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Subpart A—Acronyms and Definitions

ACRONYMS

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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
(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 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)

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).

(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.

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.

(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:

(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 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 the definitions of *capital assets*, *computing devices*, *general purpose equipment*, *information technology systems*, *special purpose equipment*, and *supplies* in this section.

Expenditures means charges made by a recipient or subrecipient to a project or program for which a Federal award is received.

(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.

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;

(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).

(5) For part 184 of this title, in addition to the forms of assistance listed in paragraph (1) of this definition, *Federal financial assistance* also includes assistance that recipients or subrecipients receive or administer in the form of:

(i) Loans; and

(ii) Loan Guarantees.

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:

(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.

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, 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.

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.

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 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.

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;

(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 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.

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 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 of 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 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 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

(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.

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 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.

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 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.

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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).

(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, 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.

(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).

(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.

(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).

(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 (Pub. L. 96–422, 94 Stat. 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.

§ 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.

§ 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 (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); 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.

§ 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.

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 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 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. 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 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 (Pub. L. 114–264) as well as the Foundations for Evidence-Based Policymaking Act (Pub. L. 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.

(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 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.

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);

(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 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 review of merit 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. 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 (Pub. L. 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, defined at 41 U.S.C. 134, over the period of performance. 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; 41 U.S.C. 2313(d). 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.

(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

(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.

(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;

(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.

§ 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));

(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

(16) 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.

(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:

(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.

(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 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:

(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;

(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 (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 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.

(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.

(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.

(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.''

(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.

(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 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.

(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 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;

(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 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.

(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 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.''

(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.

(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 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:

(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. 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.

(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 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.

(h) *Prior approvals for research awards.* The prior approval requirements for the actions described in paragraph (g) of this section 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.

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.''

(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 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.

(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 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.

(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.

(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.

(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 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.

(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.

(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.

§ 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.

(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 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 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 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;

(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.

(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:

(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:

(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 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.

(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) 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;

(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.

(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 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 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 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 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.

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 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.

(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 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 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;

(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.

(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;

(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. 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 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.

(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 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:

(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 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 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:

(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 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;

(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*;

(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.

§ 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 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.

(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.

(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:

(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 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 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:

(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.

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

(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.

(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:

(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 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).
(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.

§ 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.

(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.

(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 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:

(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 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 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.

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 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 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 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);

(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;

(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.

(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) of this section, 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 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.

(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 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.

(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

(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.

(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:

(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.

(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 (h) 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.

(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.

(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.

(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.

(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 should be allocated as a general administrative expense to all activities or included in the fringe benefit rate.

(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, 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 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.

(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 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.

(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;

(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 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.* (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.

[89 FR 30136, Apr. 22, 2024, as amended at 89 FR 79732, Oct. 1, 2024]

§ 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.

(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.

(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.

(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.

(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.

(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.

(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.

(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 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.

(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.

§ 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 breakeven 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.*

(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.

(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 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.

(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

(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:

(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 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.

(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.

(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.

(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.

(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 (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 its 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.

(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.

(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.

(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) *Requirements for nonprofit organizations subject to full coverage under CAS.* 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 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;

(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

(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 (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.

(ii) When conditions in paragraph (c)(5)(i)(A) and (B) 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)(5)(i)(A) and (B) 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 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.

(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.

§ 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 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.

§ 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.

(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 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:

(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 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* this section.

(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;

(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. 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;

(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:

(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.

(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 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.

(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 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 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.

§ 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;

(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 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.

(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.

(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).

§ 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

(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.

(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 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 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) of this section. 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.

(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);

(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

§ 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:

(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.

§ 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 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 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 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 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 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 website. 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.

(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.

(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.

(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.

(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 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;

(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.

(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 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 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:

(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 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 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;

(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 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 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 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.

(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 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 table 1:

TABLE 1 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.
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.

(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 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, 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.

(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. 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.

(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 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).

APPENDIX I TO PART 200—FULL TEXT OF NOTICE OF FUNDING OPPORTUNITY

(a) *General Requirements.*

(1) *Requirements for developing NOFOs.* 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.

(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) *Considerations for developing NOFOs.* 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.*

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)I 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 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.

(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.

