National Association of State
Auditors, Comptrollers
and Treasurers

NASACT

Headquarters Office
449 Lewis Hargett Circle, Suite 290
Lexington, KY 40503-3590
P (859) 276-1147, F (859) 278-0507
www.nasact.org

Washington Office
The Hall of the States
444 N. Capitol Street, NW, Suite 548
Washington, DC 20001
P (202) 989-6801, F (202) 989-6804

December 04, 2023

Office of Federal Financial Management
U.S. Office of Management and Budget
New Executive Office Building
725 17th Street, NW
Washington, DC 20503

Re: Docket OMB–2023–0017- Guidance for Grants and Agreements

To Whom It May Concern:

On behalf of the National Association of State Auditors, Comptrollers and Treasurers (NASACT), representing the nation's top state financial leaders, we are pleased to provide the following comments on proposed revisions to the U.S. Office of Management and Budget's (OMB) Guidance for Grants and Agreements.

We applaud OMB for revisiting the guidance and proposing policy changes and clarifications that will reduce burden and make the document easier to understand. We further applaud OMB for increasing various thresholds throughout the guidance. Specifically, the increase in the single audit threshold from $750,000 to $1,000,000 is a welcome and needed revision.

While we are supportive of most of the proposed changes, we must express our strong concern regarding a proposed change to the language related to pension and post-retirement health plans, which appears to be a significant departure from current practice. Specifically, we are referring to sections 200.431(g)(6)(v) and 200.431(h)(5). We strongly believe that the unintended consequences of such a change are not only problematic for recipient governments but would significantly increase the burden for all parties including the federal cognizant oversight agency.

Following this letter, you will find a complete summary of our comments, with references to specific areas contained within the proposed revisions to the guidance. We appreciate the time and effort put into revising this important document and commend OMB for continuing to seek ways to streamline processes and alleviate burden. We look forward to a continued dialog on the proposed revisions and believe that the best way to achieve the stated objectives is to consider the views of all affected parties.

Should you have any questions or wish to discuss our comments further, please contact our Washington Office Director Cornelia Chebinou (cchebinou@nasact.org or (571) 234-7108) or our Executive Director Kinney Poynter (kpoynter@nasact.org or (859) 276-1147). I may also be reached directly at griffin@audits.ga.gov.

Sincerely,

Greg S. Griffin
State Auditor of Georgia
NASACT President, 2023-2024

Comments from NASACT: Docket OMB–2023–0017- Guidance for Grants and Agreements

SIGNIFICANT CONCERNS

[200.431] Compensation—Fringe benefits

200.431(b)(3) – We are supportive of allowing pension costs to be charged on either a pay-as-you-go or GAAP basis. We request additional clarification of the intention of the use of subparagraph (i)versus (ii). Are entities determined to be on a cash versus GAAP because of accounting used for the SEFA, the financial statements, and/or the day-to-day books? Is the intention to require cash basis entities to follow (i) and require GAAP-basis entities to follow (ii)? Can a cash basis entity follow (ii), or a GAAP-basis entity follow (i)? The term "general administrative expense "is not defined in the guidance. To understand the intent behind this new requirement, please define general administrative expenses so that recipients and subrecipients using cash basis accounting can understand how to apply these expenses.

200.431(g)(6)(iii) – Wording was changed from "…in excess of the actuarily determined amount.." to "…in excess of the costs calculated using an actuarial cost-based method recognized by GAAP…" The U.S. Health and Human Services noted during its review of statewide cost allocation plan submissions that any amount exceeding the actuarially determined amount would be unallowable in the year funded but would be considered a prepaid contribution in a future period when the contribution is less than the actuarially determined amount for that period. When entities charge a percentage of payroll to fund the actuarially determined amount, and there are differences between projected and actual payroll amounts, then there are contribution deficiencies or excesses in a given year. Does the proposed change from "actuarially determined amount" to "actuarial cost-based method recognized by GAAP" resolve pension contributions that exceed actuarial determined contributions being considered unallowable in the year funded, so long as they are calculated using an actuarial cost-based method recognized by GAAP?

200.431(g)(6)(iv) – New language added to this section is causing considerable concern and confusion and is inconsistent with standard pension funding terminology.

The language proposed in 200.431(g)(6)(v) provides that "in all cases, the payments for unfunded pension costs may not exceed the contribution rate of the employees current pension costs." What is considered "current pension" cost? What is considered "unfunded pension cost?" The employer's portion is mandated by law at the time services are rendered and is considered a current pension cost.

As stated in the cost principles, pension costs should be allowed if they are calculated in accordance with established actuarial standards and consistent with GAAP. OMB should clarify "current pension costs" to include the "normal cost contribution rate" and the "unfunded liability amortization contribution rate" calculated in accordance with established actuarial standards recognized by GAAP. The provisions of section 200.431(g)(6)(iv) specifically allow the amortization of unfunded liability when converting to an actuarial cost method.

One of the principal objectives of actuarial valuations is to determine appropriate employee and employer contribution rates. This typically consists of contribution rates for both "normal costs" and "unfunded liability amortization," which when combined are often referred to as the Annual Required Contribution (ARC) or Actuarily Determined Contribution (ADC). State laws governing pension contributions typically require employers to pay the actuarially determined contribution rates, and this is the minimum required contribution. In general, the basic minimum required contribution is equal to: Normal cost, plus amortization of the unfunded actuarial liability (UAL), which is the actuarial liability (AL) less the actuarial value of assets (AVA). The UAL to be amortized generally occurs because experience does not exactly match the long-term assumptions previously made, such as mortality, salary increases, termination, retirement, and investment returns.

