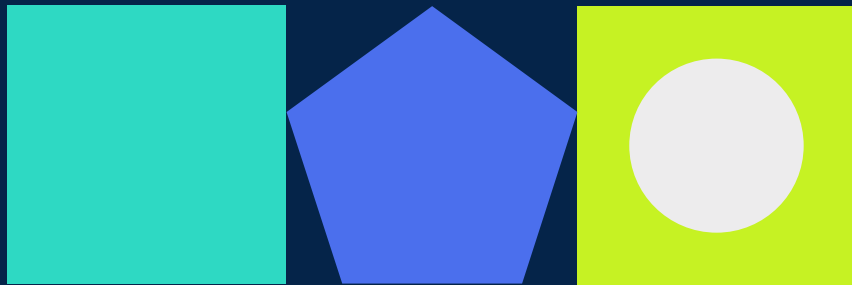


COMPLIANCE WITH FEDERAL REQUIREMENTS GOVERNING PERKINS CTE

North Carolina Community College System



Presented by: Michael Brustein, Esq.

mbrustein@bruman.com

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www.bruman.com

Agenda

1. Legal Authorities Governing Perkins
2. Recent Executive Orders Impacting Federal Education Grants
3. Perkins Allowability Roadmap
4. Required Uses of Perkins Funds
5. Supplanting
6. EDGAR Updates
7. UGG Revisions
8. Questions

What Legal Authorities Govern Perkins V?

Perkins statute

General Education
Provisions Act

Education
Department General
Administrative
Regulations
(EDGAR)

UGG

OCR Guidelines

EDGAR and the UGG

EDGAR (34 CFR)

- Part 75 - Direct Grant Programs
- Part 76 - State-Administered Programs
- Part 77 - Definitions
- Part 81 - Enforcement Regulations

UGG (2 CFR Part 200)

- Subpart A – Acronyms and Definitions
- Subpart B – General Provisions
- Subpart C – Pre-Federal Award Requirements
- Subpart D – Post Federal Award Requirements
- Subpart E – Cost Principles
- Subpart F – Audit Requirements

Final Changes to the UGG

Agencies submit to OMB:

May 15



Binding Legal Authorities

Does not include OCTAE Q+A, Dear Colleague Letters,
Emails, Non-Regulatory issuances

See: 2 CFR 200.105(b)

What about Executive Orders?

Federal law v.
Executive Order



Federal law wins

Federal regulations v.
Executive Order



Federal regs win

Executive Order: Dismantle ED

Directs Secretary McMahon to “take all necessary steps to facilitate the closure the Department of Education and return education authority to the States, while continuing to ensure the effective and uninterrupted delivery of services, programs, and benefits on which Americans rely.”

ED Reduction in Force, related lawsuits

- Council of Parent Atty and Advocates, et al, vs ED
 - RIF closing 7 of 12 OCR regional offices, freezing and politicizing investigations, and related OCR guidance and policies violate the APA, arbitrary, capricious, abuse of discretion
 - Decimation of OCR's ability to process and investigate complaints violates statutory requirements to fulfill statutory function to administer civil rights laws and "promptly investigate" civil rights complaints
 - OCR RIF exceeds agency authority, violates due process denying equal protection

Executive Orders

“Expanding Educational Freedom and Opportunity for Families”



- Instructs U.S. Depts of Education, Health and Human Services, Interior, and Defense to prioritize school choice programs and drive funding to private schools
- ED directed to prioritize school choice programs in competitive grants
- Requires ED to issue new guidance to States within 60 days about how federal funding allocations to districts and schools may be used to advance this priority
- HHS directed to issue guidance about using federal funds, including the Child Care and Development Block Grant (CCDBG), for childcare at private and religious institutions.
- Bound by the scope of existing laws (many restrict use of funds for non-public schools)

Executive Orders



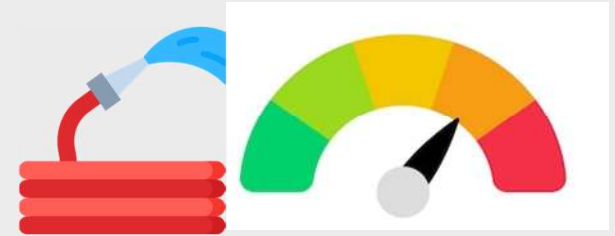
- “Ending Radical And Wasteful Government DEI Programs And Preferencing”
 - Terminates all Diversity, Equity, Inclusion, and Accessibility (DEIA) initiatives throughout federal government
 - DEIA positions across the federal government placed on administrative leave
 - In response, ED:
 - “Removed or archived hundreds of guidance documents, reports, and training materials that include mentions of DEI”
 - Dissolved DEI-related councils and training contracts
 - Withdrew Department’s equity plan

Executive Orders



- “Additional Measures to Combat Anti-Semitism”
 - Instructs federal agencies to identify allegations of antisemitism stemming from the Israel-Hamas conflict.
 - Agencies must, within 60 days, submit a report to the President identifying all civil and criminal enforcement mechanisms it could use to “curb or combat” antisemitism.
 - The Secretaries of State, Education, and Homeland Security instructed to make recommendations for how to “familiarize[e]” institutions with how to monitor and report students on visas that could impact their immigration status

Executive Orders



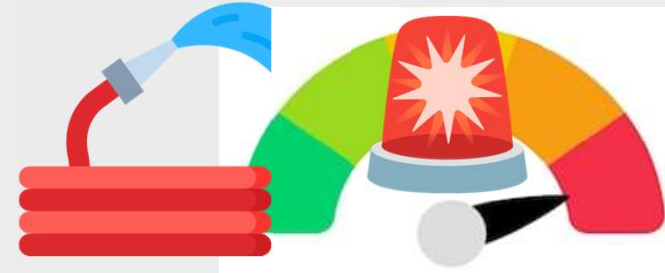
- “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”
 - Says “sex” is defined as only male and female and is an “immutable biological classification”
 - Impacts sex-based discrimination laws, including Title IX
 - Further cements January court decision striking down Biden admin Title IX regulations nationwide
 - Following this order, ED [issued guidance instructing](#) recipients to implement 2020 rule, and “immediately reorient” any investigations that may have begun under the invalidated 2024 rule

