

# SUMMARY OF CHANGES TO UNIFORM GUIDANCE FOR GRANTS AND AGREEMENTS

EFFECTIVE NOVEMBER 12, 2020

Implementation of Uniform Guidance became effective on December 26, 2014 and must be reviewed every five years in accordance with 2 CFR 200.109. This summary is intended to provide the main points to the revisions and the reader is encouraged to read the [Federal Register](#) to see the revisions in their entirety. The revisions are effective on November 12, 2020, except for amendments to §§ 200.216 (The Huawei Ban) and 200.340 (Termination) which took effect on August 13, 2020.

## Noteworthy Changes

### ◆ Performance based focus in award and evaluation.

- ▶ New §200.211 states that “Performance goals, indicators, targets, and baseline data must be included in the Federal award, where applicable. The Federal awarding agency must also specify how agencies will assess performance in the terms and conditions of the Federal award, including the timing and scope of expected performance.” Award documents will be more detailed under this revised guidance. PI review and approval of performance goals or requirements by an agency will be critical during award negotiation.
- ▶ New §200.301 states, “Federal awarding agencies must measure the recipient’s performance to show achievement of the program goals and objectives, share lessons learned, improve program outcomes and foster adoption of promising practices.” Federal agencies will determine how performance progress is measured relative to the program and, where applicable, should include performance measures or independent sources of data to measure progress.
- ▶ §200.329 extends final reporting an additional 30 days from 90 to 120 days. Federal agencies “must measure the recipient’s performance to show achievement of the program goals and objectives, share lessons learned, improve program outcomes and foster adoption of promising practices.” Note the shift from “should” (considered a best practice) to “must”. The language could result in stricter performance metric requirements for non-research awards.

### ◆ Never Contract with the Enemy.

- ▶ New §200.215 is applicable to grants and cooperative agreements in excess of \$50,000, that are performed outside the United States and its territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. These provisions prohibit recipients from providing funds, subawards, or contracts to persons actively opposing the United States or coalition forces involved in said contingency operations.

### ◆ The Huawei Ban.

- ▶ New §200.216 provides for a broad prohibition against purchasing any “equipment, services, or systems that use covered telecommunications equipment or services as a substantial component of any system.” Covered telecommunications equipment or services include such items provided by Huawei Technology Company, ZTE Corporation, or any of their many subsidiaries or affiliates. When it is to be used for certain public security purposes, such equipment also includes products provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and

Dahua Technology Company, and their subsidiaries and affiliates. This clause became effective on August 13, 2020 and applies to all recipients and subrecipients. The requirements may affect US institutions with foreign operations or awards in foreign countries where Huawei telecom equipment is widespread.

#### ◆ **Procurement Matters.**

- ▶ There are revisions to the following Procurement Sections: §200.318 General procurement standards; §200.319 competition; §200.320 Method of procurement to be followed; and §200.322 Domestic Preference for procurements. The reader should take the time to review each of these sections for new or clarifying language.
- ▶ §200.320 was redrafted to enhance its clarity. The revised language is clearer with respect to methods of procurement and their relationships to each other, as well as in clarifying that micro-purchases require no competitive process. The revisions also adopt the increased micro-purchase threshold (“MPT”) of \$10,000 and simplified acquisition threshold (“SAT”) of up to \$250,000. Further, the revisions authorize grantees with clean audits (or certain other qualifications) to annually elect MPTs of up to \$50,000. With approval of a grantee’s cognizant agency for indirect costs, MPTs may also, at least theoretically, be raised above \$50,000. Finally, a new § 200.322 was added to suggest that grantees “should” provide for domestic sourcing preferences “to the greatest extent practicable”.

