requirements of § 200.307 do not apply.

(4) At the end of a fixed amount award, the recipient or subrecipient must certify in writing to the Federal agency or pass-through entity that the project was completed as agreed to in the Federal award, or identify those activities that were not completed, and that all expenditures were incurred in accordance with § 200.403. When the required activities were not carried out, including fixed amount awards paid on a unit price basis under 200.201(b)(1)(ii), the amount of the Federal award must be reduced by the amount that reflects the activities that were

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

not completed in accordance with the Federal award. When the required activities were completed in accordance with the terms and conditions of the Federal award, the recipient or subrecipient is entitled to any unexpended funds.

(5) Periodic reports may be established for fixed amount awards.

(6) Prior approval requirements that apply to fixed amount awards are § 200.308(f) (paragraphs 1 through 3, 6 through 8, and 10) and § 200.333.

§ 200.202 Program planning and design.

(a) The Federal agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. A program must be designed:

(1) With clear goals and objectives that provide meaningful results and be consistent with the Federal authorizing legislation of the program;

(2) To measure performance based on the goals and objectives developed during program planning and design. Performance measures may differ depending on the type of program. See § 200.301 for more information on performance measurement;

(3) To align with the strategic goals and objectives within the Federal agency's performance plan and support the Federal agency's performance measurement, management, customer service initiatives, and reporting as required by Part 6 of OMB Circular A-11 (Preparation, Submission, and Execution of the Budget);

(4) To align with the Program Management Improvement Accountability Act (Public Law 114-264) as well as the Foundations for Evidence-Based Policymaking Act (Public Law 115-435), as applicable; and

(5) To encourage applicants to engage, when practicable, during the design phase, members of the community that will benefit from or be impacted by a program.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) Federal agencies should develop programs in consultation with communities benefiting from or impacted by the program. In addition, Federal agencies should consider available data, evidence, and evaluation results from past programs and make every effort to extend eligibility requirements to all potential applicants. Federal agencies are encouraged to coordinate with other agencies during program planning and design, particularly when the goals and objectives of a program or project align with those of other agencies.

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal agency must maintain an accurate list of Federal programs in the Assistance Listings maintained by the General Services Administration (GSA) at SAM.gov.

(1) The Assistance Listings is the comprehensive government-wide source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the Federal agency must submit to GSA for approval by OMB is listed in paragraph (b). GSA must prescribe the format for the submission in coordination with OMB.

(3) The Federal agency must assign the appropriate Assistance Listing before making the Federal award unless exigent circumstances require otherwise (for example, timing requirements imposed by a Federal statute).

(b) To the extent practicable, the Federal agency must create, update, and manage Assistance Listing entries based on the authorizing statute for the program and comply with additional guidance provided by GSA (in consultation with OMB) to ensure consistent and accurate information is available to prospective applicants. Assistance Listings should be

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

communicated to the public in plain language. Accordingly, Federal agencies must submit the following information to GSA when creating an Assistance Listing:

(1) *Program Description, Purpose, Goals, and Measurement.* A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the program description, purpose, goals, and performance measurement should align with the strategic goals and objectives within the Federal agency's performance plan and should support the Federal agency's performance measurement, management, customer experience initiatives, and reporting as required by Part 6 of OMB Circular A-11;

(2) *Identification.* Identification of whether the program will issue Federal awards on a discretionary or non-discretionary basis;

(3) *Projected total amount of funds available for the program.* Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) *Anticipated source of available funds.* The statutory authority for funding the program and the agency, sub-agency, or specific program unit that will issue the Federal awards (to the extent possible) and associated funding identifier (for example, Treasury Account Symbol(s));

(5) *General eligibility requirements.* The statutory, regulatory, or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (for example, type of recipient); and

(6) *Applicability of Single Audit Requirements.* Applicability of Single Audit Requirements as required by subpart F.

§ 200.204 Notices of funding opportunities.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

The Federal agency must announce specific funding opportunities for Federal financial assistance that will be openly competed. The term openly competed means opportunities that are not directed to one or more specifically identified applicants. To the extent possible, the Federal agency should communicate opportunities to the public in plain language to ensure the announcement is accessible to diverse communities of eligible applicants, including underserved communities. 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. Federal agencies may offer pre-application technical assistance or provide clarifying information for funding opportunities. However, Federal agencies must ensure these resources are made accessible and widely available to all potential applicants (for example, by posting answers to questions and requests on Grants.gov). The Federal agency should make every effort to identify in the NOFO all eligible applicants (for example, different types of nonprofit organizations such as labor unions and tribal organizations). The following information must be provided in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal agency must display the following information on *Grants.gov*, in a location preceding the full text of the announcement:

(1) Federal Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if the Federal agency has assigned a number to the funding opportunity announcement);

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(5) Assistance Listing Number(s);

(6) Funding Details. To the extent appropriate, the total amount of funding that the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range or average;

(7) Key Dates. Key dates include due dates for submitting applications or Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If possible, the Federal agency should provide an anticipated award date. If the NOFO states that applications will be evaluated on a "rolling" basis (that is, at different points during a specified period of time), the Federal agency should provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision;

(8) Executive Summary. A brief description that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible applicants. The text of the executive summary should not exceed 500 words; and

(9) Agency contact information.

(b) *Availability period.* The Federal agency should make all funding opportunities available for application for at least 60 calendar days. However, the Federal agency may modify the availability period of an opportunity as needed. For example, extending the period may be necessary to provide technical assistance to an applicant pool that was not anticipated when the announcement was made or has less experience with applying for Federal financial assistance. The Federal agency may also determine that an availability period of less than 60 days is

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

sufficient for a particular funding opportunity. However, no funding opportunity should be available for less than 30 calendar days unless the Federal agency determines that exigent circumstances justify this.

(c) *Full text of funding opportunities.* (1) The Federal agency must include the information in Appendix I for every funding opportunity.

(2) Federal agencies should ensure that funding opportunities are written using plain language. To the extent possible Federal agencies must streamline opportunities to make them accessible, particularly for funding opportunities that are new, targeted to underserved communities, or intended to reach inexperienced applicants.

(3) To reduce application burden, Federal agencies should consider whether programmatic or administrative requirements specific to the agency, program, or funding opportunity must be met at the time of application or as a requirement of receiving a Federal award.

§ 200.205 Federal agency merit review of proposals.

Unless prohibited by Federal statute, the Federal agency must design and execute a merit review process of applications for discretionary Federal awards. The objective of a merit review process is to select recipients most likely to be successful in delivering results based on the program objectives as outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with the written standards of the Federal agency. These standards should identify the number of people the agency requires to participate in the merit review process and provide opportunities for a diverse group of participants, including those representing underserved communities. The merit review process explained in this section must be described or incorporated by reference in the applicable funding opportunity.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

See Appendix I to this part. See also § 200.204. The Federal agency must also periodically review its merit review process.

§ 200.206 Federal agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of government-wide data.* (1) Prior to making a Federal award, the Federal agency is required to review eligibility information for applicants and financial integrity information for applicants available in OMB-designated databases per the Payment Integrity Information Act of 2019 (Public Law 116-117), the "Do Not Pay Initiative" (31 U.S.C. 3354), and 41 U.S.C. 2313.

(2) The Federal agency is required to review the responsibility and qualification records available in the non-public segment of the System for Award Management (SAM.gov) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold. See 41 U.S.C. 2313. The Federal agency must consider all of the information available in SAM.gov with regard to the applicant and any immediate highest-level owner, predecessor (meaning, an organization that is replaced by a successor), or subsidiary, identified for that applicant in SAM.gov. See Public Law 112-239, National Defense Authorization Act for Fiscal Year 2013. The information in the system for a prior recipient of a Federal award must demonstrate a satisfactory record of administering programs or activities under Federal financial assistance or procurement awards, and integrity and business ethics. The Federal agency may make a Federal award to a recipient that does not fully meet these standards if it is determined that the information is not relevant to the Federal award under consideration or there are specific conditions that can appropriately mitigate the risk associated with the recipient in accordance with § 200.208.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) *Risk Assessment.* (1) The Federal agency must establish and maintain policies and procedures for conducting a risk assessment to evaluate the risks posed by applicants before issuing Federal awards. This assessment helps identify risks that may affect the advancement toward or the achievement of a project's goals and objectives. Risk assessments assist Federal managers in determining appropriate resources and time to devote to project oversight and monitor recipient progress. This assessment may incorporate elements such as the quality of the application, award amount, risk associated with the program, cybersecurity risks, fraud risks, and impacts on local jobs and the community. If the Federal agency determines that the Federal award will be made, specific conditions that address the assessed risk may be implemented in the Federal award. The risk criteria to be evaluated must be described in the announcement of the funding opportunity described in § 200.204.

(2) In evaluating risks posed by applicants, the Federal agency should consider the following items:

(i) *Financial stability.* The applicant's record of effectively managing financial risks, assets, and resources;

(ii) *Management systems and standards.* Quality of management systems and ability to meet the management standards prescribed in this part;

(iii) *History of performance.* The applicant's record of managing previous and current Federal awards, including compliance with reporting requirements and conformance to the terms and conditions of Federal awards, if applicable;

(iv) *Audit reports and findings.* Reports and findings from audits performed under subpart F or the reports and findings of any other available audits, if applicable; and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(v) *Ability to effectively implement requirements.* The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients of Federal awards.

(c) *Adjustments to the Risk Assessment.* The Federal agency may modify the risk assessment at any time during the period of performance, which may justify changes to the terms and conditions of the Federal award. See § 200.208.

(d) *Suspension and debarment compliance.* The Federal agency must comply with the government-wide suspension and debarment guidance in 2 CFR part 180 and individual Federal agency suspension and debarment requirements in title 2 of the Code of Federal Regulations. Federal agencies must also require recipients to comply with these requirements. These requirements restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving Federal awards or participating in Federal awards.

§ 200.207 Standard application requirements.

(a) *Paperwork clearances.* The Federal agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320 and in alignment with OMB-approved, government-wide data elements available from the OMB-designated standards lead. Examples of application information collections approved by OMB include the Standard Forms 424 (SF-424), which is available on Grants.gov, and the Biographical Sketch Common Form (OMB Control Number 3145-0279), which Federal agencies should use to collect biographical sketches and other disclosure information from award applicants. OMB will authorize additional information collections only on a limited basis and consistent with these requirements.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) *Information collection.* The Federal agency may inform applicants that they do not need to provide certain information already being collected through other means.

§ 200.208 Specific conditions.

(a) Federal agencies are responsible for ensuring that specific Federal award conditions and performance expectations are consistent with the program design (See § 200.202 and § 200.301)

(b) The Federal agency or pass-through entity may adjust specific conditions in the Federal award based on an analysis of the following factors:

(1) Review of OMB-designated repositories of government-wide data (for example, *SAM.gov*) or review of its risk assessment (See § 200.206);

(2) The recipient's or subrecipient's history of compliance with the terms and conditions of Federal awards;

(3) The recipient's or subrecipient's ability to meet expected performance goals as described in § 200.211; or

(4) A determination of whether a recipient or subrecipient has inadequate financial capability to perform the Federal award.

(c) Specific conditions may include the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance;

(3) Requiring additional or more detailed financial reports;

(4) Requiring additional project monitoring;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(5) Requiring the recipient or subrecipient to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(d) Prior to imposing specific conditions, the Federal agency or pass-through entity must notify the recipient or subrecipient as to:

(1) The nature of the specific condition(s);

(2) The reason why the specific condition(s) is being imposed;

(3) The nature of the action needed to remove the specific condition(s);

(4) The time allowed for completing the actions; and

(5) The method for requesting the Federal agency or pass-through entity to reconsider imposing a specific condition.

(e) Any specific conditions must be promptly removed once the conditions that prompted them have been satisfied.

§ 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes, or regulations, a Federal agency or pass-through entity is authorized to require a recipient to submit annual certifications and representations. Submission may be required more frequently if a recipient or subrecipient fails to meet a requirement of a Federal award. When a recipient is provided an exception to the requirements of 2 CFR 25.110, the recipient must submit the appropriate assurance form (for example, SF-424B).

§ 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.211 Information contained in a Federal award.

The Federal award must include the following information:

(a) *Federal award performance goals.* Where applicable, performance goals, indicators, targets, and baseline data must be included in the Federal award. The Federal agency must also specify in the terms and conditions of the Federal award how performance will be assessed, including the timing and scope of expected performance. See §§ 200.202 and 200.301 for more information on Federal award performance goals.

(b) *General Federal award information.* The Federal agency must include the following information in each Federal award:

(1) Recipient Name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.400);

(2) Recipient's Unique Entity Identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see Federal award date in § 200.1);

(5) Period of Performance Start and End Date;

(6) Budget Period Start and End Date;

(7) Amount of Federal Funds Obligated by this Action;

(8) Total Amount of Federal Funds Obligated;

(9) Total Approved Cost Sharing, where applicable;

(10) Total Amount of the Federal Award including approved Cost Sharing;

(11) Budget Approved by the Federal Agency;

(12) Federal Award Description (to comply with statutory requirements (for example, FFATA));

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(13) Name of the Federal agency (including contact information for the awarding official),

(14) Assistance Listings Number and Title;

(15) Identification of whether the Award is R&D; and

(15) Indirect Cost Rate for the Federal award (including if the de minimis rate is charged per § 200.414).

(c) *General terms and conditions.* (1) Federal agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) *Administrative requirements.* Administrative requirements implemented by the Federal agency as specified in this part.

(ii) *National policy requirements.* These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.

(iii) *Recipient integrity and performance matters.* When the total Federal share of the Federal award may include more than $500,000 over the period of performance, the Federal agency must include the terms and conditions available in Appendix XII. See also § 200.113.

(iv) *Future budget periods.* When it is anticipated that the period of performance will include multiple budget periods, the Federal agency must indicate that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

(v) *Termination provisions.* Federal agencies must inform recipients of the termination provisions in § 200.340, including the applicable termination provisions in the Federal agency's regulations or terms and conditions of the Federal award.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) The Federal award must incorporate, by reference, all general terms and conditions of the Federal award, which must be maintained on the Federal agency's website.

(3) The Federal agency must provide a copy of the full text of the general terms and conditions if a recipient requests it.

(4) The Federal agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by a recipient, auditors, or others. The archive should be located on the Federal agency's website in the same place where current terms and conditions are available.

(d) *Federal award specific terms and conditions.* The Federal agency must include in each Federal award any specific terms and conditions that are in addition to the general terms and conditions. See also § 200.208. For loan and loan guarantee programs, the Federal agency must specify whether or not the Federal award has continuing compliance requirements. Whenever practicable, these specific terms and conditions should also be available on the Federal agency's website and in notices of funding opportunities (as outlined in § 200.204).

(e) *Federal agency requirements.* Any other information required by the Federal agency.

§ 200.212 Public access to Federal award information.

(a) Except as noted in paragraph (c) of this section, the Federal agency must publish the required Federal award information on *USAspending.gov* in accordance with the guidance provided by OMB and the U.S. Department of the Treasury's Government-wide Spending Data Model (GSDM).

(b) All responsibility and qualification records posted in SAM.gov will be publicly available after a waiting period of 14 calendar days, except for:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) Past performance reviews required by Federal Government contractors (See Federal Acquisition Regulation (FAR) 48 CFR part 42, subpart 42.15);

(2) Information that was entered prior to April 15, 2011; or

(3) Information that is withdrawn during the 14-calendar day waiting period by a Federal agency.

(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 200.213 Reporting a determination that an applicant is not qualified for a Federal award.

(a) The Federal agency must report in SAM.gov if it does not make a Federal award to an applicant because it determines that the applicant does not meet the minimum qualification standards as described in § 200.206(a)(2). The Federal agency must report that determination only if all of the following apply:

(1) The only basis for the determination is the applicant's prior record of performance on administering Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (meaning, the applicant was determined to be qualified based on all factors other than those two standards); and

(2) The total Federal share of the Federal award was expected to exceed the simplified acquisition threshold over the period of performance.

(b) The Federal agency is not required to report a determination that an applicant is not qualified for a Federal award if they issue the Federal award in accordance with the requirements of § 200.208.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) If the Federal agency reports a determination that an applicant is not qualified for a Federal award, the Federal agency also must notify the applicant that:

(1) The determination was made and reported in SAM.gov. The notification from the Federal agency to the applicant should also provide a brief explanation for the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination and then archived (See section 872 of Public Law 110-417, as amended, codified at 41 U.S.C. 2313);

(3) Each Federal agency that considers making a Federal award to the applicant during that five-year period will consider that information in determining the applicant's qualification to receive a Federal award when the total Federal share of a Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The applicant may review the responsibility and qualification records accessible in SAM.gov and comment on any information the system contains about the applicant; and

(5) Federal agencies must consider the applicant's comments in determining whether the applicant is qualified for a future Federal award.

(d) If the Federal agency enters information into SAM.gov about a determination that an applicant is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days; and

(2) Obtains an update to that information that could be helpful to other Federal agencies, the Federal agency should amend the information in the system within 30 days.

(e) Federal agencies must not post any information that will be made publicly available in the non-public segment of the responsibility and qualification records that is covered by a

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

disclosure exemption under the Freedom of Information Act. If a recipient asserts within seven calendar days to a Federal agency that some or all of the publicly available information is covered by a disclosure exemption under the Freedom of Information Act, the Federal agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Recipients and subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR part 180. The regulations in 2 CFR part 180 restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards.

§ 200.215 Never contract with the enemy.

Federal agencies, recipients, and subrecipients are subject to the guidance implementing Never Contract with the Enemy in 2 CFR part 183. The guidance in 2 CFR part 183 affects covered contracts, grants, and cooperative agreements that are expected to exceed $50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

§ 200.216 Prohibition on certain telecommunications and video surveillance equipment or services.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) Procure or obtain covered telecommunications equipment or services;

(2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in section 889 of Public Law 115-232, "covered telecommunications equipment or services" means any of the following:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment;

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) For the purposes of this section, "covered telecommunications equipment or services" also include 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.

(d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

(e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

(f) For additional information, see section 889 of Public Law 115-232 and § 200.471.

§ 200.217 Whistleblower protections

An employee of a recipient or subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 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

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

Subpart D - Post Federal Award Requirements

§ 200.300 Statutory and national policy requirements.

(a) The Federal agency or pass-through entity must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, applicable Federal statutes and regulations—including provisions protecting free speech, religious liberty, public welfare, and the environment, and those prohibiting discrimination—and the requirements of this part. The Federal agency or pass-through entity must communicate to a recipient or subrecipient all relevant requirements, including those contained in general appropriations provisions, and incorporate them directly or by reference in the terms and conditions of the Federal award.

(b) In administering Federal awards that are subject to a Federal statute prohibiting discrimination based on sex, 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 if the statute's prohibition on sex discrimination encompasses discrimination based on sexual orientation and gender identity consistent with the Supreme Court's reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

(c) In administering awards in accordance with the U.S. Constitution, the Federal agency must take account of the heightened constitutional scrutiny that may apply under the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Constitution's Equal Protection guarantee for government action that provides differential treatment based on protected characteristics.

§ 200.301 Performance measurement.

(a) The Federal agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster the adoption of promising practices. The Federal agency should establish program goals and objectives during program planning and design (see § 200.202). The Federal agency should clearly communicate the specific program goals and objectives in the Federal award, including how the Federal agency will measure the achievement of the goals and objectives, the expected timeline, and information on how the recipient must report the achievement of program goals and objectives. The Federal agency should also clearly communicate in the Federal award any expected outcomes (such as outputs, service performance, or public impacts of any of these), indicators, targets, baseline data, or data collections that the recipient is responsible for measuring and reporting. The Federal agency must ensure all requirements for measuring performance align with the Federal agency's strategic goals, strategic objectives, or performance goals relevant to a program (see OMB Circular A-11, Preparation, Submission, and Execution of the Budget Part 6).

(b) When establishing performance reporting frequency and content, the Federal agency should consider what information will be necessary to measure the recipient's progress, to identify promising practices of recipients, and build the evidence upon which the Federal agency makes program and performance decisions. The Federal agency should not require additional information that is not necessary for measuring program performance and evaluation. See § 200.329 for more information on reporting program performance.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) The Federal agency should also specify in the Federal award any requirements of the recipients' participation in federally-funded evaluations.

§ 200.302 Financial management.

(a) Each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's funds. All recipient and subrecipient financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by the terms and conditions; and tracking expenditures to establish that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. See § 200.450

(b) The recipient's and subrecipient's financial management system must provide for the following (see §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number, year the Federal award was issued, and name of the Federal agency or pass-through entity.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements in §§ 200.328 and 200.329. When a Federal agency or pass-through entity requires reporting on an accrual basis from a recipient or subrecipient that maintains its records other than on an accrual basis, the recipient or subrecipient must not be required to establish an accrual accounting system. This recipient or subrecipient may develop accrual data for its reports based on an analysis of the documentation on hand.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) Maintaining records that sufficiently identify the amount, source, and expenditure of Federal funds for Federal awards. These records must contain information necessary to identify Federal awards, authorizations, financial obligations, unobligated balances, as well as assets, expenditures, income, and interest. All records must be supported by source documentation. (4) Effective control over and accountability for all funds, property, and assets. The recipient or subrecipient must safeguard all assets and ensure they are used solely for authorized purposes. See § 200.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 200.305.

(7) Written procedures for determining the allowability of costs in accordance with subpart E and the terms and conditions of the Federal award.

§ 200.303 Internal controls.

The recipient and subrecipient must:

(a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should align with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) Evaluate and monitor the recipient's or subrecipient's compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified.

(e) Take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

§ 200.304 Bonds.

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal agency may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government

(b) The Federal agency may require adequate fidelity bond coverage where the recipient lacks coverage to protect the interest of the Federal Government.