Executive Orders



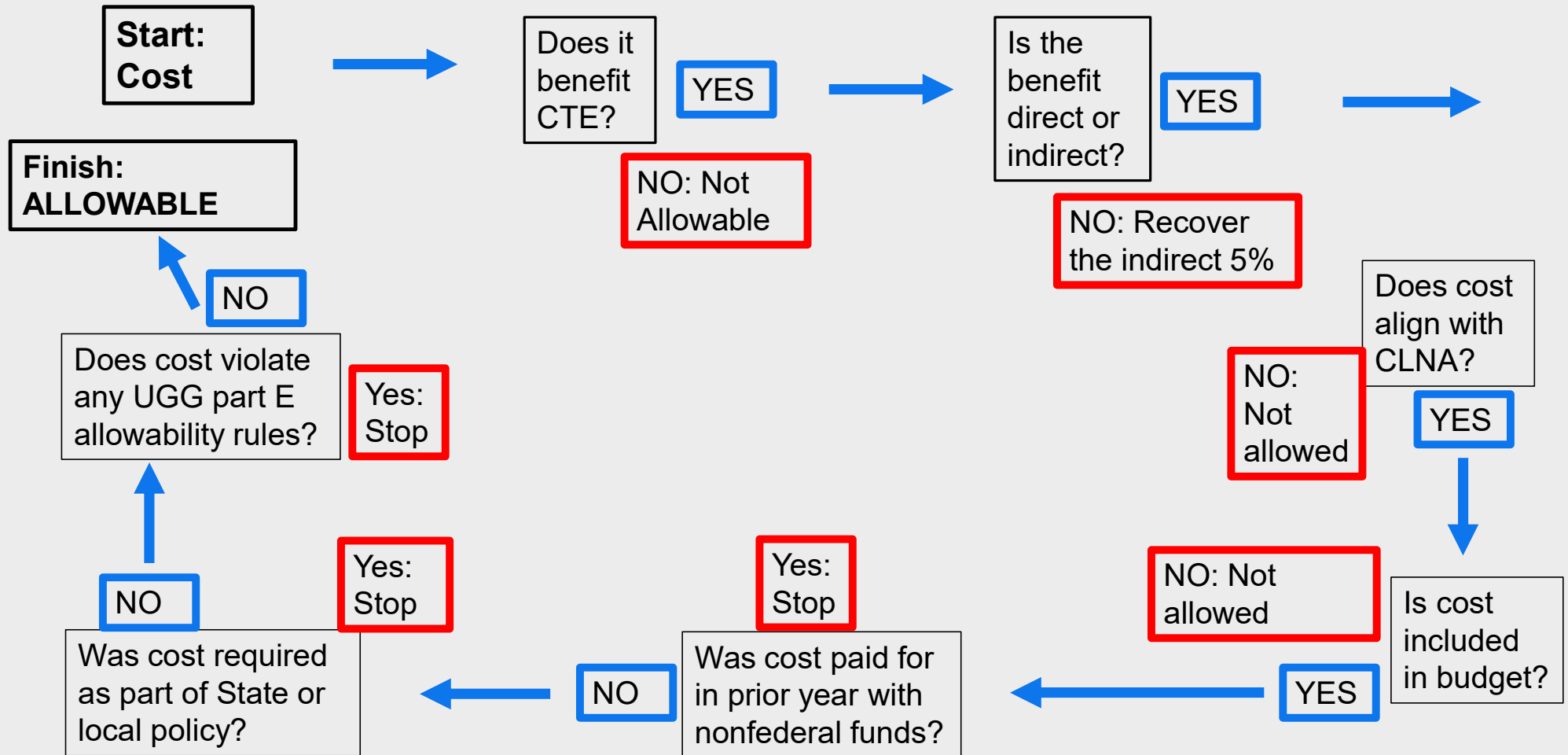
- “Ending Radical Indoctrination in K-12 Schooling”
 - Prohibits federal funds from being used for programs that include “gender ideology and critical race theory in the classroom” or “subversive, harmful ideologies”
 - Federal agencies are instructed to ensure that all recipients of federal funds providing K-12 education refrain from any use of funds to support “discrimination equity ideology”
 - Defined as any instruction which says that:
 - “an individual’s ... status as privileged, oppressing, or oppressed is primarily determined by the individual’s race, color, sex, or national origin,”
 - “an individual should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion,” or
 - “the United States is fundamentally racist, sexist, or otherwise discriminatory.”
 - Secretaries of ED, Defense, and HHS, working with the AG, must submit plan to President for “eliminating federal funding or support for illegal and discriminatory treatment and indoctrination in K-12 schools, including based on gender ideology and discriminatory equity ideology” within 90 days

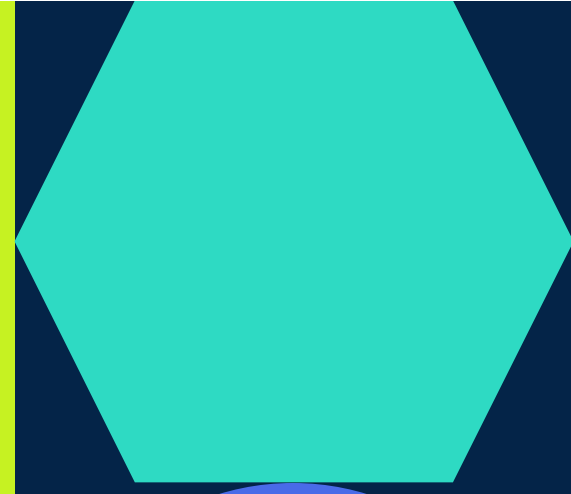
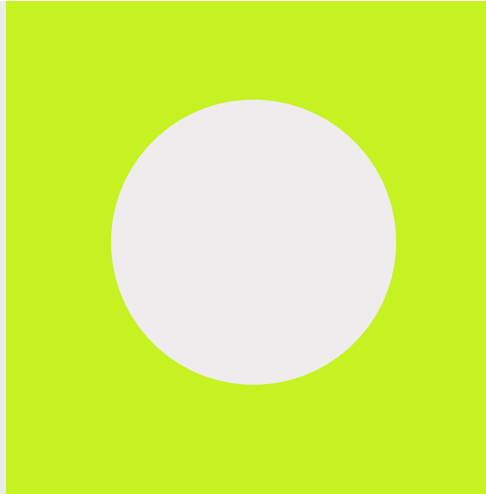
Executive Orders