#### ◆ **Subrecipient Monitoring.**

- ▶ §200.325. Revised guidance clarifies that pass-through entities (PTEs) are only responsible for addressing subrecipient audit findings that are specifically related to their subaward. PTEs are not required to address all of a subrecipient’s audit findings.
- ▶ §200.332 (formerly §200.331). PTEs must continue to recognize a subrecipient’s negotiated indirect cost rate agreement (NICRA). If no approved rate exists, PTE must determine the appropriate rate in collaboration with the subrecipient. PTEs are to either adopt a rate negotiated by the subrecipient previously with the PTE or another PTE, apply the de minimis rate, or accept a direct allocation methodology employed by the subrecipient. According to Appendix IV, Section C, PTE may be responsible for the negotiation of the indirect cost rate with subrecipient.
- ▶ New UG provisions must be flowed down to subrecipients including §200.215 Never Contract with the Enemy, §200.216 Prohibition on certain telecommunications and video surveillance services or equipment, §200.322 Domestic Preferences for Procurement, and §200.300 pursuant to EO 13798 Promoting Free Speech and Religious Liberty and EO 13864 Improving Free Inquiry, Transparency, and Accountability at College and Universities.

#### ◆ **Termination Standards.**

- ▶ §200.340. Previously agencies could only terminate awards for cause or poor performance. UG has expanded the basis for termination to include authorization for awarding agencies to terminate an award “to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities.” The termination language has also been modified to encourage agencies to clearly articulate termination rights and procedures “in applicable agency regulations or in the award [document]”. These changes allow agencies to terminate awards for reasons that the awardee has no control over, regardless of how rigorously they comply with award requirements. It is not clear whether a grantee will be afforded additional costs related to an orderly wind-down of a project that has been terminated by a federal agency.

◆ **Closeout.**

- ▶ §200.344. The time to closeout an award has been increased by 30 days from 90 to 120 calendar days after the end date of the period of performance to submit all financial, performance, and other reports as required by the terms and conditions of the Federal award. If the recipient fails to comply, the federal agency will proceed with the award closeout with the information available. If awardees do not submit reports within one year, the federal agency must report to OMB as a material failure to comply with the award terms and conditions. Subrecipients must submit their closeout reports to the PTE within 90 days. Institutions will need to be diligent in monitoring and enforcing this deadline to meet the federal agency's 120-day closeout requirement.

◆ **Budget Period and Period of Performance.**

- ▶ There are new definitions and use of the terms "budget period" and "period of performance" throughout the UG. The changes create a stricter requirement to charge costs within a specific budget period of awards.
- ▶ New §200.403(h) states that "cost must be incurred during the approved budget period".
- ▶ §200.458. A new sentence has been added that states pre-award costs "must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency."
- ▶ §200.461(b)(3). The UG clarifies that publication costs may be charged during closeout (after the end of the formal period of performance) and charged to the final budget period.

◆ **De Minimis Rate Availability.**

- ▶ §200.414(f) is revised to expand the availability of the de minimis rate to all entities that do not currently have a NICRA. Direct charged costs must not be recovered twice by application of the de minimis rate, the changes emphasize that, as a matter of grant administration, "no documentation is required to justify the 10% de minimis indirect cost rate."

◆ **Depreciation.**

- ▶ §200.436(c)(3) is updated to state that when calculating depreciation, the acquisition costs must exclude "any portion of the cost of buildings and equipment contributed by or for the non-federal entity that are already claimed as matching or where law or agreement prohibits recovery".

◆ **Other Notable Changes**

- ▶ §200.101(b)(1). "CFDA" is now referred to as "Assistance Listings".
- ▶ §25.300(a). Subrecipients are not required to obtain an active SAM (System for Award Management) registration but must obtain a Unique Entity Identifier (UEI).
- ▶ Part 170. FFATA (Federal Funding Accountability and Transparency Act) reporting threshold has increased from \$25,000 to \$30,000.
- ▶ New §200.414(h), calls for publication on an OMB-designated website of each recipient's rate, base, and rate type. Tribal governments are excluded from the coverage of this provision.
- ▶ §200.419(b)(1). Updated DS-2s are now required at the same time as submission of the F&A cost rate proposal.
- ▶ Appendix IV, Section C, Negotiation and Approval of Indirect Cost Rates. If a non-profit subrecipient does not receive any funding from any federal agency, the PTE is responsible for the negotiation of the indirect cost rate.