(c) Where bonds, insurance, or both are required in the situations described above, the bonds and insurance must be obtained from companies holding certificates of authority issued by the U.S. Department of Treasury (see 31 CFR part 223).

§ 200.305 Federal payment.

(a) *Payments for States*. Payments for states are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies."

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) *Payments for recipients and subrecipients other than States.* For recipients and subrecipients other than states, payment methods must minimize the time elapsing between the transfer of funds from the Federal agency or the pass-through entity and the disbursement of funds by the recipient or subrecipient regardless of whether the payment is made by electronic funds transfer or by other means. See § 200.302(b)(6). Except as noted in this part, the Federal agency must require recipients to use only OMB-approved, government-wide information collections to request payment.

(1) The recipient or subrecipient must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient or subrecipient, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a recipient or subrecipient must be limited to the minimum amounts needed and be timed with actual, immediate cash requirements of the recipient or subrecipient in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the recipient or subrecipient for direct program or project costs and the proportionate share of any allowable indirect costs. The recipient or subrecipient must make timely payments to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payment requests by the recipient or subrecipient must be consolidated to cover anticipated cash needs for all Federal awards received by the recipient from the awarding Federal agency or pass-through entity.

(i) Advance payment mechanisms must comply with 31 CFR part 208 and include, but are not limited to, Treasury checks and electronic funds transfers.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Recipients and subrecipients must be authorized to submit payment requests as often as necessary when electronic fund transfers are used or at least monthly when electronic transfers are not used. See Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

(3) Reimbursement is preferred when the requirements in paragraph (b) cannot be met, when the Federal agency or pass-through entity sets a specific condition per § 200.208, when requested by the recipient or subrecipient, when a Federal award is for construction, or when a significant portion of the construction project is accomplished through private market financing or Federal loans and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal agency or pass-through entity must make payment within 30 calendar days after receipt of the payment request unless the Federal agency or pass-through entity reasonably believes the request to be improper.

(4) If the recipient or subrecipient cannot meet the criteria for advance payments and the Federal agency or pass-through entity has determined that reimbursement is not feasible because the recipient or subrecipient lacks sufficient working capital, the Federal agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal agency or pass-through entity must advance cash payments to the recipient or subrecipient to cover its estimated disbursement needs for an initial period generally aligned to the recipient's or subrecipient's disbursing cycle. After that, the Federal agency or pass-through entity must reimburse the recipient or subrecipient for its actual cash disbursements. Use of the working capital advance payment method requires that the pass-through entity provide timely advance payments to any subrecipients to meet the subrecipient's actual cash disbursements. The pass-through entity must not use the working capital advance method of payment if the reason for

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) If available, the recipient or subrecipient must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on Federal funds before requesting additional cash payments.

(6) Payments for allowable costs must not be withheld at any time during the period of performance unless required by Federal statute, regulations, or in one of the following instances:

(i) The recipient or subrecipient has failed to comply with the terms and conditions of the Federal award; or

(ii) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal agency or pass-through entity may, after providing reasonable notice, withhold payments to the recipient or subrecipient for financial obligations incurred after a specified date until the conditions are corrected or the debt is repaid to the Federal Government.

(7) A payment withheld for failure to comply with the terms and conditions of the Federal award must be released to the recipient or subrecipient upon subsequent compliance. When a Federal award is suspended, payment adjustments must be made in accordance with § 200.343.

(8) A payment must not be made to a recipient or subrecipient for amounts that the recipient or subrecipient withholds from contractors to assure satisfactory completion of work. Payment must be made when the recipient or subrecipient disburses the withheld funds to the contractors or to escrow accounts established to ensure satisfactory completion of work.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(9) The Federal agency or pass-through entity must not require separate depository accounts for funds provided to the recipient or subrecipient or establish any eligibility requirements for depositories. However, the recipient or subrecipient must be able to account for all Federal funds received, obligated, and expended.

(10) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(11) The recipient or subrecipient must maintain advance payments of Federal funds in interest-bearing accounts unless one of the following applies:

(i) The recipient or subrecipient receives less than $250,000 in Federal funding per year;

(ii) The best available interest-bearing account would not reasonably be expected to earn interest in excess of $500 per year on Federal cash balances;

(iii) The depository would require an average or minimum balance so high that it would not be feasible with the expected Federal and non-Federal cash resources;

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts; or

(v) An interest-bearing account is not readily accessible (for example, due to public or political unrest in a foreign country).

(12) The recipient or subrecipient may retain up to $500 per year of interest earned on Federal funds to use for administrative expenses of the recipient or subrecipient. Any additional interest earned on Federal funds must be returned annually to the Department of Health and Human Services Payment Management System (PMS) through either the Automated Clearing House (ACH) network or a Fedwire Funds Service payment. All interest in excess of $500 per year must be returned to PMS regardless of whether the recipient or subrecipient was paid

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

through PMS. Instructions for returning interest can be found at https://pms.psc.gov/grant-recipients/returning-funds-interest.html.

(13) All other Federal funds must be returned to the payment system of the Federal agency. Returns should follow the instructions provided by the Federal agency. All returns to PMS should follow the instructions provided at https://pms.psc.gov/grant-recipients/returning-funds-interest.html.

§ 200.306 Cost sharing.

(a) Voluntary committed cost sharing is not expected under Federal research grants. The Federal agency may not use voluntary committed cost sharing as a factor during the merit review of applications or proposals for Federal research grants unless authorized by Federal statutes or agency regulations and specified in the notice of funding opportunity. Federal agencies are also discouraged from using voluntary committed cost sharing as a factor during the merit review of applications for other Federal financial assistance programs. If voluntary committed cost sharing is used for this purpose for other programs, the notice of funding opportunity must specify how an applicant's proposed cost sharing will be considered. See §§ 200.414, 200.204, and Appendix I.

(b) For all Federal awards, the Federal agency or pass-through entity must accept any cost sharing funds (including cash and third-party in-kind contributions, and also including funds committed by the recipient, subrecipient, or third parties) as part of the recipient’s or subrecipient’s contributions to a program when the funds:

(1) Are verifiable in the recipient’s or subrecipient’s records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for achieving the objectives of the Federal award;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) Are allowable under subpart E;

(5) Are not paid by the Federal Government under another Federal award, except where the program's Federal authorizing statute specifically provides that Federal funds made available for the program can be applied to cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal agency; and

(7) Conform to other applicable provisions of this part.

(c) Unrecovered indirect costs, including indirect costs on cost sharing, may be included as part of cost sharing with the prior approval of the Federal agency or pass-through entity. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the recipient's or subrecipient's approved indirect cost rate.

(d) Values for recipient or subrecipient contributions of services and property must be established in accordance with the cost principles in subpart E. When a Federal agency or pass-through entity authorizes the recipient or subrecipient to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing must be the lesser of paragraph (d)(1) or (2) below.

(1) The value of the remaining life of the property recorded in the recipient's or subrecipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal agency or pass-through may approve using the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other labor may be counted as cost sharing if the service is necessary for the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

program. Rates for third-party volunteer services must be consistent with those paid for similar work by the recipient or subrecipient. When the required skills are not found in the recipient's or subrecipient's workforce, rates must be consistent with those paid for similar work in the labor market where the recipient or subrecipient competes for the services involved. In either case, fringe benefits that are allowable, allocable, and reasonable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally-negotiated indirect cost rate or, a rate in accordance with § 200.414(d) provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include items such as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. The assessed value of donated property included as cost sharing must not exceed the property's fair market value at the time of the donation.

(h) The method used for determining the value of donated equipment, buildings, and land for which title passes to the recipient or subrecipient may differ according to the following:

(1) If the purpose of the Federal award is to assist the recipient or subrecipient in acquiring equipment, buildings, or land, the aggregate value of the donated property may be claimed as cost sharing.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings, or land, only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed if provided in the terms and conditions of the Federal award. See § 200.420.

(i) The value of donated property must be determined in accordance with the accounting policies of the recipient or subrecipient with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the recipient or subrecipient as established by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 USC 4601-4655) except as provided in the implementing regulations at 49 CFR part 24, "Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs."

(2) The value of donated equipment must not exceed the fair market value at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(j) The fair market value of third-party in-kind contributions must be documented and, to the extent feasible, supported by the same methods used internally by the recipient or subrecipient.

(k) For institutions of higher education (IHE), voluntary uncommitted cost sharing should be treated differently from mandatory or voluntary committed cost sharing. Voluntary uncommitted cost sharing should not be included in the organized research base for computing the indirect cost rate or reflected in any allocation of indirect costs. Voluntary uncommitted cost sharing includes faculty-donated additional time above that agreed to as part of the award. See OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 200.307 Program income.

(a) *General.* The recipient or subrecipient is encouraged to earn income to defray program costs when appropriate. Program income must be used for the original purpose of the Federal award. Program income earned during the period of performance may only be used for costs incurred during the period of performance or allowable closeout costs. See § 200.472(b). Program income must be expended prior to requesting additional Federal funds. Program income exceeding amounts specified in the Federal award may be added to or deducted from the total allowable costs in accordance with the terms and conditions of the Federal award.

(b) *Use of program income.* There are three methods of applying program income: deduction; addition; and cost-sharing. The Federal agency should specify what program income method(s) will be used in the terms and conditions of the Federal award. The deduction method will be used if the Federal agency does not specify a method for applying program income. When no program income method is specified in the Federal award, prior approval is required to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

use the addition or cost sharing methods. However, the addition method will be used when no method is specified for awards made to institutions of higher education (IHE) and nonprofit research institutions. In specifying alternatives to the deduction and addition methods, the Federal agency may distinguish between income earned by the recipient and income earned by subrecipients as well as between the sources, kinds, or amounts of income.

(1) *Deduction.* Program income is deducted from the total allowable costs, reducing the overall total amount of the Federal award.

(2) *Addition.* Program income is added to the total allowable costs, increasing the overall total amount of the Federal award.

(3) *Cost sharing.* Program income is used to meet the Federal award's cost sharing requirement.

(c) *Income after the period of performance.* There are no requirements governing the disposition of program income earned after the end of the period of performance of the Federal award unless stipulated in the Federal agency regulations or the terms and conditions of the Federal award. The Federal agency may negotiate agreements with recipients regarding appropriate uses of income earned after the end of the period of performance as part of the closeout process. See § 200.344.

(d) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to generating program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(e) *Not considered program income.* The following are not considered program income unless specified in Federal statutes, regulations, or the terms and conditions of the Federal award:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) *Governmental revenues.* Taxes, special assessments, levies, fines, and similar revenues the recipient or subrecipient raised.

(2) *Property.* Proceeds from the sale of real property, equipment, or supplies. The proceeds must be handled in accordance with the requirements of the Property Standards of §§ 200.311, 200.313, 200.314, or as explicitly identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(3) *License fees and royalties.* License fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under the Federal award subject to 37 CFR part 401.

§ 200.308 Revision of budget and program plans.

(a) *Approved budget in general.* The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include the Federal share and non-Federal share or only the Federal share, as determined by the Federal agency or pass-through entity.

(b) *Deviations from approved budget.* The recipient or subrecipient must report deviations from the approved budget, project or program scope, or objective(s) in accordance with § 200.329. The recipient or subrecipient must request prior approvals from the Federal agency or pass-through entity for budget and program plan revisions in accordance with this section.

(c) *Requesting approval for budget revisions.* When requesting approval for budget revisions, the recipient or subrecipient must use the same format for budget information that was used in their application, except if the Federal agency has approved an alternative format.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Alternative formats may include the use of electronic systems, email, or other agency-approved mechanisms that document the request

(d) *Federal agency or pass-through entity review.* The Federal agency or pass-through entity must review the request for budget or program plan revision and should notify the recipient or subrecipient whether the revisions have been approved within 30 days of receipt of the request. The Federal agency or pass-through entity must inform the recipient or subrecipient in writing when a decision can be expected if more than 30 days is required for a review.

(e) *Limitation on other prior approval requirements.* Unless specified in this guidance, the Federal agency must not impose additional prior approval requirements without OMB approval. See also §§ 200.102 and 200.407.

(f) *Revisions Requiring Prior Approval.* A recipient or subrecipient must request prior written approval from the Federal agency or pass-through entity for the following program and budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in key personnel (including employees and contractors) that are identified by name or position in the Federal award.

(3) The disengagement from a project for more than three months, or a 25 percent reduction in time and effort devoted to the Federal award over the course of the period of performance, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal agency, of costs that require prior approval in accordance with subpart E as applicable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(5) The transfer of funds budgeted for participant support costs to other budget categories.

(6) Subaward activities not proposed in the application and approved in the Federal award. A change of subrecipient only requires prior approval if the Federal agency or pass-through entity includes the requirement in the terms and conditions of the Federal award. In general, a Federal agency or pass-through entity should not require prior approval of a change of subrecipient unless the inclusion was a determining factor in the merit review or eligibility process. This requirement does not apply to procurement transactions for goods and services.

(7) Changes in the total approved cost-sharing amount.

(8) The need arises for additional Federal funds to complete the project. Before providing approval, the Federal agency must ensure that adequate funds are available to avoid a violation of the Antideficiency Act.

(9) Transferring funds between the construction and non-construction work under a Federal award.

(10) A no-cost extension (meaning, an extension of time that does not require the obligation of additional Federal funds) of the period of performance, other than any one-time extension authorized by the Federal agency in accordance with paragraph (g)(2). All requests for no-cost extensions should be submitted at least 10 calendar days before the conclusion of the period of performance. The Federal agency may approve multiple no-cost extensions under a Federal award if not prohibited by Federal statute or regulation.

(g) *Waiver of certain prior approvals.* Except for the requirements listed in paragraphs (f)(1) through (10), the Federal agency is authorized to waive other cost-related and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

administrative prior written approval requirements contained in subparts D and E. Such waivers may include authorizing recipients to do one or more of the following:

(1) *Pre-award costs*. Incur project costs 90 calendar days before the Federal award date. Expenses incurred more than 90 calendar days before the Federal award date require prior approval of the Federal agency. All costs incurred before the Federal award date are at the recipient's own risk (*for example,* the Federal agency is not required to reimburse such costs if the recipient does not receive the Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). Pre-award costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency. See also § 200.458.

(2) *One-time extensions.* Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (g)(2)(i) through (iii) of this section apply. Prior approval is not required if a recipient is authorized in the terms and conditions of the Federal award to initiate a one-time extension. However, the recipient must notify the Federal agency in writing with the supporting justification and a revised period of performance at least 10 calendar days before the conclusion of the period of performance. A one-time extension may not be exercised for the sole purpose of using unobligated balances. This paragraph does not preclude the Federal agency from approving further no-cost extensions to the Federal award. One-time extensions require prior approval from the Federal agency when:

(i) The terms and conditions of the Federal award prohibit the extension;

(ii) The extension requires additional Federal funds; or

(iii) The extension involves any change in the approved scope of the project.

(3) *Unobligated Balances*. Carry forward unobligated balances to subsequent budget periods.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(h) *Prior approvals for research awards.* The prior approval requirements for the actions described in paragraph (g) are automatically waived for Federal awards that support research unless stipulated in the Federal agency's regulations or terms and conditions of the Federal award. However, one-time extensions require the Federal agency's prior approval when one of the conditions in paragraph (g)(2) of this section applies.

(i) *Transfer of funds.* The Federal agency must not permit a transfer of funds that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation. The Federal agency may also, at its option, restrict the transfer of funds among direct cost categories (for example, personnel, travel, and supplies) or programs, functions, and activities when:

(1) The Federal share of the Federal award exceeds the simplified acquisition threshold; and

(2) The cumulative amount of a transfer exceeds or is expected to exceed 10 percent of the total budget, including cost share, as last approved by the Federal agency.

§ 200.309 Modifications to Period of Performance.

When the Federal agency or pass-through entity approves an extension to a Federal award, or if a recipient extends under § 200.308(g)(2), the period of performance will be amended to end at the completion of the extension. If termination occurs, the period of performance will be amended to end upon the effective date of termination. The start date of a renewal award begins a new and distinct period of performance.

Property Standards

§ 200.310 Insurance coverage.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

The recipient or subrecipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property and equipment owned by the recipient or subrecipient. Insurance is not required for Federally-owned property unless required by the terms and conditions of the Federal award.

§ 200.311 Real property.

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under the Federal award will vest upon acquisition in the recipient or subrecipient.

(b) *Use.* Except as otherwise provided by Federal statutes or the Federal agency, real property must be used for the originally-authorized purpose as long as it is needed for that purpose. While the property is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

(c) *Appraisals.* When an appraisal of real property is required and obtained by the recipient or subrecipient, it must be conducted by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) except as provided in the implementing regulations at 49 CFR part 24, "Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs."

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) *Disposition.* When real property is no longer needed for the originally-authorized purpose, the recipient or subrecipient must obtain disposition instructions from the Federal agency or pass-through entity. The instructions must specify one of the following disposition methods:

(1) *Retain title after compensating the Federal agency*. When the recipient or subrecipient retains title to the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and costs of any improvements) by the current fair market value of the property. However, in situations where the recipient or subrecipient is disposing of real property acquired or improved with the Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sell the property and compensate the Federal agency*. When a recipient or subrecipient sells the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and cost of any improvements) by the proceeds of the sale after deducting any actual and reasonable expenses paid to sell or fix up the property for sale. When the Federal award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. When directed to sell the property, the recipient or subrecipient must sell the property utilizing procedures that provide for competition to the extent practicable and that result in the highest possible return.

(3) *Transfer title to the Federal agency or a third party designated/approved by the Federal agency*. When a recipient or subrecipient transfers title to the property to a Federal

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

agency or third party designated or approved by the Federal agency, the recipient or subrecipient is entitled to be paid an amount calculated by multiplying the percentage of the recipient's or subrecipient's contribution towards the original purchase of the real property (and cost of any improvements) by the current fair market value of the property.

§ 200.312 Federally owned and exempt property.

(a) Title to Federally-owned property remains vested in the Federal Government. The recipient or subrecipient must submit an inventory listing of Federally owned property in its custody to the Federal agency or pass-through entity on an annual basis. The recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity upon completion of the Federal award or when the property is no longer needed.

(b) If the Federal agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority unless the Federal agency has statutory authority to dispose of the property by alternative methods (*for example,* the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(i)). The Federal agency or pass-through entity must issue appropriate instructions to the recipient or subrecipient.

(c) Exempt property means property acquired under the Federal award where the Federal agency has chosen to vest title to the property to the recipient or subrecipient without further responsibility to the Federal Government. The Federal agency may only exercise this option when permitted by Federal statute and set forth in the terms and conditions of the Federal award. Absent statutory authority and specific terms and conditions of the Federal award, the title to exempt property acquired under the Federal award remains with the Federal Government.

§ 200.313 Equipment.

See also § 200.439.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) *Title.* Title to equipment acquired under the Federal award will vest upon acquisition in the recipient or subrecipient subject to the conditions of this section. This title must be a conditional title unless a Federal statute specifically authorizes the Federal agency to vest title in the recipient or subrecipient without further responsibility to the Federal Government (and the Federal agency elects to do so). A conditional title means a clear title is withheld by the Federal agency until conditions and requirements specified in the terms and conditions of a Federal award have been fulfilled. Title for equipment vested in a recipient or subrecipient is subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance or until the property is no longer needed for the purposes of the project.

(2) While the equipment is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests without the approval of the Federal agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

(b) *General.* A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) The recipient or subrecipient must use equipment for the project or program for which it was acquired and for as long as needed, whether or not the project or program

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

continues to be supported by the Federal award. The recipient or subrecipient must not encumber the equipment without prior approval of the Federal agency or pass-through entity. The Federal agency may require the submission of the applicable common forms for reporting on equipment. When no longer needed for the original project or program, the equipment may be used in other activities in the following order of priority:

(i) Activities under other Federal awards from the Federal agency that funded the original program or project; then

(ii) Activities under Federal awards from other Federal agencies. These activities include consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the recipient or subrecipient must also make the equipment available for use on other programs or projects supported by the Federal Government, provided that such use will not interfere with the purpose for which it was originally acquired. First preference for other use of the equipment must be given to other programs or projects supported by the Federal agency that financed the equipment. Second preference must be given to programs or projects under Federal awards from other Federal agencies. Use for non-federally-funded projects is also permissible, provided such use will not interfere with the purpose for which it was originally acquired. The recipient or subrecipient should consider charging user fees as appropriate.

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the recipient or subrecipient must not use equipment acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services unless specifically authorized by Federal statute. This restriction is effective as long as the Federal Government retains an interest in the equipment.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) When acquiring replacement equipment, the recipient or subrecipient may either trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

(d) *Management requirements.* Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacement equipment) utilizing procedures that meet the following requirements:

(1) Property records must include a description of the property, a serial number or another identification number, the source of funding for the property (including the FAIN), the title holder, the acquisition date, the cost of the property, the percentage of the Federal agency contribution towards the original purchase, the location, use and condition of the property, and any disposition data including the date of disposal and sale price of the property. The recipient and subrecipient are responsible for maintaining and updating property records when there is a change in the status of the property.

(2) A physical inventory of the property must be conducted, and the results must be reconciled with the property records at least once every two years.

(3) A control system must be in place to ensure safeguards for preventing property loss, damage, or theft. Any loss, damage, or theft of equipment must be investigated. The recipient or subrecipient must notify the Federal agency or pass-through entity of any loss, damage, or theft of equipment that will have an impact on the program.

(4) Regular maintenance procedures must be in place to ensure the property is in proper working condition.

(5) If the recipient or subrecipient is authorized or required to sell the property, proper sales procedures must be in place to ensure the highest possible return.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(e) *Disposition.* When equipment acquired under a Federal award is no longer needed for the original project, program, or for other activities currently or previously supported by a Federal agency, the recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal agency or pass-through entity disposition instructions:

(1) Equipment with a current fair market value of $10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity.

