



**DEPARTMENT OF LABOR**

**2 CFR Part 2900**

**RIN 1205-AB71**

**Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Technical Amendments**

**AGENCY:** Department of Labor.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This final rule implements technical amendments to the Department of Labor's (Department or DOL) adoption of the Office of Management and Budget (OMB) Guidance in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities*. The Department is making technical amendments in this final rule; all regulatory language included here is consistent with either the policies in the Uniform Guidance or the Department's existing policies and practices.

**DATES:** *Effective Date:* [Insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Adele Gagliardi, Administrator, Office of Policy Development and Research (OPDR), at 202-693-3700 (voice); or 202-693-2766 (facsimile).

These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

The Preamble to this rule is organized as follows:

- I. Background – provides a brief description of the development of the final rule and a summary of the technical changes.
- II. Administrative Information – sets forth the applicable regulatory requirements.

## I. Background

The Department implements, in this final rule, technical amendments to 2 CFR 2900 which supplemented the final guidance *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* published by the Office of Management and Budget (OMB) on December 26, 2013, (Uniform Guidance, available at 78 FR 78589). The Department published 2 CFR part 2900 as part of OMB's joint interim final rule at 2 CFR part 200 (Interim Final Rule, available at 79 FR 75867) which implemented in regulations the final guidance published earlier by OMB. 2 CFR part 2900 has Department specific policies and procedures for financial assistance administration which were approved by OMB and supplements the information in 2 CFR part 200.

The Uniform Guidance followed on a notice of proposed guidance issued February 1, 2013, (available at 78 FR 7282), and an advanced notice of proposed guidance issued February 28, 2012, (available at 77 FR 11778). The final guidance incorporated feedback received from the public in response to those earlier issuances. Additional supporting resources are available from the Council on Financial Assistance Reform at [www.cfo.gov/COFAR](http://www.cfo.gov/COFAR).

The Uniform Guidance delivered on two presidential directives; Executive Order 13520 on Reducing Improper Payments (74 FR 62201; November 15, 2009), and February 28, 2011, Presidential Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments, (Daily Comp. Pres. Docs.; <http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf>). It reflected more than two years of work by the Council on Financial Assistance Reform to improve the efficiency and effectiveness of Federal financial assistance. For a detailed discussion of the reform and its impacts, please see the Federal Register notice for the issuance of the final guidance (78 FR 78589).

The Department provided additional language in 2 CFR part 2900 beyond that included in 2 CFR part 200, consistent with the Department's existing policy, to provide more detail with respect to how the Department intended to implement the policy, where appropriate. The Department is not making any new policy with the technical amendments in this final rule; all regulatory language included here is consistent with either the policies in the Uniform Guidance or the Department's existing policies and practices as explained in 2 CFR part 2900.

This final rule incorporates minor changes to 2 CFR part 2900 to add citations or correct citation errors in §§ 2900.1, 2900.5, 2900.7, and 2900.13. In addition, non-substantive deletions and additions of a word or phrase were made to §§ 2900.3, 2900.13, 2900.15, 2900.16, and 2900.21 to clarify the language in the section. Finally, typographical errors were corrected in §§ 2900.5 and 2900.20.

Accordingly, the regulations in 2 CFR part 2900 are amended to include updated information.

## **II. Administrative Information**

### Paperwork Reduction Act:

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1) (PRA), the Department reviewed this final rule and determined that there are no new collections of information contained within the rule.

### Regulatory Flexibility Act:

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This final rule implements technical

amendments to 2 CFR 2 part 900 which supplemented OMB final guidance issued on December 26, 2013. Therefore, this final rule and will not have a significant economic impact beyond the impact of the December 2013 guidance.

Executive Order 12866 Determination:

Pursuant to Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) designated the joint interim final rule at 2 CFR 200, which included Department specific policies and procedures for financial assistance administration at 2 CFR part 2900, published on December 19, 2014, (Interim Final Rule, available at 79 FR 75867) not to be significant. This final rule implements technical amendments to 2 CFR part 2900 and introduces no new policy issues, economic impacts, or new burdens; therefore, pursuant to Executive Order 12866, this action is not a significant regulatory action and was not submitted to OMB for review.

Administrative Procedure Act (5 U.S.C. 553) Waiver of Proposed Rulemaking and Waiver of Delayed Effective Date:

a) Waiver of Proposed Rulemaking - In General

Under the Administrative Procedure Act (APA), the Department generally is required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, as noted earlier in the background preamble, OMB offered the public two opportunities to comment on the Uniform Guidance, first through an advanced notice of proposed guidance and, second, through a notice of proposed guidance. OMB considered over 300 comments submitted in response to each of these notices. OMB has directed agencies to adopt the uniform guidance in part 200 without change, except to the extent that an agency can demonstrate that any

conflicting agency requirements are required by statute or regulations, or consistent with longstanding practice and approved by OMB. As explained above, the Department published agency specific supplemental information that was approved by OMB in 2 CFR part 2900. This final rule only makes technical amendments to 2 CFR part 2900. Finally, OMB made clear that the requirements in 2 CFR part 200 (including the audit requirements in subpart F) and 2 CFR part 2900, will apply, starting on December 26, 2014, giving recipients of all types of financial assistance advance notice of when the regulations would become effective. Therefore, under 5 U.S.C. 553(b)(B), there is good cause for waiving proposed rulemaking as unnecessary.

b) Waiver of Delayed Effective Date - In General

Generally, the Department is subject to the APA requirement to delay the effective date of its final regulations by 30 days after publication, as required under 5 U.S.C. 553(d), unless an exception under subsection (d) applies.

