



March 23, 2020

U.S. Office of Management and Budget
725 17th Street, NW
Washington, DC 20500
Attn: Office of Federal Financial Management

RE: Docket ID: OMB-2019-0005

To Whom it May Concern:

The American Institute of CPAs (AICPA) is the world's largest member association representing the CPA profession, with more than 429,000 members in in the United States and worldwide, and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including business and industry, public practice, government, education and consulting. The AICPA sets ethical standards for its members and U.S. auditing standards for private companies, nonprofit organizations, federal, state and local governments. It develops and grades the Uniform CPA Examination, offers specialized credentials, builds the pipeline of future talent and drives professional competency development to advance the vitality, relevance and quality of the profession.

On behalf of the AICPA and its Governmental Audit Quality Center (GAQC), we appreciate the opportunity to comment on the *Federal Register* (FR) Proposed Guidance document titled, *Guidance for Grants and Agreements*, which ultimately would result in proposed revisions to 2 CFR 25, *Universal Identifier And System For Award Management*, 170, *Reporting Subaward and Executive Compensation Information*, and 200 *Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards* (Uniform Guidance). We support OMB's efforts to update this regulation. However, we have a number of comments on the proposal which are included in the Appendix to this letter.

This comment letter was prepared based on input received by members of the AICPA GAQC Executive Committee that have significant experience in performing single audits. We would be happy to discuss these comments with representatives of OMB. Please contact me at 202-434-9259 or mary.foelster@aicpa-cima.com if you have any specific questions or would like to schedule a follow-up discussion.

Sincerely,

A handwritten signature in black ink that reads "Mary M. Foelster".

Mary M. Foelster
Senior Director, Governmental Auditing and Accounting

cc: GAQC Executive Committee

Significant Comments

Section 200.110. Effective/applicability date. This section states that “the standards set forth in this part that affect the administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final.” We are unclear about how this effective date is to be operationalized and whether federal agency action by some or all agencies will be needed for it to become effective. If that is the case, we strongly recommend OMB add language back to this section providing the agencies a hard deadline for taking whatever action will be needed. We cannot have a situation where the revised 2 CFR 200 becomes effective for some but not all agencies as it will result in a significant burden to recipients who will have to adapt to a variety of rules depending on their mix of awarding agencies and effective dates. It will also add much complexity to the ensuing audits. Separately, we found the new second paragraph discussing negotiated indirect cost rates to be unclear with the potential to be misinterpreted. For example, could currently negotiated indirect cost rates remain in place past the effective date of the rate in the negotiated indirect cost rate agreement? Further, the intent of the last sentence describing how federal awarding and indirect cost rate negotiating agencies use the Uniform Guidance for both generating proposals and negotiating rates is not clear. We suggest OMB revise this new language for clarity to ensure an appropriate understanding.

200.1 Definitions, Internal Control and Internal Control over Compliance Requirements for Federal Awards. We strongly recommend that OMB not make the proposed changes to these definitions. The changes that were made make “internal control” apply to non-federal entities and “internal control over compliance for Federal awards” apply to federal awarding agencies. The existing definitions relate both terms to internal control at the *non-federal entity level*. In particular, the revision to the definition relating to internal control over compliance is problematic because “internal control over compliance” is used elsewhere in the Uniform Guidance (e.g., section 200.514 and 200.515) to describe auditor responsibilities over *non-federal entity* internal control over compliance. Additionally, “internal control over compliance for Federal awards” is not used elsewhere in the Uniform Guidance. We believe it is inappropriate for OMB to define a term in 200.1 that is not used elsewhere.

200.1, Period of Performance. The proposal states that the changes in this area are intended to clarify that the recipient may not incur obligations during the entire period of performance in instances where a federal awarding agency incrementally funds the federal award and funding has not been received for a subsequent budget period within the period of performance. Although this may have been the intent, we found the changes made in this area, inclusive of the change in definition for period of performance to be very confusing. This is an area that is already challenging in practice and the proposed changes add confusion. Specifically, we have the following concerns and questions:

- The definition of period of performance in section 200.1 instructs readers to see *Budget Period*. The budget period is often a subset of the total award period. The definition appears to be describing something more commonly referred to as the award period in the forms used by most agencies. If that is the case, how will an auditor determine the “anticipated time” used in the updated definition?
- We are also unclear as to why section 200.308, *Period of Performance*, was removed. That leaves the concept primarily only addressed in the definitions section which is not ideal.
- Per the definition section, the period of performance is between the start and end of the initial federal award or renewal. What are non-federal entities to do should an award not be renewed

timely? Are the costs after the end of the initial federal award unallowable? Is it safe to assume that the projects funded by grant dollars will not stop mid-stream while awaiting renewal?

Ultimately, it is important for OMB to be clear about whether when testing period of performance, the auditor should be testing cutoff of the overall award period or whether they should be testing cutoff with the budget period. It will also be important for the OMB *Compliance Supplement* to be aligned to whatever the ultimate requirement will be. See also our other comments below which identify other specific issues in this area.