(2) Except as provided in § 200.312(b), or if the Federal agency or pass-through entity fails to provide requested disposition instructions within 120 days, items of equipment with a current fair market value in excess of $10,000 (per-unit) may be retained or sold by the recipient or subrecipient. However, the Federal agency is entitled to an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase by the current market value or proceeds from the sale. If the equipment is sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain, from the Federal share, $1,000 of the proceeds to cover expenses associated with the selling and handling of the equipment.

(3) The recipient or subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that the recipient or subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) In cases where a recipient or subrecipient fails to take appropriate disposition actions, the Federal agency or pass-through entity may direct the recipient or subrecipient to take disposition actions.

(f) *Equipment retention.* When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment, or authorize a pass-through entity to permit the subrecipient to retain equipment, with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.

§ 200.314 Supplies.

See also § 200.453.

(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. Unused supplies means supplies that are in new condition, not having been used or opened before. The aggregate value of unused supplies consists of all supply types, not just like-item supplies. 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, from the Federal share, $1,000 of the proceeds to cover expenses associated with the selling and handling of the supplies.

(b) Unless expressly authorized by Federal statute, the recipient or subrecipient must not use supplies acquired with the Federal award to provide services for a fee that is less than a

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

private company would charge for similar services. This restriction is effective as long as the Federal Government retains an interest in the supplies or as authorized by Federal statute.

§ 200.315 Intangible property.

(a) Title to intangible property acquired under a Federal award vests upon acquisition in the recipient or subrecipient. The recipient or subrecipient must use that intangible property for the originally-authorized purpose and must not encumber the property without the approval of the Federal agency or pass-through entity. When no longer needed for the originally-authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).

(b) To the extent permitted by law, the recipient or subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so. This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories.

(c) The recipient or subrecipient is subject to applicable regulations governing patents and inventions, including government-wide regulations in 37 CFR part 401.

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(e)(1) The recipient or subrecipient must provide research data relating to published research findings produced under the Federal award and that were used by the Federal Government in developing an agency action that has the force and effect of law if requested by the Federal agency in response to a Freedom of Information Act (FOIA) request. When the Federal agency obtains the research data solely in response to a FOIA request, the Federal agency may charge the requester a fee for the cost of obtaining the research data. This fee should reflect the costs incurred by the Federal agency and the recipient or subrecipient. This fee is in addition to any fees the Federal agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings mean:

(i) Research findings published in a peer-reviewed scientific or technical journal; or

(ii) Research findings publicly cited by a Federal agency in developing an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings. Research data does not include any of the following:

(i) Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (for example, laboratory samples).

(ii) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(iii) Personnel, medical, and other personally identifiable information that, if disclosed, would constitute an invasion of personal privacy. Information that could identify a particular person in a research study is not considered research data.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(f) Federal agencies should work with recipients to maximize public access to Federally funded research results and data in a manner that protects data providers' confidentiality, privacy, and security. Agencies should provide guidance to recipients to make restricted-access data available through a variety of mechanisms. FOIA may not be the most appropriate mechanism for providing access to intangible property, including Federally funded research results and data.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property acquired or improved with the Federal award must be held in trust by the recipient or subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal agency or pass-through entity may require the recipient or subrecipient to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

Procurement Standards

§ 200.317 Procurements by States and Indian Tribes.

When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327. All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in §§ 200.318 through 200.327.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.318 General procurement standards.

(a) *Documented procurement procedures.* The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §§ 200.317 through 200.327.

(b) *Oversight of contractors.* Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).

(c) *Conflicts of interest*. (1) The recipient or subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) *Avoidance of unnecessary or duplicative items.* The recipient's or subrecipient's procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach.

(e) *Procurement arrangements using strategic sourcing.* When appropriate for the procurement or use of common or shared goods and services, recipients and subrecipients are encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.

(f) *Use of excess and surplus Federal property.* The recipient or subrecipient is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

(g) *Use of value engineering clauses.* When practical, the recipient or subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.

(h) *Responsible contractors.* The recipient or subrecipient must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

(i) *Procurement records.* The recipient or subrecipient must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

(j) *Time-and-materials type contracts*. (1) The recipient or subrecipient may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a recipient or subrecipient is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient or subrecipient awarding such a contract must assert a high degree of

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) *Settlement of contractual and administrative issues.* The recipient or subrecipient is responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the recipient or subrecipient of any contractual responsibilities under its contracts. The Federal agency will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. The recipient or subrecipient must report violations of law to the Federal, State, or local authority with proper jurisdiction.

(l) *Examples of labor and employment practices.* (1) The procurement standards in this subpart do not prohibit recipients or subrecipients from:

(i) Using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements;

(ii) Requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative (see OMB Memorandum M-21-28), or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located. The hiring preferences or goals should be consistent with the policies and procedures of the recipient or subrecipient, and must not prohibit interstate hiring;

(iii) Requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

U.S.C. 3102(24)), including women and people from underserved communities as defined by Executive Order 14091;

(iv) Using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or

(v) Offering employees of a predecessor contractor rights of first refusal under a new contract.

(2) Recipients and subrecipients may use the practices listed in paragraph (1) if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

§ 200.319 Competition.

(a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with the standards of this section and § 200.320.

(b) To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

(c) Examples of situations that may restrict competition include, but are not limited to:

(1) Placing unreasonable requirements on firms for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(d) The recipient or subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Are made in accordance with § 200.319(b);

(2) Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a "brand name or equivalent" description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and

(3) Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

(e) The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(f) To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that 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 products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

(g) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Procurement Methods.

There are three types of procurement methods described in this section: informal procurement methods (for micro-purchases and simplified acquisitions); formal procurement methods (through sealed bids or proposals); and noncompetitive procurement methods. For any of these methods, the recipient or subrecipient must maintain and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319.

(a) *Informal procurement methods for small purchases.* These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold as defined in § 200.1. Recipients and subrecipients may also establish a lower threshold. Informal procurement methods include:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) *Micro-purchases*—(i) *Distribution.* The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold defined in § 200.1. To the extent practicable, the recipient or subrecipient should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price reasonable based on research, experience, purchase history, or other information; and maintains documents to support its conclusion. Purchase cards may be used as a method of payment for micro-purchases.

(iii) *Micro-purchase thresholds.* The recipient or subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the recipient or subrecipient must be authorized or not prohibited under State, local, or tribal laws or regulations. The recipient or subrecipient may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) *Recipient or subrecipient increase to the micro-purchase threshold up to $50,000.* The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The recipient or subrecipient may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold is consistent with State law.

(v) *Recipient or subrecipient increase to the micro-purchase threshold over $50,000.* Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The recipient or subrecipient must submit a request that includes the requirements in paragraph (a)(1)(iv) of this section. The increased threshold is valid until any factor that was relied on in the establishment and rationale of the threshold changes.

(2) *Simplified acquisitions*—(i) *Simplified acquisition procedures.* The aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate.

(ii) *Simplified acquisition thresholds.* The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures, which may be lower than, but must not exceed, the threshold established in the FAR.

(b) *Formal procurement methods.* Formal procurement methods are required when the value of the procurement transaction under a Federal award exceeds the simplified acquisition threshold of the recipient or subrecipient. Formal procurement methods are competitive and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

require public notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined by the recipient or subrecipient in accordance with paragraph (a)(2)(ii) of this section:

(1) *Sealed bids.* This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids procurement method is preferred for procuring construction services.

(i) For sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders have been identified as willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate. For local governments, the invitation for bids must be publicly advertised.

(B) The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids. For local governments, the bids must be opened publicly.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(D) A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.

(E) The recipient or subrecipient must document and provide a justification for all bids it rejects.

(2) *Proposals.* This is a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract. They are awarded in accordance with the following requirements:

(i) Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.

(ii) The recipient or subrecipient must have written procedures for conducting technical evaluations and making selections.

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and

(iv) The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E)

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one of the following circumstances applies:

(1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The procurement transaction can only be fulfilled by a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;

(4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or

(5) After soliciting several sources, competition is determined inadequate.

§ 200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.

(a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

(b) Such consideration means:

(1) These business types are included on solicitation lists;

(2) These business types are solicited whenever they are deemed eligible as potential sources;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

(4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

(5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

§ 200.322 Domestic preferences for procurements.

(a) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

§ 200.323 Procurement of recovered materials.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, 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. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

§ 200.324 Contract cost and price.

(a) The recipient or subrecipient must perform a cost-benefit or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

sector employees. However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.

(b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the recipient or subrecipient under subpart E of this part. The recipient or subrecipient may reference its own cost principles as long as they comply with subpart E of this part.

(c) The recipient or subrecipient must not use the "cost plus a percentage of cost" and "percentage of construction costs" methods of contracting.

§ 200.325 Federal agency or pass-through entity review.

(a) The Federal agency or pass-through entity may review the technical specifications of proposed procurements under the Federal award if the Federal agency or pass-through entity believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition. The recipient or subrecipient must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity. This review should take place prior to the time the specifications are incorporated into a solicitation document. When the recipient or subrecipient desires to accomplish the review after a solicitation has been developed, the Federal agency or pass-through entity may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.

(b) When requested, the recipient or subrecipient must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) to the Federal

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

agency or pass-through entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:

(1) The recipient's or subrecipient's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition, or only one bid is expected to be received in response to a solicitation;

(3) The procurement is expected to exceed the simplified acquisition threshold and specifies a "brand name" product;

(4) The procurement is expected to exceed the simplified acquisition threshold, and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(c) The recipient or subrecipient is exempt from the pre-procurement review in paragraph (b) of this section if the Federal agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The recipient or subrecipient may request that the Federal agency or pass-through entity review its procurement system to determine whether it meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third-party contracts are awarded regularly.

(2) The recipient or subrecipient may self-certify its procurement system. However, self-certification does not limit the Federal agency's or pass-through entity's right to review the system. Under a self-certification procedure, the Federal agency or pass-through entity may rely

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

on written assurances from the recipient or subrecipient that it is complying with the standards of this part. The recipient or subrecipient must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

The Federal agency or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. Before doing so, the Federal agency or pass-through entity must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified timeframe.

(b) A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.

(c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

§ 200.327 Contract provisions.

The recipient's or subrecipient's contracts must contain the applicable provisions described in Appendix II of this part.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Performance and Financial Monitoring and Reporting

§ 200.328 Financial reporting.

(a) The Federal agency must require only OMB-approved government-wide data elements on recipient financial reports. At the time of publication, this consists of the Federal Financial Report (SF-425); however, this also applies to any future OMB-approved government-wide data elements available from the OMB-designated standards lead.

(b) The Federal agency or pass-through entity must collect financial reports no less than annually. The Federal agency or pass-through entity may not collect financial reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect financial reports in coordination with performance reports.

(c) The recipient or subrecipient must submit financial reports as required by the Federal award. Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period.

(d) The final financial report submitted by the recipient must be due no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit a final financial report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any financial report with justification from the recipient or subrecipient.

§ 200.329 Monitoring and reporting program performance.

(a) *Monitoring by the recipient and subrecipient.* The recipient and subrecipient are responsible for the oversight of the Federal award. The recipient and subrecipient must monitor

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

their activities under Federal awards to ensure they are compliant with all requirements and meeting performance expectations. Monitoring by the recipient and subrecipient must cover each program, function, or activity. See also § 200.332.

(b) *Reporting program performance.* The Federal agency must use OMB-approved common information collections (for example, Research Performance Progress Reports) when requesting performance reporting information. The Federal agency or pass-through entity may not collect performance reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should align the due dates of performance reports and financial reports. When reporting program performance, the recipient or subrecipient must relate financial data and project or program accomplishments to the performance goals and objectives of the Federal award. Also, the recipient or subrecipient must provide cost information to demonstrate cost-effective practices (for example, through unit cost data) when required by the terms and conditions of the Federal award. In some instances (for example, discretionary research awards), this may be limited to the requirement to submit technical performance reports. Reporting requirements must clearly indicate a standard against which the recipient's or subrecipient's performance can be measured. Reporting requirements should not solicit information from the recipient or subrecipient that is not necessary for the effective monitoring or evaluation of the Federal award. Federal agencies should consult monitoring framework documents such as the agency's Evaluation Plan to make that determination. As noted in OMB Circular A-11, Part 6, Section 280, measures of customer experience are of co-equal importance as traditional measures of financial and operational performance.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) *Submitting performance reports.* (1) The recipient or subrecipient must submit performance reports as required by the Federal award. Intervals must be no less frequent than annually nor more frequent than quarterly except if specific conditions are applied (See § 200.208). Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal agency or pass-through entity may require annual reports before the anniversary dates of multiple-year Federal awards. The final performance report submitted by the recipient must be due no later than 120 calendar days after the period of performance. A subrecipient must submit a final performance report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any performance report with justification from the recipient or subrecipient.

(2) As applicable, performance reports should contain information on the following:

(i) A comparison of accomplishments to the objectives of the Federal award established for the reporting period (for example, comparing costs to units of accomplishment). Where performance trend data and analysis would be informative to the Federal agency program, the Federal agency should include this as a performance reporting requirement.

(ii) Explanations on why established goals or objectives were not met; and

(iii) Additional information, analysis, and explanation of cost overruns or higher-than-expected unit costs.

(d) *Construction performance reports.* Federal agencies or pass-through entities rely on on-site technical inspections and certified percentage of completion data to monitor progress

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

under Federal awards for construction. Therefore, the Federal agency or pass-through entity may require additional performance reports when necessary to ensure the goals and objectives of Federal awards are met.

(e) *Significant developments.* When a significant development that could impact the Federal award occurs between performance reporting due dates, the recipient or subrecipient must notify the Federal agency or pass-through entity. Significant developments include events that enable meeting milestones and objectives sooner or at less cost than anticipated or that produce different beneficial results than originally planned. Significant developments also include problems, delays, or adverse conditions which will impact the recipient's or subrecipient's ability to meet milestones or the objectives of the Federal award. When significant developments occur that negatively impact the Federal Award, the recipient or subrecipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

(f) *Site visits.* The Federal agency or pass-through entity may conduct in-person or virtual site visits as warranted.

(g) *Performance report requirement waiver.* The Federal agency may waive any performance report that is not necessary to ensure the goals and objectives of the Federal award are being achieved.

§ 200.330 Reporting on real property.

The Federal agency or pass-through entity must require the recipient or subrecipient to submit reports on the status of real property in which the Federal Government retains an interest. Such reports must be submitted at least annually. In instances where the Federal Government's interest in the real property extends for 15 years or more, the Federal agency or pass-through

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

entity may require the recipient or subrecipient to report at various multi-year frequencies. Reports submitted at multi-year frequencies may not exceed a five-year reporting period. The Federal agency must only require OMB-approved government-wide data elements on recipient real property reports.

Subrecipient Monitoring and Management

§ 200.331 Subrecipient and contractor determinations.

An entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor. The pass-through entity is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor. The Federal agency may require the pass-through entity to comply with additional guidance to make these determinations, provided such guidance does not conflict with this section. The Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier; however, the Federal agency is responsible for monitoring the pass-through entity's oversight of first-tier subrecipients. All of the characteristics listed below may not be present in all cases, and some characteristics from both categories may be present at the same time. No single factor or any combination of factors is necessarily determinative. The pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. In making this determination, the substance of the relationship is more important than the form of the agreement.(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of the Federal award and creates a Federal financial assistance relationship with a subrecipient. See the definition of *Subaward* in § 200.1. Characteristics that support the classification of the entity as a subrecipient include, but are not limited to, when the entity:

(1) Determines who is eligible to receive what Federal assistance;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) Has its performance measured in relation to whether the objectives of a Federal program were met;

(3) Has responsibility for programmatic decision-making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) Implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the recipient's or subrecipient's use and creates a procurement relationship with a contractor. See the definition of *contract* in § 200.1. Characteristics that support a procurement relationship between the recipient or subrecipient and a contractor include, but are not limited to, when the contractor:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the implementation of a Federal program; and

(5) Is not subject to compliance requirements of a Federal program as a result of the agreement. However, similar requirements may apply for other reasons.

§ 200.332 Requirements for pass-through entities.

A pass-through entity must: (a) Verify that the subrecipient is not excluded or disqualified in accordance with § 180.300. Verification methods are provided in § 180.300, which include confirming in SAM.gov that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information provided below. A pass-through entity must provide the best available information when some of the information below is unavailable. A pass-through entity must provide the unavailable information when it is obtained. Required information includes:

(1) Federal award identification.

(i) Subrecipient's name (must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date;

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated in the subaward;

(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity, including the current financial obligation;

(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

(x) Federal award project description, as required by the Federal Funding Accountability and Transparency Act (FFATA);

(xi) Name of the Federal agency, pass-through entity, and contact information for awarding official of the pass-through entity;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(xii) Assistance Listings title and number; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at the time of disbursement;

(xiii) Identification of whether the Federal award is for research and development; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is used in accordance with § 200.414).

(2) All requirements of the subaward, including requirements imposed by Federal statutes, regulations, and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient for the pass-through entity to meet its responsibilities under the Federal award. This includes information and certifications (see § 200.415) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency;

(4) Indirect Cost Rate;

(i) An approved indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, a pass-through entity must determine the appropriate rate in collaboration with the subrecipient. The indirect cost rate may be either:

(A) An indirect cost rate negotiated between the pass-through entity and the subrecipient. These rates may be based on a prior negotiated rate between a different pass-through entity and the subrecipient, in which case the pass-through entity is not required to collect information justifying the rate but may elect to do so; or

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require the use of the de minimis indirect cost rate if the subrecipient has an approved indirect cost rate negotiated with the Federal Government.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Subrecipients may elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to access the subrecipient's records and financial statements for the pass-through entity to fulfill its monitoring requirements; and

(6) Appropriate terms and conditions concerning the closeout of the subaward.

(c) Evaluate each subrecipient's fraud risk and risk of noncompliance with a subaward to determine the appropriate subrecipient monitoring described in paragraph (f) of this section. When evaluating a subrecipient's risk, a pass-through entity should consider the following:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits. This includes considering whether or not the subrecipient receives a Single Audit in accordance with subpart F and the extent to which the same or similar subawards have been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of any Federal agency monitoring (for example, if the subrecipient also receives Federal awards directly from the Federal agency).

(d) If appropriate, consider implementing specific conditions in a subaward as described in § 200.208 and notify the Federal agency of the specific conditions.

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(f) Depending upon the pass-through entity's assessment of the risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters;

(2) Performing site visits to review the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(g) Verify that a subrecipient is audited as required by subpart F of this part.

(h) Consider whether the results of a subrecipient's audit, site visits, or other monitoring necessitate adjustments to the pass-through entity's records.

(i) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 and in program regulations.

§ 200.333 Fixed amount subawards.

With prior written approval from the Federal agency, the recipient may provide subawards based on fixed amounts up to $500,000. Fixed amount subawards must meet the requirements of § 200.201.

Record Retention and Access

§ 200.334 Record retention requirements.

The recipient and subrecipient must retain all Federal award records for three years from the date of submission of their final financial report. For awards that are renewed quarterly or annually, the recipient and subrecipient must retain records for three years from the date of submission of their quarterly or annual financial report, respectively. Records to be retained

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

include but are not limited to, financial records, supporting documentation, and statistical records. Federal agencies or pass-through entities may not impose any other record retention requirements except for the following:

(a) The records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken if any litigation, claim, or audit is started before the expiration of the three-year period.

(b) When the recipient or subrecipient is notified in writing by the Federal agency or pass-through entity, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs to extend the retention period.

(c) The records for property and equipment acquired with the support of Federal funds must be retained for three years after final disposition.

(d) The three-year retention requirement does not apply to the recipient or subrecipient when records are transferred to or maintained by the Federal agency.

(e) The records for program income earned after the period of performance must be retained for three years from the end of the recipient's or subrecipient's fiscal year in which the program income is earned. This only applies if the Federal agency or pass-through entity requires the recipient or subrecipient to report on program income earned after the period of performance in the terms and conditions of the Federal award.

(f) The records for indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates) must be retained according to the applicable option below:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) *If submitted for negotiation.* When a proposal, plan, or other computation must be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the date of submission.

(2) *If not submitted for negotiation.* When a proposal, plan, or other computation is not required to be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 200.335 Requests for transfer of records.

The Federal agency must request the transfer of records to its custody from the recipient or subrecipient when it determines that the records possess long-term retention value. However, the Federal agency may arrange for the recipient or subrecipient to retain the records that have long-term retention value so long as they are continuously available to the Federal Government.

§ 200.336 Methods for collection, transmission, and storage of information.

When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award information in open and machine-readable formats. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a computer system. Upon request, the Federal agency or pass-through entity must always provide or accept paper versions of Federal award information to and from the recipient or subrecipient. The Federal agency or pass-through entity must not require additional copies of Federal award information submitted in paper versions. The recipient or subrecipient does not need to create and retain paper copies when original records

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

are electronic and cannot be altered. In addition, the recipient or subrecipient may substitute electronic versions of original paper records through duplication or other forms of electronic conversion, provided that the procedures are subject to periodic quality control reviews. Quality control reviews must ensure that electronic conversion procedures provide safeguards against the alteration of records and assurance that records remain in a format that is readable by a computer system.

§ 200.337 Access to records.

(a) *Records of recipients and subrecipients.* The Federal agency or pass-through entity, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives must have the right of access to any records of the recipient or subrecipient pertinent to the Federal award to perform audits, execute site visits, or for any other official use. This right also includes timely and reasonable access to the recipient's or subrecipient's personnel for the purpose of interview and discussion related to such documents or the Federal award in general.

(b) *Extraordinary and rare circumstances.* The recipient or subrecipient and Federal agency or pass-through entity must take measures to protect the name of victims of a crime when access to the victim's name is necessary. Only under extraordinary and rare circumstances would such access include a review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head or delegate of the Federal agency.

