ESSA and EDGAR Hot Topics

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Topics

2 CFR Part 200 Updates
- Proposed OMB changes to 2 CFR Part 200
- Proposed Draft 2020 Compliance Supplement
ED Cost Allocation Guide
- Time and Effort Updates
- Equitable Services Guidance Highlights
- LEA Pooling Options
- SNS Guidance
- Methodology Options and Districtwide Allowability

OMB Proposed Revisions 2 CFR Part 200
Published January 22, 2020
Comments due March 23, 2020
General Administrative Priorities

- Procurement Changes to Better Target Areas of Greater Risk and Conform to Statutory Requirements
- Strengthen Merit Review and Improve Governmentwide Approach to Performance and Risk
- Standardize Terminology, Data Elements and Alignment with Other Authoritative Source Requirements
- Emphasize Machine Readable Information Format
- Eliminate References to Non-Authoritative Guidance
- Change Closeout to Reduce Burden and Support the GONE Act
- Expanded Use of Di Minimus Rate
- Clarify Areas of Misinterpretation

Terminology Changes

NEW The Definitions no longer have section numbers – 200.1 Definitions

<table>
<thead>
<tr>
<th>Definition Term Changes</th>
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<tbody>
<tr>
<td>Obligation</td>
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<td>OFDA</td>
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Terminology Changes (cont.)

NEW Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Budget period</td>
<td>Time interval during which recipients are authorized to expend the current funds awarded and must meet matching/cost-sharing, if any.</td>
</tr>
<tr>
<td>Discretionary Award</td>
<td>An award in which the awarding agency may exercise judgment (“discretion”) in selecting the grant award recipient through a competitive (sometimes non-competitive) process or based on merit of existing grant recipients.</td>
</tr>
<tr>
<td>Non-discretionary Award</td>
<td>An award made by the awarding agency but the agency has no ability to exercise judgment (“discretion”), due to “mandatory” award requirements, in selecting the applicant/recipient organization through a competitive process. Non-discretionary awards can be both formula and non-formula based.</td>
</tr>
<tr>
<td>Renewal</td>
<td>Subsequent Federal award to a current Federal award; each renewal must have a distinct period of performance</td>
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### Terminology Changes (cont.)

**Updated Definitions**

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Capital Assets</strong></td>
<td>Updates the definition for alignment with Governmental Accounting Standards Board (GASB)</td>
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<td><strong>Improper Payment</strong></td>
<td>Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 Appendix C.</td>
</tr>
<tr>
<td><strong>Intangible Property</strong></td>
<td>Updates the definition for alignment with GASB</td>
</tr>
<tr>
<td><strong>Management Decision</strong></td>
<td>The Federal awarding agency 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.</td>
</tr>
</tbody>
</table>

### 200.204 Federal awarding agency review of merit of proposals

For discretionary grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, with the objective of selecting the recipients most likely to be successful in delivering results based on the program objectives.

### 200.301 Performance Measurement

Language was altered to:
- Emphasize that agencies are encouraged to measure recipient performance to improve program goals and objectives, share lessons learned, and spread the adoption of promising practices.
- The goal is to *shift the culture of Federal grant making from a heavy focus on compliance to a balanced approach that includes a focus on the degree to which grant programs achieve their goals and intended results.*
200.211 Information contained in a Federal award

NEW Federal award performance goals.
- The Federal awarding agency must include in the Federal award of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program.
- Strengthens the ability to terminate an award for failing to meet performance goals

NEW Award info:
- Budget Period Start and End Date;
- (Also added to 200.331 Requirements for pass-through entities)
- Performance goals, indicators, targets, baseline data, and data collection plan

Prohibition of Including References to Non-Binding Guidance Documents.
- Federal awarding agencies are prohibited from including references to non-binding guidance in the terms and conditions of award. (To comply with Executive Order (EO) 13891)
- References to non-binding guidance include references to promising practices and other documents that the inclusion of by reference carries the implicit threat of enforcement action.
- These resources may be shared outside of the terms and conditions for reference purposes.