(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 section 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 section must specifically address content and form or format requirements for:

(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.

(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 section 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 section 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.

(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 section 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.

(C) If applicable, this section 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 section 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 section 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:

(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 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.

(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 decisionmaking. 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:

(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*.

(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.

(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 websites 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.

[89 FR 30204, Apr. 22, 2024]

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all

contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of ''federally assisted construction contract'' in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, ''Equal Employment Opportunity'' (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and implementing regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, ''Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction''). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland ''Anti-Kickback'' Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of ''funding agreement'' under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ''funding agreement,'' the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional

Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), ''Debarment and Suspension.'' SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.323.

(K) See §200.216.

(L) See §200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHES)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1 for a discussion of the components of indirect (F&A) costs.

1. Major Functions/Activities of an IHE

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities

are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.468 of this part.

2. Criteria for Distribution

a. *Base period*. A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings*. The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.

c. *General considerations on cost groupings*. The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:

(1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

(3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.

(5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.

(2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.

(3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost

analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:

(a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsection B.4.c, may be used in the recovery of utility costs.

e. Order of distribution.

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. IDENTIFICATION AND ASSIGNMENT OF INDIRECT (F&A) COSTS

1. Definition of Facilities and Administration

See §200.414 which provides the basis for these indirect cost requirements.

2. Depreciation

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §200.436.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:

(1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.

(4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in §200.449, must be classified as an expenditure under the category

Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:

(1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.

(2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the ''effective square footage'' described in subsection (c)(2)(ii) of this section.

(ii) ''Effective square footage'' allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.

A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory ''Labs for the 21st Century'' benchmarking tool and the US Department of Energy ''Buildings Energy Databook'' and were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB website.

5. General Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; *i.e.*, solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental Administration Expenses

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (*e.g.*, chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 200.413(c) and 200.468.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored Projects Administration

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

8. Library Expenses

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under §200.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

c. Amount allocated in paragraph b of this section must be assigned further as follows:

(1) The amount in the student category must be assigned to the instruction function of the institution.

(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

9. Student Administration and Services

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with subpart E of this Part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. DETERMINATION AND APPLICATION OF INDIRECT (F&A) COST RATE OR RATES

1. Indirect (F&A) Cost Pools

a. (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.

(2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2 and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described

in Section A.1 functions of an institution) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

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.

3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Rates for Indirect (F&A) Costs

Public Law 87–638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the ''indirect costs'' (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

5. Negotiated Fixed Rates and Carry-Forward Provisions

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and Final Rates for Indirect (F&A) Costs

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or

downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed Rates for the Life of the Sponsored Agreement

a. Except as provided in paragraph (c)(1) of §200.414, Federal agencies must use the negotiated rates in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. ''Negotiated rates'' per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. ''Life'' for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in §200.414, when an educational institution does not have a negotiated rate with the Federal Government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative Method for Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the ''Administration'' portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under ''Administration'' as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the ''Administration'' portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. Negotiation and Approval of Indirect (F&A) Rate

a. Cognizant agency for indirect costs is defined in Subpart A.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds directly to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see §200.332.

(2) After cognizance is established, it must continue for a five-year period.

b. Acceptance of rates. See §200.414.

c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:

(1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (i.e., a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.

g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.

h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10 of this appendix, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. SIMPLIFIED METHOD FOR SMALL INSTITUTIONS

1. General

a. Where the total direct cost of work covered by this Part at an institution does not exceed $10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

2. Simplified Procedure—Salaries and Wages Base

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a from the amount of salaries and wages included under subsection b.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

3. Simplified Procedure—Modified Total Direct Cost Base

a. Establish the total costs incurred by the institution for the base period.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section C.2, The distribution basis, that consists of all institution's direct functions.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. DOCUMENTATION REQUIREMENTS

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB website.

F. CERTIFICATION

1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads ''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 intent set forth in the award documents. 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 3729–3733 and 3801–3812)''.