(c) *Expiration of right of access.* The Federal agency's or pass-through entity's rights of access are not limited to the required retention period of this part but last as long as the records

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

are retained. Federal agencies or pass-through entities must not impose any other access requirements upon recipients and subrecipients.

§ 200.338 Restrictions on public access to records.

Federal agencies may not place restrictions on the recipient or subrecipient that limit public access to the records of the recipient or subrecipient pertinent to a Federal award, except for protected personally identifiable information (PII) or other sensitive information when the Federal agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to records that remain under the recipient's or subrecipient's control except as required by § 200.315. Unless required by Federal, State, local, or tribal law, recipients and subrecipients are not required to permit public access to their records. The recipient's or subrecipient's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

Remedies for Noncompliance

§ 200.339 Remedies for noncompliance.

The Federal agency or pass-through entity may implement specific conditions if the recipient or subrecipient fails to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award. See § 200.208 for additional information on specific conditions. When the Federal agency or pass-through entity determines that noncompliance cannot be remedied by imposing specific conditions, the Federal agency or pass-through entity may take one or more of the following actions:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) Temporarily withhold payments until the recipient or subrecipient takes corrective action.

(b) Disallow costs for all or part of the activity associated with the noncompliance of the recipient or subrecipient.

(c) Suspend or terminate the Federal award in part or in its entirety.

(d) Initiate suspension or debarment proceedings as authorized in 2 CFR part 180 and the Federal agency's regulations, or for pass-through entities, recommend suspension or debarment proceedings be initiated by the Federal agency.

(e) Withhold further Federal funds (new awards or continuation funding) for the project or program.

(f) Pursue other legally available remedies.

§ 200.340 Termination.

(a) The Federal award may be terminated in part or its entirety as follows:

(1) By the Federal agency or pass-through entity if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award;

(2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;

(3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or

(4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

(b) The Federal agency or pass-through entity must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award.

(c) When the Federal agency terminates the Federal award prior to the end of the period of performance due to the recipient's material failure to comply with the terms and conditions of the Federal award, the Federal agency must report the termination in SAM.gov. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter information in SAM.gov.

(1) The information required under paragraph (c) of this section is not to be reported in SAM.gov until the recipient has either:

(i) Exhausted its opportunities to object or challenge the decision (see § 200.342); or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal agency that it intends to appeal the decision to terminate.

(2) If a Federal agency, after entering information about a termination in SAM.gov, subsequently:

(i) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Obtains an update to that information that could be helpful to other Federal agencies, the Federal agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) The Federal agency must not post any information that will be made publicly available in the non-public segment of SAM.gov that is covered by a disclosure exemption under the Freedom of Information Act (FOIA). When the recipient asserts within seven calendar days to the Federal agency which posted the information that a disclosure exemption under FOIA covers some of the information made publicly available, the Federal agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Before reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's FOIA procedures.

(d) When the Federal award is terminated in part or its entirety, the Federal agency or pass-through entity and recipient or subrecipient remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

§ 200.341 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide written notice of termination to the recipient or subrecipient. The written notice of termination should include the reasons for termination, the effective date, and the portion of the Federal award to be terminated, if applicable.

(b) If the Federal award is terminated for the recipient’s material failure to comply with a Federal award, the notification must state the following:

(1) The termination decision will be reported in SAM.gov;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) The information will be available in SAM.gov for five years from the date of the termination and then archived;

(3) Federal agencies that consider making a Federal award to the recipient during the five year period must consider this information in judging whether the recipient is qualified to receive the Federal award when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The recipient may comment on any information in SAM.gov about the recipient for future consideration by Federal agencies. The recipient may submit comments in SAM.gov.

(5) Federal agencies should consider the recipient's comments when determining whether the recipient is qualified for a Federal award.

(c) Upon termination of the Federal award, the Federal agency must provide the information required by the Federal Funding Accountability and Transparency Act (FFATA) to *USAspending.gov*. In addition, the Federal agency must update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 2313 and 31 U.S.C. 3321.

§ 200.342 Opportunities to object, hearings, and appeals.

The Federal agency must maintain written procedures for processing objections, hearings, and appeals. Upon initiating a remedy for noncompliance (for example, disallowed costs, a corrective action plan, or termination), the Federal agency must provide the recipient with an opportunity to object and provide information challenging the action. The Federal agency or pass-through entity must comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient or subrecipient is entitled under any statute or regulation applicable to the action involved.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.343 Effects of suspension and termination.

Costs to the recipient or subrecipient resulting from financial obligations incurred by the recipient or subrecipient during a suspension or after the termination of a Federal award are not allowable unless the Federal agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from financial obligations which were properly incurred by the recipient or subrecipient before the effective date of suspension or termination, and not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

Closeout

§ 200.344 Closeout.

(a) The Federal agency or pass-through entity must close out the Federal award when it determines that all administrative actions and required work of the Federal award have been completed. When the recipient or subrecipient fails to complete the necessary administrative actions or the required work for an award, the Federal agency or pass-through entity must proceed with closeout based on the information available. This section specifies the administrative actions required at the end of the period of performance.

(b) A recipient must submit all reports (financial, performance, and other reports required by the Federal award) no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit all reports (financial, performance, and other reports required by a subaward) to the pass-through entity no later than 90 calendar days after the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient. When the recipient does not have a final indirect cost rate covering the period of performance, a final financial report must still be submitted to fulfill the requirements of this section. The recipient must submit a revised final financial report when all applicable indirect cost rates have been finalized.

(c) The recipient must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must liquidate all financial obligations incurred under a subaward no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient.

(d) The Federal agency or pass-through entity must not delay payments to the recipient or subrecipient for costs meeting the requirements of subpart E of this part.

(e) The recipient or subrecipient must promptly refund any unobligated funds that the Federal agency or pass-through entity paid and that are not authorized to be retained. See OMB Circular A-129 and § 200.346.

(f) The Federal agency or pass-through entity must make all necessary adjustments to the Federal share of costs after closeout reports are received (for example, to reflect the disallowance of any costs or the deobligation of an unliquidated balance).

(g) The recipient or subrecipient must account for any property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(h) The Federal agency must make every effort to complete all closeout actions no later than one year after the end of the period of performance. If the indirect cost rate has not been finalized and would delay closeout, the Federal agency is authorized to mutually agree with the recipient to close an award using the current or most recently negotiated rate. However, the recipient is not required to agree to a final rate for a Federal award for the purpose of prompt closeout.

(i) If the recipient does not comply with the requirements of this section, including submitting all final reports, the Federal agency must report the recipient's material failure to comply with the terms and conditions of the Federal award in SAM.gov. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov. Federal agencies may also pursue other enforcement actions as appropriate. See § 200.339.

Post-Closeout Adjustments and Continuing Responsibilities

§ 200.345 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of the Federal award does not affect any of the following:

(1) The right of the Federal agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or review. However, the Federal agency or pass-through entity must make determinations to disallow costs and notify the recipient or subrecipient within the record retention period.

(2) The recipient's or subrecipient's requirement to return funds or right to receive any remaining and available funds as a result of refunds, corrections, final indirect cost rate adjustments (unless the Federal award in closed in accordance with § 200.344(h)), or other transactions.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) The ability of the Federal agency or pass-through entity to make financial adjustments to a previously closed Federal award, such as resolving indirect cost payments and making final payments.

(4) Audit requirements in subpart F of this part.

(5) Property management and disposition requirements in §§ 200.310 through 200.316.

(6) Records retention as required in §§ 200.334 through 200.337.

(b) After the closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part. This may only be done with the consent of the awarding Federal agency or pass-through entity and the recipient or subrecipient, provided the responsibilities of the recipient or subrecipient referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions are made for continuing responsibilities of the recipient or subrecipient, as appropriate.

Collection of Amounts Due

§ 200.346 Collection of amounts due.

Any Federal funds paid to the recipient or subrecipient in excess of the amount that the recipient or subrecipient is determined to be entitled to under the Federal award constitute a debt to the Federal Government. The Federal agency must collect all debts arising out of its Federal awards in accordance with the Standards for the Administrative Collection of Claims (31 CFR part 901).

Subpart E - Cost Principles

General Provisions

§ 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) The recipient and subrecipient are responsible for the efficient and effective administration of the Federal award through sound management practices.

(b) The recipient and subrecipient are responsible for administering Federal funds in a manner consistent with Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) The recipient and subrecipient, in recognition of their unique combination of staff, facilities, and experience, are responsible for employing organization and management techniques necessary to ensure the proper and efficient administration of the Federal award.

(d) The accounting practices of the recipient and subrecipient must be consistent with these cost principles and support the accumulation of costs as required by these cost principles, including maintaining adequate documentation to support costs charged to the Federal award.

(e) When reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should ensure that the recipient consistently applies these cost principles. Where wide variations exist in the treatment of a given cost item by the recipient, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect costs* in § 200.1.

(f) For recipients and subrecipients that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The recipient or subrecipient must not earn or keep any profit resulting from Federal financial assistance unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307. When the required activities of a fixed amount award were completed

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

in accordance with the terms and conditions of the award, the unexpended funds retained by the recipient or subrecipient are not considered profit.

§ 200.401 Application.

(a) *General.* The recipient and subrecipient must apply these principles in determining allowable costs under Federal awards. The recipient and subrecipient must also use these principles as a guide in pricing fixed-price contracts and subcontracts when costs are used in determining the appropriate price. These cost principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on items such as education allowance or published tuition rates and fees.

(2) Capitation awards based on case counts or the number of beneficiaries.

(3) Fixed amount awards, except as provided in § 200.101(b). See also § 200.201.

(4) Federal awards to hospitals (see Appendix IX of this part).

(5) Food commodities provided through grants and cooperative agreements.

(6) Other awards under which the recipient or subrecipient is not required to account for actual costs incurred.

(b) *Federal contract.* A Federal contract awarded to a recipient is subject to the Cost Accounting Standards (CAS). It must incorporate the applicable CAS requirements per 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). With respect to the allocation of costs, the Cost Accounting Standards at 48 CFR parts 9904 or 9905 take precedence over the cost principles in subpart E. When a contract with a recipient is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (for example, CAS 414 - 48 CFR 9904.414 - Cost of Money as an

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Element of the Cost of Facilities Capital, and CAS 417 - 48 CFR 9904.417 - Cost of Money as an Element of the Cost of Capital Assets Under Construction, apply instead of the allowability provisions of § 200.449). For example, the allowability of costs in CAS-covered contracts is determined first by the allocation provisions of the Cost Accounting Standards rather than the allowability provisions in § 200.449 (unless the CAS does not address the specific costs). In complying with those requirements, the recipient's application of cost accounting practices for estimating, accumulating, and reporting costs for Federal awards and CAS-covered contracts must be consistent with 48 CFR. The recipient only needs to maintain one set of accounting records supporting the allocation of costs if the recipient administers both Federal awards and CAS-covered contracts.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit organizations in terms of the applicability of cost principles. These nonprofit organizations must operate under Federal cost principles that apply to for-profit organizations located at 48 CFR 31.2. Appendix VIII contains a list of these nonprofit organizations. Other organizations may be added to this list if approved by the cognizant agency for indirect costs.

Basic Considerations

§ 200.402 Composition of costs.

The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs minus any applicable credits

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following criteria to be allowable under Federal awards:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the recipient or subrecipient.

(d) Be accorded consistent treatment. For example, a cost must not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for State and local governments and Indian Tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing requirements of any other federally-financed program in either the current or a prior period. See § 200.306(b).

(g) Be adequately documented. See §§ 200.300 through 200.309.

(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).

§ 200.404 Reasonable costs.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

A cost is reasonable if it does not exceed an amount that a prudent person would incur under the circumstances prevailing when the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration must be given to the following:

(a) Whether the cost is generally recognized as ordinary and necessary for the recipient's or subrecipient's operation or the proper and efficient performance of the Federal award;

(b) The restraints or requirements imposed by such factors as sound business practices; arm's-length bargaining; Federal, State, local, tribal, and other laws and regulations; and terms and conditions of the Federal award;

(c) Market prices for comparable costs for the geographic area;

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the recipient or subrecipient, its employees, its students or membership (if applicable), the public at large, and the Federal Government; and

(e) Whether the cost represents a deviation from the recipient's or subrecipient's established written policies and procedures for incurring costs.

§ 200.405 Allocable costs.

(a) *Allocable costs in general.* A cost is allocable to a Federal award or other cost objective if the cost is assignable to that Federal award or other cost objective in accordance with the relative benefits received. This standard is met if the cost satisfies any of the following criteria:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the recipient or subrecipient and can be distributed in proportions that may be approximated using reasonable methods; or

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) Is necessary to the overall operation of the recipient or subrecipient and is assignable in part to the Federal award in accordance with these cost principles.

(b) *Allocation of indirect costs.* All activities which benefit from the recipient's or subrecipient's indirect cost, including unallowable activities and donated services by the recipient or subrecipient or third parties, will receive an appropriate allocation of indirect costs.

(c) *Limitation on charging certain allocable costs to other Federal awards.* A cost allocable to a particular Federal award may not be charged to other Federal awards (for example, to overcome fund deficiencies or to avoid restrictions imposed by Federal statutes, regulations, or the terms and conditions of the Federal awards). However, this prohibition would not preclude the recipient or subrecipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) *Direct cost allocation principles.* If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit However, when those proportions cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c), the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved, when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(e) *Costs of contracts subject to CAS.* If a contract is subject to CAS, costs must be allocated to that contract according to the Cost Accounting Standards, which take precedence over the allocation provisions in this part.

§ 200.406 Applicable credits.

(a) Applicable credits refer to transactions that offset or reduce direct or indirect costs allocable to a Federal award. Examples of such transactions are purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the recipient or subrecipient relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the recipient or subrecipient should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. See §§ 200.436 and 200.468 for potential application areas.

§ 200.407 Prior written approval (prior approval).

The reasonableness and allocability of certain costs under Federal awards may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the recipient may seek the prior written approval of the Federal agency (or, for indirect costs, the cognizant agency for indirect costs) before incurring the cost. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that cost unless prior approval is specifically required for allowability as described under certain circumstances in the following sections:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) Section 200.306 Cost sharing;

(b) Section 200.307 Program income;

(c) Section 200.308 Revision of budget and program plans;

(d) Section 200.333 Fixed amount subawards;

(e) Section 200.430 Compensation - personal services, paragraph (h);

(f) Section 200.431 Compensation - fringe benefits;

(g) Section 200.439 Equipment and other capital expenditures;

(h) Section 200.440 Exchange rates;

(i) Section 200.441 Fines, penalties, damages and other settlements;

(j) Section 200.442 Fund raising and investment management costs;

(k) Section 200.445 Goods or services for personal use;

(l) Section 200.447 Insurance and indemnification;

(m) Section 200.455 Organization costs;

(n) Section 200.458 Pre-award costs;

(o) Section 200.462 Rearrangement and reconversion costs;

(p) Section 200.475 Travel costs.

§ 200.408 Limitation on allowance of costs.

Statutory requirements may limit the allowability of costs. Any costs that exceed the maximum amount allowed by statute may not be charged to the Federal award. Only the amount allowable by statute may be charged to the Federal award.

§ 200.409 Special considerations.

Other sections in this part describe special considerations and requirements applicable to states, local governments, Indian Tribes, and IHEs. In addition, certain provisions among the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

items of cost in this subpart are only applicable to certain types of recipients and subrecipients, as specified in the following sections:

(a) Direct and Indirect Costs (§§ 200.412-200.415);

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417); and

(c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419).

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the awarding Federal agency, cognizant agency for indirect costs, or pass-through entity must be refunded with interest to the Federal Government. Unless directed by Federal statute or regulation, repayments must be made in accordance with the instructions provided by the Federal agency or pass-through entity that made the allowability determination. See §§ 200.300 through 200.309, and §200.346.

§ 200.411 Adjustment of previously negotiated indirect cost rates containing unallowable costs.

(a) Negotiated indirect cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made in accordance with the requirements of this section. These adjustments or refunds are intended to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds must be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) For rates covering a future fiscal year of the recipient or subrecipient, the unallowable costs must be removed from the indirect cost pools and the rates must be adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs must be computed for each year involved, and a cash refund (including interest) must be made to the Federal Government in accordance with the directions provided by the cognizant agency for indirect costs. When cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments must be made when the rates are finalized to avoid duplicate recovery of the unallowable costs.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

Direct and Indirect Costs

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as direct or indirect costs. A cost may be direct for some specific service or function but indirect for the Federal award or other final cost objective. Therefore, each cost incurred for the same purpose in like circumstances must be treated consistently either as a direct or an indirect cost to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect costs charged to Federal awards are provided in this subpart.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as direct or indirect costs. See § 200.405.

(b) *Application to Federal awards.* The association of costs with a Federal award determines whether costs are direct or indirect. Costs charged directly to a Federal award are typically incurred specifically for that Federal award (including, for example, supplies needed to achieve the award's objectives and the proportion of employee compensation and fringe benefits expended in relation to that specific award). Costs that otherwise would be treated as indirect costs may also be considered direct costs if they are directly related to a specific award (including, for example, extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, cybersecurity, integrated data systems, asset management systems, performance management costs, program evaluation costs, or other institutional service operations).

(c) *Administrative and clerical staff salaries.* Administrative and clerical staff salaries should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if they meet all of the following conditions:

(1) The administrative or clerical services are integral to a Federal award;

(2) Individuals involved can be specifically identified with a Federal award; and

(3) The costs are not also recovered as indirect costs.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) *Minor items.* A direct cost of a minor amount may be treated as an indirect cost, for reasons of practicality, provided that it is treated consistently for all Federal and non-Federal purposes.

(e) *Treatment of unallowable costs in determining indirect cost rates.* The costs of certain activities are not allowable as charges to Federal awards. Even though these costs are unallowable, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their equitable share of the recipient's or subrecipient's indirect costs if they represent activities which:

(1) Include the salaries of personnel;

(2) Occupy space; and

(3) Benefit from the recipient's or subrecipient's indirect costs.

(f) *Treatment of certain costs for nonprofit organizations.* For nonprofit organizations, the costs of activities performed by the nonprofit organization primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See § 200.454.

(2) Providing services and information to members, the government, or the public. See §§ 200.454 and 200.450.

(3) Promotion, lobbying, and other forms of public relations. See §§ 200.421 and 200.450.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) Conferences (except those held to conduct the general administration of the recipient or subrecipient). See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in the recipient's or subrecipient's operation. See also § 200.442.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

§ 200.414 Indirect costs.

(a) *Facilities and administration classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvements, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for IHEs, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III. Major nonprofit organizations are those which receive more than $10 million in direct Federal funding.

(b) *Diversity of nonprofit organizations.* It is not always possible to specify the types of costs that may be classified as indirect costs for nonprofit organizations due to the diversity of their accounting practices. The association of a cost with a Federal award is the determining factor in distinguishing direct from indirect costs. However, typical examples of indirect cost for

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See § 200.306.)

(1) Negotiated indirect cost rates must be accepted by all Federal agencies. A Federal agency may use a rate different from the negotiated rate for either a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by the awarding Federal agency in accordance with paragraph (c)(3) of this section.

(2) The Federal agency must notify OMB of any approved deviations. The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate.

(3) The Federal agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) The Federal agency must include, in the notice of funding opportunity, the policies relating to indirect cost rate reimbursement or cost share as approved under paragraph (e). As appropriate, the Federal agency should incorporate discussion of these policies into its outreach activities with applicants before posting a notice of funding opportunity. See § 200.204.

(d) *Pass-through entities.* Pass-through entities are subject to the requirements in § 200.332(b)(4) and must accept all federally negotiated indirect costs rates for subrecipients.

(e) *Appendices.* Requirements for development and submission of indirect cost rate proposals and cost allocation plans are contained in the following Appendices:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) Appendix III to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200 - State/Local Government-wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200 - Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200 - States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200 - Hospital Cost Principles.

(f) *De minimis rate.* Recipients and subrecipients that do not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs (MTDC). The recipient or subrecipient is authorized to determine the appropriate rate up to this limit. Federal agencies and pass-through entities may not require recipients and subrecipients to use a de minimis rate lower than the negotiated indirect cost rate or the rate elected pursuant to this subsection unless required by Federal statute or regulation. The de minimis rate must not be applied to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. Recipients and subrecipients are not required to use the de minimis rate. When applying the de minimis rate, costs must be consistently charged as either direct or indirect costs and may not be double charged or inconsistently charged as both. The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, the recipient or subrecipient must

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

use the de minimis rate for all Federal awards until the recipient or subrecipient chooses to receive a negotiated rate.

(g) *One-time extension of indirect rates.* A recipient or subrecipient with a current Federal negotiated indirect cost rate may apply for a one-time extension of that agreement for up to four years. This extension will be subject to review and approval by the cognizant agency for indirect costs. If this extension is granted, the recipient or subrecipient may not request a rate review until the extension period ends. The recipient or subrecipient must re-apply to negotiate a new rate when the extension ends. After a new rate has been negotiated, the recipient or subrecipient may again apply for a one-time extension of the new rate in accordance with this paragraph.

§ 200.415 Required certifications.

(a) Financial reports must include a certification, signed by an official who is authorized to legally bind the recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

(b) Subrecipients under the Federal award must certify to the pass-through entity whenever applying for funds, requesting payment, and submitting financial reports: "I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812." Each such certification must be maintained pursuant to the requirements of § 200.334. This paragraph applies to all tiers of subrecipients.

(c) Certification of cost allocation plan or indirect cost rate proposal. Each cost allocation plan or indirect cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the recipient, must be certified by the recipient using the *Certificate of Cost Allocation Plan* or *Certificate of Indirect Costs* as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the recipient by an individual at a level no lower than the vice president or chief financial officer of the recipient that submits the proposal.