It would be extremely burdensome and very inconsistent if entities are required to obtain prior approval of their numerous awarding agencies to charge amounts paid to the pensions plans to pay down the unfunded actuarial liability in accordance with an actuarial costs-based method recognized by GAAP.

Pensions are inherently complex and cover long time frames. They are based on known information at the time of the actuarial valuation, but also require many estimates and assumptions to reasonably project the future pension cash flow. As is the case with all estimates and assumptions, actual performance will almost always vary. Accordingly, the actuarial valuation each year will be based on updated census data and will produce revised estimates of the projected cash flows, pension liability, and contribution rates. This course correction process is normal pension business practice in accordance with established actuarial standards as recognized by GAAP.

Estimates and assumptions, regardless of how reasonable and well-constructed almost always result in a variance from actual experience. A variance does not necessarily mean that an estimate or assumption was bad. However, it underscores the importance of setting assumptions and using methodologies in accordance with recognized actuarial standards.

Section 200.404 provides that “A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.” To determine whether costs are reasonable or unreasonable, it is necessary to consider the context and overall environment. Understanding the environment provides the context in which to consider reasonableness. To determine the reasonableness of pension costs, it is essential to determine the reasonableness of the estimates and assumptions. Past performance can assist in this assessment, but the focus is essentially to ensure that estimates and assumptions are reasonable and prudent given the current known conditions and environment. No one knows the future, so hindsight is not appropriate in determining reasonableness. The sole criteria must be the known conditions and reasonable future expectations that exist at the time the estimates and assumptions are adopted.

For example, recently inflation has increased at an extremely rapid rate. Another example is the significant increase in borrowing rates. While these substantial cost increases are clearly not desirable, understanding the environment provides the context that can aid in understanding that the increased costs are reasonable given the environmental conditions.

The unfunded liability amortization contribution rate is a component of the pension contribution rate, which is a legally required portion of the payroll cost. It is not discretionary. The only way to not incur the cost is to not have a payroll charge, which is impossible given that a payroll charge is part of almost every grant. Accordingly, this burden shift is potentially both significant and unavoidable.

We strongly recommend that OMB strike the proposed language in 200.431(g)(6)(v). As written, the proposed language lacks clarity and may lead to unintended outcomes that are not consistent with the stated intent. It seems contrary to Administration priorities to increase agency and recipient burden, pronounce unclear policy that can lead to discretionary and different outcomes, and be more confusing and inconsistent with established pension methodology and standards.

The new language indicates that in all cases, payments for unfunded pension costs may not exceed the contribution rate of the employee’s current pension costs. This does not seem logical as the original source of the unfunded pensions costs comes from payroll costs of employees who are a part of the pension plan and who worked on both federal and state programs. The federal government should share in their proportionate share of these expenditures. The federal government benefited from the services performed by the covered employees in the pension plan. Why would the federal government not

proportionally support the legally required contributions to the related pension plans based on an actuarial cost method recognized by GAAP? Why wouldn't all sources that fund the covered payroll (state and federal) be charged a proportionate share of the UAL amortization payment? Had the true actuarial determined contribution been known and not required to be estimated the rate would have been higher in prior years and both the state and federal government would have covered their proportionate share.

200.431(h) – Similarly, we would recommend that the proposed language for post-retirement health plan (PRHP) be removed. The language appears to limit PRHP costs to the "current health benefit" cost. What is considered "current health benefit cost?" What is considered "unfunded PHRP cost?" These terms may be confusing in relation to standard actuarial terms for PHRP costs including "normal cost," and "unfunded liability" (known as UAL). The employer's portion, which may be mandated by law and are subject to provisions/limitations in the Patient Protection and Affordable Care Act (PPACA), should be considered a current PRHP cost. Any other interpretation could become financially burdensome to governments trying to operate federal programs from which employees are paid.

200.431(h)(5) – This proposed change seems to conflict with all other principles regarding the allowability of PRHP costs incurred under an acceptable actuarial cost method (e.g., the provisions of section 200.431(h)(4) specifically allow the amortization of unfunded liability when converting to an actuarial cost method).

Standard actuarial contribution rates include normal cost and UAL calculations. In general, the basic minimum required contribution is equal to: Normal cost, plus amortization of the unfunded actuarial liability (UAL), which is the actuarial liability (AL) less the actuarial value of assets (AVA). Actuarial gains or losses occur each year because the actual events during the year ("experience") do not exactly match the long-term assumptions previously made. Gains or losses on plan assets occur because the actual investment returns were higher or lower than anticipated. Gains or losses on actuarial liabilities can occur because long-term assumptions (e.g., mortality, medical cost increases, termination, retirement) were not met. Components of the UAL include, experience gains/losses (both benefits and investment returns), impacts of plan changes, impact of assumption changes.

Unless unfunded PRHP costs are defined as something other than the UAL component of actuarially determined PHRP rates, the proposal that payments for unfunded PRHP costs may only be charged with prior approval of the awarding agency will be highly inconsistent and overly burdensome. Recipients would have to track and account for individual components of PRHP contribution rates separately and apply them differently to each federal award, as determined by/negotiated with each individual awarding agency.

OTHER COMMENTS

Part 1—About Title 2 of the Code of Federal Regulations and Subtitle A

We agree with revising headings and wording to "Federal Financial Assistance" to match the correct terminology as defined in section 200.1 and used throughout the guidance. We appreciate the added content in specific sections to provide context. For example:

1. Replacing "will" with "must" provides clarity and certainty that this item is a requirement and not open to interpretation.
2. In sections of the guidance pertaining to Procurement, the expansion of the different section to include language stating the guidance does not prohibit recipients or subrecipients from requiring additional features to procurement is helpful. E.g., 200.318(l) and 200.319(f).