Under 5 U.S.C. 553(d), the Department may waive the delayed effective date requirement if it finds good cause and explains the basis for the waiver in the final rulemaking document or if the regulations grant or recognize an exemption or relieve a restriction. In the present case, there is good cause to waive the delayed effective date for three reasons.

First, OMB informed the public on December 26, 2013, that agencies would be required to adopt the Uniform Guidance and make it effective by December 26, 2014. The public had significant time to prepare for the promulgation of those interim final regulations.

Second, while those interim final regulations were based on a new, more effective method for establishing government-wide requirements, the substance of the regulations are, in most cases, virtually identical to the requirements that exist in current agency regulations.

Finally, this final rule makes technical changes to the Department's agency-specific supplemental information at 2 CFR part 2900 that was made effective along with 2 CFR part 200 on December 27, 2014. Delaying the implementation of these technical amendments would cause errors that were discovered in 2 CFR part 2900 to be in effect for an additional 30 days causing unnecessary confusion to recipients of Federal financial assistance. Based on these considerations, the Department has determined that there is good cause to waive the delayed effective date for these final regulations.

Unfunded Mandates Reform Act of 1995 Determination:

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OMB has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 13132 Determination:

The Department has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

Plain Language:

The Department drafted this rule in plain language.

List of Subjects in 2 CFR Part 2900:

Accounting, Administrative practice and procedure, Appeal procedures, Auditing, Audit requirements, Cost principles, Grant programs, Grant programs-labor, Grants administration, Labor, Reporting and recordkeeping requirements.

Under the authority of the 5 U.S.C. 301, the Department of Labor amends 2 CFR part 2900 as follows:

**PART 2900 – UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

1. The authority citation for part 2900 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 2 CFR 200.

2. Revise § 2900.1 to read as follows:

**§2900.1 Budget.**

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal Awarding agency specifies as requiring prior approval. See § 200.407 and § 2900.16 for more information about prior approval. (See 2 CFR 200.8)

3. Amend § 2900.3 by revising the introductory text to read as follows:

**§2900.3 Questioned cost.**

In the DOL, in addition to the guidance contained in 2 CFR 200.84, a *Questioned cost* means a cost that is questioned by an auditor, Federal Project Officer, Grant Officer, or other authorized Awarding agency representative because of an audit or monitoring finding:

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4. Revise § 2900.5 to read as follows:

**§2900.5 Federal awarding agency review of merit of proposals.**

In the DOL, audits and monitoring reports containing findings, issues of non-compliance or questioned costs are in addition to reports and findings from audits performed under Subpart F – Audit Requirements of 2 CFR 200 or the reports and findings of any other available audits. (See 2 CFR 200.205(c)(4))

5. Revise § 2900.7 to read as follows:

**§2900.7 Payment.**

In addition to the guidance set forth in 2 CFR 200.305(b), for Federal awards from the Department of Labor, the non-Federal entity should liquidate existing advances before it requests additional advances.

6. Revise § 2900.13 to read as follows:

**§2900.13 Intangible property.**

In addition to the guidance set forth in 2 CFR 200.315(d), the Department of Labor requires intellectual property developed under a competitive Federal award process to be licensed under a Creative Commons Attribution license. This license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the recipient.

7. Revise § 2900.15 to read as follows:

**§2900.15 Closeout.**

In addition to the guidance set forth in 2 CFR 200.343(b), for Federal awards from the Department of Labor, the non-Federal entity must liquidate all obligations and/or accrued expenditures incurred under the Federal award. For non-Federal entities reporting on an accrual basis and operating on an expenditure period, unless otherwise noted in the grant agreement, the only liquidation that can occur during closeout is the liquidation of accrued expenditures (NOT obligations) for goods and/or services received during the grant period.

8. Revise § 2900.16 to read as follows:

**§2900.16 Prior written approval (prior approval).**

In addition to the guidance set forth in 2 CFR 200.407, for Federal awards from the Department of Labor, the non-Federal entity must request prior written approval which should include the timeframe or scope of the agreement and be submitted not less than 30 days before the requested action is to occur. Unless otherwise noted in the grant agreement, the Grant Officer is the only official with the authority to provide prior written approval (prior approval). Items included in the statement of work or budget as awarded does not constitute prior approval.

9. Amend § 2900.20 by revising the introductory text to read as follows.

**§2900.20 Federal Agency Audit Responsibilities.**

In the DOL, in addition to 2 CFR 200.513, the department employs a collaborative resolution process with non-federal entities.

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10. Revise § 2900.21 to read as follows:

**§2900.21 Management decision.**

In the DOL, ordinarily, a management decision is issued within six months of receipt of an audit from the audit liaison of the Office of the Inspector General and is extended an additional six months when the audit contains a finding involving a subrecipient of the pass-through entity being audited. The pass-through entity responsible for issuing a management decision must do so within twelve months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and should begin corrective action no later than upon receipt of the audit report. (See 2 CFR 200.521(d))

Signed at Washington, DC, this 23rd day of December, 2015.

**Thomas E. Perez,**

Secretary, U.S. Department of Labor.

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