(2) The Federal Government may either disallow all indirect costs or unilaterally establish an indirect cost rate when the recipient fails to submit a certified proposal for establishing a rate. This rate should be based upon audited historical data or other data furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. The rate established must ensure that potentially unallowable costs are not reimbursed. Alternatively, the recipient may use the de minimis indirect cost rate. See § 200.414(f).

(d) Nonprofit organizations must certify that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a), if applicable.

(e) The recipient must certify that the requirements and standards for lobbying (see § 200.450) have been met when submitting its indirect cost rate proposal.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Special Considerations for States, Local Governments and Indian Tribes

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) Awards to states, local governments, and Indian Tribes are often implemented at the level of department within the State, local government, or Indian Tribe. A central service cost allocation plan is established to allow such department to claim a portion of centralized service costs that are incurred in proportion to the award's activities. Examples of centralized service costs may include motor pools, computer centers, purchasing, and accounting. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan establishes this process.

(b) Individual departments typically charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate proposal for each operating department is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each operating department of the State, local government, or Indian Tribe carrying out Federal awards; and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for developing and submitting cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in Appendices V, VI, and VII of this part.

§ 200.417 Interagency service.

An operating department may provide services to another operating department of the same State, local government, or Indian Tribe. In these instances, the cost of services provided

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost rate equal to 15 percent of the direct salaries and wages for providing the service (excluding overtime, shift premiums, and fringe benefits) may be used instead of determining the actual indirect costs of the service. These services do not include centralized services that are included in central service cost allocation plans described in Appendix V of this part.

Special Considerations for Institutions of Higher Education

§ 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a State or local government on behalf of and in direct benefit to its IHEs are allowable. These costs include but are not limited to fringe benefit programs such as pension costs and Federal Insurance Contributions Act (FICA) costs. These costs are allowable regardless of whether or not they are recorded in the accounting records of the institutions, subject to the following conditions:

(a) The costs meet the requirements of § 200.402 - 200.411;

(b) The costs are properly supported by approved cost allocation plans in accordance with the applicable cost accounting principles of this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.419 Cost accounting standards.

An IHE that receive an aggregate total $50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

General Provisions for Selected Items of Cost

§ 200.420 Considerations for selected items of cost.

(a) This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to other requirements of this subpart. These principles apply whether or not a particular cost item is properly treated as a direct or indirect cost.

(b) The following sections are not intended to be a comprehensive list of potential items of cost encountered under Federal awards. Failure to mention a particular item of cost, including as an example in certain sections, is not intended to imply that it is either allowable or unallowable. When determining the allowability for an item of cost, each case should be based on the treatment provided for similar or related items of cost and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability.

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media includes, but is not limited to, magazines, newspapers, radio and television, direct mail, exhibits, and electronic or computer transmittals.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the recipient or subrecipient for the performance of a Federal award (See also § 200.463);

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when the recipient or subrecipient is reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach (for example, recruiting project participants) and other specific purposes necessary to meet the Federal award requirements.

(c) The term "public relations" includes community relations and means those activities dedicated to maintaining the recipient's or subrecipient's image or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press about specific activities or accomplishments which result from the performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities or financial matters.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) Costs of meetings, conventions, conferences, or other events related to other activities of the entity (see also § 200.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia;

(4) Costs of advertising and public relations designed solely to promote the recipient or subrecipient.

§ 200.422 Advisory councils.

An advisory council or committee is a body that provides advice to the management of such entities as corporations, organizations, or foundations. Costs incurred by both internal and external advisory councils or committees are allowable if authorized by statute, the Federal agency, or as an indirect cost where allocable to Federal awards. See § 200.444, which applies to States, local governments, and Indian Tribes.

§ 200.423 Alcoholic beverages.

The cost of alcoholic beverages is unallowable.

§ 200.424 Alumni activities.

Costs incurred by IHEs for, or in support of, alumni activities are unallowable.

§ 200.425 Audit services.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) A reasonably proportionate share of the costs of audits required by and performed in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), and the requirements of this part are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and subpart F of this part have not been conducted, or have been conducted but not in accordance with the requirements; and (2) Except as provided for in paragraph (c), any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under Federal awards are less than $1,000,000 during its fiscal year."

(b) The costs of a financial statement audit of a recipient or subrecipient that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon procedures engagements to monitor subrecipients (in accordance with §§ 200.331-333) exempt from having an audit conducted under the Single Audit Act and the requirements of this part. This cost is allowable only if the agreed-upon procedures engagements are:

(1) Conducted in accordance with GAGAS or applicable international attestation standards, as appropriate;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 200.426 Bad debts.

Bad debts (debts determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

collection costs, and related legal costs, arising from such debts are also unallowable. See § 200.428.

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal agency requires assurance against financial loss to itself or others because of an act or default of the recipient or subrecipient. They also arise when the recipient or subrecipient requires similar assurance, including bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required under the Federal award's terms and conditions are allowable.

(c) Costs of bonding required by the recipient or subrecipient in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a recipient or subrecipient to recover improper payments, including improper overpayments, are allowable as either direct or indirect costs, as appropriate. The recipient or subrecipient may use the amounts collected in accordance with cash management standards described in § 200.305.

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as activity costs provided for in Appendix III, (B)(9) Student Administration and Services.

§ 200.430 Compensation - personal services.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the recipient or subrecipient consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with the recipient's or subrecipient's laws, rules, or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (g) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be reasonable to the extent that it is consistent with that paid for similar work in other activities of the recipient or subrecipient. In cases where the kinds of employees required for Federal awards are not found in the other activities of the recipient or subrecipient, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the recipient or subrecipient competes for the kind of employees involved.

(c) *Professional activities outside the recipient or subrecipient.* Unless the Federal agency expressly authorizes an arrangement, a recipient or subrecipient must follow its written policies and procedures concerning the permissible extent of professional services that can be

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

provided outside the recipient or subrecipient for non-organizational compensation. Where the recipient or subrecipient does not have written policies or procedures, or they do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require the recipient or subrecipient to allocate the effort of professional staff working on Federal awards between:

(1) Recipient or subrecipient activities, and

(2) Non-organizational professional activities. Appropriate arrangements governing compensation must be negotiated on a case-by-case basis if the Federal agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award.

(d) *Unallowable costs.* (1) Costs unallowable under other sections of these principles must not be allowable under this section solely because they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with Federal statute. See 10 U.S.C. § 3744(a)(16), 41 U.S.C. 1127, and 41 U.S.C. 4304(a)(16) for the ceiling amount, covered compensation subject to the ceiling, covered employees, and other relevant provisions for cost-reimbursement contracts. For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining the allowability of compensation will be given to any change in a recipient's or subrecipient's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, efficient performance, suggestion awards, or safety awards is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued according to an agreement entered into in good faith between the recipient or subrecipient and the employees before the services were rendered, or according to an established plan followed by the recipient or subrecipient so consistently as to imply, in effect, an agreement to make such payment.

(g) *Standards for Documentation of Personnel Expenses*. (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control that provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the recipient or subrecipient;

(iii) Reasonably reflect the total activity for which the employee is compensated by the recipient or subrecipient, not exceeding 100 percent of compensated activities (for IHEs, this is the IBS);

(iv) Encompass federally-assisted and all other activities compensated by the recipient or subrecipient on an integrated basis but may include the use of subsidiary records as defined in the recipient's or subrecipient's written policy;

(v) Comply with the established accounting policies and procedures of the recipient or subrecipient (See paragraph (i)(1)(ii) of this section for treatment of incidental work for IHEs.); and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(vi) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(vii) Budget estimates (meaning, estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity performed;

(B) Significant changes in the related work activity (as defined by the recipient's or subrecipient's written policies) are promptly identified and entered into the records. Short-term (such as one or two months) fluctuations between workload categories do not need to be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The recipient's or subrecipient's system of internal controls includes processes to perform periodic after-the-fact reviews of interim charges made to a Federal award based on budget estimates. All necessary adjustments must be made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(viii) Because practices vary as to the activity constituting a full workload (for example, the Institutional Base Salary (IBS) for IHEs), records may reflect categories of activities expressed as a percentage distribution of total activities.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ix) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. Therefore, a precise assessment of factors contributing to costs is not required when IHEs record salaries and wages charged to Federal awards.

(2) For records that meet the standards required in paragraph (g)(1) of this section, the recipient or subrecipient is not required to provide additional support or documentation for the work performed other than that referenced in paragraph (g)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) States, local governments, and Indian Tribes may use substitute processes or systems for allocating salaries and wages to Federal awards either in place of or in addition to the records described in paragraph (g)(1) of this section if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems that use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards, including:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (g)(5)(iii);

(B) The sample must cover the entire period involved; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors and clerical and support staff, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts allocated to Federal awards will be minimal or if it concludes that the system proposed by the recipient or subrecipient will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance when these are clearly documented. These plans are acceptable as an alternative to requirements in paragraph (g)(1) of this section when approved by the cognizant agency for indirect costs.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a recipient or subrecipient may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided the plans are approved in advance by all involved Federal agencies. In these instances, the recipient or subrecipient must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(8) For a recipient or subrecipient whose records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation supporting the records as required in this section.

(h) *Nonprofit organizations.* This paragraph provides guidance specific to only nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, a determination must be made that the compensation is reasonable for the actual personal services rendered rather than a distribution of earnings above actual costs. Compensation may include director's and executive committee member's fees, incentive awards, off-site or incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(i) *Institutions of Higher Education (IHEs).* This paragraph provides guidance specific to only IHEs.

(1) *Determining allowable personnel costs.* Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etcetera), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under the written institutional policy (at a rate not to exceed institutional base salary) do not need to be included in the records described in paragraph (g). To charge payments of incidental activities directly, such activities must either be expressly authorized in the Federal award budget or receive prior written approval by the Federal agency.

(2) *Salary basis.* Charges for work performed on Federal awards by faculty members during the academic year are allowable at the institutional base salary (IBS) rate. Except as noted in paragraph (i)(1)(ii), in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of the faculty at an institution. IBS is the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal agency, charges of a faculty member's salary to a Federal award may not exceed the proportionate share of the IBS for the period during which the faculty member worked on the Federal award.

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty members is in addition to their regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are expressly authorized in the Federal award or approved in writing by the Federal agency.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) *Extra service pay.* Extra service pay typically represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay results from Intra-IHE consulting, it is subject to the same requirements of paragraph (b) of this section. It is allowable if all of the following conditions are met:

(i) The IHE establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The IHE establishes a consistent written definition of work covered by IBS, which is specific enough to determine conclusively when work beyond that level has occurred. This definition may be described in appointment letters or other documentation.

(iii) The supplementation amount paid is commensurate with the IBS pay rate and additional work performed. See paragraph (i)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the IHE.

(v) The total salaries charged to Federal awards, including extra service payments, are subject to the standards of documentation as described in paragraph (g).

(5) *Periods outside the academic year.* (i) Except as specified for teaching activity in paragraph (i)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period must be at a rate not more than the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period must be based on the written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(6) *Part-time faculty.* Charges for work performed on Federal awards by faculty members having only part-time appointments must be determined at a rate not more than that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follows:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable, provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. These costs must be allocated equitably among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members.* Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the IHE's written policy and paragraph (i)(1)(i).

§ 200.431 Compensation - fringe benefits.

(a) *General.* Fringe benefits are allowances and services employers provide to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefits. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, an organization-employee agreement, or an established policy of the recipient or subrecipient.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the recipient or subrecipient or a specified grouping of employees.

(i) When a recipient or subrecipient uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment and must be allocated as a general administrative expense to all activities.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a recipient or subrecipient uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) *Fringe benefits.* The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs; and other similar benefits are allowable, provided such benefits are permitted under established written policies. The recipient or subrecipient must allocate fringe benefits to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

and charged as direct or indirect costs following the recipient's or subrecipient's accounting practices.

(d) *Cost objectives.* The recipient or subrecipient may assign fringe benefits to cost objectives by identifying specific benefits to specific individual employees or by allocating them based on entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees unless the recipient or subrecipient demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation and the types of coverage, the extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The cost of such insurance is unallowable when the recipient or subrecipient is named as beneficiary.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*for*

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

example, post-retirement health benefits) are allowable in the year of payment provided that the recipient or subrecipient follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the recipient or subrecipient that relates to personal use by employees (including transportation to and from work) is unallowable as a fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension plan costs.* Pension plan costs incurred in accordance with the established written policies of the recipient or subrecipient are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) The cost assigned to each fiscal year should be determined in accordance with GAAP, except for State and local governments.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. The recipient or subrecipient may follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Premiums for pension plan termination insurance that are paid according to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(6) Pension plan costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the recipient or subrecipient in excess of the actuarially determined amount for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(iv) When a recipient or subrecipient establishes or converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) Payments for unfunded pension costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

unfunded pension costs directly to a Federal award if those unfunded pension costs are not allocable to that award.

(vi) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed pension costs (including subsequent earnings) that revert or inure to the recipient or subrecipient through a refund, withdrawal, or other credit.

(h) *Post-retirement health.* A post-retirement health plan (PRHP) refers to the costs of health insurance or health services not included in a pension plan covered by paragraph (g) for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in the current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) Amounts funded by the recipient or subrecipient in excess of the actuarially determined amount for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(4) If a recipient or subrecipient establishes or converts to an actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) Payments for unfunded PRHP costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded PRHP costs directly to a Federal award if those unfunded PRHP costs are not allocable to that award.

(6) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums; or

(ii) An insurer or trustee that will maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(7) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed post-retirement benefit costs (including subsequent earnings) that revert or inure to the recipient or subrecipient through a refund, withdrawal, or other credit.

(i) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by recipients and subrecipients to workers whose employment is being terminated. Severance pay is allowable only to the extent that, in each case, it is required by:

(i) Law;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the recipient's or subrecipient's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual severance payments for normal turnover must be allocated to all activities; or, where the recipient or subrecipient provides for a reserve for normal severances, such method is acceptable if the charge to current operations is reasonable in light of payments made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the recipient or subrecipient.

(ii) Measuring the costs of abnormal or mass severance pay by means of an accrual method will not achieve equity for both parties. Therefore, accruals are not allowable. However, the Federal Government recognizes its responsibility to contribute its fair share toward a specific payment. Prior approval by the Federal agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in severance pay packages that are in excess of the standard severance pay provided by the recipient or subrecipient to an employee upon termination of employment and that are paid to the employee contingent upon a change in management control over, or ownership of, the recipient's or subrecipient's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the recipient or subrecipient in the United States, are unallowable unless they are

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

required by applicable foreign law or necessary for the performance of Federal programs and approved by the Federal agency.

(5) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the recipient or subrecipient in that country, are unallowable unless they are either:

(i) Required by applicable foreign law; or

(ii) Necessary for the performance of Federal programs and approved by the Federal agency.

(j) *For IHEs only.* (1) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees are allowable, provided such benefits are granted in accordance with established written policies of the IHE and are distributed to all IHE activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees not employed by the IHE are limited to the tax-free amount allowed by the Internal Revenue Code as amended (26 U.S.C. 127).

(3) IHEs may offer employees tuition waivers or reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466, for treatment of tuition remission provided to students.

(k) *Fringe benefit programs and other benefit costs.*

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) For IHEs whose costs are paid by a State or local government, fringe benefit programs (such as pension costs and FICA) and any other benefits costs incurred specifically on behalf of, and in direct benefit to, the IHE, are allowable, subject to the following:

(i) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;

(ii) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(iii) The costs are not otherwise borne directly or indirectly by the Federal Government.

(2) The allowability of these costs for the IHE does not depend on whether they are recorded in the accounting records of the IHE.

§ 200.432 Conferences.

A conference means an event whose primary purpose is to disseminate technical information beyond the recipient or subrecipient and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs may include the rental of facilities, speakers' fees, attendance fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. The costs of identifying and providing locally available dependent-care resources for participants are allowable as needed. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed to minimize costs to the Federal award. The Federal agency may authorize exceptions for programs including Indian Tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

§ 200.433 Contingency provisions.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) Contingency provisions are part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items approved by the Federal agency) which are associated with possible events or conditions arising from causes for which the precise outcome is indeterminable at the time of estimate and that are likely to result, in the aggregate, in additional costs for the approved activity or project. Contingency amounts for major project scope changes, unforeseen risks, or extraordinary events must not be included in the budget estimates for a Federal award.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates to the extent necessary to improve their precision. Contingency amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements of this part (see §§ 200.300 and 200.403), be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the recipient's or subrecipient's records.

(c) Payments to a recipient's or subrecipient's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the recipient or subrecipient to other entities are unallowable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) The value of services and property donated (that is, in-kind donations) to the recipient or subrecipient may not be charged to the Federal award either as a direct or indirect cost. The value of donated services and property may be used to meet cost sharing requirements (see § 200.306). Depreciation on donated assets is permitted so long as the donated property is not counted towards meeting cost sharing requirements (see § 200.436).

(c) Services donated or volunteered to the recipient or subrecipient may be provided by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing requirements in accordance with the provisions of § 200.306.

(d) To the extent feasible, services donated to the recipient or subrecipient will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to a nonprofit organization and used in the performance of a direct cost activity must be considered in the determination of the recipient's or subrecipient's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the recipient or subrecipient;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient or subrecipient and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the project's total costs. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing requirements.

(f) Fair market value of donated services must be computed as described in § 200.306.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a recipient or subrecipient. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations of personal property and use of space may be used to meet cost sharing requirements described in § 200.300. The recipient or subrecipient must value the donations in accordance with § 200.300. Where the recipient or subrecipient treats donations as indirect costs, indirect cost rates must separate the value of the donations so that reimbursement is not made.

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) *Definitions for this section*—(1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) *Costs* include the services that bear a direct relationship to a judicial or administrative proceeding and provided by in-house or private counsel, accountants, consultants, or others engaged to assist the recipient or subrecipient before, during, or after the commencement of that proceeding.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts that violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (42 U.S.C. 1320a-7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs.* (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil, or administrative proceeding (including the filing of a false certification) commenced by the Federal Government, a State, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the recipient or subrecipient, (or commenced by third parties or a current or former employee of the recipient or subrecipient who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 4701 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute, regulation, or the terms and conditions of the Federal award by the recipient or subrecipient (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of recipient or subrecipient liability.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(C) In the case of any civil or administrative proceeding, the disallowance of costs, the imposition of a monetary penalty, or an order issued by the Federal agency head or delegate to the recipient or subrecipient to take corrective action under 10 U.S.C. 4701 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the recipient or subrecipient, to rescind or void a Federal award, or to terminate a Federal award because of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) *Allowability of costs for proceeding commenced by Federal Government*. If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the recipient or subrecipient and the Federal Government, then the costs incurred may be allowed to the extent expressly authorized in the agreement.

(d) *Allowability of costs for proceeding commenced by State, local, or foreign government.* If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign government, then the costs incurred may be allowed if the authorized Federal official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal agency.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(e) *Allowability of costs in general*. Costs incurred in connection with proceedings described in paragraph (b), and not made unallowable by that paragraph, may be allowed to the extent that:

(1) The costs are reasonable and necessary for the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official has determined the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and other factors that may be appropriate. This percentage must not exceed 80 percent unless an agreement under paragraph (c) has explicitly considered this limitation and permitted a higher percentage. In that case, the total amount of costs incurred may be allowable.

(f) *Major Fraud Act.* Costs incurred by the recipient or subrecipient in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make the employee whole, where the recipient or subrecipient was found liable or settled, are unallowable.

(g) *Un-allowability of costs for prosecuting claims against Federal Government*. Costs for prosecuting claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(h) *Patent infringement litigation*. Costs of legal, accounting, and consultant services, and related costs incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) *Potentially unallowable costs*. Costs that may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The recipient or subrecipient may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP provided that they are needed and used in the recipient's or subrecipient's activities and correctly allocated to Federal awards. The compensation must be made by computing the proper depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX of this part.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the recipient or subrecipient by a third party, its fair market value at the time of the donation

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

must be considered as the acquisition cost. Such assets may be depreciated or claimed as cost sharing but not both. When computing depreciation charges, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where the title was originally vested or is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the recipient or subrecipient that is already claimed as cost sharing or where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as the type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Once used, depreciation methods may not be changed unless approved in advance by the cognizant agency for indirect costs. The depreciation methods used to calculate the depreciation amounts for indirect cost rate purposes must be the same methods used by the recipient or subrecipient for its financial statements.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component may be depreciated over its estimated useful life in this case. The building components must be grouped into three general components: building shell (including construction and design costs), building services systems (for example, elevators, HVAC, and plumbing system), and fixed equipment (for example, sterilizers, casework, fume hoods, cold rooms, and glassware/washers). A cognizant agency for indirect costs may authorize a recipient or subrecipient to use more than these three groupings in exceptional cases. When a recipient or subrecipient elects to depreciate its buildings by their components, the same depreciation method must be used for indirect and financial statements purposes, as described in paragraphs (d)(1) and (2).

(4) No depreciation may be allowed on assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (meaning, from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods before the conversion from the use allowance method and depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Adequate property records must support depreciation charges, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. The recipient or subrecipient may use statistical sampling techniques when taking these inventories. In addition, the recipient or subrecipient must maintain adequate depreciation records showing the amount of depreciation.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the recipient's or subrecipient's established written policies for improving working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) These costs must be equitably apportioned to all activities of the recipient or subrecipient. Income generated from these activities must be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the recipient's or subrecipient's objective is to operate food services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only when:

(1) The recipient or subrecipient can demonstrate unusual circumstances; and

(2) Approved by the cognizant agency for indirect costs.

§ 200.438 Entertainment and prizes.

(a) *Entertainment costs*. 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.

(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.