Procurement. In prior discussions with OMB and during previous Single Audit Roundtables, the challenges between linking the Uniform Guidance micro-purchase and simplified acquisition thresholds with the FAR have been discussed. It appears that the problems we have today, with significant delays between threshold increases being issued by law and then delays with FAR updates, will continue. This disconnect has caused significant challenges from a single audit perspective and, as a result, OMB has had to issue guidance instructing auditors not to write findings in this area. Therefore, we recommend that OMB consider removing auditor requirements around testing compliance with the micro-purchase and simplified acquisition threshold requirements going forward. We have several other comments on other specific changes proposed in the procurement area below in the Other Comments section below.

200.513. Responsibilities. We recommend OMB delete subsection (a)(3)(ii), “Governmentwide Project to Determine the Quality of Single Audits,” as we believe there are more efficient, effective, timely, and less costly ways for the goal of this provision to be met; many of which are already ongoing. The AICPA is fully committed to enhancing the quality of all audits, including single audits. That commitment has been demonstrated in many ways over the years including the launch of the GAQC, the profession’s enhancing audit quality efforts which have included an emphasis on single audits, and resulting improvements to our peer review program. While our recommendation to remove this provision may seem counter to that commitment, we would like to stress that is far from the case. Instead, we believe an effort should be made to explore alternatives to the current regulatorily-required, statistically based quality study that would focus on improving quality and that could occur on a much more real-time basis. For example, such alternatives might include the following: (1) working with the agencies’ Offices of Inspector General to more formally communicate matters that are being found on the quality control reviews (QCRs) being performed on an ongoing basis; (2) the AICPA could regularly provide OMB and the agencies with information about single audit quality being gleaned from the peer review process and enhanced oversight reviews; and (3) OMB and the agencies could use the time and resources it would take carry out a formal study to place more emphasis on developing a strong, well-developed, and timely OMB *Compliance Supplement* which, in our view, is critical to the performance of a high quality single audit. Taking this kind of approach will also ensure that trends and other key areas that need emphasis are identified and communicated to the auditor community on a real-time basis versus on a 6-year schedule. If OMB accepts this recommendation, we would welcome the opportunity to work collaboratively with the various stakeholders to further develop the alternatives. However, if OMB determines this provision will be retained in the regulation, we recommend the following:

- The revised date in the regulation for the project is for audits that are submitted in 2021 which would generally result in the project focusing on audits being performed in 2020. Considering the unprecedented situation our country is currently in relating to the Novel Coronavirus, we would strongly recommend that date be revisited and pushed out even further. Our recommendation would be for OMB to revise the language to “audits submitted in 2023 or later as determined by

OMB.” Our hope is that today’s uncertainty would be resolved by then, but our language would also provide OMB with the latitude to extend the date further if necessary.

- Another revision was made to this section to indicate that the project may rely on the current and ongoing quality control review work performed by agencies. We appreciate this was likely added to relieve some of the burden of the project. However, in light of the fact that OMB left the requirement in for the project to result in a statistically reliable estimate, we are unclear how the ongoing QCR work being done by the agencies could be used for that purpose since it is our understanding that engagements selected for review by the agencies are based on certain pre-defined criteria. Therefore, we recommend OMB reconsider this addition if the requirement for a statistically based estimate is to be retained.

200.516 Audit findings. In subsection (a)(1), OMB should eliminate the requirement to report a federal award finding for significant instances of abuse. We believe the concept of reporting abuse findings was originally included in this section to align with *Government Auditing Standards* (the Yellow Book). However, now that the 2018 Yellow Book has eliminated the responsibility to report abuse, we believe OMB should do the same and remove it from this section. OMB should be aware the even though the reporting of abuse findings has been removed, the 2018 Yellow Book does include application guidance instructing that evaluating internal control in a government environment may also include considering internal control deficiencies that result in waste or abuse. That application guidance would also apply to the compliance audit performed in a single audit.

Impact of Certain Changes on Future Single Audits. There are various changes proposed where it is unclear whether there could be future implications for single audits. For example, sections 200.202 *Program planning and design*; 200.210, *Information contained in a federal award*; and 200.301, *Performance measurement*; all emphasize performance and include an encouragement that more information about performance goals, indicators, milestones, or expected outcomes be included in federal awards. We fully support the federal government emphasizing performance with recipients. However, we are unclear about whether, with the addition of this information in federal awards, there is an intention to scope such provisions into the required audit of compliance. If so, it is important for OMB to consider that the single audit is currently designed for the auditor to provide assurance on the financial statements and compliance and not necessarily performance. Separately, we noted the proposal also describes other new requirements such as the Never Contract with the Enemy, Promoting Free Speech, Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment, and Domestic Preferences for Procurements, some of which will require certain information to appear in federal awards. Again, it is unclear as to whether there is an intent for requirements associated with these rules to be considered in the scope of the single audit. If there is a desire by OMB for audit assurance in any of these areas, we suggest OMB consult with various stakeholder groups, including the AICPA, to determine whether another type of engagement would be necessary before adding requirements to the OMB *Compliance Supplement*.