3. In section 200.323(b), we appreciate the addition of the language around recovered and reusable materials along with language to encourage the use, but not making it an absolute requirement.

Part 25—Unique Entity Identifier and System for Award Management

[25.105] Applicability – This section appears to exempt subrecipients of subrecipients (second tier subrecipients) from obtaining a Unique Entity Identifier (UEI). However, we are concerned that a second tier subrecipient would still be subject to single audit, and if the UEI is not required, then it could cause issues when the single audit is reported to the clearinghouse. The UEI is a required field in the submission package.

25.105(b) – Not requiring tier two subrecipients to obtain a UEI could potentially put the state at risk as the state has ultimate responsibility for monitoring all subrecipients.

25.300 – Define “full registration” (regarding System for Award Management (SAM)). There is already confusion over levels of registration. Does full registration mean everything including the Commercial and Government Entity Program?

25.400 Definition of Recipient – We suggest that OMB add a definition for “internal recipient” for situations where the recipient passes funds to another state agency within the primary government.

We also notice that definitions given in this part are consistent with section 200.1. In a future update, OMB may wish to consider consolidating definitions for the entire title into one section to avoid unnecessary duplication or variances among the parts.

[Appendix A to Part 25] Award Term – Section I. Throughout the appendix, the paragraphs used second-person pronouns (e.g., you) and second-person possessive adjectives (e.g., your). Therefore, the use of these pronouns and adjectives does not make it clear what entities are subject to the Appendix.

Part 170—Reporting Subaward and Executive Compensation

[170.300] Definitions

Total Compensation – The definition of total compensation refers to 17 CFR 29.402(c)(2). Executive compensation is located at 17 CFR 229.402 not 17 CFR 29.402 (which does not exist). Consider revising the citation to 17 CFR 229.402(c)(2).

Part 180 – OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement)

[180.110 -180.500] – We suggest that OMB clarify “disqualified” or “ineligible” and how or if those terms differ from the terms suspended or debarred.

Part 182 – Government-Wide Requirements for Drug-Free Workplace (Financial Assistance)

[182.230] – We suggest adding personal residence to workplaces for employees who work from home.

PARTPart 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Subpart A – Acronyms and Definitions

We thank OMB for recognizing the need to remove acronyms and definitions that either appear only once or are used infrequently in the Uniform Guidance. We appreciate the additional definitions that provide needed clarification and guidance for recipients.

[200.1] **–** Definitions

- *Equipment* **–** We agree with OMB's proposal to increase the threshold for equipment. We would consider a minimum threshold of $25,000 to be more appropriate in these economic times and more consistent with other procurement-related thresholds. We also recommend that OMB specify whether the increased threshold is intended to be prospective or retrospective. Will recipients be expected to apply the increased threshold only to equipment purchased after the effective date of the Uniform Guidance? Or would they be expected to remove any equipment which does not meet the updated definition from existing equipment inventory lists?

- *Key Personnel* **–** Does the definition of "key personnel" apply to the agency's personnel or to the personnel of the recipient/sub-recipient?

- *Improper Payment* **–** The proposed definition removes several clarifications including:

    - treatment when an agency's review is unable to discern whether a payment was proper due to insufficient / lack of documentation,
    - treatment of interest or other fees resulting from an underpayment, and
    - whether a questioned cost is considered an improper payment.

    We believe removal of those clarifications could cause confusion in the audit community. Further, the edits to this definition remove the important distinction that any "questioned costs" identified by the auditor cannot be considered "improper payments" until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C. Without clearly stating this distinction within the Federal regulations, individuals may believe that "questioned costs" reported by the auditor are the same as "improper payments" and can be used by a federal awarding agency as a foundation for calculating their improper payment rate for a high-risk program.

- *Micro-purchase Threshold* – The definition indicates, "Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the recipient or subrecipient and approved by the cognizant agency for indirect costs." However, 2 CFR 200.320(a)(1)(iv) allows an entity to self-certify a micro-purchase threshold up to $50,000.

- *Modified Total Direct Costs* – The definition to increase the exclusion threshold for subaward costs from $25,000 to $50,000 is appropriate due to inflation and the level of expected monitoring activity.

- *Subaward* – The definition states "It does not include payments to a contractor or to an individual that is a federal program beneficiary" but does not address if a subaward does or does not apply to a "non-individual beneficiary," otherwise known as an entity that is a beneficiary. The definitions of "subaward" and "subrecipient" appropriately exclude payments to an individual that is a federal program beneficiary, but there is no definition given for "beneficiary." The 2023 Compliance Supplement for ALN 21.027 describes how the subrecipient or beneficiary designation is an important distinction to determine whether a non-federal entity is subject to single audit or not and provides a definition for auditors. However, it would be more helpful if this definition were included in the CFR rather than buried in the Compliance Supplement.

- *Questioned Cost* **–** The definition of “questioned cost” starts with “an amount expended or received from a federal award” followed by three items that the auditor must use when they are applying their judgement, which are: noncompliance, lack of documentation, and unreasonable and not the actions a prudent person would take. For each of these three items, the auditor would need to specifically identify the amount that was in noncompliance, lacked documentation, or unreasonable and not representing the actions a prudent person would take. Additionally, this same section goes on to define “known questioned cost” to mean a question cost specifically identified by the auditor. While different words are used to define “questioned cost” and “known questioned cost” both will result in the same amount being reported when the auditor is required to report “questioned costs.” To limit confusion caused by these two different terms having the same effect in practice and to apply principles of the plain language act, OMB should first edit the definition for “questioned cost” to include "known" so it reads “known questioned cost” and then define “likely question cost” as an estimate based on “known questioned cost.”