200.208 Specific Conditions

NEW (a) Federal award conditions must be consistent with the program design and include clear performance expectations.
- (b) Risk-based specific conditions.
  - (1) The Federal awarding agency or pass-through entity may impose more or less restrictive or additional specific Federal award conditions as needed, based on an analysis of the following factors:
    - (i) Based on the criteria set forth in §200.206;
    - (ii) History of compliance with terms and conditions of a Federal award;
    - (iii) Ability to meet expected performance goals
    - (iv) A responsibility determination of an applicant or recipient.
200.339 Termination

- Removed “for cause”
- NEW (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities.
- NEW (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

200.343 Closeout

(a) The non-Federal entity must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.
- A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.
(b) A NFE must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance.
- NEW Failure to submit, must report to FAPIIS

200.331 Requirements for pass-through entities

NEW (d)(4) The pass-through entity is only responsible for resolving audit findings specifically related to the subaward (i.e., non-systemic) and not applicable to the entire subrecipient (i.e., systemic).
- the pass-through entity may rely on cognizant agency for audit to follow-up on systemic issues.
- 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 issued by the pass-through entity.
200.458 Pre-award costs

- Costs incurred prior to the effective date in anticipation of the Federal award (costs must be necessary for efficient and timely performance).
  - Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.
  - If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency.
  - Deleted 200.309 Period of performance which gave SEAs authority to award pre-award costs.

200.319 Formal v. Informal Procurement

- NEW Informal procurement methods. When the value of the procurement for property or services does not exceed the simplified acquisition threshold formal procurement methods are not required.
  - The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost.
- NEW Formal procurement methods. When the value exceeds the simplified acquisition threshold formal procurement methods are required.
  - Formal procurement methods require following documented procedures.
  - Formal procurement methods also require public advertising unless a non-competitive procurement can be used.

200.1 Micro-purchase threshold

- Definition has removed the threshold amount.
  - The amount set by the Federal Acquisition Regulation at 48 CFR 2.101
  - Currently set at $10,000 per OMB Memo M-18-18
- NEW may purchase property (used to say supplies) or services
- NEW Unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency.
200.319(a)(1) Micro-purchase threshold

- The non-Federal entity is responsible for determining an appropriate micro-purchase threshold based on internal controls, an evaluation of risk and its documented procurement procedures.
  - All non-Federal entities can establish lower thresholds.
- NEW May request a higher micro-purchase threshold:
  - Must be authorized or not prohibited under State, local, or tribal laws or regs.
  - Requests for approval of a higher threshold must be submitted to the cognizant Federal agency for indirect cost rates.
  - Look to see if entity is low risk and must include at a minimum a review of the entity’s audit findings and any appropriate internal institutional risk assessments.
  - Must also be consistent with any applicable state laws.

200.319(a)(2) Small Purchase Procedures

- Set by simplified acquisition threshold (200.1) – has removed the threshold amount.
  - Currently set at $250,000 per OMB Memo M-18-18
- The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR 84 subpart 2.1.
- Thresholds differ from the FAR. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures.
  - States, IHEs and local governments should determine if local government laws on purchasing apply.
  - Note: State/local laws apply under state-administered programs.

200.319(b)(3) Noncompetitive Procurement

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- NEW The acquisition of property or services, the aggregate dollar amount does not exceed the micro-purchase threshold.
- The item is only available from a single source.
- There is a public emergency that will not permit delay.
- The Federal awarding agency or pass-through expressly authorizes noncompetitive proposals in response to a written request from a non-Federal entity; or
- After soliciting a number of sources, competition is determined inadequate.
200.414 Indirect (F&A) Costs

**Expanded use of the De Minimus Rate**

- Allows the use of the de minimus rate of 10% of modified total direct costs (MTDC) to all non-Federal entities (except for those described in Appendix VII to Part 200: State and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b).
  - Currently, the de minimus rate can only be used for NFEs that have never received a negotiated indirect cost rate.
  - **Note:** LEAs are still restricted from using the 10% rate.
- **NEW** All rate agreements must be available publicly on an OMB Designated Federal website.

200.413 Direct Costs

Program evaluation costs now included as an allowable example of a direct cost.

200.335 Methods for collection, transmission and storage of information.

- The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system.
Things of note:
- "Activities Allowed and Unallowed" and "Allowable Costs/Cost Principles" are treated as a single requirement.
- ESSA Title IV, A
  - Clarifies that the 15% limitation on technology infrastructure applies to the Effective Use of Technology set-aside (not the entire Title IV allocation)
ED’s Cost Allocation Guide (cont.)

- “[Charges] must be based on records that accurately reflect the work performed, must be supported by system of internal controls, and meet the other general requirements in 2 CFR 200.430(i)”
- “The uniform guidance elevated the role of internal controls”
- “[I]t also establishes critical parameters within which that flexibility must be exercised”
- “Department grantees that do not adhere to these parameters in documenting personnel expenses charged to federal grants could face questioned costs in audit findings”

ED’s Cost Allocation Guide

- “More flexible and less burdensome time and effort reporting systems could be implemented”
- “Would not need cognizant agency approval to use these approaches”
  - ED’s Response to the Association of Education Federal Finance Administrator’s (AEFFA) Proposals for New Time and Effort Systems (June 15, 2016)?