Uniform Guidance Frequently Asked Questions. We noted that in a few cases, it appears that OMB transferred guidance that has previously been included in the CFO Council’s Uniform Guidance Frequently Asked Questions (FAQs) into this proposed guidance. For example, section 200.101(b)(1) was revised to add the definitions of “must” and “should” which came from FAQ .303-2. However, we question why certain other FAQs were not incorporated. For example, FAQ .511-1 includes a provision stating that the auditee must submit the corrective action plan on auditee letterhead and that an auditee may not simply reference the “views of responsible officials” section of the findings to fulfill its responsibility for the preparation of a corrective action plan. We are concerned that this information was not proposed as a change

in section 200.511(c) of the Uniform Guidance. OMB should incorporate the change to section 200.511(c) and then perform a detailed review of the FAQs to ensure that any “must” requirements are included in the final guidance document issued by OMB.

Other Comments

State References. We noted that certain definitions and various other sections of the regulation refer to States. In several of our detailed comments below, we question whether the reference and/or section should also refer to other types of governments (e.g., tribes). OMB should check all State references throughout the regulation to determine whether they should be broadened to include other types of governments or tribes.

Background and Objectives. This section states the following: “The intent is to clarify that the recipient may not incur obligations during the entire period of performance in instances where a Federal awarding agency incrementally funds the Federal award and funding has not been received for a subsequent budget period within the period of performance.” The word “obligations” by itself is no longer included in the definitions and we question whether it should be. If not, OMB should consider whether another term should be used in its place here.

25.100, Purposes of this Part. This section modified the introduction to indicate it provides guidance to recipients. Previously, it stated that it provided guidance to agencies. We question why it is not also relevant to refer to agencies, especially since OMB recognizes that agencies also receive awards in this section. This needs clarification especially since the term "Recipient" is defined in section 200.1 as a non-federal entity.

25.110, Types of Recipient and Subrecipient Entities to which this Part Applies. Subsection (a) states that this section applies to all federal agencies and non-federal entities except for those "exempted by statute or exempted in paragraphs (b) and (c)." If the ultimate goal of including information in the System for Award Management (SAM) is to provide access to public information, OMB should consider whether tribes, which are included in the definition of non-Federal entities, are exempted by statute given the nature of some of the language in the Indian Self-Determination and Education Assistance Act or, whether given their unique relationship, tribes should be included in part 25.110(c) as a specific exemption.

25.325, For-Profit Organization. We are aware that Treasury and the Internal Revenue Service are focusing on providing clarifying guidance for tribal chartered entities which can take many different names or forms. Therefore, OMB should consider whether this section should include for-profit tribal chartered entities.

Appendix A to Part 25—Award Term, Part I. System for Award Management and Universal Identifier Requirements. Subsection A, *Requirement for System for Award Management*, uses “federal award” versus “contract or grant” inconsistently throughout. OMB should revise this section for consistency.

170.200, Federal Awarding Agency Reporting Requirements. The word “pubically” is misspelled. Also, OMB should replace the term “obligations” as used here since it is no longer defined.

170.305, Federal Award. The phrase “...non-Federal agency of Federal agency...” should be revised to “...non-Federal agency or Federal agency.”

170.315, Executive. Our read of this definition is that it would not include elected officials since they are not employees or members of management. If that is not the intent, OMB should consider clarifying the definition since many recipients of federal awards are state and local governments with elected officials.

Appendix A to Part 170, Part I, Reporting Subawards and Executive Compensation. Subsection (a)(1) was revised to read: “you must report each action that equals or exceeds \$30,000 in Federal funds.” Elsewhere in the existing Part I of this Appendix (which was not revised), it refers to “*obligating actions*.” OMB should consider whether “obligating” should be added before “action” in this revised sentence for consistency.

200.1 Definitions. The section numbers were removed from each definition. We have found those numbers to be helpful when referring to specific paragraph references with clients, in findings, etc. This change also creates a challenge when looking back to older documents that reference specific sections whose numbers have now been removed. The proposed guidance states that this change was made to accommodate future additions. To the extent such additions will not be made for another 5 or more years, we recommend the section numbers be reinstated and maintained until such time as new definitions are developed and ready to be added.

200.1 Definitions, Capital Assets. In this definition, software is appropriately listed as a capital asset, but it should be listed separately and not as a subset of intellectual property. Also, in this definition, “FSAB standards” should be revised to “FASB standards” and “leasee” should be revised to “lessee.”

200.1 Definitions, Federal Share. Revise “federal” in the term “federal award” to be capitalized (Federal) like it is throughout this Part.