  We propose a wording change from “questioned cost” to “known questioned cost.” Known questioned cost has the meaning given in paragraphs (1) through (3).

  (1) Known questioned cost means an amount expended or received from a federal award, that the auditor identifies and in their judgment:

  > (i) Is noncompliant or suspected noncompliant with Federal statutes, regulations, or the terms and conditions of the Federal award;
  > (ii) At the time of the audit, lacked adequate documentation to support compliance; or
  > (iii) Appeared unreasonable and did not reflect the actions a prudent person would take in the circumstances.

  (2) The known questioned cost amount under (1)(ii) is the portion of a transaction that lacked adequate documentation confirmed as noncompliant.

  (3) There is no known questioned cost solely because of:

  > (i) Deficiencies in internal control; or
  > (ii) Noncompliance with reporting requirements if this noncompliance does not affect the amount expended or received from the Federal award.

  (4) Likely questioned cost is an estimate based on known questioned costs as calculated in paragraph (5).

  (5) Likely questioned cost means a mathematical calculation whereby sampling information related to known questioned costs were extrapolated to the entire population from which the sample was drawn to indicate a possible amount of known questioned cost that could be identify if the entire population is reviewed. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the likely questioned costs, not just the known questioned costs.

- *Questioned Cost* **–** Paragraph (1)(ii) **–** Clarify what is meant by “At the time of the Audit.” Is it OMB’s intention to limit this to the moment the auditor is on-site and requested documentation or is it intended to mean before the conclusion of the audit? We have experienced disagreements with auditors accepting documentation that is located and provided after a test is conducted but before the fieldwork has ended and the report is issued. This has sometimes resulted in questioned costs being reported unnecessarily.

- *Questioned Cost* **–** Paragraph (3)(ii) **–** Is it OMB's intention to exclude misclassified costs from questioned costs as part of "reporting" if the misclassification does not affect the amount expended? For example, a recipient might misclassify an otherwise allowable cost as a program cost rather than an administrative cost, or a payment to a subrecipient as a contractor payment. If so, consider expanding the language in (3)(ii) to cover this or add a separate provision as (3)(iii).

  Paragraph (3)(ii) also indicates that there are no questioned costs solely because of noncompliance with reporting requirements if this noncompliance does not affect the amount expended or received from the Federal award. Should the word "reporting" be replaced with "nonmonetary"? Or does the Uniform Guidance intend to mean that only reporting requirements are considered nonmonetary requirements? The determination of monetary versus nonmonetary is complex and auditor judgement varies greatly. OMB should define which compliance requirements are considered monetary versus nonmonetary to facilitate consistent treatment and reporting.

- *Subrecipient* **–** Define the term beneficiary. Recently, federal agencies have expanded the use of the term beneficiaries, most notably Treasury used that term in their COVID awards. Defining the term in the UG would allow for more consistency when the term is used. Further, the differences between "beneficiary" and "participant" should be clearly highlighted. If the definitions do not differ, OMB should require the use of one or the other, not both.

- *Supplies* **–** Specify whether the increased threshold is intended to be prospective or retrospective.

Subpart B – General Provisions

[200.107] OMB Responsibilities – We recommend that OMB require federal agencies to adopt the UG changes within a specified time. In past UG adoptions and revisions, some agencies took months to adopt the changes while others never adopted them at all. This leads to confusion amongst recipients and auditors as to which version of the UG should be followed. A consistent implementation across federal agencies would reduce inconsistencies and confusion.

Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards

[Section 200.201] Use of Grants, Cooperative Agreements, Fixed Amount Awards and Contracts – This section clarifies that recipients are entitled to any unexpended funds under a fixed amount award if the required activities were completed in accordance with the terms and conditions of the award and would only take into account the requirements for allowable costs under Section 200.403. This clarification does not address whether any of the other typical compliance requirements (e.g., allowable activities, procurement) are applicable to the fixed amount award. Given the flexibility allowed under fixed amount awards, auditors will need clear guidance as to which compliance requirements will not apply to either the spent and unspent funding or both. In other words, the fixed amount loses its federal character as soon as it is paid. However, explicit clarification on this point would be helpful to ensure federal agencies, recipients, and auditors have certainty as to whether compliance requirements will apply. It would also be helpful to require federal awarding agencies to use the term "fixed amount award" in award documents and the Compliance Supplement for any such awards (or components of awards, such as the administrative fee component of ALN 14.871) for these awards to be clearly related to Uniform Guidance.

200.201(b)(1) **–** Should this reference 2 CFR 200.328 Financial Reporting? If not, auditors and recipients may interpret this as including the SEFA and/or Financial Statements, especially considering 2 CFR 200.510 includes SEFA and Financial Statements under the Financial Statements heading.

200.201(6) **–** This section makes reference to Section "200.308 (paragraphs 1 through 3, 6, and 10)"; however, even though 2 CFR 200.308 has alpha paragraphs and numeric subparagraphs, none of the subparagraphs goes to (10). Therefore, it is not clear if the right section or paragraphs are being cited in 200.201(6).

[200.208] Specific Conditions **–** Unless an award has a matching requirement, would the recipient's financial resources impact the analysis? Clarify if the intent is for that to apply only when the award has a matching requirement.

[200.211] Information Contained in a Federal Award **–** The reporting of loans and loan guarantees on the SEFA is impacted by whether the program has continuing compliance requirements (2 CFR 502(b)). Major program determination is frequently impacted by the determination of whether a loan program has continuing compliance requirements, and that determination often rests with auditor judgement. The UG should require that federal agencies include in the grant agreement for loan programs whether the program has continuing compliance requirements which would require balances to be reported on the SEFA. Such guidance could be included in 2 CFR 200.211 and 2 CFR 200.332 (requiring pass-through agencies to include the determination in subgrant agreements). Absent such guidance from the awarding agency, there will continue to be inconsistent determinations made by recipients of loan programs.