§ 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of *capital expenditures, equipment, special purpose equipment, general purpose equipment, acquisition cost, and capital assets.*

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are allowable as direct costs, but only with the prior written approval of the Federal agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $10,000 or more have the prior written approval of the Federal agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life are allowable as a direct cost, but only with the prior written approval of the Federal agency or pass-through entity. See § 200.436 on the allowability of depreciation on buildings, capital improvements, and equipment. See § 200.465 on the allowability of real property and equipment rental costs.

(4) When approved as a direct cost in accordance with paragraphs (b)(1) through (3), capital expenditures must be charged in the period in which the expenditure is incurred or as otherwise determined appropriate and negotiated with the Federal agency.

(5) The recipient or subrecipient may claim the unamortized portion of any equipment written off as a result of a change in capitalization levels by continuing to claim the otherwise allowable depreciation on the equipment or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the Federal agency instructs the recipient or subrecipient to otherwise dispose of or transfer the equipment, the costs of disposal or transfer are allowable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. Before providing approval, the Federal agency must ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Antideficiency Act.

(b) The recipient or subrecipient is required to make reviews of local currency gains to determine the need for additional Federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the recipient or subrecipient provides the Federal agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from recipient or subrecipient violations of, alleged violations of, or failure to comply with, Federal, State, local, tribal, or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with the prior written approval of the Federal agency. See § 200.435.

§ 200.442 Fundraising and investment management costs.

(a) Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

contributions, are unallowable. Fundraising costs for meeting the Federal program objectives are allowable with the prior written approval of the Federal agency.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds, which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fundraising and investment activities must be allocated an appropriate share of indirect costs in accordance with § 200.413.

§ 200.443 Gains and losses on the disposition of depreciable assets.

(a) The recipient or subrecipient must include gains and losses on the sale, retirement, or other disposition of depreciable property in the year they occur as credits or charges to the asset cost grouping(s) of the property. The amount of the gain or loss is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.

(2) The property is given in exchange as part of the purchase price of a similar item, and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from failing to maintain proper insurance, except as provided in § 200.447.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) Compensation for the use of the property was provided through use allowances instead of depreciation.

(5) Gains and losses arising from extraordinary or bulk sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316.

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable except as provided in § 200.475. Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a local government or the chief executive of an Indian Tribe;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, or school board, whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation. However, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435; and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided as a direct cost under a program statute or regulation.

(b) Indian Tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1) may include up to 50 percent of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and their staff in the indirect cost calculation without documentation.

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for the personal use of the recipient's or subrecipient's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Housing costs (for example, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses for the recipient's or subrecipient's employees are only allowable as direct costs and must be approved in advance by the Federal agency.

§ 200.446 Idle facilities and idle capacity.

(a) Definitions for the purpose of this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the recipient or subrecipient.

(2) Idle facilities mean completely unused facilities that exceed the recipient's or subrecipient's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means maintenance, repair, housing, rent, and other related costs (for example, insurance, interest, and depreciation). These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load (for example, consolidated data centers).

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate, and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under this exception, costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. These costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained by the terms and conditions of the Federal award are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) The types, extent, and cost of coverage are in accordance with the recipient's or subrecipient's established written policy and sound business practices.

(2) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal agency has approved the costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only when the insurance represents additional compensation (see § 200.431). This insurance is unallowable when the recipient or subrecipient is identified as the beneficiary.

(5) Insurance costs to correct defects in the recipient's or subrecipient's materials or workmanship are unallowable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(6) Medical liability (malpractice) insurance is an allowable cost of a Federal research program only when the program involves human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and assigned to individual projects based on how the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable unless expressly authorized in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for a self-insurance program, including workers' compensation, unemployment compensation, and severance pay, are allowable subject to the following requirements:

(1) The type, extent, and cost of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, a provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by considering factors such as the recipient’s or subrecipient’s settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, and other relevant factors or information. Reserve levels related to employee-related coverages must normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve exceeding the levels described in paragraph (d)(3)(i) of this section must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to the types of insured risk and losses generated by the various insured activities or agencies of the recipient or subrecipient. If individual departments or agencies of the recipient or subrecipient experience significantly different levels of claims for a particular risk, those differences must be recognized by using separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (for example, general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with the claims collection regulations of the cognizant agency for indirect cost.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(f) Indemnification includes securing the recipient or subrecipient against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the recipient or subrecipient only to the extent expressly provided for in the Federal award, except as provided in paragraph (c).

§ 200.448 Intellectual property.

(a) *Patent and copyright costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where the Federal Government requires that a title or a royalty-free license be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See § 200.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(b) *Royalties and other costs for the use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid or administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness when the royalties may have been obtained as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the recipient or subrecipient.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a recipient or subrecipient.

(3) In any case involving a patent or copyright formerly owned by the recipient or subrecipient, the amount of royalty allowed must not exceed the cost which would have been allowed had the recipient or subrecipient retained ownership.

§ 200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the recipient’s or subrecipient’s own funds are unallowable. Financing costs

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(including interest) to acquire, construct, or replace capital assets are allowable, subject to the requirements of this section.

(b) *Capital assets.* (1) Capital assets is defined in § 200.1. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For recipient or subrecipient fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Requirements for all recipients and subrecipients.* (1) The recipient or subrecipient uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the recipient or subrecipient from an unrelated (arm's length) third party.

(3) The recipient or subrecipient obtains the financing via an arm's-length transaction (meaning, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The recipient or subrecipient limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(5) The recipient or subrecipient expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over $1 million to purchase or construct facilities unless the recipient or subrecipient makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, “initial equity contribution” means the amount or value of contributions made by the recipient or subrecipient for the acquisition of facilities prior to occupancy.

(i) The recipient or subrecipient must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The recipient or subrecipient must impute interest on excess cash flow as follows:

(A) Annually, the recipient or subrecipient must prepare a cumulative (from the project’s inception) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(B) To compute monthly cash inflows and outflows, the recipient or subrecipient must divide the above-mentioned annual amounts by the months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The interest rate to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) *Additional requirements for states, local governments and Indian Tribes.* For interest costs to be allowable for states, local governments, and Indian Tribes, the recipient or subrecipient must have incurred the interest costs for buildings after October 1, 1980, or after September 1, 1995, for land and equipment.

(1) The requirement to offset the interest earned on borrowed funds against allowable interest cost (paragraph (c)(5) of this section) also applies to earnings on debt service reserve funds.

(2) The recipient or subrecipient must negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of $1 million or more, as described in paragraph (c)(7) of this section. For this purpose, a recipient or subrecipient must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) *Additional requirements for IHEs.* For interest costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(f) *Additional requirements for nonprofit organizations.* For interest costs to be allowable, the nonprofit organization must have incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to "full coverage" under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The nonprofit organization's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), "Cost of Money as an Element of the Cost of Facilities Capital," and CAS 417 (48 CFR 9904.417), "Cost of Money as an Element of the Cost of Capital Assets Under Construction."

§ 200.450 Lobbying.

(a) *Lobbying costs associated with obtaining Federal assistance awards.* The costs of certain influencing activities associated with obtaining grants, cooperative agreements, contracts, or loans are unallowable. Lobbying with respect to certain grants, cooperative agreements, contracts, and loans is governed by relevant statutes, including the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying," published on February 26, 1990, including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

(b) *Executive lobbying costs.* Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merit.

(c) *Restrictions on nonprofit organizations and IHEs.* In addition, the following restrictions apply to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established to influence the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or State legislation;

(B) The enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or State legislation by preparing, distributing, or using publicity or propaganda or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient's or subrecipient's member of congress, legislative body, subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence State legislation to directly reduce the cost, or to avoid material impairment of the recipient's or subrecipient's authority to perform the grant, contract, or other agreement;

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award; or

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities to retain their charitable deduction status and avoid punitive excise taxes, 26 U.S.C. (I.R.C.) 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. 4911(d)(2) and 26 CFR 56.4911-2(c)(1) through (c)(3).

(3) When a recipient or subrecipient seeks reimbursement for indirect costs, total lobbying costs must be identified separately in the indirect cost rate proposal and thereafter be treated as other unallowable activity costs in accordance with § 200.413.

(4) The recipient or subrecipient must submit a certification that the requirements and standards of this section have been complied with as part of its annual indirect cost rate proposal. (See § 200.415.)

(5(i) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record-keeping requirements in § 200.302 with respect to lobbying costs during a particular calendar month when:

(*A*) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) for 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(B) Within the preceding five-year period, the recipient or subrecipient has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) When conditions in paragraph (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, recipients and subrecipients are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(iii) In consultation with OMB, the Federal agency must establish procedures for resolving, in advance, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or recipient or subrecipient from contesting the lawfulness of such a determination.

§ 200.451 Losses on other awards or contracts.

Any excess costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the recipient's or subrecipient's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another is unallowable. All losses are not allowable indirect costs and must be included in the appropriate indirect cost rate base for allocating indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements that add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary for the performance of a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are an allowable part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. Charging computing devices as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where Federally-donated or furnished materials are used in performing the Federal award, the materials will be used without charge.

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the recipient's or subrecipient's membership in business, technical, and professional organizations are allowable.

(b) Costs of the recipient's or subrecipient's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See § 200.450.

§ 200.455 Organization costs.

(a) Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the recipient or subrecipient in connection with the establishment or reorganization of an organization, are unallowable except with prior approval of the Federal agency.

(b) The costs of any of the following activities are unallowable: activities undertaken to persuade employees of the recipient or subrecipient, or any other entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing.

(c) The costs related to data and evaluation are allowable. Data costs include (but are not limited to) the expenditures needed to gather, store, track, manage, analyze, disaggregate, secure, share, publish, or otherwise use data to administer or improve the program, such as data systems, personnel, data dashboards, cybersecurity, and related items. Data costs may also include direct or indirect costs associated with building integrated data systems—data systems that link individual-level data from multiple State and local government agencies for purposes of management, research, and evaluation. Evaluation costs include (but are not limited to) evidence reviews, evaluation planning and feasibility assessment, conducting evaluations, sharing evaluation results, and other personnel or materials costs related to the effective building and use of evidence and evaluation for program design, administration, or improvement.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.456 Participant support costs.

Participant support costs are allowable (see § 200.1). 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.

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for the protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

§ 200.458 Pre-award costs.

Pre-award costs are those incurred before the start date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. These costs are allowable only to the extent that they would have been allowed if incurred after the start date of the Federal award and only with the written approval of the Federal agency. If approved, these costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency or pass-through entity.

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the recipient or subrecipient are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

costs from the Federal Government. In addition, legal and related services are limited under § 200.435.

(b) In determining the allowability of costs in a particular case, no single factor or any combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the recipient's or subrecipient's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to receiving a Federal award(s).

(4) The impact of Federal awards on the recipient's or subrecipient's business (meaning, what new problems have arisen).

(5) Whether the proportion of Federal work to the recipient's or subrecipient's total business influences the recipient or subrecipient in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or entity providing the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (for example, description of the service, estimate of the time required, rate of compensation, and termination provisions).

(c) To be allowable, retainer fees must be supported by evidence of bona fide services available or rendered in addition to the factors in paragraph (b) of this section.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including developing data necessary to support the recipient's or subrecipient's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated to all current activities of the recipient or subrecipient. No proposal costs of past accounting periods may be allocated to the current period.

§ 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling, are allowable. These costs should be allocated as indirect costs to all benefiting activities of the recipient or subrecipient if they are not identifiable with a particular cost objective.

(b) Page charges, article processing charges (APCs), or similar fees such as open access fees for professional journal publications and other peer-reviewed publications resulting from a Federal award are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(3) The recipient or subrecipient may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs were not incurred during the period of performance of the Federal award. These costs must be charged to the final budget period of the award unless otherwise specified by the Federal agency.

§ 200.462 Rearrangement and reconversion costs.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations are allowable as a direct cost if the costs are incurred specifically for a Federal award and with the prior approval of the Federal agency or pass-through entity.

(b) Costs incurred in restoring or rehabilitating the recipient's or subrecipient's facilities to approximately the same condition existing immediately before the commencement of a Federal award(s), less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the recipient's or subrecipient's standard recruitment program. When the recipient or subrecipient uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the recipient or subrecipient, are unallowable.

(c) If relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of those relocation costs. See § 200.464.

(d) Short-term visas (as opposed to longer-term immigration visas) are generally an allowable cost and they may be proposed as a direct cost because they are issued for a specific period and purpose and can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

(1) Be critical and necessary for the conduct of the project;

(2) Be allowable under the applicable cost principles;

(3) Be consistent with the recipient's or subrecipient's cost accounting practices and established written policy; and

(4) Meet the definition of "direct cost" as described in the applicable cost principles.

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) The costs of transportation of the employee, members of their immediate family and their household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incidental to the disposition of the employee's former home. These costs, together with those described in paragraph (b)(4) of this section, are limited to eight percent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. If relocation costs incurred incident to the recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of the cost. If a new employee is relocating to an overseas location and dependents are not permitted for any

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

reason, and the costs do not include transporting household goods, the costs must be considered travel costs in accordance with § 200.474, not relocation costs under § 200.464.

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

§ 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as costs of comparable rental properties; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and if other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would have been allowed if the recipient or subrecipient had continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount described in paragraph (b) of this section. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement can control or substantially influence the actions of the other. Such leases include, but are not limited to, those between:

(1) Divisions of the recipient or subrecipient;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) The recipient or subrecipient and another entity under common control through common officers, directors, or members; and

(3) The recipient or subrecipient and a director, trustee, officer, or key employee of the recipient or subrecipient or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the recipient or subrecipient may establish a separate corporation to own property and lease it back to the recipient or subrecipient.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse and parents thereof;

(ii) Children and spouses thereof;

(iii) Parents and spouses thereof;

(iv) Siblings and spouses thereof;

(v) Grandparents and grandchildren and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards are allowable only up to the amount (described in paragraph (b) of this section) that would have been allowed if the recipient or subrecipient had purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable if they meet the criteria in § 200.449.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Unallowable costs include costs that would not have been incurred if the recipient or subrecipient had purchased the property, such as amounts paid for profit, management fees, and taxes.

(e) Rental or lease payments are allowable under lease contracts where the recipient or subrecipient is required to recognize an intangible right-to-use lease asset under GASB standards or right-of-use operating lease asset under FASB standards for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the recipient or subrecipient, including commercial or residential real estate, for purposes such as the home office is unallowable.

§ 200.466 Scholarships, student aid costs, and tuition remission.

(a) Costs of scholarships, fellowships, and student aid programs at IHEs are allowable only when the purpose of the Federal award is to provide training to participants, and the Federal agency approves the cost.

(b) Tuition remission and other forms of compensation paid as, or instead of, wages to students performing necessary work are allowable provided that: (1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with the established written policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) The student is enrolled in an advanced degree program at the IHE or an affiliated institution during the academic period and the student's activities under the Federal award are related to their degree program;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) The IHE compensates students under Federal awards as well as other activities in similar manners.

(c) Charges for tuition remission and other forms of compensation paid to students as, or instead of, salaries and wages are subject to the reporting requirements in § 200.430. The charges must be treated as a direct or indirect cost in accordance with the actual work performed. Tuition remission may be charged on an average rate basis. See § 200.431.

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the recipient or subrecipient are unallowable unless they are allowed under § 200.421 and are necessary to meet the requirements of the Federal award.

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the recipient or subrecipient are allowable provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section and take into account any items of income or Federal financing that qualify as applicable credits under § 200.406. These costs include charges for facilities such as computing facilities, wind tunnels, and reactors.

(b) The costs of such services, when material, must be charged directly to the applicable Federal awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) Does not discriminate between activities under Federal awards and other activities of the recipient or subrecipient, including usage by the recipient or subrecipient for internal purposes; and

(2) Is designed to recover only the aggregate costs of the services. Each service's costs must normally consist of its direct costs and an allocable share of all indirect costs. Rates must be adjusted at least biennially and must consider any over or under-applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect costs.

(d) Under extraordinary circumstances, the cognizant agency for indirect costs and the recipient or subrecipient may negotiate and establish an alternative costing arrangement if it is in the Federal Government's best interest.

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities are unallowable unless expressly authorized in the Federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) *For States, local governments, and Indian Tribes*. (1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are, in effect, user fees for benefits provided to the Federal Government are allowable.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) This provision does not restrict the authority of the Federal agency to identify taxes where Federal participation is inappropriate. The cognizant agency for indirect costs may accept a reasonable approximation in circumstances where determining the amount of unallowable taxes would require an excessive amount of effort.

(b) *For nonprofit organizations and IHEs*. (1) Taxes that the recipient or subrecipient is required to pay and which are paid or accrued in accordance with GAAP are generally allowable. These costs include payments made to local governments instead of taxes and that are commensurate with the local government services received. The following taxes are unallowable:

(i) Taxes for which exemptions are available to the recipient or subrecipient directly or which are available to the recipient or subrecipient based on an exemption afforded the Federal Government and, in the latter case, when the Federal agency makes available the necessary exemption certificates;

(ii) Special assessments on land which represent capital improvements; and

(iii) Federal income taxes.

(2) Any refund of taxes and interest thereon, which were allowed as Federal award costs, must be credited to the Federal Government as a cost reduction or cash refund, as appropriate. However, any interest paid or credited to a recipient or subrecipient incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the Federal Government has reimbursed the recipient or subrecipient for the taxes, interest, and penalties.

(c) *Value Added Tax (VAT).* Foreign taxes charged for procurement transactions that a recipient or subrecipient is legally required to pay in a country are allowable. Foreign tax refunds

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

or applicable credits under Federal awards refer to receipts or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the recipient or subrecipient relate to allowable cost, these costs must be credited to the Federal agency as a cost reduction or cash refunds, as appropriate. In cases where the costs are credited back to the Federal award, the recipient or subrecipient may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, the Federal agency may allow the recipient or subrecipient to use the foreign government tax refund for approved activities under the Federal award.

§ 200.471 Telecommunication and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and 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 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

§ 200.472 Termination and standard closeout costs.

(a) *Termination Costs.* Termination of a Federal award generally gives rise to the incurrence of costs or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They must be used in conjunction with the other termination requirements of this part.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) The cost of items reasonably usable on the recipient's or subrecipient's other work is unallowable unless the recipient or subrecipient submits evidence that it would not retain such items without sustaining a loss. In deciding whether such items are reasonably usable on other work of the recipient or subrecipient, the Federal agency or pass-through entity should consider the recipient's or subrecipient's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the recipient or subrecipient must be considered evidence that the items are reasonably usable on the recipient's or subrecipient's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order do not exceed the reasonable quantitative requirements of other work.

(2) If the recipient or subrecipient cannot discontinue certain costs immediately after the effective termination date, despite making all reasonable efforts, then the costs are generally allowable within the limitations of this part. Any costs continuing after termination due to the negligent or willful failure of the recipient or subrecipient to immediately discontinue the costs are unallowable.

(3) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(i) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the recipient or subrecipient;

(ii) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal agency (see § 200.313 (d)); and

(iii) The loss of useful value for any one terminated Federal award is limited to the portion of the acquisition cost which bears the same ratio to the total acquisition cost as the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(4) If paragraph (a)(4)(i) and (ii) below are satisfied, rental costs under unexpired leases (less the residual value of such leases) are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award. These rental costs may include the cost of alterations of the leased property and the cost of reasonable restoration required by the lease, provided the alterations were necessary for the performance of the Federal award.

(i) The amount of claimed rental costs does not exceed the reasonable use value of the property leased for the period of the Federal award and a further period as may be reasonable; and

(ii) The recipient or subrecipient makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of the lease.

(5) The following settlement expenses are generally allowable.

(i) Accounting, legal, clerical, and similar costs that are reasonably necessary for:

(A) The preparation and presentation to the Federal agency or pass-through entity of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see §§ 200.339-200.343); and

(B) The termination and settlement of subawards.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(6) Claims under subawards, including the allocable portion of claims common to the Federal award and other work of the recipient or subrecipient, are generally allowable. An

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

appropriate share of the recipient's or subrecipient's indirect costs may be allocated to the amount of settlements with contractors and subrecipients, provided that the amount allocated is consistent with the requirements of § 200.414. These allocated indirect costs must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

(b) *Closeout Costs.* Administrative costs associated with the closeout activities of a Federal award are allowable. The recipient or subrecipient may 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, costs associated with the disposition of equipment and property, and related indirect costs). These 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.

§ 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 200.474 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating to goods purchased, in process, or delivered, are allowable. When the costs can be readily identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. When identification with the materials received cannot be readily made, the inbound transportation cost may be charged to the appropriate indirect cost accounts if the recipient or subrecipient follows a consistent, equitable procedure in this respect. If reimbursable under the terms and conditions of the Federal award, outbound freight should be treated as a direct cost.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.475 Travel costs.

(a) *General.* Travel costs include the transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the recipient or subrecipient. These costs may be charged on an actual cost basis, on a per diem or mileage basis, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip. The method used must be consistent with those normally allowed in like circumstances in the recipient's or subrecipient's other activities and in accordance with the recipient's or subrecipient's established written policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the recipient or subrecipient in its regular operations as the result of the recipient's or subrecipient's established written policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary for the Federal award; and

(2) The costs are reasonable and consistent with the recipient's or subrecipient's established written policy.

(c) *Dependents.* (1) Temporary dependent care costs (dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care are allowable provided that these costs:

(i) Are a direct result of the individual's travel to a conference for the Federal award;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Are consistent with the recipient's or subrecipient's established written policy for all travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of six months or more with prior approval of the Federal agency. See § 200.432.

(d) *Establishing rates and amounts.* In the absence of an established written policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11 ("Travel and Subsistence Expenses; Mileage Allowances"), by the Administrator of General Services, or by the President (or their designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205-46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The recipient or subrecipient must justify and document these conditions on a case-by-case basis for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a recipient's or subrecipient's determinations that customary standard airfare or other

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

discount airfare is unavailable for specific trips if the recipient or subrecipient can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Travel costs by recipient or subrecipient-owned, -leased, or -chartered aircraft include the cost of the lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of these costs that exceeds the cost of airfare, as provided for in paragraph (d), is unallowable.