200.1 Definitions, GAGAS. By removing the header showing the term being defined, the regulation has lost the full name of GAGAS. We recommend using “Generally accepted government auditing standards (GAGAS)” as the term being defined, rather than just “GAGAS.”

200.1 Definitions, Highest Level Owner. We are confused by this definition and suggest also adding a definition for “owner” so the concept of “highest level owner” has more context. It would also seem offeror should be defined as well since it is used in the definition.

200.1 Definitions, Hospital. This definition describes hospitals that are operated by a state or subdivision of state. OMB should consider whether this definition should be broadened to include those hospitals operated by other types of governments like tribes.

200.1 Definitions, Improper Payment. Instead of defining this term in the regulation, the definition has been revised to refer to OMB Circular A-123. This seems contrary to the effort being made to centralize the definitions into section 200.1 and we encourage OMB to include the detailed definition in this regulation. Separately, we appreciate the addition clarifying that questioned costs are not an improper payment until reviewed and confirmed to be improper by a federal awarding agency. The difference between improper payments and both known and likely questioned costs are often confused; however, each one has a fundamentally different definition established by law or regulations. Anything that OMB can do to provide further clarity to these terms would aid in reducing the misinterpretation and misuse of these reported amounts.

200.1 Definitions, Institutions of Higher Education (IHEs). As noted in a previous comment, it appears there is an effort being made to centralize all definitions in one place. OMB should consider whether there is a way to add this definition to this regulation to further that purpose rather than just referring to another location.

200.1 Definitions, Micro-purchase. Currently the definition of “micro-purchase threshold” is included as part of the “micro-purchase” definition. We recommend it be made its own separate definition so it can be easily identified. We have several other comments on the “micro-purchase threshold” definition as follows:

- Why modify this definition with the word "Generally" when saying that the micro-purchase threshold is not to exceed the FAR amount unless a higher threshold is approved? If there are further exceptions, we recommend they be described in this definition. Otherwise, we suggest removing the term "Generally" because it could be misleading.
- In the parenthetical phrase about a higher threshold requested, OMB should add "for indirect costs" after "cognizant agency" for accuracy and to be consistent with the definition of "cognizant agency for indirect costs" above. Also, OMB should add an "s" at the end of "micro-purchase" in the second sentence.

200.1 Definitions, Modified Total Direct Cost. While there was no change made to this definition, the discussion of exclusions including “up to the first \$25,000 of each subaward” and “the portion of each subaward in excess of \$25,000” differs from the discussion of similar exclusions in some of the Appendix to the Uniform Guidance covering indirect costs. This has created confusion in practice. The Appendix language for similar bases (total costs less exclusion) indicates they may exclude the first \$25,000, but certain agencies have interpreted this section to indicate that the first \$25,000 must be included in the base, as opposed to opting to exclude the total amount of all subawards. We recommend OMB take this opportunity to clear up the confusion in this area.

200.1 Definitions. Oversight Agency for Audit. This definition was revised and we are confused by the new sentence: “When the direct funding represents less than 25 percent of the total funding received from the non-Federal entity (as prime and subawards), then the Federal agency with the predominant amount of funding is the designated oversight agency for award.” First, instead of “received from the non-Federal entity” we believe it should be “received by the non-Federal entity?” Also, we believe the parenthetical “as prime and subawards” is confusing. We would suggest a revision as follows for clarity: “When the funding received directly from a Federal awarding agency represents less than 25 percent of the total funding received by the non-Federal entity (i.e., both funding received directly and through subawards), then the Federal agency....”

200.1 Definitions, Simplified Acquisition Threshold. This definition was revised to add a new paragraph which includes a statement that “Thresholds differ from the FAR.” This expansion to the definition implies that non-federal entities can have higher thresholds if they have internal controls, evaluate risk, etc. We recommend OMB clarify that non-federal entities should determine their own thresholds but that they cannot be higher than the FAR amount. Further, the addition to this definition includes that “States, IHEs and local governments should determine if local government laws on purchasing apply.” It does not seem appropriate that a definition contains a “should” statement. If this sentence is integral to the definition it should be rewritten to be more of a statement; alternatively, it should be moved elsewhere in the regulation.

200.1, Subsidiary. It appears this definition is being added to address the proposed new requirement that federal financial assistance applicants provide information in SAM on their immediate owner and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a federal contract, grant, or cooperative agreement within the last three years. We believe “subsidiary” as defined here will be challenging for governments and not-for-profits to apply since the concept of ownership in the definition rarely applies. Additionally, just because an entity owns more than 50% of another entity does not automatically mean it is a subsidiary under GAAP.

200.1 Definitions. Subrecipient. The updates made to this definition do not appear grammatically correct. We suggest the following rewrite: “*Subrecipient* means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. A subrecipient is usually a non-Federal entity but may be another type of entity. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

200.1 Definitions. We noted several places in new or revised text that OMB is introducing terminology that is not defined and has not been used in the current version of the regulation. For example, the document introduces “prime applicants,” “prime recipients,” “prime award,” “prime award reporting,” “prime awardees,” “systemic audit findings,” and “non-systemic audit findings,” and “direct funding,” among others. All new text included in the regulation needs to be carefully reviewed by OMB to ensure that the terminology used is consistent with defined terms in the regulation. Alternatively, OMB should include the new terms in the list of definitions in 200.1.