2. Certification of Indirect (F&A) Costs

a. *Policy*. Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. *Certificate*. The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015; 85 FR 49577, Aug. 13, 2020; 89 FR 30206, Apr. 22, 2024]

APPENDIX IV TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR NONPROFIT ORGANIZATIONS

A. GENERAL

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in §200.413(d). After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. ''Major nonprofit organizations'' are defined in paragraph (a) of §200.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. ALLOCATION OF INDIRECT COSTS AND DETERMINATION OF INDIRECT COST RATES

1. General

a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.

b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it

devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

2. Simplified Allocation Method

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in §200.413(e).

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.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in direct Federal funding in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in paragraph (a) of §200.414, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (*i.e.,* Facilities or Administration) is of the distribution base identified with that category.

3. Multiple Allocation Base Method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.

b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: ''Facilities'' and ''Administration,'' as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §200.436.

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with §200.449.

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to

any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in §200.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards. The results of special cost studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

(a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in §200.1, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in §200.1).

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: ''Facilities'' and ''Administration,'' as described in §200.414(a).

4. Direct Allocation Method

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (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.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 of this Appendix.

5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

C. NEGOTIATION AND APPROVAL OF INDIRECT COST RATES

1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

a. *Cognizant agency for indirect costs* means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference

between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. *Provisional rate or billing rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also §200.414.) If the nonprofit does not receive any funding from any Federal agency, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with §200.332(a)(4).

b. Except as otherwise provided in §200.414(f), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with §200.414(g), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

(1) Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the nonprofit organization using the Certificate of Indirect (F&A) Costs set forth in section j. of this appendix. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

(2) Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with subpart E of this part.

(3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49579, Aug. 13, 2020; 89 FR 30206, Apr. 22, 2024]

APPENDIX V TO PART 200—STATE/LOCAL GOVERNMENTWIDE CENTRAL SERVICE COST ALLOCATION PLANS

A. GENERAL

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported 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 provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.*'' A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their website.

B. DEFINITIONS

1. *Agency or operating agency* means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Billed central services* means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

4. *Cognizant agency for indirect costs* is defined in §200.1. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

5. *Major local government* means local government that receives more than $100 million in direct Federal awards subject to this Part.

C. SCOPE OF THE CENTRAL SERVICE COST ALLOCATION PLANS

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. omitted from the plan will not be reimbursed.

D. SUBMISSION REQUIREMENTS

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. DOCUMENTATION REQUIREMENTS FOR SUBMITTED PLANS

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocated central service*, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

a. *General.* The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, *e.g.*, regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by GAAP) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan must include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted

but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan must include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

F. NEGOTIATION AND APPROVAL OF CENTRAL SERVICE PLANS

1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

Department of the Interior—Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor—State and local labor departments.

Department of Education—School districts and state and local education agencies.

Department of Agriculture—State and local agriculture departments.

Department of Transportation—State and local airport and port authorities and transit districts.

Department of Commerce—State and local economic development districts.

Department of Housing and Urban Development—State and local housing and development districts.

Environmental Protection Agency—State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. OTHER POLICIES

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a ''fixed with carry-forward'' basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This ''carry-forward'' procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in subpart D of this part.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49581, Aug. 13, 2020]

APPENDIX VI TO PART 200—PUBLIC ASSISTANCE COST ALLOCATION PLANS

A. GENERAL

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. DEFINITIONS

1. *State public assistance agency* means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. POLICY

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. SUBMISSION, DOCUMENTATION, AND APPROVAL OF PUBLIC ASSISTANCE COST ALLOCATION PLANS

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in section E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. REVIEW OF IMPLEMENTATION OF APPROVED PLANS

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.

2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR Part 16.

Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.

4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49581, Aug. 13, 2020]

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to this part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*'' A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to this part.

B. Definitions

1. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.

4. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a ''final'' rate for that period.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (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), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration

the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (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), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a ''restricted rate'' is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. SUBMISSION AND DOCUMENTATION OF PROPOSALS

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in §200.334.

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.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this Part. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

E. NEGOTIATION AND APPROVAL OF RATES

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between

the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in §200.420, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. OTHER POLICIES

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit)should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75889, Dec. 19, 2014; 85 FR 49581, Aug. 13, 2020; 89 FR 30207, Apr. 22, 2024]

APPENDIX VIII TO PART 200—NONPROFIT ORGANIZATIONS EXEMPTED FROM SUBPART E OF PART 200

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington, DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois