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Just When You Think You've Got It – They Change It! 😔

Guidance for Federal Financial Assistance

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Introductions

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Agenda

1. Complexity of Federal Funding Requirements
2. Code of Federal Regulations (CFR)
3. Purpose of Revisions to the CFR
4. 2024 Revisions to the Procurement Standards in 2 CFR Part 200
5. What Didn’t Get Revised
6. Best Practices
7. Q&A

Complexity of Federal Funding Requirements: Federal Loans vs Federal Grants

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LOANS

- Repayment
- Longer terms
- Lower interest
- Compliance requirements



GRANTS

- **No** repayment
- Cost share
- Compliance requirements

Complexity of Federal Funding Requirements: Purse Strings



Complexity of Federal Funding Requirements: The Web of Compliance Requirements

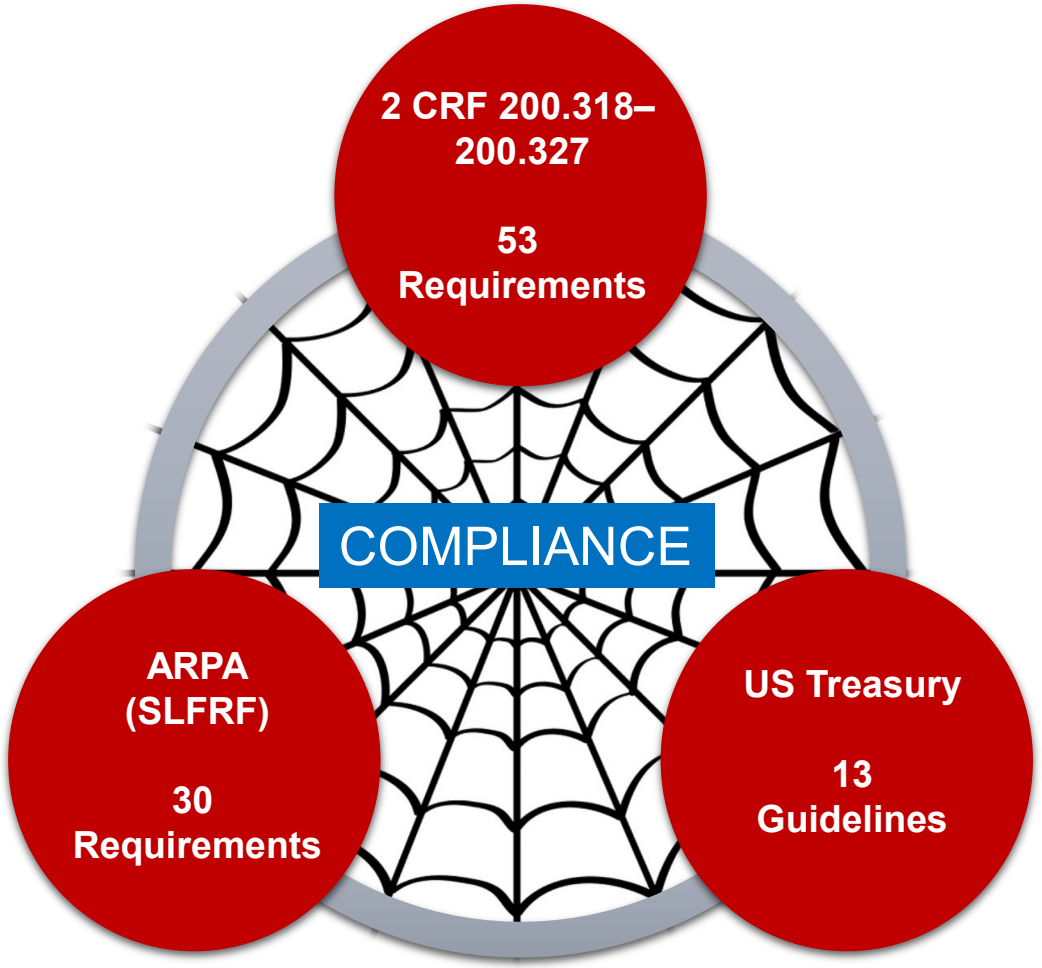
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Example:

2021 ARPA Grants =

96

Compliance Requirements



Code of Federal Regulations (CFR)

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What is the Code of Regulations (CFR)?

- The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government

- The CFR is separated into 50 titles

Code of Federal Regulations (CFR)

- What does 2 CFR Part 200 cover?
  - The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
  - Made up of six subparts and 12 appendices
  - Established by the Office of Management and Budget (OMB)
  - https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II

2024 Revisions to the CFR

- Changes to the CFR
  - Federal agencies must implement the Final Rule by **October 1, 2024**; however, agencies could have chosen to enforce for Federal awards issued no earlier than **June 21, 2024**
  - Not minor changes – Redline over 640 Pages

Title 2: **Federal Financial Assistance**

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- On April 22, 2024, OMB issued a Final Rule revising 2 CFR Parts 1, 25, 170, 175, 180, 182, 183, 184, and 200

Title 2: Federal Financial Assistance	
2 CRF 200 Part 1	About Title 2 of the Code of Federal Regulations and Subtitle A
2 CRF 200 Part 25	Unique Entity Identifier and System For Award Management
2 CRF 200 Part 170	Award Term
2 CRF 200 Part 175	Award Term For Trafficking in Persons
2 CRF 200 Part 180	OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement)
2 CRF 200 Part 182	Government-Wide Requirements For Drug-Free Workplace (Financial Assistance)
2 CRF 200 Part 183	Never Contract With the Enemy
2 CRF 200 Part 184	Buy America Preferences For Infrastructure Projects
2 CRF 200 Part 200	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance

Purpose of Revisions to the CFR

The OMB revised its guidance for Federal Financial Assistance for the purpose of:

(1) incorporating statutory requirements and administration priorities

(2) reducing agency and recipient burden

(3) clarifying sections that recipients or agencies have interpreted in different ways

(4) rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms within the guidance

OMB's revisions are intended to improve:

- Federal financial assistance management
- transparency
- oversight

…through more accessible and easily understandable guidance.

