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Part III

Office of Management and Budget

2 CFR Chapter I, Chapter II, Part 200, et al.
Uniform Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Executive Office of the President, Office of Management and Budget (OMB).

ACTION: Final guidance.

SUMMARY: To deliver on the promise of a 21st-Century government that is more efficient, effective and transparent, the Office of Management and Budget (OMB) is streamlining the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. These modifications are a key component of a larger Federal effort to more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. This guidance provides a governmentwide framework for grants management which will be complemented by additional efforts to strengthen program outcomes through innovative and effective use of grant-making models, performance metrics, and evaluation. This reform of OMB guidance will reduce administrative burden for non-Federal entities receiving Federal awards while reducing the risk of waste, fraud and abuse.

This final guidance supersedes and streamlines requirements from OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in OMB guidances); Circulars A-89, A-102, and A-133; and the guidance in Circular A-50 on Single Audit Act follow-up. Future reform efforts may eventually seek to incorporate the Cost Principles for Hospitals in Department of Health and Human Services regulations. Copies of the OMB Circulars that are superseded by this guidance are available on OMB's Web site at <http://www.omb.eop.gov>. The final guidance consolidates the guidance previously contained in the aforementioned citations into a streamlined format that aims to improve both the clarity and accessibility. This final guidance is located in Title 2 of the Code of Federal Regulations.

This final guidance does not broaden the scope of applicability from existing government-wide requirements,

affecting Federal awards to non-Federal entities including state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations. Parts of it may also apply to for-profit entities in limited circumstances and to foreign entities as described in this guidance and the Federal Acquisition Regulation. This guidance does not change or modify any existing statute or guidance otherwise based on any existing statute. This guidance does not supersede any existing or future authority under law or by executive order or the Federal Acquisition Regulation.

DATES: This guidance is effective December 26, 2013.

This guidance is applicable for Federal agencies December 26, 2013 and or Federal agenhr2emeneal



the guidance into one document improves consistency and eliminates of many duplicative provisions throughout. Further, as described in § 200.110 Effective Date, Federal agencies will implement this guidance in unison, which will provide non-Federal entities with a predictable, transparent, and governmentwide consistent implementation schedule. Finally, this completes a long-standing goal of co-locating all related OMB guidance into Title 2 of the Code of Federal Regulations.

2. *Performance*: The final guidance includes provisions that focus on performance over compliance to provide accountability for Federal funds.

- Section 200.102 Exceptions notes that on a case-by-case basis, in accordance with OMB guidance in M-13-17, OMB will waive certain compliance requirements and approve new strategies for innovative program designs that improve cost-effectiveness and encourage effective collaboration across programs to achieve outcomes. The models described in OMB Memorandum 13-17 include tiered evidence grants, Pay for Success and other pay-for-performance approaches, and Performance Partnerships allowing braided and blended funding. The goals for these models include encouraging a greater share of funding to support approaches with strong evidence of effectiveness and building more evaluation into grant-making so we keep learning more about what works. In addition to these specific models, M-13-17 also encourages Federal agencies to pursue other strategies to increase cost-effectiveness in high-priority programs.

- Section 200.201 Use of Grant Agreements (Including Fixed Amount Awards), Cooperative Agreements, And Contracts includes provisions for fixed amount awards that minimize compliance requirements in favor of requirements to meet performance milestones.

- Section 200.301 Performance Measurement provides more robust guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The Federal awarding agency is required d

• Section 200.433 Contingency Provisions clarifies the circumstances under which contingency costs may be included in Federal awards.

• Appendix III Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) includes provisions that extend to all IHEs the provisions previously extended only to a few that allow for recovery of increased utility costs associated with research.

5. **Final Guidance**: The final guidance strengthens language in certain items of cost to appropriately limit costs under Federal awards.

• Section 200.432 Conferences clarifies allowable conference spending and requires conference hosts/sponsors to exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award.

• Section 200.437 Employee Health And Welfare Costs eliminates the existing allowance for "morale" cost.

• Section 200.464 Relocation Costs Of Employees limits the previously unlimited amount of time for which a Federal award may be charged for the costs of an employee's vacant home for up to six-months.

• Section 200.469 Student Activity Costs expands to all entities the limitation on student activity costs that previously applied only to IHEs.

6. **Part 200—Federal Awards**: The final guidance includes provisions that set the stage for Federal agencies to manage Federal awards via standardized business process and use of consistently defined data elements. This will reduce administrative burden on non-Federal entities that must navigate the processes of multiple Federal agencies as they manage information required to implement Federal awards.

• Subpart A—Acronyms and Definitions provides standard definitions of terms present not only throughout the document, but also throughout many approved Federal information collections used to manage Federal awards.