200.101, Applicability. We appreciate OMB incorporating the meaning of “must” and “should” in subsection (b)(1). However, this discussion has been placed under the subheading of “Applicability to different types of federal awards” which seems unrelated to the topic discussed. Instead, we recommend it be made its own new subsection within section 200.101 under a subtitle of “Requirements and Recommended Approaches.” Alternatively, it could be made its own separate section of the regulation. We believe it is an important discussion that should be placed in a location that will be more apparent to all users of 2 CFR Part 200.

200.102, Exceptions. We have the following comments on this section:

- *Subsection (a).* With an increased emphasis on federal agencies requesting OMB exceptions in subsection (d), a requirement should be established in this section for federal agencies to clearly document and make public what exceptions have been granted, including differences that arise from changes agencies make to the requirements in 2 CFR 200 in their agency adoption of the regulation. This is a problem in today’s environment as there is lack of transparency surrounding agency exceptions. Further, to ensure there is a clear understanding of all exceptions, OMB should establish a central Web location where all such exceptions are posted and described. Otherwise, every recipient and grantee will have to search numerous agency Web sites and there is a high likelihood the exceptions will be overlooked due to the difficulty in identifying them.
- *Subsection (b).* Again, this section should be revised to include how agencies are to clearly identify what exceptions and restrictions have been established to ensure that recipients and auditors are aware of them.

- *Subsection (d)*. This new section has been added encouraging agencies to request exceptions in support of "innovative program designs" that alleviate select compliance requirements and hold recipients accountable for good performance." This change does not yet seem to have an effect on auditors, but as noted in our comment "Impact of Certain Changes on Future Single Audits" in the Significant Comments section above, there could be audit challenges. Also, OMB should replace the word "apple" with "apply" to correct a typographical error.

200.205, Federal Awarding Agency Review of Merit of Proposals. The last sentence of this section states that federal agencies must systematically review award selection criteria for effectiveness. OMB should consider defining effectiveness for this purpose to ensure consistent application by agencies. Also, in the following sentence, "...delivering results based on the program objectives *outlines* in section §200.202," OMB should replace the word "outlines" with "outlined."

200.208 Specific Conditions. In subsection (b), the proposed changes provide federal awarding agencies and pass-through entities the ability to impose less restrictive federal award conditions. However, while there is guidance in this section for the types of actions an agency might take to impose more restrictive or additional award conditions, no similar guidance was added for the types of actions an agency might take to provide less restrictive conditions. This new provision could more effectively be implemented by federal agencies and pass-through entities if additional guidance is incorporated into section 200.208 on how less restrictive conditions could be utilized.

200.211, Information Contained in a Federal Award. We have the following comments on this section:

- *Subsection (a)*. This subsection has a typographical error that we suggest OMB correct as follows: "The Federal awarding agency must include in the Federal award ~~of~~ the timing and scope of expected performance by the non- Federal entity..."
- *Subsection (b)(5) and (6)*. Both sections were revised to include discussion of budget period. See our comment above in the Significant Comment section titled, "Period of Performance" relating to our confusion over whether the expectation will be for auditors to test period of performance or the budget period.
- *Subsection (e)*. This new section prohibits federal awarding agencies from including references to non-binding guidance in the terms and conditions of award. We fully support this addition to the regulation.

200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. OMB should consider adding additional implementation guidance for determining how grantees could effectively determine whether contracting entities utilize covered technology. One example could be to include a provision in contract agreements (i.e., add to Appendix II) where the contracting entity would certify that they do not use covered technology. In addition, what exceptions are in place for a rural grantee where the sole contractor available is not in compliance with this provision? It would be helpful if OMB can address this situation directly in the Uniform Guidance. Finally, for efficiency purposes, it would be most useful if OMB could revise this section to include the definition of covered technology instead of referring to another law.

200.305 Federal payment. While the proposed changes to this paragraph are quite minor, we believe an important opportunity to clarify federal payment rules has been missed and we suggest it be specifically addressed. In particular, the interpretation of when the “disbursement” (i.e., paragraph 200.305(b)) of funds is measured varies in practice. Some non-federal entities interpret a disbursement as coinciding with the occurrence of an expenditure similar to how they would measure that expenditure under GAAP. This interpretation also aligns with the measurement of expenditures in the historical “Period of Performance” rules which focus on when an expenditure has been incurred and not when it is paid. Others interpret “disbursement” as meaning the non-federal entity’s actual subsequent payment for a purchase, the expenditure for which has been incurred at an earlier point in time. Practically speaking, most accounting systems are maintained on an accrual basis of accounting, so the incurrence of an expenditure is tracked in the normal course of business and in the project cost records of the non-federal entity. These project cost records are frequently used to monitor adherence to rules about minimizing the time between payment of advances to the non-federal entity for those on the Advance Payment Method and ensuring a “disbursement” has been made before a request for reimbursement for those on the Reimbursement Payment Method. Since accounting systems are not often configured to capture the physical payment date for purchases at the project or federal award level, measuring and monitoring disbursements based on physical payments for purchases is not always practical for many non-federal entities. Again, we suggest OMB take this opportunity to clarify this area in the final guidance it issues.