Purpose of Revisions to the CFR

- Big picture changes
  - Throughout subparts A through E of Part 200, OMB now uses the terms “recipient,” “subrecipient,” or both in place of “non-Federal entity” (“NFE”). OMB found that using the term “non-Federal entity” in subparts A through E of the prior version of part 200 presented challenges to readers and made it difficult to quickly understand which entity was being addressed.
  - Other plain language revisions to make the Uniform Guidance more accessible to the general public and ensure more equitable access to Federal funding opportunities by making the guidance easier to understand.

Revisions to the Procurement Standards in 2 CFR Part 200

§ 200.318	General procurement standards
§ 200.319	Competition
§ 200.320	Procurement methods
§ 200.321	Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms
§ 200.322	Domestic preferences for procurements
§ 200.323	Procurement of recovered materials
§ 200.324	Contract cost and price
§ 200.325	Federal agency or pass-through entity review
§ 200.326	Bonding requirements
§ 200.327	Contract provisions

Revisions to § 200.318 General Procurement Standards

- §200.318(c):
  - Adds **board member** to the list of those who can create a conflict of interest.
- §200.318(h):
  - When evaluating whether a contractor is responsible, recipient or subrecipient must consider **proper classification** of **employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8)**

Revisions to § 200.318 General Procurement Standards

- §200.318(1):
  - Provides examples of labor and employment practices that may be used so long as the practices are consistent with the U.S. Constitution, applicable Federal statutes an regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.
  - Examples include:
    - PLAs
    - Requiring construction contractors to use hiring preferences or goals for people in high-poverty areas, disadvantaged communities, or individuals with barriers to employment (including women and people from underserved communities)
    - Using agreements intended to ensure uninterrupted delivery or services, or community benefits
    - Offering employees of a predecessor contractor the right of first refusal under a new contract

Revisions to § 200.319 Competition

- Removed §200.319(c):
  - Formerly restricted use of state, local, or tribal geographical preferences in the evaluation of bids and proposals
  - Allowed geographical preferences for A/E selection as long as enough firms could qualify
- Added §200.319(f):
  - **To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.**

Revisions to 200.320 Procurement Methods

- Several changes to language = Few substantive changes
  - Still requires a competitive process for large construction projects
  - Still prefers sealed bids, but permits proposals when conditions not appropriate for bids
- What's Missing?
  - Still no mention of or authorization for construction alternate procurement methods (such as design/build or construction management at risk)

  200.320(c)(4), which was not substantively changed, permits a federal funding agency to accept a written request that a non-competitive process

Revisions to § 200.321 Contracting with Small, Minority, Women, Veteran-Owned Businesses

- Added:
  - **Veteran-owned businesses** to the types of businesses that recipients and subrecipients are encouraged to consider for procurement contracts under a Federal award.
- Updated:
  - "Must take all necessary affirmative steps to assure" to **"When possible, the recipient or subrecipient should ensure"** that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered.

Revisions to § 200.323 Procurement of Recovered Materials

- Added § 200.323(b):
  - **The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.**

Revisions to § 200.324 Contract Cost and Price

- Added language in § 200.324(a):
  - The **recipient or subrecipient** must perform a cost-benefit or price analysis **for** every procurement **transaction**, including contract modifications, **in excess of the simplified acquisition** threshold. The method and degree of analysis **conducted depend** on the facts surrounding the particular procurement **transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However,** as a starting point, the **recipient or subrecipient** must make independent estimates before receiving bids or proposals.

Revisions to § 200.324 Contract Cost and Price

- Removed § 200.324(b):
  - Requiring the recipient to negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
  - May still be a best practice when there is no competition

Threshold / Rate Changes

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Area	Previous Threshold or Rate	New Threshold or Rate
Single Audit or Program Specific Audit 2 CFR 200.501 (a)	$750,000	$1,000,000
Type A threshold for entities expending awards from $1 million to $34 million 2 CFR 200.518 (b)(1)	$750,000	$1,000,000
Equipment that may be retained, sold, or otherwise disposed of with no further responsibility to the federal agency or pass-through entity 2 CFR 200.313 (e)(1)	$5,000	$10,000
Unused supplies required to be sold at the end of a grant award period 2 CFR 200.314 (a)	$5,000	$10,000
De Minimis indirect rate 2 CFR 200.414 (f)	10%	15%
Amount of subawards recipients can apply to the indirect rate 2 CFR 200.1 “Modified Total Direct Cost (MTDC)”	$25,000	$50,000

Best Practices

Revisions will need to be made to implement the final rule

UPDATE

- Procurement Policies & Procedures
- Contracts & Templates
- Documentation

Contact Information

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