• Section 200.203 Notices Of Funding Opportunities provides a standard set of data elements to be provided in all Federal notices of funding opportunities. This will make such notices easier for non-Federal entities to compare and understand.

• Sections 200.206 Standard

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the public online, and encourages Federal agencies to take a more cooperative approach to audit resolution in order to more conclusively resolve underlying weaknesses in internal controls.

- Section 200.501 Audit Requirements raises the Single Audit threshold from \$500,000 in Federal awards per year to \$750,000 in Federal awards per year. This reduces the audit burden for approximately 5,000 non-Federal entities while maintaining Single Audit coverage over 99% of the Federal dollars currently covered.

- Section 200.512 Report Submission requires publication of Single Audit Reports online with safeguards for protected personally identifiable information and an exception for Indian tribes in order to reduce the administrative burden on non-Federal entities associated with transmitting these reports to all interested parties.

- Section 200.513 Responsibilities requires Federal awarding agencies to designate a Senior Accountable Official who will be responsible for overseeing effective use of the Single Audit tool and implementing metrics to evaluate audit follow-up. This section also encourages Federal awarding agencies to make effective use of cooperative audit resolution practices in order to reduce repeated audit findings.

- Section 200.518 Major Program Determination focuses audits on the areas with internal control deficiencies that have been identified as material weaknesses. Future updates to the Compliance Supplement will reflect this

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The COFAR considered both views and determined that the sensitive information on computing devices could more efficiently be protected through guidance specifically on internal controls for sensitive information, rather than through prescriptive requirements for the devices themselves. Further, the COFAR considered that the prescriptive requirements that are appropriately in place for equipment over the threshold of \$5,000 would create an administrative burden the cost of which would outweigh any benefits achieved by reducing the potential attractiveness of these devices to thieves. To guard against the costly burden that treating these devices as equipment would create, the COFAR recommended retaining the definition of supplies as proposed. To protect the sensitive information on these devices, the COFAR recommended new specific language on internal controls governing sensitive information (see section 200.303 Internal Controls).

200.33 Equipment

Commenters advocated for a higher threshold for equipment than \$5,000. Comments suggested that particularly for large state governments with high amounts of Federal awards, and with state policies of higher capitalization thresholds in place, a higher threshold, possibly in line with the non-Federal entity's own capitalization threshold, would be more appropriate. The COFAR considered and determined that even though entities may view higher thresholds as appropriate for their own purposes, maintaining the threshold at \$5,000 is important to protect the assets purchased with taxpayer dollars under Federal awards. The COFAR did not recommend raising the threshold.

2. Subchapter B: General Provisions

200.101 Applicability

Some commenters suggested at a minimum that this section in the proposal needed to be revised for clarity, and some proposed significant changes to applicability of the guidance beyond what had been proposed.

The COFAR reviewed these and recommended changes for clarity. The guidance maintains existing language stating that this guidance does not supersede any existing or future authority under law or by executive order or the Federal Acquisition

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COFAR did not recommend the addition.

3. Subpart C—Pre-Award Requirements

Content in the NPG from Subchapters previously designated as C—Notice of Federal Awards and D—Terms and Conditions of Federal Awards was reorganized to provide more streamlined guidance on information that is required to be provided to a non-Federal entity upon receipt of a Federal award.

200.201 Use of Grant Agreements (Including Fixed Amount Awards), Cooperative Agreements, and Contracts

In order to broaden a best practice within many Federal agencies' existing policy and to facilitate implementation of M-13-17, a recently published policy encouraging evidence-based programs, and drawing on existing policies and practices from several Federal agencies, new language has been added to the final guidance to allow for "Fixed amount" awards that rely more on performance than compliance for accountability. (See also Section 200.102 Exceptions and 200.430 Compensation—Personal Services.)

4. Subpart D—Post-Award Requirements

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200.301 Performance Measurement

In this section, commenters expressed concern about the longstanding requirement to relate performance to financial information whenever practicable. This language was not a change from existing policy, but in response to concerns, the COFAR recommended clarifications that this requirement will be met through use of governmentwide standard information collections, and notes that further requirements are as appropriate in accordance with those collections. This means that, for the research community where there are standard information collections for performance that, in accordance with the “where practicable” aspect of the guidance, do not relate financial information to performance data, there will be no such requirement.

200.302 Financial Management

Some commenters suggested that to strengthen financial management, non-Federal entities should be required to maintain separate bank accounts for each Federal award. The COFAR considered this but determined that doing so would be excessively administratively burdensome for non-Federal entities, and is not necessary to assure accountability as long as non-Federal entities have appropriate records that meet the standards as described in the guidance. The COFAR recommended further edits to better streamline this section of the guidance on financial management that was

Language in paragraphs (d), (e), and (f) is longstanding language which has always encouraged state and local governments subject to A-102 to avoid duplicative purchases and to enter into common procurements to promote efficient use of Federal awards. Comments recommended strengthening the language in light of OMB's 2012 Shared Services Strategy for Federal agencies encouraging the use of "shared services" for increased efficiency. The COFAR recommended strengthening the language in line with comments received. Additional changes as noted below in the cost principles are further intended to facilitate these types of arrangements.

