

PUBLICATION

OMB Soon To Release Updates To Uniform Grant Regulations

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The Office of Management and Budget (OMB) held a webinar on April 4, 2024, which was followed by a White House announcement of the impending launch of revised regulations at Title 2 of the U.S. Code of Federal Regulations (2 C.F.R.). These regulations are critically important to anyone who receives or intends to receive federal assistance such as federal grants.

Billing the forthcoming changes "the most substantial revision to the Uniform Grants Guidance since it went into effect ten years ago," the [White House recently announced](#) the availability of a pre-publication copy of the rule, implementation memorandum, and reference guides. The [full pre-publication text of the rule is available here](#), but the following are among the many changes in the 648-page rule:

- Part 25 clarifies that the requirement to obtain a Unique Entity Identifier (UEI) and register in SAM.gov does not apply beyond first-tier subawards of a federal award. Second-tier subrecipients may still obtain one voluntarily.
- Part 180 makes "minimal revisions" to this part based on feedback received from the Interagency Suspension and Debarment Committee, including factors influencing a debarment decision, a clarification of the available administrative actions in lieu of debarment, and that before initiating a suspension officials may consider "other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits."
- § 200.1 clarifies terms including what constitutes real property.
- § 200.204 and Appendix I provide guidance to Federal agencies issuing Notices of Funding Opportunities.
- § 200.307 clarifies the use and expenditure of program income, including allowing program income for certain closeout costs.
- § 200.313(e)(1) will increase the value of equipment purchased with federal financial assistance that must be disposed per the federal awarding agency's instructions. The change increases the value from \$5,000 to \$10,000. Any equipment with a fair market value below \$10,000 at the end of the grant period "may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity."
- Similarly, § 200.314 increases the threshold for the disposition of unused supplies from \$5,000 to \$10,000. The section also clarifies that this amount is the total amount of remaining unused supplies, not just like-items.
- § 200.318(h) expands upon the requirement that recipients and subrecipients award contracts only to responsible contractors.
- § 200.318(l) expands upon requirements regarding labor and employment practices.
- § 200.319 removes prohibitions on state, local, or tribal geographical preferences, and clarifies that the rule 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.
- § 200.320 no longer requires tribal governments to open sealed bids in public. The requirement remains for local governments.

- § 200.320(a)(1)(ii) clarifies that a recipient or subrecipient must maintain documents to support its conclusion when awarding micro-purchase awards without soliciting competitive price or rate quotations.
- § 200.321 adds "veteran-owned business" to the types of businesses that recipients and subrecipients are encouraged to consider for procurement contracts under a federal award.
- § 200.324(a) clarifies that the recipient or subrecipient must perform a cost-benefit or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.
- § 200.333 increases from \$750,000 to \$1,000,000 the level at which a recipient of Federal funds is required to conduct a single audit or a program-specific audit.
- § 200.334 includes corrections that clarify record retention requirements.
- § 200.407 removes items from the prior written approval requirements to reduce federal agency and recipient burden, including entertainment costs, memberships, subscriptions, professional activity costs, and participant support costs. The rule also removes real property and equipment but retains the requirement to request disposition instructions.
- § 200.413(b) clarifies eligible direct costs.
- § 200.414 increases the de minimis indirect cost rate from ten percent to 15 percent.
- § 200.455 clarifies that certain costs associated with data and evaluation are allowable.

Of particular interest to utilities, with regard to § 200.311 (Real Property) the preamble states:

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

The rule will go into effect on October 1, 2024, though Federal agencies may elect to apply the final guidance to Federal awards issued before that date. OMB clarifies, however, that Federal agencies must wait to apply the guidance until 60 days after it is published in the Federal Register.

If you have any questions on Federal grant compliance, please contact [Erin J. Greten](#) or any member of Baker Donelson's [Disaster Recovery and Government Services Team](#).