200.309 Period of Performance. The proposal removes this section which we are confused by, especially since this means that period of performance is only covered in the definitions section. See our related comment in the Significant Comments section above titled, “Period of Performance.”

200.312, Equipment. Subsection (b) specifies “A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures.” We recommend the same type of exemption for tribes, in accordance with tribal laws and procedures. See our related comment above titled “State References.”

200.319 Methods of procurement to be followed. We have the following comments and concerns on this section (see our related concern on the definition of simplified acquisition threshold above):

- *Subsections (a)(1)(iii) and (2)(ii).* In discussing thresholds that differ from the FAR, these sections have been revised to state that 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. This added language seems to incorporate entity judgments which could then be challenged without further instructions from OMB. It would also seem to introduce a higher likelihood that federal agencies and pass-through entities might “instruct” non-federal entities to lower their procurement thresholds based on results of monitoring and/or the single audit.
- *Subsection (a)(1)(iii).* This paragraph discusses requesting approval for a higher micro-purchase threshold from the cognizant agency for indirect costs. However, it would be helpful for OMB to be more specific as to how to an entity would do that. For example, would a non-federal entity contact the area office of its cognizant agency for indirect costs? Also, what happens if the non-federal entity does not have a cognizant agency? This should be clarified by OMB.
- *Subsection (a)(1)(iv).* We support the expansion of the ability to request a higher micro-purchase threshold to all non-federal entities as it will be effective in further reducing administrative burden.

However, many subrecipients lack a known cognizant agency for indirect costs. Without OMB providing further implementing guidance, subrecipients will need to seek a determination of who their cognizant agency for indirect costs is. In those cases, because the non-federal entity will not need an actual negotiated indirect cost rate, we believe there will be scenarios where federal agencies will not be willing to accept the relationship and review the micro-purchase threshold increase. OMB should address this situation directly in this section. Also, the end of this paragraph recognizes that values used to set the micro-purchase thresholds must also be consistent with state law. We believe that for a tribe, the threshold should be consistent with tribal law. Therefore, we recommend the following edit: “Values used to set micro-purchase thresholds must also be consistent with any applicable state or tribal law.”

200.321 Domestic Preferences for Procurements. OMB needs to provide more clarity in this section or there will be inconsistency in practice or potential misapplication. Our specific comments and concerns follow:

- This section states that: “the non-Federal entity should, *to the greatest extent practicable* under a Federal award, provide a preference for the purchase, acquisition, *or use of goods, products, or materials* produced in the United States...” First, what does “to the greatest extent practicable” mean? How will that be interpreted by both federal agencies, pass-through entities, and subrecipients? Second, as it relates to the use of goods, products or materials produced in the U.S., we are unclear about how far down the chain a non-federal entity would need to go to comply with this requirement. For example, is this meant to ensure that all components and subcomponents used in manufacturing come from the U.S. or is it only that the final manufacturing is meant to occur in the U.S. (assuming the final manufacturing constitutes substantial transformation)?
- This section also requires that the domestic preference language be added to all subawards, purchase orders and contracts funded with federal awards. To ensure this provision is not overlooked, we recommend OMB add this to the subaward requirements included in section 200.331 and in the contract provisions found in Appendix II.
- What is the expectation for incidental items that comprise in total a de minimis amount of the total cost of the iron, steel and manufactured goods used in the project (like a bolt, screw, wire, switch, etc.)? Some federal agencies provided waivers for these types of items relating to similar provisions in the American Recovery and Reinvestment Act.
- For those grants that already contain Buy American provisions, how will grantees reconcile between the two requirements?

200.328, Monitoring and Reporting Program Performance. OMB should add the ending parenthesis in the last sentence in subsection (b).

200.331, Requirements for Pass-Through Entities. We have the following comments on revisions made to this section:

- *Subsection (a)(4)(ii).* We recommend OMB make several clarifications to this subsection to address the following questions: (1) Would there be any time parameters or other rules around looking to a negotiated rate with another pass-through entity? (2) Could it be any pass-through

entity? (3) Would it be any pass-through entity subaward that was in place when the new subaward negotiation took place? (4) What if there is a subaward with another pass-through entity but that other subaward has been closed and there are no other active subawards to anchor to?

- *Subsection (a)(4)(iii)*. This section says that if no federally approved rate exists, the pass-through entity must accept one of three rates, one of which is the de minimis, defined as 10%. We are aware of cases when a subrecipient does not have a federally approved rate and is charging less than the 10% de minimis rate, simply because it does not incur that level of indirect costs and does not want to overcharge. This section should be revised to state that the pass-through entity would allow to accept that lower rate.
- *Subsection (d)(4)*. This section needs significant clarification and revision in the following areas: (1) It introduces the notion of systemic and non-systemic audit findings which are not defined elsewhere. Instead, OMB should refer to audit findings relating only to the subaward versus audit findings that affect multiple federal programs or subawards. (2) It is unclear who is responsible for following up on the “systemic” issues or even whether resolution of those findings is needed. This is important and needs to be clarified. (3) In stating that the pass-through entity “may rely on the subrecipient’s auditor,” there is a problematic implication that the auditor is part of the subrecipient’s internal control system which is inappropriate. Alternatively, one could read it to mean that somehow the auditor would be issuing a management decision which is also problematic. OMB should limit the reference here to only the single audit report. (4) Also, what if there is no cognizant agency? Who is responsible for ensuring the finding is resolved? (5) If OMB retains a reference to “cognizant agency,” modify the reference to “cognizant agency for audit.”

200.335, Methods for Collection, Transmission and Storage of Information. The revisions to this section leave unclear about whether PDFs will continue be an acceptable substitution for “paper” versions of documents in the future. Without the explicit ability to use PDFs as a bridge between “paper” and “machine readable formats,” this section, as written, could cause uncertainty on whether the current practice of using PDFs will continue to be acceptable in the near future.

200.343, Closeout. In subsection (a), we assume that the 120-day deadline is being provided only for direct recipients; however, it is currently unclear. If so, the first sentence of this section should be revised to “Non-Federal entities receiving federal awards directly from a Federal awarding agency must submit, no later than 120 calendar days after the end date of the period of performance, all...” Also, in subsection (g), an “s” is missing at end of “all closeout requirement...” and in subsection (h), “Federal Award” should be “Federal award.”

200.414, Indirect (F&A) costs. We have the following comments on this section:

- *Subsection (h)*. This section states that “All rate agreements from non-Federal entities must be available publicly on an OMB-Designated Federal website.” We question whether “from non-Federal entities” is the correct phrase here or whether it should be “of non-Federal entities.” OMB should clarify this. Also, we would encourage OMB to focus on comments received from the recipient community on this change to understand the issues that some may have with making this information public. If retained, other questions that we believe should be addressed to avoid confusion in practice are: (1) Does this apply to negotiated rates only? (2) Whose responsibility is it to place the rate agreements on the OMB-Designated Website and what specific site is required?

(3) Are de minimis rates required to be published too? (4) When does this requirement start? (5) Does this requirement apply to tribal organizations?

- *Subsection (f)*. We appreciate the additional flexibility in electing to charge a de minimis rate of 10%, and the burden relief it provides by not having to substantiate it. However, there are entities that want to elect to charge an even lower rate, because they simply do not incur that level of costs and would not choose to charge more than necessary to cover their costs. In conversations with OMB, that approach has been deemed acceptable, but it would help if it were acknowledged and clarified in 2 CFR Part 200, as there are several places that discuss the de minimis rate.

200.415, Required Certifications. We have received questions over time about the provision in subsection (a) that indicates that the “annual and final fiscal reports *or* vouchers” requesting payment under the agreements must include a certification and whether the use of “or” in this sentence means that the auditee can use either “annual and final fiscal reports” or “vouchers” to comply with the certification requirement? Based on conversations with agency representatives, we believe the answer to this question is yes. Therefore, we recommend the following clarification to this section: “....to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, either (1) the annual and final fiscal reports or (2) vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows...”

200.500, Financial Statements. Subsection (b)(6) states that the schedule of expenditures of federal awards must include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in section 200.414, *Indirect (F&A) costs*. Over time, we have heard questions about how this requirement should be viewed when the de minimis rate is only used on one grant or project. Similarly, questions have arisen about how this requirement would be affected by situations where the auditee uses the de minimis rate on more than one grant or project, but not all, in terms of whether the auditee needs to specify which grant(s) or project(s) it used the de minimis rate on, and which it did not. We recommend this subsection be revised as follows to address these commonly asked questions: “the schedule of expenditures of federal awards must include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in §200.414 *Indirect (F&A) costs*. When an auditee uses the de minimis rate on only one grant or project, the auditee may indicate in the notes that they have elected to use the de minimis rate. However, the auditee is only required to indicate in the notes whether or not they have used the de minimis rate and is not required to describe the extent to which it has been used on individual grants or projects.”