- “Ending Radical Indoctrination in K-12 Schooling”
 - AG instructed to work with State/local officials to file actions against K-12 teachers and school officials who “sexually exploit minors” or “unlawfully practice medicine by offering diagnoses or treatment” or “facilitate the social transition of a minor student.”
 - “Social transition” is defined broadly by the order as:
 - “the process of adopting a ‘gender identity’ or ‘gender marker’ that differs from a person’s sex. This process can include psychological or psychiatric counseling or treatment by a school counselor or other provider; modifying a person’s name (e.g., “Jane” to “James”) or pronouns (e.g., “him” to “her”); calling a child “nonbinary”; use of intimate facilities and accommodations such as bathrooms or locker rooms specifically designated for persons of the opposite sex; and participating in school athletic competitions or other extracurricular activities specifically designated for persons of the opposite sex.”

Perkins Allowability Roadmap





What are the required uses of funds under Perkins V?

Sec. 135(a) – Local Use of Funds

- Each local recipient that receives Perkins funds “shall use such funds to develop, coordinate, implement, or improve [CTE] programs to meet the needs identified in the [CLNA].”
- If it doesn’t tie back to the CLNA, it will be impossible to argue it is necessary under Perkins...therefore its unallowable

Size, Scope, and Quality

- Sec. 135(b) of Perkins requires local recipients to “support [CTE] programs that are of sufficient size, scope, and quality to be effective.”
- Size, scope, and quality became a primary focus near the end of Perkins IV, and gained much greater significance under Perkins V.
 - Focus include greater burden on the State to define these terms in the State plan

Sec. 135(b)(1) – Career Exploration

- Provide career exploration and career development activities, including in the middle grades, to aid in making informed plans and decisions about future education and career opportunities and programs of study



Sec. 135(b)(2) – Professional Development



- Provide professional development for teachers, faculty, school leaders, administrators, specialized instructional support personnel, career guidance and academic counselors, or paraprofessionals

Sec. 135(b)(3) – Skills Attainment

- Provide within CTE the skills necessary to pursue careers in high-skill, high-wage, or in-demand industry sectors or occupations



Sec. 135(b)(4) – Academic Skills

- Support integration of academic skills into CTE programs and programs of study to support—
 - CTE participants at the secondary school level in meeting the challenging State academic standards adopted under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 by the State in which the eligible recipient is located; and
 - (B) CTE participants at the postsecondary level in achieving academic skills

Sec. 135(b)(5) – Increase Student Achievement

- Plan and carry out elements that support the implementation of CTE programs and programs of study and that result in increasing student achievement of the local levels of performance
 - 20 different possible uses of funds (work-based learning, CTSO costs, industry certifications, support for special pops
 - “Other activities to improve [CTE] programs.”



Sec. 135(b)(6) - Evaluations

- Develop and implement evaluations of the activities carried out with funds under this part, including evaluations necessary to complete the CLNA and the local performance report

Pooling & Admin

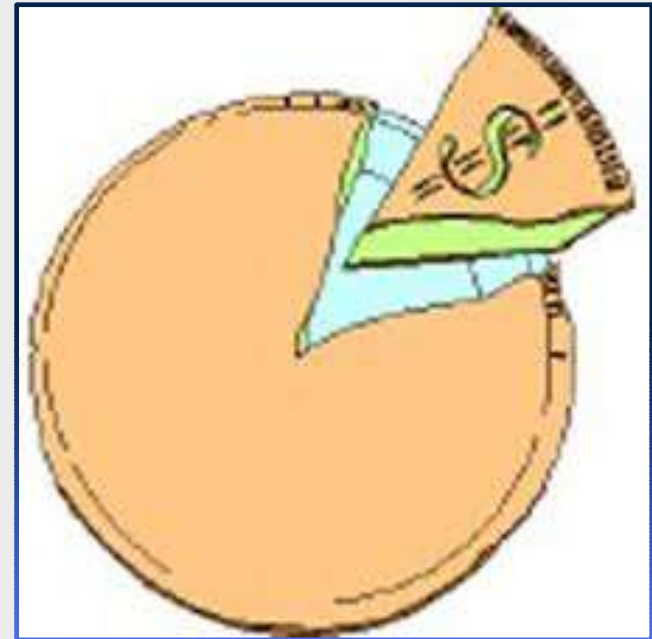
- Locals may pool a portion of funds received with a portion of funds available to one or more local recipients to support implementation of programs of study through the activities described in subsection (b)(2).
- 5% Cap on local admin



Supplanting

Sec. 211(a) of Perkins

- Perkins V funds shall supplement, and shall not supplant, non-federal funds expended to carry out CTE activities.



Presumption of Supplanting

- OMB Compliance Supplement:
 - Required to be made available under other state, or local laws
 - Provided with non-federal funds in prior year
- These presumptions are rebuttable if the college or consortium can demonstrate that it would not have provided the services in question with non-federal funds had the federal funds not been available

EDGAR FINAL CHANGES

NPRM released: January 11, 2024

Final Version released: August 28, 2024 (Effective September 30, 2024)
<https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-17239.pdf>

Final 76.50 – Basic Requirements for Subgrants

- Unless prohibited by applicable statutes or regulations or by the terms and conditions of the grant award, a State may use State-administered formula grant funds –
 - 1. Directly
 - 2. To make subgrants to eligible applicants, as determined by statutes or regulations, or if not addressed in law, as determined by the State; or
 - 3. To authorize a subgrantee to make subgrants
- Grantees are responsible for monitoring subgrantees consistent with 2 CFR 200.332
- If subgranting is not allowed; may contract, as needed for supplies, equipment, and other services.

Hearing Requirements

- Hearing on the record. 34 CFR 76.401
- At a minimum, must include:
 1. Notice;
 2. Opportunity to participate and be represented by counsel;
 3. Opportunity to present and challenge evidence (in writing or through testimony); and
 4. Impartial decision-maker.

Update: Hearing Requirements, 34 CFR 76.401

- Clarifies that aggrieved applicants must allege a specific federal or state statute or regulation has been violated.
 - Secretary may dismiss an appeal without a federal citation after asking the appellant to “show cause” why the appeal should not be dismissed.
 - SEA has 30 days to hold a hearing on the record for the ruling.
 - If SEA did not follow the law, must rescind its action in whole or in part.
 - Subsequent appeals (20 days after decision) to the Secretary must include a federal citation and brief description of alleged violation
- Appeals only for SEAs and related to denial of state-administered formula grant applicants
 - Other appeals of SEA final actions are in 76.783

76.783 State educational agency action— subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

- (1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or
- (2) Terminating further assistance for an approved project.
- **(3) Failing to provide funds in amounts in accordance with the requirements of applicable statutes and regulations.**

(b) The procedures in § 76.401(d)(2)–(7) apply to any request for a hearing under this section.

Uniform Grants Guidance (UGG) Updates

“These revisions will improve stewardship of Federal funds, promote equitable access to programs and services, reduce administrative burden for agencies, applicants, and recipients, and facilitate streamlined and effective oversight and implementation of Federal programs. Among other things, the revisions eliminate several prior approval requirements, increase multiple thresholds that trigger additional requirements, and clarify requirements for agencies and recipients.”
(OMB Memo M-24-11)

OMB Final Update Objectives



Incorporating statutory requirements and administration priorities;



Reducing agency and recipient burden;



Clarifying sections that recipients or agencies have interpreted in different ways; and



Rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms.

Terminology/General Changes

- Current rule uses the term “non-Federal entity”
 - Changed many “non-Federal entity” requirements back to “**recipient**” and “**subrecipient**” as needed for clarification
- Removed unnecessary acronyms (terms only used once)
- Definition Updates:
 - New definition of improper payment
 - Changed thresholds for equipment and supplies
 - Increased MTDC excluded subaward costs
- OMB will further review this part “periodically” versus every 5 years (200.109)

Mandatory Disclosures – 200.113

- Mandatory disclosures (200.113): Applicant, recipients, and subrecipients must **promptly** disclose **whenever it has credible evidence of the commission** a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations under Title 18 or Civil False Claims Act (31 U.S.C. 3729–3733)
 - **Includes both criminal and civil false claims actions**
 - Must be made in writing to the Federal agency, **the agency's Office of Inspector General, and the** pass-through entity (if applicable)
 - Also required to report matters to recipient integrity and performance (i.e. SAM and FAPIIS)
- **Includes any activities or subawards in connection with the Federal award**
- Failure to report can result in remedies for noncompliance (200.339)

Required **Financial** Certifications – 200.415

New (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.”

- This paragraph applies to all tiers of subrecipients

New Whistleblower Protections – 200.217

- An employee of a recipient or subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing 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
 - **Recommendation: add to policies and procedures!**

Statutory and National Policy Requirements - 200.300

New: (b) ... 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, consistent with the Supreme Court's reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

New: (c) ... the Federal agency must take account of the heightened constitutional scrutiny that may apply under the Constitution's Equal Protection clause for government action that provides differential treatment based on **protected characteristics**.

FINANCIAL MANAGEMENT

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Financial Management – 200.302 (b)

(b) Seven standards:

1. Identification in accounts
2. Financial reporting
3. Accounting records (financial obligations)
4. Internal controls
 - Should **align** with Green book or COSO Integrated Framework
5. Budget control
6. Written procedures for federal payment
7. Written procedures for determining allowability

Internal Controls – 200.303

MUST:

- Establish, **document**, and maintain internal controls
- Comply with requirements (including U.S. Constitution)
- Evaluate and monitor compliance
- Take prompt action to correct noncompliance
- Take **reasonable cybersecurity and other** measures to safeguard **information including** personally identifiable information (PII) and other types of information
 - This includes info the federal agency or pass-through designates as sensitive or info the recipient/subrecipient considers sensitive and is consistent with laws re privacy and responsibility over confidentiality

Federal Payment – 200.305(b)

- Must minimize time elapsing between draw down and disbursement
 - Must maintain written procedures to implement the requirements of §200.305 (per § 200.302)
- 1) Advance Payments
 - Limited to minimum amounts needed to meet immediate cash needs
 - Subject to cash management requirements
 - 2) Reimbursements (preferred for construction projects)
 - Federal agency or pass-through must make payment within 30 calendar days after receipt of the payment request
 - Initial payments made with state/local funds

Program Income – 200.307

- Encouraged to earn income to defray program costs where appropriate
 - Must be used for the original purpose of the Federal award
 - May only be used for costs incurred during the period of performance or allowable closeout costs
 - Must be expended prior to requesting additional Federal funds
- (e) Not considered program income:
 - Gov't revenues: taxes, assessments, fines, etc.
 - Property: proceeds from sale of real property, equipment, supplies (but must follow property rules 200.311, 313, 314)
 - License fees and royalties: includes patents, fees, etc.

Program Income – 200.307(b)(cont.)

- The Federal agency should specify what program income method(s) will be used in the terms and conditions of the Federal award.
- Three methods
 - Deduction: deduct PI from total allowable costs; reduce federal award by amount of PI earned (default method)
 - Addition: PI added to federal award (requires prior approval from federal agency except IHEs and non-profit research institutions)
 - Cost **sharing**: may be used to meet cost **sharing** requirement; federal award amount remains the same (requires prior approval of federal awarding agency)

Revision of Budget/Program Plans – 200.308

- Must report deviations from budget or project scope or objective and request prior approvals from Federal awarding agencies **or pass through entities** for budget and program plan revisions
- **The Federal awarding 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.**

Revision of Budget/Program Plans – 200.308 (cont.)

Prior approval must be requested for:

1. Change in scope of objective/project/program
2. Change in **key personnel (including employees and contractors) that are identified by name or position in the federal award**
3. Disengagement from project for 3+ months or 25% reduction in time by approved project director or principal investigator
4. Inclusion of costs that require prior approval, **unless waived**.
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 award (not applicable to change in subrecipients)**. Does not apply to procurement
7. Changes to cost-sharing amount
8. Need arises for additional federal funds for project
9. **Transferring funds between construction and non-construction**
10. **A no-cost extension**



Timely Spending

Financial Obligations – 200.1

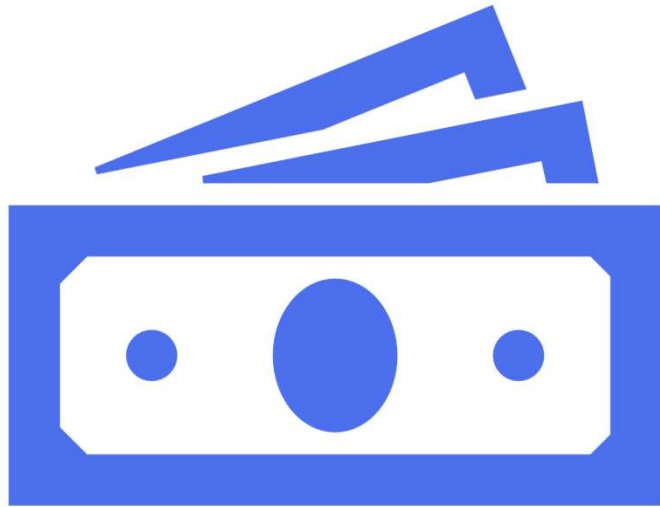
- *Period of performance* (200.1) means the time interval between the start and the planned end date of a Federal award, which may include one or more funded portions, or budget periods.
- Financial obligations means orders placed for property and services, contracts and subawards made, and similar transactions 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**

When do costs obligate? 34 CFR 76.707

Type of Cost	Date of Obligation
Acquisition of real or personal property	On the date on which the State or subgrantee makes a binding written commitment to acquire the property
Personal services by an employee	When the services are performed
Personal services by a contractor	On the date on which the State or subgrantee makes a binding written commitment to obtain the services
Performance of work other than personal services	On the date on which the State or subgrantee makes a binding written commitment to obtain the work
Travel	When the travel is taken
Pre-agreement costs	First day of the period of performance

Closeout & Liquidation – 200.344

- (a) Federal agency or pass-through **must** close out the award when it determines that all administrative actions and required work of the Federal award have been completed.
- (b) Recipient closeout reports: 120 days; subs: 90 days
- (c) SEA must liquidate within 120 days of obligation date
 - Complete scope of work
 - Finish accounting
 - Finalize draw-downs
- LEA has 90 days to liquidate (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 recipient or subrecipient**



Allowability and Cost Principles

Basic Factors of Allowability - 200.403

To be allowable, a cost *must*:

- Be necessary, reasonable and allocable
- Comply with the cost principles and Federal award
- Be consistent with policies and procedures applying uniformly to Federal and non-Federal activities and costs
- Be consistently treated as either direct or indirect costs
- Be determined in accordance with GAAP
- Not be included or used to meet cost sharing / match requirements
- Be adequately documented
- **Administrative closeout costs may be incurred until due date of the final reports. 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.

Direct Costs – 200.413

- Direct Costs: 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.
 - Typically incurred specifically to benefit an award (**including, for example, supplies needed to achieve the award's objectives, and the proportion of employee compensation and benefits expended in relation to that specific award**)
- Most costs are directly charged to the grant
- For costs that cannot be directly charged, grantees have an indirect cost rate

Direct Costs – 200.413(c)

- Salaries of administrative and clerical staff should normally be treated as “indirect” unless all of following are met:
 - Such services are integral to the activity
 - Individuals can be specifically identified with the activity
 - Costs not also recovered as indirect
 - **Removed “such costs are explicitly included in budget or have prior written approval of federal awarding agency”**

Restricted vs. Unrestricted Indirect Cost Rates – 34 CFR 76.560–580

- State and local governments
 - EDGAR 75.561 and 76.561 requires States to negotiate rates with LEAs that want them; accordingly, these entities have a negotiated rate
- Restricted rate programs – 34 CFR 76.563
 - Required for programs with a supplement not supplant provision
 - De minimis rate is an “unrestricted” rate
 - Cannot be used for programs with supplement not supplant provisions

Selected Items of Cost Examples

Alcohol – 200.423

- Not allowable

Entertainment **and Prizes** – 200.438

- 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.**

Advertising and Public Relations – 200.421

Allowable for programmatic purposes including:

- Recruitment of personnel
- Procurement of goods and services
- Disposal of materials
- Program outreach (e.g., **recruiting project participants**)
- Public relations (in limited circumstances)
- Costs of promotional items and memorabilia, ~~including models, gifts and souvenirs~~ are not allowable
- Costs of advertising solely to promote the recipient/subrecipient are not allowable

Professional Development (PD)

Conferences – 200.432

- Generally allowable
- To be considered a “conference,” must disseminate technical information beyond the recipient or subrecipient and be necessary and reasonable for successful performance under the Federal award
- Allowable conference costs include rental of facilities, costs of meals and refreshments, transportation . . . unless restricted by the Federal award
- Costs related to identifying **and providing** locally available dependent-care resources **for participants** are allowable **as needed**
- Conference hosts must exercise discretion in ensuring costs are appropriate, necessary, and managed to minimize costs to Federal award

Training and education costs – 200.473

- Allowable

USDE's High Burden for Food During PD Activities

ED generally does not allow for the purchase of food:

- "Generally, there is a very high burden of proof to show that paying for food and beverages with Federal funds is necessary to meet the goals and objectives of a Federal grant.
- When a grantee is hosting a meeting, the grantee should:
 - Structure the agenda for the meeting so there is time for participants to purchase their own food, beverages, and snacks.
- In addition, when planning a meeting, grantees may want to consider a location in which participants have easy access to food and beverages.
- These determinations will be made on a case-by-case basis, and there may be some circumstances where the cost would be permissible.
- Grantees, therefore, will have to make a compelling case that the unique circumstances they have identified would justify costs as reasonable and necessary."

- Department of Education Guidance on Food, 2014

Travel - 200.475

- Travel costs may be charged on actual cost basis, a per diem or mileage basis or a combination of the two, provided the method used is applied to an entire trip and not selected days of the trip
 - The method used must be consistent with state/local activities and established written policies
- Travel charges must be consistent with entity's **established** written policies
 - Must also document and justify that participation of an individual is necessary for the federal award and costs are reasonable and consistent with written policies.
- Allows costs for "above and beyond regular dependent care" if:
 - Costs are directly related to federal award travel
 - Consistent with **established written** policy for all travel and
 - Costs are temporary during travel period

Participant Support Costs – 200.1

- Participant support costs are allowable.
 - Direct costs that support participants 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 (200.1)
 - Must be defined in your policies and procedures and consistently treated!
- Who is a Participant?
 - 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
 - DOES NOT INCLUDE: Individuals committing effort to develop or deliver the program including consultants, project personnel, or staff members
 - Examples of participants: community members, students, or conference attendees
- Prior approval requirement removed.

Fines, Penalties, Damages – 200.441

- Costs resulting from **recipient or subrecipient** violations of, or 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.

Prohibition on Telecommunications and Video Surveillance – 200.216, 200.471

- Prohibits Recipients and subrecipients from entering into or renewing contracts with certain covered entities
 - 200.471: Telecommunication and video surveillance services or equipment are allowable, *except* prohibited entities under 200.216
- Entities will be incorporated into the excluded parties list in the SAM (www.sam.gov). When a user conducts a search of the excluded parties list, a record will appear describing the nature of the exclusion for any entity identified as covered by this prohibition. (OMB FAQ 47)
 - Recommendation: Check SAM.gov for applicable contracts!

Prior Written Approval – 200.407

§ 200.306 Cost sharing
§ 200.307 Program income
§ 200.308 Revision of budget/ program plans
§ 200.333 Fixed amount subawards
§ 200.430 Compensation – personal services
§ 200.431 Compensation – fringe benefits
§ 200.440 **Exchange Rates**
§ 200.441 Fines, penalties, damages and other settlements
§ 200.442 Fund raising and investment management costs
§ 200.445 Goods or services for personal use
§ 200.442 Fund raising and investment management costs

§ 200.445 Goods or services for personal use
§ 200.447 Insurance and indemnification
§ 200.455 Organization costs
§ 200.439 Equipment and other capital expenditures
§ 200.458 Pre-award costs
§ 200.462 Rearrangement and reconversion costs
§ 200.475 Travel costs

Removed: Real property, Equipment (200.313), Entertainment costs, Participant support costs, taxes.

TIME AND EFFORT REPORTING



What we normally hear...



Forms are confusing



Completing forms takes too much time away from our work



What a waste of paper!



Difficult tracking staff due to staff turnover



Decentralized responsibilities make allocations hard



Lack of adequate communication between program and fiscal staff



Complexity of applying requirements to variety of situations



What is “time and effort”?

- Documentation of Personnel Expenses
 - Employees paid with Federal funds, in whole or in part, must maintain documentation of time worked
 - 2 CFR 200.430(g)
 - Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed.

Who is required to keep time & effort?

- Any employee paid in whole or in part with federal funds
 - Includes: Full time and part time employees, Federal stipends that are considered salary expenses, Substitute teachers (if employees), etc. 200.430(**g**)(1) & (4)
- Any employee whose salary is used to meet a match/cost share requirement
- Time and effort requirements do not apply to contractors!

Documentation Standards

200.430(g)(1): Documentation must...

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and allocable;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting polices and practices; and
6. Support distribution among specific activities or cost objectives.



1. Be Supported by a System of Internal Controls

- What are the best controls?
 - Anything that will support the truth and accuracy of the documentation supporting salaries
 - Verifiable documentation
 - Signatures (not required, but a good control)
 - Electronic signatures are allowable!
 - Documentation from person with first-hand knowledge
 - Policies & Procedures - 200.430(a)

2. Be Incorporated Into Official Records

- No federal standard
- However, time distribution records **MUST** conform to any policies and procedures that your entity has
- Pass-throughs may have specific requirements for subrecipients

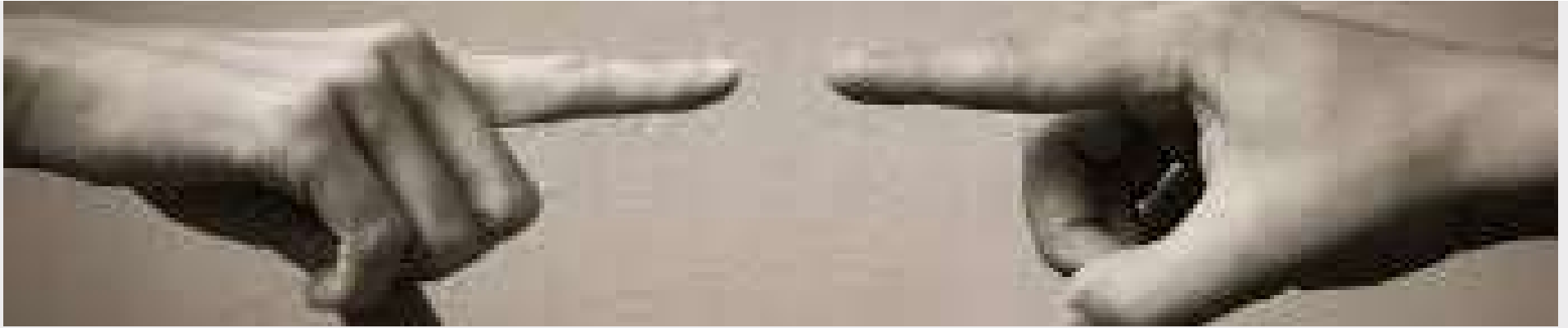
3. Reasonably Reflect Total Activity

- All time (100%) should be documented
- Must be reasonable

Budget Estimates - 200.430(g)(1)(vii)

Budget estimates alone do not qualify as support for charges to Federal awards but may be used for interim accounting purposes if:

- Produces reasonable approximations
- Significant changes to the corresponding work activity are identified in a timely manner
- Internal controls in place to review after-the-fact interim charges based on budget estimates



What if the budget doesn't match effort?

- Two Options:
- (1) Change how the employee is working (program fix)
- (2) Change how the employee is paid (fiscal fix)

What is Significant?

- De minimis benefit (In re Michigan (ED, 1989))
- Limited work on another cost objective does not need to be captured in time and effort records.
- Employees may work 5% or less on another cost objective.
- The work performed on these limited duties cannot deprive a benefit from the intended beneficiaries.

Reconciliation – 200.430(**g**)(1)(vii)(C)

- All necessary adjustments must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.
- Cannot overcharge the federal program!

4. Encompass ALL Activities

- 100% of effort must be recorded, regardless of federal vs. non-federal time
- Make sure you are including all cost objectives

5. Comply With Established Accounting Policies and Practices

- Salary expenses, tracking and reconciliation should all follow the entity's standard accounting practices
- Anomalies are red flags to auditors

6. Support distribution among specific activities or cost objectives

- Allocate costs correctly
- Identify and use accurate cost objectives

What is a cost objective?

200.1: 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.

- Anything that requires separate cost accounting

Procurement

Procurements by States and Indian Tribes – 200.317

- States and Indian tribes follow their own policies and procedures
 - If such policies and procedures do not exist, more restrictive requirements under 200.318 through 200.327 apply.
- State/Tribal procedures must include procurement standards in 200.321, 200.322, 200.323, and 200.327
 - 200.321 – Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.
 - 200.322 – Domestic preferences
 - 200.323 – Procurement of recovered material
 - 200.327 – Contract provisions

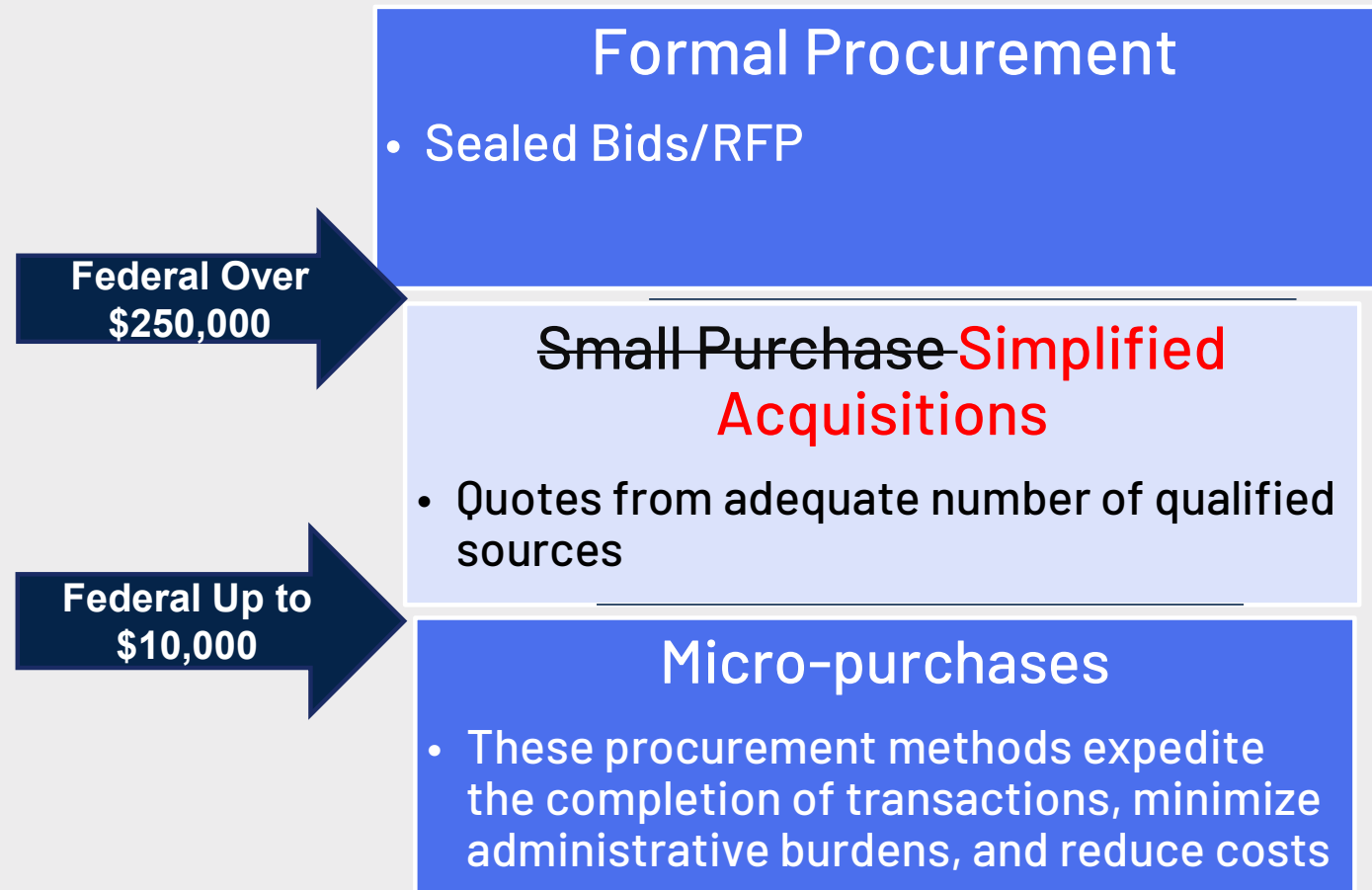
Conflicts of Interest – 200.318(c)

- Maintain written standards of conduct covering conflicts of interest actions of employees engaged in the selection, award, and administration of contracts.
- A conflict of interest arises when any of the following has a financial or other interest in the firm selected for award:
 - Employee, officer, agent, or **board member**
 - Any member of their immediate family
 - Their partner
 - An organization which employs, or is about to employ, any of the parties indicated herein or has a financial or other interest in or tangible personal benefit from an entity considered for a contract

Competition – 200.319 (cont.)

- New Contractor Preferences
 - 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 or products providing services on a contract, and other worker protections
 - 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

Methods of Procurement – 200.320



**But
Don't
forget
state
law!**

Noncompetitive Procurements – 200.320(c) (same under PDE rules)

Allowable only when:

1. The aggregate amount of the transaction is under the micro-purchase threshold
2. **The procurement** transaction can only be fulfilled by a single source
3. There is a public emergency for the requirement that will not permit 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

Contracting with Small, Minority, Women's, or **Veteran**-Owned Businesses – 200.321

- **When possible**, should consider small businesses, minority businesses, women's businesses, **veteran-owned businesses**, and labor surplus area firms (**see DOL's list**).
- Consideration means:
 - Including these businesses on solicitation lists
 - Soliciting whenever deemed eligible as potential sources
 - Dividing separate procurements and establishing delivery schedules to permit maximum participation
 - Use orgs like the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
 - Requiring contractors under a federal award to apply these conditions to subcontracts

PROPERTY STANDARDS

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Property Thresholds



Equipment: tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of **\$10,000** or more per unit



Supply: All tangible personal property other than equipment



Computing Devices: If less than **\$10,000** per unit, defined as supplies

General Equipment Rules – 200.313(b)

- 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 must follow paragraphs rest of 200.313
- Equipment purchases required prior approval (200.439)

Equipment Use – 200.313(c)

- Equipment must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award
- Equipment must be available for shared use, provided such use will not interfere with the purpose for which it was originally acquired, and it follows this order of preference:
 - First by other programs from same agency
 - Then open to other Federal programs
 - Non-Federal programs, **provided such use will not interfere with the purpose for which it was originally acquired**

Replacement Equipment -200.313(c)(4)

- May use sale price of old equipment towards purchase price of replacement equipment
 - Calculate new federal share using % of federal funds initially used to purchase equipment

Inventory Procedures – 200.313(d)

- Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacing equipment) utilizing procedures that meet the following requirements:

1) Property records

- Description, serial number or other ID, source of funding (including FAIN), title, acquisition date and cost, percent of Federal **contribution**, location, use and condition, and disposition date including sale price.
- **Recipient/subrecipient is responsible for maintaining and updating property records when there is a change in status of the property**

Inventory Procedures – 200.313(d)(cont.)

- 2) Physical inventory at least every two years (or more often, if required by State or your own policies)
- 3) Control system to prevent property loss, damage, theft
 - All incidents must be investigated **and reported to the Federal agency or pass-through entity**
- 4) **Regular** maintenance procedures **in place**
- 5) If authorized or required to sell property, proper sales procedures to ensure highest possible return

Equipment Disposition –200.313(e) and (f)

- When property is no longer needed in any current or previously Federally-funded supported activity, must request disposition instruction from the Federal agency **or pass-through entity**.
- Disposition will be made as follows, in accordance with Federal agency **or pass-through entity** disposition instructions:
 - Fair market value more than **\$10,000 (per unit)** = pay Federal share back to federal agency **or pass-through entity**
 - May retain **\$1,000** to cover expenses associated with the selling and handling of the equipment.
 - Fair market value of **\$10,000 or less (per unit)** = no money owed back to feds
- **Equipment retention.** When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.

Supplies – 200.314

- Supplies are an allowable direct charge (200.453). Title to supplies acquired under the Federal award will vest upon acquisition in the recipient or subrecipient.
- If there is a residual inventory of unused supplies **at the end of the period of performance** exceeding **\$10,000** in total aggregate value, and the supplies are not needed for any other Federal award, the State or LEA may retain or sell the 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**
 - OESE provided an SEA guidance in April 2024 that new “unused supplies” definition can apply to current rules.
- Fair market value more than **\$10,000 (aggregate)** = pay Federal share back to federal agency **or pass-through entity**
 - May retain **\$1,000** to cover expenses associated with the selling and handling of the supplies.



Record Keeping

Methods of Collection, Transmission and Storage of Information – 200.336

- When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award information in an open file, non-licensed, and machine-readable formats.
- 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 quality control reviews.
 - Quality control reviews must ensure that electronic conversion procedures provide reasonable safeguards against alteration of records and assurance that records remain in a format readable by a computer system.

Access to Records- 200.337

- 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 **subrecipient or recipient** 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 and subrecipient's personnel for the purpose of interview and discussion related to such documents **or the Federal award in general.**

Required Written Policies

Conflicts of Interest Policy – 200.318(c)

Accounting Policies – 200.306(h)(2)(i); 200.400; 200.430(i)

Time and Effort Policies – 200.430(a)

Fringe Benefits Policies – 200.431

Employee Health and Welfare Policies – 200.437

Travel Reimbursement Policy – 200.475(a)

Required Written Procedures

Real property sales procedures – 200.311(c)(2)

Time & Effort Procedures – ED Cost Allocation Guide

Written Allowability Procedures – 200.302(b)(7); 200.403(c)

Written Cash Management Procedures – 200.302(b)(6) and 200.305

Written Procurement Procedures – 200.318(a), 200.319(d), and 200.320

Procedures for Managing Equipment – 200.313(d)

Participant support cost classification - 200.456

Record conversion quality control - 200.336

Suggested Written Policies and Procedures

Record Retention

Audit Resolution

For the pass-through entity: Subrecipient monitoring (per compliance supplement)

Program Specific Requirements

Subrecipient Monitoring

For example ...

Subrecipient monitoring:

- Finding: Did not follow federal procurement. Used a sole source agreement.
- Considerations:
 - Amount of the contract
 - Term of the contract
 - Justification for sole source
 - Proof of services / delivery
- Noncompliance? Yes.
 - Corrective actions: (Discuss!)
 - Recovery of funds?

Subrecipient monitoring:

- Finding: Did not keep time and effort documentation.
- Considerations:
 - Agency wide or sampled individuals?
 - Available job descriptions? Available for interviews?
 - Employees split funded?
- Noncompliance? Yes.
 - Corrective actions: (Discuss!)
 - Recovery of funds?

Subrecipient monitoring:

- Finding: Lapsed funding.
- Considerations:
 - How much (in comparison to overall award amount)
 - Did you meet grant-mandated set-asides?
 - Budget/plan to increase spending?
- Noncompliance? No.
 - Recommended actions (Discuss!)

Subrecipient monitoring:

- Finding: Questioned / unallowable costs
- Considerations:
 - Clearly unallowable? Gray area?
 - Budgeted?
 - Documentation issue?
- Noncompliance? Yes.
 - Corrective actions (Discuss!)
 - Recovery of funds?

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Questions???



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