[200.216] Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment **–** The section prohibits "telecommunication equipment produced by certain corporations/companies" (or any subsidiary or affiliate of such entities)." To assist the recipient and subrecipient with compliance with this section consider adding a source to where the recipient or subrecipient can look up the companies' subsidiaries or affiliates.

Subpart D – Post Federal Award Requirements

[200.314(a)], [200.325(c)(2)], [200.337(c)], [200.329(d)], [200.338], [200.505], [200.510(b)], [200.513(b)], [200.519(c)(1)] **–** Each section contains a typo "pass-through-through" used instead of "pass-through."

[200.303(a)] Internal Controls **–** Is the addition of the word "document" intended to indicate the control procedures should be documented or that the entity must document that they conducted the internal control? Consider clarifying the documentation standards.

Property Standards

[200.313] Equipment **–** Will equipment owned prior to the effective date of these revisions be subject to these new requirements?

[200.314] Supplies **–** In section 200.314, we are supportive of increasing the supply and equipment thresholds from $5,000 to $10,000. This increase is appropriate due to inflation.

Procurement

[200.318(e)] General Procurement Standards – We would recommend further elaboration on exactly what procurement requirements are met when an intergovernmental agreement or inter-entity agreement is used. Is it only for 2 CFR 200.319 competition? If so, would the procurement action entered into with the intergovernmental/inter-entity agreement need to follow all other procurement requirements, including the method of procurement in 2 CFR 200.320? This section has been a point of contention over the past several years and additional clarification would be extremely helpful.

[200.320] Procurement Methods

> 200.320(a) **–** The heading "Informal Procurement Methods for Small Purchases" may be confusing to auditors and recipients because the term 'small purchase' was formerly used as a procurement method (now replaced by "simplified acquisitions").
>
> 200.320(a)(1)(ii) **–** We agree with the removal of documented procedure requirements for the use of purchase cards. The value of a micro-purchase threshold is to reduce burden, so we support the elimination of unnecessary requirements and conditions attached to micro-purchases.
>
> 200.320(a)(2)(i) **–** Define what is an adequate number of sources. Entities have used varying definitions, including documenting that one source is an adequate number. Even changing from 'an adequate number' to 'more than one' would provide helpful clarification.

[200.321] – We would suggest providing examples of "when possible." There could be a potential conflict with state procurement rules statutes which prohibit splitting purchases.

[200.322] Domestic Preferences for Procurements

> 200.322(c) This section indicates that federal agencies must implement Buy America preferences. The use of the terms *must* and *preferences* in the same section of guidance is confusing. Is the intent for federal agencies to require recipients to follow Buy America provisions in procurements? Or is the intention to simply include Buy America as a best practice in grant agreements for infrastructure grants?

Subrecipient Monitoring and Management

[200.331] Contracting with Small Businesses **–** This section states that "the Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier." This appears to not always be the case – especially with disaster programs – FEMA often has agreements directly with subrecipients of an overall state-administered grant.

OMB should consider expanding Section 200.331 to include beneficiary determinations. Without OMB specifically setting the requirement within Uniform Guidance for federal awarding agencies and recipients of federal financial assistance to determine and document their determination as to which entities are beneficiaries of a program, there may be confusion as to which Federal rules govern the interactions between the entities involved.

The proposed wording for Section 200.331 states "The recipient or subrecipient are responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor." This statement could be interpreted to mean that the subrecipient receiving the federal funds has a responsibility for making the determination. To provide clarity, the OMB should consider editing the section to read, "The recipient or subrecipient providing the Federal funding is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor."

[200.332] Requirements for Pass-through Entities

> 200.332(a) – We recommend that all three options in 2 CFR 180.300 and in the Compliance Supplement be included so that recipients and subrecipients can use this to verify that an entity is not excluded or disqualified under Section 180.300. The current phrasing of this section would imply that only SAM.gov should be used to confirm exclusions. We would disagree with this proposed revision if the intention were to eliminate previously allowable methods for compliance.

> Section 200.332(c) begins “Prior to issuing a subaward.” Is the evaluation of the subrecipient’s risk of noncompliance only required when issuing the subaward? What about situations where the subawards are for multiple years?
> Section 200.332 (e)(2) states “Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, **site visits**, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward.” OMB should clarify who is to conduct site visits and whether it is OMB’s intent for the pass-through entity to conduct site visits.

Remedies for Noncompliance

[200.339(d)] - The opening paragraph of 200.339 uses the term "may" in the sentence "When the Federal agency or pass-through entity determines that noncompliance cannot be remedied by imposing specific conditions, the Federal agency or passthrough entity may take one or more of the following actions.." however in 200.339(d) after the opening paragraph uses the term "must" when describing the actions of the pass-through entity in the sentence "Pass-through entities must recommend suspension or debarment proceedings for a subrecipient or subcontractor be initiated by the Federal agency." The use of must in this sentence appears to remove the pass-through entity's ability to practice discretion before recommending that an entity be suspended or debarred.
[200.340] – We would suggest deleting subrecipient and only allow the recipient to terminate as some states do not allow mutual termination.

Subpart E—Cost Principles

Basic Considerations

[200.407] Prior Approval – We are supportive of eliminating requirements for prior approvals in all cases where federal agencies are not experiencing value from the requirement, since prior approvals create time and cost burdens. We appreciate retaining the helpful option for recipients to seek prior written approval at their discretion to ensure mutual understanding and prevent later disagreement.

Direct and Indirect Costs

[200.414] – Section 200.332(a)(4) states that pass-through entities must accept all federally negotiated indirect costs rates for subrecipients. We suggest adding “unless otherwise provided in the grant agreement” at the end of this sentence. Also, we suggest adding “or plans” after rates in this sentence.

[200.414(f)] Indirect Costs – We agree with OMB’s proposal to increase the de minimis indirect cost rate to 15 percent of MTDC.

Special Considerations for States, Local Governments, and Indian Tribes

[200.417] Interagency Service – Earlier in the document the de minimis is raised to 15%; here it is still at 10%. Is this on purpose?

General Provisions for Selected Items of Cost

[200.425] Audits Conducted in Accordance with the Single Audit Act

> 200.425(a)(1) **–** This section provides that any costs for audits that are not required by and performed in accordance with the Single Audit Act are unallowable. For states and other large non-federal entities that use other audits as part of their system of controls (i.e., audits conducted by internal audit, inspector general, etc.) this section appears to indicate

that these other audits are not allowable and should not be included in indirect cost allocation plans similar to how alcoholic beverages are not allowed to be included in cost allocation plans.

Consider changing 200.425(a)(1) to read: "(1) Costs for audits that are performed to meet the requirement at §200.501(a) but the audit is not performed in accordance with the Single Audit Act, and the requirements of this part."

The Green Book (GB), which is a best practice listed within UG, recognizes that audits done by internal auditors, external auditors, and inspectors generals play an important role in monitoring the internal controls of an entity.

> GB 16.07 Separate evaluations also include audits and other evaluations that may involve the review of control design and direct testing of internal control. These audits and other evaluations may be mandated by law and are performed by internal auditors, external auditors, the inspectors general, and other external reviewers. Separate evaluations provide greater objectivity when performed by reviewers who do not have responsibility for the activities being evaluated.

200.425(c)(3) **–** The removal of "Types of" from "Type of Compliance Requirements" so that it just reads "Compliance Requirements" along with continuing to list "allowable costs" will permit pass-through entities to indirectly include other types of compliance requirements not listed such as "Period of Performance" and "Procurement" for which non-compliance may cause a cost not to be allowable to the award. If this is an intended change of this edit, then OMB should consider adding all the compliance requirements which pass-through entities may engage an auditor to test at subrecipients not subject to a Single Audit or include guidance in another document, such as the FAQ document for UG, that this was an intended change so that agreed upon procedures can be expanded in the future to cover more compliance requirements.

[200.455] Organization Costs

In Section 200.455(b), the phrasing is difficult to read and understand. Is this section stating that collective bargaining activities are an unallowed cost to a federal grant?

Subpart F—Audit Requirements

[200.501] Audit Requirements **–** The terminology “recipients or subrecipients” has been substituted for “non-Federal entities” throughout, except in Subpart F – Audit Requirements. Are Federal entities which receive an award as a recipient or subrecipient subject to audit? The Single Audit threshold has been raised to $1,000,000 but the threshold for Type A programs remains $750,000 in Section 500.518(b)(2). Should it be revised to $1,000,000 also?

200.501(b) **–** The amendment struck “or more” from the sentence such that the provisions are limited to entities expending exactly $1,000,000 in federal awards. We recommend OMB re-insert “or more” so the sentence reads “A non-federal entity that expends $1,000,000 or more in Federal Awards…”

200.501(h) **–** OMB should consider editing the section titled "Compliance responsibility for contractors" to make it active voice and consistent with Federal Plain Language Guidelines dated March 2011. As written currently, we are not sure which entity must review the contractor's records to determine program compliance, management of the auditee or the auditor.

Suggested Wording: However, in cases where compliance requirements flow down to the contractor, the auditee must include the contractor's responsibilities within its agreement with the contractor and the auditee must review the contractor's records to determine the contractor's compliance with program requirements.

Additionally, because this requirement for auditees to monitor compliance by their contractors is within the "Audits requirements" section, OMB may want to mention or reference this requirement within the procurement sections to ensure that those responsible for procurement transactions and contract management are aware they cannot outsource the function of complying with a federal requirement to a third-party through a contractual agreement without monitoring the activities of the contractor to ensure compliance.

We would like to state that we do not believe that the following within 200.501(h) creates a requirement for the auditor of the auditee to audit the records at the contractor: "Also, when these procurement transactions relate to a major program, the scope of the audit must include a determination that these transactions comply with Federal statutes, regulations, and the terms and conditions of a Federal award." However, the auditor of the auditee could audit records that originated from the contractor if the auditee first obtains the records in fulfilling their monitoring responsibilities and takes responsibility for the contents of the records.

200.501(i) - Is there a significance to using “for-profit organizations” in the body text but “for-profit subrecipient” in the caption?

[200.502] Basis for Determining Federal Awards Expended **–** The Federal Register executive summary indicated that in section 200.502 OMB “proposed to revise the guidance to require that the schedule of expenditures of Federal Awards for comprehensive annual financial reports identify the state, municipal, or local entity recipient or subrecipient of a federal award.” However, we could not see what this was referring to in the actual text of the proposed changes. In case we missed it, if this means that the SEFA would identify passthrough recipients, then we would strongly disagree since this would increase the complexity and length (by hundreds or even thousands of extra lines) of the SEFA for states or large cities and counties.

This section further adds that loan and loan guarantees retain their federal character through the end of the period of performance unless otherwise specified – the term ‘retain their federal character’ could be confusing to auditors. This could be interpreted to mean that there are continuing compliance requirements unless otherwise stated, but we do not believe that is the intent. If it is the intent, then the term ‘continuing compliance requirements’ should be used in this sub-paragraph to be clear. If not, the language should be updated to be less confusing.

200.502(b) **–** The reporting of loans and loan guarantees on the SEFA is impacted by whether the program has continuing compliance requirements. Major program determination is frequently impacted by the determination of whether a loan program has continuing compliance requirements, and that determination often rests with auditor judgement. The UG should require federal agencies to include in grant agreements for loan programs whether the program has continuing compliance requirements which would require the balances to be reported on the SEFA. Such guidance could be included in 2 CFR 200.211 and 2 CFR 200.332 (requiring pass-through agencies to include the determination in subgrant agreements). Absent such guidance from the awarding agency, there will continue to be inconsistent determinations made by recipients of loan programs. The basis for determining Federal awards expended for loan and loan guarantees in 2 CFR 200.502(b) is not intuitive and needs to be clarified using plain language.

[200.505] Remedies for Noncompliance **–** This section's title was changed from "Sanctions" to "Remedies for noncompliance" which now creates two sections 200.505 and 200.339 with different numbers, but with the same title. Because 200.505 only discusses the impact of not having an audit, consider changing to "Remedies for not being audited" to provide focus and to limit future confusion when two different sections have the same title.

We recommend that OMB edit this section to use active voice to reinforce the expectation that it is

a non-federal entity's responsibility to have an audit conducted in accordance with UG.

> Suggested wording: In cases of continued inability or unwillingness of a non-federal entity to have an audit conducted in accordance with this part, federal agencies or pass-through entities must take appropriate action as provided in § 200.339.

Auditees

[200.510] Financial Statements

> 200.510(b)(2) **–** This change would significantly impact states and other large governments in which multiple agencies/departments/IHEs receive funding under the same Assistance Listing, adding several pages to their SEFAs and making the provision challenging to fully comprehend for those entities with numerous recipients of federal awards. This would also impact smaller governments such as Counties which have multiple organizational units. OMB should remove this requirement as it adds extraneous information which is not necessary for the users of the SEFA. We believe that adding yet another additional column will make the SEFA even harder to produce, format and read. In our view, any theoretical benefits of this addition would be outweighed by the increased preparation complexity, cost, and burden.
>
> If the requirement remains, the definition of an organizational unit should be added so auditors and auditees are aware of what the federal government considers to be an organizational unit. Further, an alternative should be allowed for governments to report multiple SEFAs in the reporting package, one for each "reporting unit," being a department or agency.

[200.511] Audit Findings Follow-up

OMB should consider changing the title for the "Summary Schedule of Prior Audit Findings" to "Summary Schedule of Prior Findings" because Uniform Guidance defines "audit finding" to mean just federal findings, not findings reported under Generally Accepted Government Auditing Standards (GAGAS); however, Uniform Guidance requires that this schedule also include GAGAS findings.

> 200.511(a) – Requires that the summary schedule of prior findings include "the fiscal year in which the finding initially occurred." OMB should consider revising this sentence to read "the fiscal year in which the finding was initially reported in the auditor's report.
>
> 200.511(b)(3) – "Two years have passed since the audit report in which the finding occurred was submitted to the FAC." The addition of an example with fiscal years would be very helpful in interpreting this requirement.
>
> 200.511(c) – The 2 CFR Frequently Asked Questions includes a requirement that "the auditee must submit the corrective action plan on auditee letterhead." However, we note this requirement is not being proposed at section 200.511(c). We request that this requirement either be incorporated into Uniform Guidance or be removed from the Frequently Asked Questions. In our view, it is not appropriate for a Frequently Asked Questions document to be a source of additional requirements that are not in the CFR.
>
> OMB should incorporate this requirement into the final rule for Uniform Guidance by revising this section to state: "The corrective action plan must be a document separate from the auditor's findings described in § 200.516. The corrective action plan must also provide the name(s) of the contact person(s) responsible for the corrective action, the corrective action to be taken, and the anticipated completion date. The auditee must submit the corrective action plan on auditee letterhead."

[200.512] Report Submission – The FAC is defined as "the repository of record designated by OMB where non-federal entities must transmit the information required by subpart F." As a repository that only receives reports and awards zero grants, does it make sense for the FAC to know which auditees have met the threshold to trigger the requirement for them to submit a collection form and reporting package to the FAC? Suggested wording: ...follow up, using the last email on record for known auditees that have not submitted a data collection form and reporting packages to the FAC in the last 12 months.

Auditors

[200.514] Scope of Audit **–** This section is currently titled "Scope of audit". However, it also includes general requirements as to the standards that the auditor must follow when conducting such audits ("the audit must be conducted in accordance with GAGAS"). Therefore, OMB should revise the title to read "Standards and scope of audit."

> 200.514(c)(3)(i) – This section requires that the auditor "plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for assertions relevant to the compliance requirements for each major program." In audit, "assertions" is a word more commonly associated with financial statements. In addition, the current sentence refers to "compliance requirements" in a broad manner, suggesting that a low assessed level of control risk must be attained for all compliance requirements for each major program. OMB should revise this to read "plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for each type of compliance requirement subject to testing that may have a direct and material impact on each major program."
>
> 200.514(c)(4) – This section states that "when internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements." This speaks to "compliance requirements" in a broad manner. OMB should revise this to state “when internal controls over some or all of the types of compliance requirements subject to testing that may have a direct and material impact on a major program are likely to be ineffective..."
>
> 200.514(d)(4) – We disagree with this section that requires that compliance testing must include tests of transactions. This is unnecessary given the existing requirement to render an opinion and follow professional standards. It also creates a confusing difference with the requirements (or terminology, or both) of professional audit standards at AU-C 935 paragraph 19, which requires “tests of details” but specifically states that tests of transactions may or may not be included. This is because testing individual transactions may not be the most appropriate or effective methodology for every situation and compliance requirement. For example, in evaluating the accuracy of a report, the most relevant test might be a reconciliation of numbers or tracing certain report details to supporting documentation or other evidence.

[200.515] Audit Reporting **–** The provision does not provide for a direct opinion on the schedule of expenditures of federal awards in accordance with AU-C section 805, or AU-C section 800. We recommend the second sentence be amended to say “The auditor must also determine whether the schedule of expenditures of federal awards is presented fairly in all material respects in relation to the auditee’s financial statements as a whole, or presented fairly in all material respects in accordance with generally accepted accounting principles, or in accordance with a special purpose framework.

> 200.515(d)(ii) and (iv) – In this section, “if applicable” is added to the end of each statement. Since the requirement asks for a statement about whether significant deficiencies or material weaknesses were disclosed, would this not always be applicable?

200.515(d)(1)(vii) – One of the phrases shown in bold below should be removed: An identification of major programs by listing each individual major program; however, **in the case of a cluster of programs**, only the cluster name as shown on the schedule of expenditures of federal awards is required **for a cluster of programs.**

[200.516] Audit Findings – Given the threshold for an audit of federal awards is recommended to increase to $1,000,000 in federal expenditures, we recommend the threshold for reporting an audit finding in relation to these sections be increased from $25,000 to $100,000.

This will allow for greater efficiency at both the state and federal level. The questioned costs threshold is incredibly low given the range of amounts reported on various entities' SEFAs, such as states vs. local school districts. This threshold should be reviewed during each revision to determine if it is still appropriate.

200.516(a)(3) – This section currently states that the auditor must include information to provide proper perspective for evaluating the prevalence and consequences of questioned costs. However, only known questioned costs must be reported when a finding is required (known or likely questioned costs are greater than $25,000). The auditor may report likely to provide proper perspective for evaluating the prevalence and consequences of the questioned costs, but it is not required. We ask OMB to consider updating the section to state, "When a finding is required, the auditor must report known questioned costs, but may report likely questioned costs to provide proper perspective for evaluating the prevalence and consequences of the questioned costs."

200.516(b)(6) – In section 200.516(b)(6), we question the usefulness of requiring a description of how known questioned costs were computed. Given the definition of known questioned costs, there is often no computations other than adding up the known instances. This requirement previously made sense to describe how questioned costs were computed because it encompassed both known and likely questioned costs. In our view, describing computations for estimates, projections or extrapolations of likely questioned costs can be valuable, but we are unclear what value this is intended to bring to known questioned costs.

200.516(b)(7) – We are concerned that if the auditors need to provide a description as to why each internal control finding without a questioned cost does not include a known amount of questioned costs, it will undermine the importance of the auditee having a properly designed system of internal controls. We recommend not including this proposed requirement within the final rule.

200.516(b)(8) – The auditor is required to provide proper perspective for evaluating the prevalence and consequences of questioned costs. However, if only known questioned costs are to be reported, it is now unclear to us whether this proper perspective is intended to be provided by describing likely questioned costs. It would be helpful to explicitly clarify whether the auditor's computation of likely questioned costs (if any) is expected to be identified and described for this purpose.

200.516(b)(9) – OMB should update this section to clarify the meaning of "immediately prior audit." OMB should consider using "immediately prior audit of the federal program." This adjustment is necessary because a Type A federal program may only have a significant deficiency, which if there are no other risk factors, may cause a two-year gap between when the auditor audits it as a major program. However, the same deficiency may still exist three years later. Without this clarification, there is likely to be inconsistency in practice as some auditors may interpret the current requirement to mean "immediately prior audit of the non-federal entity." If the auditor interprets this requirement as such, the auditor will not provide a reference to the prior finding from when the program was last audited. Therefore, federal awarding agencies and pass-through entities would not have the linkage needed to determine that the current finding is discussing the same deficiency an auditor reported the last time the program was audited as a major program.

[200.518] Major Program Determination **–** We applaud OMB for raising the threshold of the single audit from $750,000 to $1 million but would welcome a larger increase to the threshold.

A recent analysis of the proposed change by the AICPA Single Audit Roundtable noted several items that seem to contradict the stated purpose of the update. First, raising the audit threshold to $1,000,000 does not offer substantial relief. While the data projects a 7% decrease in the number of audits performed nationally based upon 2022 numbers, it is important to remember that even with the adjustment there is still an increase of 2,860 audits from 2019. This is 8% more audits than just a few years ago. Even more telling from the AICPA analysis is that the percentage of federal dollars audited after the proposed increase would be virtually unchanged (99% of total grant dollars). These coverage amounts indicate that virtually all federal grant dollars are being audited. Any amount not reviewed is likely inconsequential.

A better way to set the threshold may be to consider how to get the best coverage of federal funds for the number of audits. To set a standard like auditing 95% of all federal funds may yield a threshold higher than $1 million. That would still ensure significant oversight while providing greater relief for the shortage of public finance staff.

Appendix X to Part 200 – Data Collection Form

We notice that the new federal clearinghouse does not appear to be using the term “Data Collection Form” anymore and does not appear to be presenting guidance or submissions as a form. Rather, the new site is referring to this as the “single audit reporting package” or “single audit submission” and presenting guidance as a series of “workbooks.” We suggest that terminology be appropriately aligned between the CFR and the new clearinghouse, both in the appendix and throughout Part 200.