200.509, Auditor Selection. Subsection (a) of this section has not changed but we recommend OMB consider adding additional emphasis to help improve the proposal evaluation process. Our members’ experience is that it is becoming more common for audit purchasers to focus solely on price in the single audit procurement process. The AICPA, in our efforts to communicate on this point, have recommended that audit purchasers separately evaluate technical abilities first and then look at price to increase the likelihood of a high-quality audit at a fair price. We recommend OMB include a similar emphasis and suggest the following revision: “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. Auditees are encouraged to separately evaluate proposals based first on technical criteria and then on price.”

200.513, *Responsibilities*. We have the following comments on this section:

- *Subsection (a)(1)*. Similar to our comments in section 200.1 on the definition of “Oversight Agency for Audit,” this subsection needs to be revised similarly. We recommend the following: “*Cognizant agency for audit responsibilities*. A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of funding directly (~~direct funding~~) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the ~~direct~~ funding received directly from a Federal awarding agency represents less than 25 percent of the total funding received by the non-Federal entity (~~as prime and sub awards~~ both funding received directly and through subawards), then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.”
- *Subsection (a)(3)(ix)*. This items only addresses agencies providing advice on fiscal year changes. As we have discussed with OMB and the agencies over time, there are other areas that occur much more frequently in today’s environment that we suggest be directly addressed in this regulation. However, in absence of directly addressing those areas with this revision, we recommend this subsection be revised to indicate that agencies also should provide guidance on the effect of non-federal entity mergers and acquisitions, including the effect on low-risk auditee status, how to report a mid-year merged schedule of expenditures of federal awards, the impact on the carryforward of findings, etc.

200.514, *Scope of Audit*. In section 200.515, *Auditor reporting*, OMB added clarification that the financial statement opinion might also cover financial statements prepared under a special purpose framework, such as cash, modified cash, or regulatory. If that reference is retained there, we suggest this section be made consistent as follows: “Financial statements. The auditor must determine whether the financial statements of the auditee 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). 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.”

200.515, *Audit Reporting*. We have the following comments on this section:

- Subsection (d)(1)(i) requires that the summary of auditor results must include “the type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).” Since the Uniform Guidance has been issued, the Data Collection Form, in the section that represents what is in the schedule of findings and questioned costs, splits questions about the auditor’s reporting on the financial statements into two categories—reporting on financial statements prepared in accordance with GAAP and a series of questions to be used when reporting on financial statements prepared in accordance with a special purpose framework. Additionally, a question is required on the Form that asks about whether a going concern emphasis of matter was included in the report which is not included in section 200.515. We recommend that OMB review this subsection against what the Federal Audit Clearinghouse is collecting in Part III: Information

from the Schedule of Findings and Questioned Costs, Item 2. Financial Statements, to ensure an appropriate alignment between the regulation and the Form.

- Subsection (d)(1)(i) should be revised to align with the change made in subsection (a) of this section as follows: “(i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP or a special purpose framework such as cash, modified cash, or regulatory (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

200.512 Report Submission. We noted no revisions were suggested for this section and question whether OMB has considered whether any changes are needed considering the passage of the GREAT Act and other federal efforts around the use of data standards and other potential changes in the future.

200.516, Audit Findings. Subsection(b)(7) states that each audit finding should report whether the sampling was a statistically valid sample. As we have previously discussed with OMB, statistical sampling is not required in a single audit. Therefore, most findings simply state that a statistical sample was not used. We question how useful this statement is in an audit finding. We recommend OMB remove this requirement from this section. If not, we request OMB make the following revision: “Although statistical sampling is not required to be used for compliance testing or internal control testing under Subpart F, the auditor should report whether the sampling was a statistically valid sample.”

Appendix I to Part 200—Full Text of Notice of Funding Opportunity. In section A, Program Description—Required, we believe the letter “a” in the word “assistance” should be capitalized in the fourth sentence. However, this should be checked throughout the document as we noted some instances of “Assistance listing,” “assistance listing,” and “Assistance Listing.” The appropriate version should be selected and used throughout.

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations. In section C. *Negotiation and Approval of Indirect Cost Rates*, subsection (2)(a), the following sentence should be revised as follows for clarity. “If the nonprofit does not receive any funding directly from ~~any~~ a Federal agency, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with section§200.331(a)(4).”

Other. We noted in various sections of the document that Web links identifying where certain items can be found have been removed (e.g., in Appendix I, section E, *Documentation Requirements*, the link to the OMB Web site was removed, in Appendix V; section A, *General*, the link to the brochure was removed; etc.) We believe it is preferable for Web inks to be updated and left in the document as some of the items being referred to may be hard to locate otherwise.

Other. In 22 cases in the proposed guidance, “calendar days” are referred to and in 2 cases uses “business days.” There are 8 other cases where only “days” is used without a qualifier. In cases where only the term “days” is used, OMB should specify the type of day to eliminate future questions.

Other. “Student Financial Aid” should be updated throughout to “Student Financial Assistance” to be consistent with other federal regulations.

Other. The proposed guidance refers to both “documented” and “written” and we are not clear on the difference. If they are both intended to mean same thing, consider choosing and using just one of the terms to limit confusion.