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See § 200.475.

Subpart F - Audit Requirements

General

§ 200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

Audits

§ 200.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends $1,000,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends $1,000,000 or more in Federal awards during the non-Federal entity's fiscal year must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) or (d) of this section.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) *Program-specific audit election (in general).* A non-Federal entity may elect to have a program-specific audit conducted in accordance with § 200.507 if the following conditions are met:

(1) The non-Federal entity expends Federal awards under only one Federal program (excluding research and development); and

(2) The Federal program's statutes or regulations, or terms and conditions of the Federal award, do not require a financial statement audit of the non-Federal entity.

(d) *Program-specific audit election for research and development.* A non-Federal entity may elect to have a program-specific audit for research and development conducted in accordance with § 200.507, but only if all of the following conditions are met:

(1) The non-Federal entity expends Federal awards only from the same Federal agency, or the same Federal agency and the same pass-through entity; and

(2) The Federal agency, or pass-through entity in the case of a subrecipient, approves a program-specific audit in advance.

(e) *Exemption when Federal awards expended are less than $1,000,000.* A non-Federal entity that expends less than $1,000,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted in § 200.503. However, in all instances, the records of the non-Federal entity must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and the Government Accountability Office (GAO).

(f) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(g) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Unless a program is exempt by Federal statute, Federal awards expended as a recipient or a subrecipient are subject to audit under this part. Payments received for goods or services provided as a contractor under a Federal award (see § 200.331) are not subject to audit under this part.

(h) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of a Federal award. Federal award compliance requirements normally do not flow down to contractors. However, for procurement transactions in which the contractor is made responsible for meeting program requirements, the auditee must ensure those requirements are met, including by clearly stating the contractor's responsibilities within the contract and reviewing the contractor's records to determine compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include a determination of whether these transactions comply with Federal statutes, regulations, and the terms and conditions of a Federal award. See also § 200.318(b).

(i) *For-profit subrecipient.* This subpart does not apply to for-profit organizations. As necessary, the pass-through entity is responsible for establishing requirements to ensure compliance by for-profit subrecipients. The subaward with a for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring throughout the performance of the subaward, and post-award audits (see § 200.332).

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.502 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity related to the Federal award pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as:

(1) Expenditure/expense transactions associated with grants, cooperative agreements, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, and direct appropriations;

(2) The disbursement of funds to subrecipients;

(3) The use of loan proceeds under loan and loan guarantee programs;

(4) The receipt of property (including surplus property);

(5) The receipt or use of program income;

(6) The distribution or use of food commodities;

(7) The disbursement of amounts entitling the non-Federal entity to an interest subsidy; and

(8) The period when insurance is in force.

(b) *Loan and loan guarantees (loans).* The Federal Government is at risk for loans until the debt is repaid. Therefore, the following guidelines must be used to calculate the value of Federal awards expended under loan programs (except as noted in paragraphs (c) and (d)):

(1) The value of new loans made or received during the audit period; plus

(2) The balance of loans from previous years at the beginning of the audit period for which the Federal Government imposes continuing compliance requirements; plus

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at Institutions of Higher Education (IHE).* When loans are made to students of an IHE, but the IHE itself does not have continuing compliance requirements for the loans, then only the value of loans made during the audit period are considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds that are federally restricted is considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and is subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance (such as free rent, food commodities, donated property, or donated surplus property that is received as part of a Federal award to carry out a Federal program) must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency and must be included in determining Federal awards expended under this part.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans from the National Credit Union Share Insurance Fund and the Central Liquidity Facility funded by contributions from insured non-Federal entities are not considered Federal awards expended.

§ 200.503 Relation to other audit requirements.

(a) *Other financial audits.* An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such an audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) *Conducting additional audits.* Notwithstanding paragraph (a) of this section, a Federal agency, Inspectors General, or GAO may conduct or arrange additional audits to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits not to be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors.

(c) *Authority to conduct additional audits.* The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal officials. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) *Federal agency to pay for additional audits.* A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) *Request for a program to be audited as a major program.* A Federal agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. Such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited to allow for planning. After consultation with its auditor, the auditee should promptly respond to such a request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. With approval of the Federal agency, a pass-through entity may use the provisions of this paragraph for a subrecipient.

§ 200.504 Frequency of audits.

Audits required by this part must be performed annually unless biennial audits are permitted under paragraph (a) or (b). Biennial audits must cover both fiscal years within the biennial period.

(a) A State, local government, or Indian Tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo biennial (every other year) audits pursuant to this part. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo biennial audits pursuant to this part.

§ 200.505 Remedies for audit noncompliance.

In cases of continued inability or unwillingness of a non-federal entity to have an audit conducted in accordance with this part, Federal agencies or pass-through entities must take appropriate action as provided in § 200.339.

§ 200.506 Audit costs.

See § 200.425.

§ 200.507 Program-specific audits.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(a) *Program-specific audit guide available.* In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor concerning internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement (Appendix VI, Program-Specific Audit Guides). When a current program-specific audit guide is available, the auditor must follow Generally Accepted Government Auditing Standards (GAGAS) and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements for a major program in accordance with§ 200.514(c);

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iii) Determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements for a major program under § 200.514(d);

(iv) Follow up on prior audit findings and perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511 When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, the auditor must report this condition as a current-year audit finding.; and

(v) Report any audit findings consistent with the requirements of § 200.516.

(4) The auditor's report(s) may be in the form of either combined or separate reports. It may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance that includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with §

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

(c) *Report submission for program-specific audits.* (1) *Submission deadline and public availability.* The audit must be completed and submitted in accordance with paragraph (c)(2) or (c)(3) of this section. Unless a different period is specified in the program-specific audit guide, the audit must be submitted within 30 calendar days after the auditee receives the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). The submission is due the next business day when the due date falls on a Saturday, Sunday, or Federal holiday. Unless restricted by Federal law or regulation, the auditee must make copies of the reporting package available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) *Program-specific audit guide available*. When a program-specific audit guide is available, the auditee must electronically submit the data collection form prepared in accordance with § 200.512(b), as applicable to the program-specific audit, to the Federal Audit Clearinghouse (FAC). The submission must also include the reporting required by the program-specific audit guide.

(3) *Program-specific audit guide not available.* When a program-specific audit guide is not available, the auditee must electronically submit the data collection form prepared in accordance with § 200.512(b) to the FAC. The submission must also include the financial statement(s) of the Federal program, summary schedule of prior audit findings, and corrective action plan as described in paragraph § 200.507(b)(2) and the auditor's report(s) described in paragraph § 200.507(b)(4).

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);

(2) 200.504 Frequency of audits through 200.506 Audit costs;

(3) 200.508 Auditee responsibilities through 200.509 Auditor selection;

(4) 200.511 Audit findings follow-up;

(5) 200.512 Report submission, paragraphs (e) through (h);

(6) 200.513 Responsibilities;

(7) 200.516 Audit findings through 200.517 Audit documentation;

(8) 200.521 Management decision; and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

Auditees

§ 200.508 Auditee responsibilities.

The auditee must:

(a) Arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted in accordance with § 200.512.

(b) Prepare financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.

(c) Promptly follow up and take corrective action on audit findings. This includes preparing a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.

(d) Provide the auditor access to personnel, accounts, books, records, supporting documentation, and any other information needed for the auditor to perform the audit required by this part.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

§ 200.509 Auditor selection.

(a) *Auditor procurement.* When procuring audit services, the auditee must follow the procurement standards in §§ 200.317 through 200.327 of subpart D or the FAR (48 CFR part 42), as applicable. When requesting proposals for audit services, the objectives and scope of the audit must be made clear, and the non-Federal entity must request a copy of the audit organization's peer review report, which the auditor must provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make efforts to contract with businesses as stated in § 200.321 or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceed $1 million. This restriction applies to the base year used to prepare the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they fully comply with the requirements of this part.

§ 200.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

unit and fiscal year chosen to meet this part's requirements. However, organization-wide financial statements of the non-Federal entity may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. The schedule must include the total Federal awards expended as determined in accordance with § 200.502. The auditee may choose to provide information requested by Federal agencies or pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may separately list the amount of Federal awards expended for each year of a Federal award. The schedule must:

(1) List individual Federal programs by Federal agency using the applicable Assistance Listing number(s). For a cluster of programs, the non-Federal entity must provide the cluster name, a list of individual Federal programs within the cluster, and provide the Federal agency name and the applicable Assistance Listing number(s). For research and development, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision within the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(3) Provide total Federal awards expended for each individual Federal program and the Assistance Listings number or other identifying number when the Assistance Listings

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

information is unavailable. For a cluster of programs, the auditee must also provide the total for the cluster.

(4) Include the total amount provided to subrecipients from each Federal program.

(5) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This requirement is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes describing the significant accounting policies used in preparing the schedule and whether the auditee elected to use the de minimis indirect cost rate of up to 15 percent (see § 200.414).

§ 200.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include financial statement findings that the auditor was required to report in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or only partially corrected, the summary schedule must describe the reasons for the finding's recurrence, planned corrective action, and any partial corrective action taken. When the corrective action taken significantly differs from the corrective action previously reported in a corrective action plan or the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare a corrective action plan to address each audit finding included in the auditor's report for the current year. The corrective action plan must be a document separate from the auditor's findings described in § 200.516. The corrective action plan must also provide the name(s) of the contact

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

person(s) responsible for the corrective action, the corrective action to be taken, and the anticipated completion date. When the auditee does not agree with the audit findings or believes corrective action is not required, the corrective action plan must include a detailed explanation of the reasons.

§ 200.512 Report submission.

(a) *General.* (1) The audit, the data collection form, and the reporting package must be submitted within 30 calendar days after the auditee receives the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). The cognizant agency for audit or oversight agency for audit (in the absence of a cognizant agency for audit) may authorize an extension when the nine-month timeframe would place an undue burden on the auditee. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) The auditee must make copies available for public inspection unless restricted by Federal statute or regulation. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* The FAC is the repository of record for subpart F reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit the required data collection form described in Appendix X of this part. This form provides information about the auditee, its Federal programs, the results of the audit, and whether the audit was completed in accordance with this part. The form must include all information required by this part that is necessary for Federal agencies to use the audit to ensure the integrity of Federal programs. The form includes data elements and a format that

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

OMB must approve, is available from the FAC, and include collections of information from the reporting package described in paragraph (c).

(2) A senior-level representative of the auditee (for example, a State controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection form stating that the auditee complied with the requirements of this part, including that:

(i) The data collection form was prepared in accordance with this part (and the instructions accompanying the form);

(ii) The reporting package does not include protected personally identifiable information;

(iii) The information included in its entirety is accurate and complete; and

(iv) The FAC is authorized to make the reporting package and the form publicly available on a website.

(3) An auditee that is an Indian Tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site. To opt-out, an Indian Tribe or tribal organization must exclude the authorization described in paragraph (b)(2)(iv) of this section. In these instances, the Indian Tribe is responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to those Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the Indian Tribe opts not to authorize publication, it must make copies of the reporting package available for public inspection.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) The auditor must complete the applicable data elements of the data collection form using the information included in the reporting package described in paragraph (c) of this section. The auditor must sign a statement to be included as part of the data collection form stating:

(i) The source of information included in the data collection form;

(ii) The auditor's responsibility for the information;

(iii) The data collection form is not a substitute for the reporting package described in paragraph (c); and

(iv) The content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the following:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 200.511(b);

(3) Auditor's report(s) discussed in § 200.515; and

(4) Corrective action plan discussed in § 200.511(c).

(d) *Submission to FAC.* The auditee must electronically submit the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section to the FAC.

(e) *Requests for management letters issued by the auditor.* Auditees must submit, when requested by a Federal agency or pass-through entity, a copy of any management letters issued by the auditor.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(f) *Report retention requirements.* Auditees must keep a copy of the data collection form described in paragraph (b) of this section and a copy of the reporting package described in paragraph (c) on file for three years from the date of submission to the FAC. Copies of audit records must be maintained in accordance with § 200.336.

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 200.507(c) to the public, except for Indian Tribes exercising the option in paragraph (b)(3) of this section, and maintain a database of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing.* Nothing in this part must preclude electronic submissions to the FAC in such a manner as may be approved by OMB.

Federal Agencies

§ 200.513 Responsibilities.

(a) *Cognizant agency for audit responsibilities.* (1) A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The cognizant agency for audit must be the Federal agency that provides the largest amount of direct funding (as listed on the non-Federal entity's Schedule of expenditures of Federal awards, see § 200.510(b)) unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2019 and every fifth year after that.

(3) Notwithstanding how audit cognizance is determined, a Federal agency may reassign cognizance to another Federal agency that provides substantial funding to an auditee if it agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must notify the FAC, the auditee, and the auditor (if known) of the change.

(4) The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors and provide the results to other interested organizations.

(iii) Cooperate and support the Federal agency designated by OMB to lead a government-wide analysis to assess the quality of single audits. The government-wide analysis may rely on the current and ongoing quality control review work performed by Federal agencies, State auditors, and professional audit associations. This government-wide audit analysis must be performed at an interval determined by OMB, and the results must be posted publicly. In providing support to the government-wide analysis, a Federal agency must provide the following:

(A) An assessment of the extent to which single audits conform to the requirements, standards, and procedures of this part; and

(B) Recommendations to address audit quality issues, including recommendations for any changes to this part's requirements, standards, and procedures.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iv) Promptly inform the appropriate Federal law enforcement officials and impacted Federal agencies of any direct reporting by the auditee or its auditor required by GAGAS, Federal statute, or regulation.

(v) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate State licensing agencies and professional bodies.

(vi) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(vii) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon, rather than duplicate, audits performed in accordance with this part.

(viii) Coordinate a management decision for cross-cutting audit findings that affect the Federal programs of more than one agency when requested by any Federal agency whose awards are included in the audit finding of the auditee. Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects all Federal awards (including

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal awards of more than one Federal agency or pass-through entity); for example, a cross-cutting audit finding may include an issue related to the recipient's accounting system.

(ix) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(x) Provide advice to auditees as to how to handle changes in fiscal year.

(b) *Oversight agency for audit responsibilities.* An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit.* A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice and assistance to auditees and auditors.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Awarding Federal agency responsibilities.* In addition to all other requirements of this part, the awarding Federal agency must:

(1) Ensure that audits are completed, and reports are received in a timely manner in accordance with the requirements of this part.

(2) Provide technical advice and assistance to auditees and auditors.

(3) Follow-up on audit findings to ensure that non-Federal entities take appropriate and timely corrective action. Follow-up includes:

(i) Issuing a management decision in accordance with § 200.521;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) Monitoring the non-Federal entity's progress implementing a corrective action;

(iii) Using a cooperative audit resolution approach to improve Federal program outcomes through better audit resolution, follow-up, and corrective action, which means the use of audit follow-up techniques promoting prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(A) A strong commitment by Federal agency and non-Federal entity leadership to Federal program integrity;

(B) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; non-Federal entities and their auditors working cooperatively with Federal agencies;

(C) A focus on current conditions and corrective action going forward;

(D) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(E) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

(iv) Tracking the effectiveness of the Federal agency's follow-up processes, the effectiveness of single audits in improving non-Federal entity accountability, and the use of single audits in making Federal award decisions. The Federal agency should develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow up on audit findings.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) Provide OMB with annual updates to the compliance supplement. These updates include working with OMB to ensure that the compliance supplement focuses the auditor on testing the compliance requirements most likely to cause improper payments, fraud, waste, abuse, or generate audit findings for which the Federal agency will take action in accordance with § 200.505. Prior to submitting compliance supplement drafts to OMB, Federal agencies should engage with external audit stakeholders, the Federal agency's Office of Inspector General, and the National Single Audit Coordinator (NSAC).

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal agency. The accountable official must be:

(i) Responsible for ensuring that the Federal agency fulfills the requirements of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Accountable for improving the effectiveness of the Federal agency's single audit processes in accordance with paragraph (c)(3)(iv).

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison. The liaison must:

(i) Serve as the Federal agency's point of contact for the single audit process within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and information sharing. This includes coordinating audit follow-up, identifying higher risk non-Federal entities, providing

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

input on single audit and follow-up policy, enhancing the utility of the FAC, and identifying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal agency's program management personnel related to the single audit process.

(iv) Promote the Federal agency's use of a cooperative audit resolution approach as described in paragraph (c)(3)(iii) of this section.

(v) Coordinate the Federal agency's audit follow-up processes and ensure non-Federal entities implement corrective actions for audit findings.

(vi) Ensure the Federal agency fulfills its responsibility, as a cognizant agency for audit, to coordinate a management decision for cross-cutting audit findings under (a)(4)(viii) of this section. Cross-cutting audit findings means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal agency or pass-through entity). For example, this may include an issue related to the recipient's accounting system.

(vii) Ensure the Federal agency provides OMB with annual updates to the compliance supplement consistent with the compliance supplement preparation guide.

(viii) Support the mission of the Federal agency's single audit accountable official and coordinate with the Federal agency's Office of Inspector General and National Single Audit Coordinator (NSAC).

Auditors

§ 200.514 Standards and scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must also cover the entire operations of the auditee, or, at the option of the auditee, such audit must

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during the audit period. In these instances, the audit must include the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the auditee's financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by State law). The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control.* (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control-Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements, and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included.

(4) The compliance testing must include tests of transactions or other auditing procedures necessary to provide the auditor with sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow up on prior audit findings regardless of whether a prior audit finding is related to a major program in the current year. Audit follow-up includes performing procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511. When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, the auditor must report this condition as a current-year audit finding.

(f) *Data collection form.* As required in § 200.512(b)(4), the auditor must complete and sign specified sections of the data collection form.

§ 200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports. It may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) on whether the financial statement(s) of the auditee is presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by State law). The auditor must also decide whether the schedule of expenditures of

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of internal control and compliance testing and the results of the tests. Where applicable, the report must refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance and include an opinion (or disclaimer of opinion) as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor’s results, which must include:

(i) The type of report the auditor issued (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion) on whether the audited financial statements were prepared in accordance with GAAP;

(ii) A statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iv) A statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion) on compliance for major programs;

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);

(vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the schedule of expenditures of Federal Awards is required; (viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under§ 200.520.

(2) Findings relating to the financial statements required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a) and be reported in the following manner:

(i) Audit findings (for example, internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements (paragraph (d)(2) of this section) and Federal awards (this paragraph (d)(3)) must be reported in both sections of the

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

schedule. However, the reporting in one section of the schedule may be in summary form and reference a detailed reporting in the other section.

(e) Nothing in this part precludes combining the reporting required by this section with the reporting required by § 200.512(b) when allowed by GAGAS and Appendix X of this part.

§ 200.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as an audit finding in the schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs when either known or likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. When reporting questioned costs, the auditor must include information to provide proper perspective for evaluating the prevalence and consequences of the questioned costs.

(4) Known questioned costs greater than $25,000 for a Federal program that is not audited as a major program. Except for audit follow-up, the auditor is not required to perform

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (for example, as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion. This must be included unless the circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs.

(6) Known or likely fraud affecting a Federal award, unless the fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs. This paragraph does not require the auditor to publicly report information that could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented with sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies or pass-through entities to arrive at a management decision. As applicable, the following information must be included in audit findings:

(1) The Federal program and specific Federal award identification, including the Assistance Listings title and number, Federal award identification number and year, the name of the Federal agency, and name of the applicable pass-through entity. When information, such as

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

the Assistance Listings title and number or Federal award identification number, is unavailable, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement for the audit finding (for example, the specific Federal statute, regulation, or term and condition of the Federal award). The criteria or specific requirement provides a context for evaluating evidence and understanding findings. The criteria should generally identify the required or desired state or expectation with respect to the program or operation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency or pass-through entity to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) The identification of known questioned costs, by applicable Assistance Listing number(s) and Federal award identification number(s), and how these questioned costs were computed.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(7) When there are known questioned costs but the dollar amount is undetermined or not reported, a description of why the dollar amount was undetermined or otherwise could not be reported.

(8) Information to provide proper perspective for evaluating the prevalence and consequences of the audit finding. For example, whether the audit finding represents an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. In addition, the audit finding should indicate whether the sampling was a statistically valid sample.

(9) The identification of whether the audit finding is a repeat of a finding in the immediately prior audit. The audit finding must identify the applicable prior year audit finding reference numbers in these instances.

(10) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(11) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission (see § 200.512(b)).

§ 200.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee. The cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity may extend the retention period by providing written notification to the auditor. When the auditor is aware that the Federal agency, pass-through entity, or auditee is

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to the destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation as is reasonable and necessary.

§ 200.518 Major program determination.

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must consider current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process described in paragraphs (b) through (h) of this section must be followed.

(b) *Step one.* (1) The auditor must identify and label the larger Federal programs as Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table 1:

Table to paragraph (b)(1)

Total Federal awards expended	Type A threshold
Equal to or exceed $1,000,000 but less than or equal to $34 million	$1,000,000

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Total Federal awards expended	Type A threshold
Exceed $34 million but less than or equal to $100 million	Total Federal awards expended times .03.
Exceed $100 million but less than or equal to $1 billion	$3 million.
Exceed $1 billion but less than or equal to $10 billion	Total Federal awards expended times .003.
Exceed $10 billion but less than or equal to $20 billion	$30 million.
Exceed $20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) Including large loans and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. A Federal program providing loans is considered a large loan program when it exceeds four times the largest non-loan program. The auditor must identify each large loan program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For this paragraph, a program is only considered a Federal program providing loans if the value of Federal awards expended for loans within the program comprises 50 percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program, and the value of Federal awards expended under a loan program is determined as described in § 200.502.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(4) For biennial audits (see § 200.504), the determination of Type A and Type B programs must be based on the Federal awards expended during the two-year audit period.