Time and Effort Policies and Procedures:
1. Completion of time and attendance reporting;
2. Approval cycle that is required;
3. Processing of personnel charges to federal awards; and
4. Internal review process that will be established to ensure effective internal control over the award.
“The information should be of sufficient detail to permit an understanding of how the system will operate from the point the time is worked to the point the time is recorded in the accounting records and charged to federal awards.”

New, clarified Q&As:

1. LEAs cannot unilaterally decide to pool funds for equitable services (must have agreement from private school officials)
   - School-by-school allocations; pooling within LEA; pooling across LEAs
2. LEAs can unilaterally decide to transfer funds out of TII or TIV (after consultation)
3. Carryover stays within the “equitable services” set-aside (dropped “extraordinary circumstances”)
   - 15% cap on carryover applies to LEA allocation as a whole; if LEA allocation is reduced because of exceeding that cap, then reduction cannot be applied to equitable services set aside
New, clarified Q&As:

4. LEAs must initiate consultation; if new school opens after consultation deadline, then LEA should contact but not required to serve in that year.

5. LEAs must determine administrative costs for equitable services:
   - Title I admin for private schools is a separate cost objective from Title I admin for public schools.

6. LEAs may charge indirect costs to its proportionate share, but should be discussed in consultation.

7. Preschool children may participate in equitable services only if the students are considered “elementary” students under State law.

Pooling Across LEAs

Example LEAs A and B agree to pool funds for 2 schools:

- LEA A generates $50,000 for PS1 and $25,000 for PS2.
- LEA B generates $5,000 for PS1 and $1,000 for PS2.

There is $81,000 total available.

Eligibility:

- Uniform criteria of educational need (lowest-achieving)
- Attend Private School 1 or 2
- Reside in either LEA A or LEA B
- Eligible children may receive Title I services regardless of how much funds their LEA generated.

Pooling Across LEAs (cont.)

- All LEAs and private school officials must agree to pool.
- All must agree to definition of lowest achieving.

Questions:

- Can more than 2 LEAs decide to pool?
- What if LEAs generating funds want to pool, but the receiving LEA does not want to pool funds?
- How is carryover calculated?
5
ESSA Title I, A Supplement Not Supplant
Informational Document
Dated June 2019

Supplement not Supplant Informational Document

- Defines Title I “neutral”
- Connection between Sec. 1118(b) and Sec. 1003(e)(2)
  - If meet Title I, Part A SNS then 1003 SNS is met
- Applicability of SNS to Migrant and Neglected and Delinquent programs
  - Parts C and D do not flow funds directly to schools, therefore the Title I, Part A special rule does not apply.
  - Follows the presumptions of supplanting.

Supplement not Supplant Informational Document (cont.)

- Application of SNS test for LEA-reserved funds
  - An LEA must conduct districtwide activities supported by such funds in a manner that does not take into account a school’s Title I status (e.g., by implementing a policy of conducting districtwide activities in a Title I-neutral manner).
- Requirements to meet “Title-I like” funding exclusion
  - Be supplemental State and local funds; and
  - Meet the intent and purposes of Title I, Part A.
LEAs do not have to have a methodology if:
1. Single school LEA;
2. Only Title I schools; or
3. Grade span contains only: a single school; non-Title I schools; or all Title I schools (no methodology for this grade span).

Regulations?
Enforcement?
ESSA Sec. 1118 is silent
ED will not add information on the topic
SEAs follow enforcement provisions in GEPA and 2 CFR Part 200

State Agency Monitoring and Enforcement (GEPA, 20 USC 1232c)
(a) States must monitor compliance under federal programs
   ▶ “periodic visits by State personnel” of programs administered by local agencies to determine whether compliant
   ▶ “periodic audits of expenditures” under such programs
   ▶ “investigate and resolve” complaints received by the State relating to such programs
(b) States must enforce federal requirements
   ▶ Withhold approval in whole or in part of the application for funds until requirements have been met
   ▶ Suspend payments until requirements are met (60 days)
   ▶ Withhold payments until requirements are met
Other state oversight and enforcement tools (EDGAR, UGG, GEPA)

1. Recover funds; terminate an award. 34 CFR 76.783
2. Deny application for funding. 34 CFR 76.401
3. Withhold payments, disallow costs, initiate suspension and debarment proceedings, terminate award. 2 CFR 200.338

Registration Now Open!

THANKS!

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