(c) *Step two.* (1) The auditor must identify Type A programs that are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low-risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must not have had:

(i) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515(c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal agency request that a Type A program not be considered low-risk for a specific recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year for a particular recipient for the Federal agency to comply with 31 U.S.C. 3515. The Federal agency must notify the auditee and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three.* (1) The auditor must identify high-risk Type B programs using professional judgment and the criteria in § 200.519. However, the auditor is not required to

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

identify more high-risk Type B programs than at least one-fourth of the number of low-risk Type A programs identified as low-risk under step two. Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1), (2), and (c)(1), a single criterion in risk would rarely cause a Type B program to be considered high-risk. When identifying which Type B programs to assess for risk, the auditor is encouraged to use an approach that provides an opportunity for different high-risk Type B programs to be audited as major programs over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed 25 percent (0.25) of the Type A threshold determined in step one.

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low-risk under step two.

(2) All Type B programs identified as high-risk under step three.

(3) Additional programs as necessary to comply with the percentage of coverage rule described in paragraph (f). This rule may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* When the auditee meets the criteria in § 200.520, the auditor only needs to audit the major programs identified in paragraphs (e)(1) and (2) of this section and such additional Federal programs with Federal awards expended that, in the aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in paragraphs (e)(1) and (2) of this section and such additional Federal programs with Federal awards expended that,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

in the aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis used for determining major programs.

(h) *Auditor's judgment.* The auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct when the determination was performed and documented in accordance with this part. Challenges by a Federal agency or pass-through entity must only be for clearly improper use of the requirements in this part. However, a Federal agency or pass-through entity may provide auditors guidance about the risk of a particular Federal program. The auditor must consider this guidance in determining major programs in audits not yet completed.

§ 200.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as those described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Therefore, consideration should be given to the control environment over Federal programs. This includes considering factors such as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards, and the competence and experience of personnel who administer the Federal programs.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (for example, one college campus) or pervasive throughout the entity.

(ii) A weak system for monitoring subrecipients would indicate higher risk when significant parts of a Federal program are passed to subrecipients through subawards.

(2) Prior audit findings would indicate higher risk, especially when the situations identified in the audit findings could significantly impact a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than those recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) The oversight exercised by Federal agencies or pass-through entities may be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) With the concurrence of OMB, a Federal agency may identify Federal programs that are higher risk. OMB will identify these Federal programs in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be higher risk.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Federal programs primarily involving staff payroll costs may be at high risk for noncompliance with the requirements of § 200.430 but otherwise be at low risk.

(2) The phase of a Federal program in its lifecycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its lifecycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to the start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor’s opinion on whether the financial statements were prepared in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by State law), and the auditor's in-relation-to opinion on the schedule of expenditures of Federal awards were unmodified.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(c) No internal control deficiencies were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515(c); or

(3) Known or likely questioned costs that exceeded five percent (.05) of the total Federal awards expended for a Type A program during the audit period.

Management Decisions

§ 200.521 Management decisions.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

issue a management decision on findings relating to the financial statements, which are required to be reported in accordance with GAGAS.

(b) *Federal agency.* The cognizant agency for audit is responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency (see § 200.513(a)(4)(viii)). The awarding Federal agency is responsible for issuing a management decision for audit findings that affect the Federal awards it makes to a non-Federal entity (see § 200.513(c)(3)(i)).

(c) *Pass-through entity.* The pass-through entity is responsible for issuing a management decision for audit findings that affect subawards it issues to subrecipients under a Federal award (see § 200.332(e)).

(d) *Time requirements.* The Federal agency or pass-through entity responsible for issuing a management decision must do so within six months of the FAC's acceptance of the audit report. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516(c).

15. Revise appendix I to part 200 to read as follows:

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

(a) *General Requirements.*

(1) In developing a notice of funding opportunity (NOFO), Federal agencies must:

(i) Be concise and use plain language per the guidance at *PlainLanguage.gov* wherever possible.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) For electronic NOFOs and other information about them, comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(2) Federal agencies may:

(i) Link to standard content to include required information rather than including the full language in the NOFO. The NOFO should make clear if linked information is critical—for example, standard terms and conditions, administrative and national policy requirements, and standard templates.

(ii) Include links to relevant regulations and other sources.

(iii) Use cross-references between the sections, including hyperlinks in electronic versions.

(3) *Required Consistency.* Potential applicants must be able to find similar information across all Federal NOFOs. To that end, Federal agencies must include the same or similar section headings and a table of contents with at least these sections:

(i) Basic Information

(ii) Eligibility

(iii) Program Description

(iv) Application Contents and Format

(v) Submission Requirements and Deadlines

(vi) Application Review Information

(vii) Award Notices

(viii) Post-Award Requirements and Administration

(b*) Required Sections and Information.*

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

As required below, the Federal agency must include the following sections and information in the text of a NOFO and a table of contents.

(1) *Basic Information.*

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal.

(i) This section must include the following:

(A) Federal Agency Name.

(B) Funding Opportunity Title.

(C) Announcement Type (whether the funding opportunity is the initial announcement or a modification of a previously announced opportunity).

(D) Funding Opportunity Number (required, if the Federal agency has assigned a number to the funding opportunity announcement).

(E) Assistance Listing Number(s).

(F) Funding Details. The total amount of funding that the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range.

(G) Key Dates. Key dates include due dates for submitting applications or Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If possible, the Federal agency should provide an anticipated award date. If the NOFO is evaluated on a “rolling” basis, the Federal agency should

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision.

(H) Executive Summary. A brief description that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible recipients. The text of the executive summary should not exceed 500 words

(I) Agency contact information.

(ii) This section could include the following:

(A) The amount of funding per Federal award, on average, experienced in previous years.

(B) Whether this is a new program or a one-time initiative.

(2) *Eligibility***.**

This section addresses the factors that determine applicant or application eligibility.

(i) *Eligible Applicants.* This subsection must identify the following:

(A) A complete and specific list of entity types eligible to apply.

(B) Any additional restrictions on eligibility beyond the type of entity.

(C) Eligibility factors for the principal investigator or project director, if any.

(D) Criteria that would make any particular projects ineligible.

(E) A reference to any funding restriction elsewhere in the NOFO that could affect an applicant's or project's eligibility.

(F) A reference or link to any other factors that would disqualify an applicant or application, such as the responsiveness criteria in 6a.

(G) Any limit on the number of applications an applicant may submit under the announcement. Make clear whether the limitation is on the submitting organization, individual investigator or program director, or both.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(ii) *Cost Sharing.* This subsection must state:

(A) Whether there is required cost sharing. This statement must be clear that not committing to the required cost sharing will make the application ineligible. If cost sharing is not required, the announcement must say so.

(B) An explanation of the calculation for the required cost sharing. Required cost sharing may be a certain percentage or amount or in the form of contributions of specified items or activities (*for example,* provision of equipment).

(C) Any restrictions on the types of cost, such as in-kind contributions, acceptable as cost sharing.

(D) Any requirement to commit to cost sharing. This section should refer to the appropriate portions of section (b)(4) stating any pre-award requirements for the submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

(3) *Program Description.*

This section contains the full program description of the funding opportunity.

(i) This section must include the following:

(A) The general purpose of the funding and what it is expected to achieve for the public good.

(B) The Federal agency's funding priorities or focus areas, if any.

(C) Program goals and objectives.

(D) A description of how the award will contribute to achieving the program's goals and objectives.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(E) The expected performance goals, indicators, targets, baseline data, data collection, and other outcomes the Federal agency expects recipients to achieve.

(F) For cooperative agreements, the "substantial involvement" that the Federal agency expects to have or should reference where the potential applicant can find that information.

(G) Information on program specific unallowable costs so that the applicant can develop an application and budget consistent with program requirements and any limits on indirect costs.

(H) Any eligibility criteria for beneficiaries or program participants other than Federal award recipients.

(I) Citations for authorizing statutes and regulations for the funding opportunity.

(ii) This section could also include the following:

(A) Any program history, such as whether it is a new program or a new or changed area of program emphasis.

(B) Examples of successful projects funded in the past.

(C) For infrastructure projects subject to Build America, Buy America requirements, information on key items anticipated to be purchased under the program, and any related domestic sourcing concerns based on market research.

(D) Other information the Federal agency finds necessary.

(4) *Application Contents and Format.*

This subsection must identify the required content of an application and the forms or formats an applicant must use. If any requirements are stated elsewhere, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

(i) This subsection must specifically address content and form or format requirements for:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(A) Whether pre-applications, letters of intent, or white papers are required or encouraged.

(B) The application as a whole.

(C) Component pieces of the application.

(D) Information that successful applicants must submit after notification of intent to make a Federal award but prior to a Federal award. For example, this could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.).

(ii) Within each of the categories above, this subsection must include, where relevant:

(A) Limitations on page numbers.

(B) Formatting requirements, including font and font size, margins, paper size, and color limitations.

(C) Any requirements for file naming, file size limitations, or file format such as PDF.

(D) The number of copies required if paper submissions are allowed.

(E) The sequence required for application sections or components.

(F) Signature requirements, including those for electronic submissions.

(G) Any requirements for third-party information such as references, letters of support, or letters of commitment to the project or to contribute to cost sharing.

(H) A reference to any requirements to provide documentation to support an eligibility determination, such as proof of 501(c)(3) status or an authorizing tribal resolution.

(I) Instructions needed to develop the narrative portions of the application. Include any requirements for its order, format, or required headings.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(J) If applicable, the need to identify proprietary information. Include how to do so and how the Federal agency will handle it.

(5) *Submission Requirements and Deadlines.*

(i) *Address to Request Application Package.* This subsection must include the following:

(A) How to get application forms, kits, or other materials needed to apply. If the announcement contains everything needed, this section needs only say so. If not, the guidance must include:

(1) An Internet address where the materials can be accessed.

(2) An email address.

(3) A U.S. Postal Service mailing address.

(4) Telephone number.

(5) Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, or other appropriate telecommunication relay service.

(ii) *Unique entity identifier and System for Award Management (SAM.gov).* This subsection must state the requirements for unique entity identifiers and registration in SAM.gov. It must include the following:

(A) Each applicant must:

(1) Be registered in SAM.gov before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active registration in SAM.gov with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal agency.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(B) If individuals are eligible to apply, they are exempt from this requirement under 2 CFR 25.110(b).

(C) If the Federal agency exempts any applicants from this requirement under 2 CFR 25.110(c) or (d), a statement to that effect.

(iii) *Submission Instructions.* This subsection addresses how the applicant will submit the application. It must include the following:

(A) Actions needed prior to applying:

(1) Instructions on any registrations required to access electronic submission systems or links to them. Where possible, provide the expected time frames needed to complete the registration process.

(B) The methods for submitting the application:

(1) Whether the applicant must submit in electronic or paper form or whether the applicant has an option. Applicants should not be required to submit in more than one format.

(2) Instructions on how to submit electronically or links to them. Must include the URL to the electronic submission system and information on or links to information about the system or software requirements needed by the system.

(3) If the Federal agency allows paper submissions, the process used to approve this option if it is not automatically allowed.

(4) If the Federal agency allows paper submissions, the method for submitting the application. This information must include a postal address and "care of" information needed to route the application to the appropriate person, office, or email address, if the Federal agency allows such submissions.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(C) If applicable, this subsection also must say how applicants must submit pre-applications, letters of intent, third-party information, or other information required before the award. It must include the following:

(1) Instructions on how to submit electronically or links to them.

(2) Whether the applicant must submit in electronic or paper form or whether the applicant has an option.

(3) If the Federal agency allows paper submissions, the method for submitting the required information. This information must include a postal address and "care of" information needed to route the application to the appropriate person, office, or email address.

(D) This subsection must also include what to do in the event of system problems and a point of contact who will be available if the applicant experiences technical difficulties.

(iv) *Submission Dates and Times.* This subsection must include due dates and times for all submissions. If they are different for electronic and paper submissions, be clear about the differences. This includes the following:

(A) Full applications.

(B) Any preliminary submissions, such as letters of intent, white papers, or pre-applications.

(C) Any other submissions required before Federal award separate from the full application.

(D) If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so.

(v) *Intergovernmental Review.* This section must include the following:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(A) Whether or not the funding opportunity is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

(B) If it is applicable, include the following:

(1) A short description of this requirement.

(2) Where applicants can find their State's Single Point of Contact, learn whether their State has an intergovernmental review process, and if so, get information on their State's process. The list of SPOCs is on the Office of Management and Budget's website.

(6) *Application Review Information.*

(i) *Responsiveness Review.* This section includes information on the criteria that make an application or project ineligible. These are sometimes referred to as "responsiveness" criteria, "go-no-go" criteria, or "threshold" criteria. Federal agencies may change the title of this section as appropriate. This section must include the following:

(A) A brief understanding of the Federal agency responsiveness review process.

(B) A list and enough detail to understand the criteria or disqualifying factors to be reviewed.

(C) A reference to the regulation or requirement that describes the restriction, if applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, say so.

(ii) *Review Criteria.* This section must address the review criteria that the Federal agency will use to evaluate applications for merit. This information includes the merit and other review criteria evaluators will use to judge applications, including any statutory, regulatory, or other preferences that will be applied in the review process. These criteria are distinct from eligibility

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize the fairness of the process.

(A) This section must include the following:

(1) A clear description of each criterion and sub-criterion used.

(2) If criteria vary in importance, the relative percentages, weights, or other means used to distinguish between them.

(3) For statutory, regulatory, or other preferences, an explanation of those preferences with an explicit indication of their effect, for example, if they result in additional points being assigned.

(4) How an applicant's proposed cost sharing will be considered in the review process if it is not an eligibility criterion in Section 2b. For example, to assign a certain number of additional points to applicants who offer cost sharing or to break ties among applications with equivalent scores after evaluation against all other factors. If cost sharing will not be considered in the evaluation, the announcement should say so. Do not include statements that cost sharing is encouraged without providing clarity about what that means.

(5) The relevant information if the Federal agency permits applicants to nominate reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest.

(B) This section could include the following:

(1) The types of people responsible for evaluation against the merit criteria. For example, peers external to the Federal agency or Federal agency personnel.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(2) The number of people on an evaluation panel and how it operates, how reviewers are selected, reviewer qualifications, and how conflicts of interest are avoided.

(iii) *Review and Selection Process.*

This section may vary in the level of detail provided.

(A) It must include the following:

(1) Any program policy, factors, or elements that the selecting official may use in selecting applications for the award. For example, geographical dispersion, program balance, or diversity.

(2) A brief description of the merit review process, including how the Federal agency uses merit review outcomes in final decision-making. For example, whether they are advisory only.

(B) It could also include the following:

(1) Who makes the final selections for awards.

(2) Any multi-phase review methods. For example, an external panel that advises on, makes, or approves final recommendations to the deciding official.

(iv) *Risk Review.*

(A) This section must include the following:

(1) A brief description of the factors used for the Federal agency's risk review as required by § 200.206.

(2) If the Federal agency expects that any award under the NOFO will be more than the simplified acquisition threshold during its period of performance, include the following information:

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(i) That before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, the Federal agency must review and consider any information about the applicant that is in the responsibility/qualification records available in SAM.gov (see 41 U.S.C. 2313).

(ii) That an applicant can review and comment on any information in the responsibility/qualification records available in SAM.gov.

(iii) That before making decisions in the risk review required by § 200.206 the Federal agency will consider any comments by the applicant, along with information available in the responsibility/qualification records in SAM.gov.

(7) *Award Notices.*

This section must address what a successful applicant can expect to receive following selection.

(i) It must include the following:

(A) If the Federal agency's practice is to provide a separate notice stating that an application has been selected before it makes the Federal award, indicate that the letter is not an authorization to begin performance and that the Federal award is the authorizing document.

(B) If pre-award costs are allowed, beginning performance is at the applicant's own risk.

(C) This section should indicate that the notice of Federal award signed by the grants officer, or equivalent, is the official document that obligates funds, and whether it is provided through postal mail or by electronic means and to whom.

(D) The timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.

(8) *Post-Award Requirements and Administration.*

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(i) Administrative and National Policy Requirements. Providing information on administrative and policy requirements lets a potential applicant identify any requirements with which it would have difficulty complying. This section must include the following:

(A) A statement related to the "general" terms and conditions of the award, including requirements that the Federal agency normally includes.

(B) Any relevant specific terms and conditions.

(C) Any special requirements that could apply to specific awards after the review of applications and other information based on the particular circumstances of the effort to be supported. For example, if human subjects were to be involved or if some situations may justify specific terms on intellectual property, data sharing, or security requirements.

(D) As in other sections, the announcement need not include all terms and conditions of the award but may refer to documents with details on terms and conditions.

(ii) *Reporting.*

This section includes information needed to understand the post-award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ from what the Federal agency's Federal awards usually require. For example, differences in report type, frequency, form, format, or circumstances for use. This section must include the following:

(A) The type of reporting required, such as financial or performance.

(B) The reporting frequency.

(C) The means of submission, such as paper or electronic.

(D) References to all relevant requirements, such as those at 2 CFR 180.335 and 180.350.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(E) If the Federal share of any Federal award may include more than $500,000 over the period of performance, this section must inform potential applicants about the post-award reporting requirements reflected in appendix XII to this part.

(9) *Other Information – Optional*.

This section may include any additional information to help potential applicants. For example, the section could include the following:

(i) Related programs or other upcoming or ongoing Federal agency funding opportunities for similar activities.

(ii) Current Internet addresses for Federal agency Web sites that may be useful to an applicant in understanding the program.

(iii) Routine notices to applicants. For example, the Federal Government is not obligated to make any Federal award as a result of the announcement, or only grants officers can bind the Federal Government to the expenditure of funds.

13. Amend appendix III to part 200 by revising the heading of section A.1. and paragraph C.2 to read as follows:

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

*****

A. General

* * * * *

1. Major Functions/Activities of an IHE

*****

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

* * * * *

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

16. Amend appendix IV to part 200 by revising paragraphs B.2.c. and B.4.a.iii to read as follows:

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

*****

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

* * * * *

2. * * *

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for $50,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.

* * * * *

4. * * *

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

a. * * *

(iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, information technology and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

17. Amend appendix VII to part 200 by

a. Revising paragraphs C.2.c.(1), C.3.e.(1), and D.1.b.;

b. Redesignating paragraphs D.1.c. and D.1.d. as D.1.d. and D.1.e; and

c. Adding a new paragraph D.1.c.

The revisions and addition read as follows:

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

* * * * *

2. * * *

c. * * *

(1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of $50,000, and participant support costs),

* * * * *

3. * * *

e. * * *

(1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of $50,000, and participant support costs),

*****

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

D. Submission and Documentation of Proposals

* * * * *

1. * * *

b. A governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) that receives more than $35 million in direct Federal funding during its fiscal year must submit its indirect cost rate proposal to its cognizant agency for indirect costs.

c. If a governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) receives $35 million or less in direct Federal funding during its fiscal year, it must develop an indirect cost proposal in accordance with the requirements of this part and maintain the proposal and related supporting documentation for audit. This established rate must be accepted by any Federal agency to which the governmental department or agency applies for funding. Federal agencies must not compel the governmental department or agency to accept the de minimis rate or some other rate established by the Federal agency. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by an awarding Federal agency. The Federal agency's review should be limited to ensuring the proposal is consistent with the principles of this part. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

*****

18. Revise appendix X to part 200 to read as follows:

Appendix X to Part 200—Data Collection Form

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

The data collection form is available as a series of workbooks on the Federal Audit Clearinghouse (FAC.gov). The form and submission instructions can be found at https://www.fac.gov/.

19. Revise appendix XII to part 200 to read as follows:

Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

I. Reporting of Matters Related to Recipient Integrity and Performance

(a) *General Reporting Requirement.*

(1) If the total value of your active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient must ensure the information available in the responsibility/qualification records through the System for Award Management (SAM.gov), about civil, criminal, or administrative proceedings described in paragraph (b) of this award term is current and complete. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in responsibility/qualification records in SAM.gov on or after April 15, 2011 (except past performance reviews required for Federal procurement contracts) will be publicly available.

(b) *Proceedings About Which You Must Report.*

(1) You must submit the required information about each proceeding that—

(i) Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

(ii) Reached its final disposition during the most recent five-year period; and

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(iii) Is one of the following—

(A) A criminal proceeding that resulted in a conviction;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(C) An administrative proceeding that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(D) Any other criminal, civil, or administrative proceeding if—

(*1*) It could have led to an outcome described in paragraph (b)(1)(iii)(A) through (C);

(*2*) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(*3*) The requirement in this award term to disclose information about the proceeding does not conflict with applicable laws and regulations.

(c) *Reporting Procedures.*

Enter the required information in SAM.gov for each proceeding described in paragraph (b) of this award term. You do not need to submit the information a second time under grants and cooperative agreements that you received if you already provided the information in SAM.gov because you were required to do so under Federal procurement contracts that you were awarded.

(d) *Reporting Frequency.*

During any period of time when you are subject to the requirement in paragraph (a) of this award term, you must report proceedings information in SAM.gov for the most recent five-year period, either to report new information about a proceeding that you have not reported previously or affirm that there is no new information to report. If you have Federal contract,

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.

grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000, you must disclose semiannually any information about the criminal, civil, and administrative proceedings.

(e) *Definitions.*

For purposes of this award term—

Administrative proceeding means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (for example, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with the performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

Total value of currently active grants, cooperative agreements, and procurement contracts includes the value of the Federal share already received plus any anticipated Federal share under those awards (such as continuation funding).

II. [Reserved]

Deidre A. Harrison,
Deputy Controller, performing the delegated duties of the Controller
Office of Federal Financial Management.

This document is a pre-publication version of the final guidance. We have taken steps to ensure the accuracy of this version, but it is not the official version.