Commenters were concerned that the requirement in paragraph (i) requiring the maintenance of records sufficient to detail the history of performance would similarly create administrative burden. The COFAR considered this requirement to be an important one for documenting the integrity of the transaction and recommended it be retained.

Commenters were concerned that language in the NPG, which required information concerning any protests of a procurement to be provided to the Federal awarding agency, would create an unnecessary layer of administrative burden to that process. The COFAR concurred, and that language has been removed from the section.

200.319 Competition

Commenters were concerned that language in this section, which prohibits the use of geographic preference in solicitations, would put some non-Federal entities in conflict with the requirements of state law in some cases where state laws require such preferences. The COFAR considered this, but ultimately determined that such preferences could result in the non-Federal entity not making the most efficient possible use of the funds received under a Federal award, and so recommended the language remain unchanged. Where there is a conflict between state or tribal law and this guidance as implemented in regulation with respect to the administration of a Federal award, this Federal guidance prevails.

200.320 Methods of Procurement To Be Followed

Commenters were concerned that the methods of procurement in this section might be overly proscriptive and might prevent entities from making purchases from specific contractors where such purchases were necessary, especially for example, for the integrity of a research

project. The COFAR considered the language and recommended that with minor clarifications these methods, which include sole source procurements with justification, be retained as they should be inclusive enough to account for such situations.

200.322 Procurement of Recovered Materials

The COFAR also recommended including language in paragraph (f) on the procurement of recovered material to reiterate non-Federal entities' obligations under section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

200.328 Monitoring and Reporting Program Performance

Some language in this section that had been included in the NPG aligning requirements with those in OMB Circular A-11 were found by Federal agencies to be overly broad, and have instead been replaced by more narrow language in section 200.102 Exceptions. The more specific language is designed to encourage evidence based program design.

The final guidance also includes language from existing guidance that had been dropped from the NPG noting that reporting should not be required more frequently than quarterly. In addition, similar language to that in section 200.501 on Standards for Performance and Financial Management notes that performance reports are subject to the Paperwork Reduction Act requirements and should use OMB-approved governmentwide information collections.

200.329 Reporting on Real Property

The language in this section is based on the supplementary information provided in the purpose section of the Final Notice of the Real Property Status Report (RPSR) form SF-429 available at 75 FR 56540 published September 16, 2010.

This section was proposed in the NPG as section 200.501, but the COFAR recommended it be reordered in the final guidance for a more logical flow of post-award requirements.

200.331 Requirements for Pass-Through Entities

Many commenters were concerned that this section could expand the monitoring requirements for

subrecipients significantly and result in increased administrative burden. In addition to re-ordering certain elements of the NPG language for clarity as some commenters suggested, the COFAR recommended the following further modifications:

In paragraph (a), data elements that are required to be included in subawards are aligned with those required to be included by Federal awarding agencies in Federal awards in section 200.210 Information Contained In A Federal Award.

Comments on the proposed language requiring pass-through entities to include an indirect cost rate in the subaward were highly positive, but suggested that the de minimis rate as outlined in section 200.414 Indirect (F&A) Costs should be higher. Commenters were concerned that pass-through entities might decline to negotiate, and this would make the de minimis rate more likely a de facto rate for subrecipients. The COFAR considered this feedback but determined that as an automatic rate without any review of actual costs, the rate should remain at the conservative levels discussed in that section to protect the Federal government against excessive over reimbursement.

Comments noted concern that as stated the language broadened pass-through entity responsibility for monitoring subrecipients particularly with respect to audit follow-up. The COFAR recommended modifications to clarify that the required monitoring of subrecipients is limited to reviewing any performance and financial reports that the pass-through entity has decided to require in order to meet their own requirements under the terms and conditions of the Federal award, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits only when those findings pertain to Federal award funds provided to the subrecipient from the pass-through entity. This is consistent with existing requirements. Language is further modified to clarify that pass-through entities must only verify, rather than ensure, that a subrecipient has an audit as required by Subpart F Audit Requirements. As a result of these clarifications, the requirements for subrecipient monitoring are substantively unchanged from existing guidance.

the way it was proposed. Some commenters were concerned that the conditions as originally articulated were not sufficiently clear for auditors to determine whether a directly charged administrative cost was allowable or not. Other commenters were concerned that the requirement to have these costs approved in the budget was more restrictive than otherwise standard rebudgeting practices and would unduly constrain implementation. The COFAR considered the issue and recommended adding explicit language to clarify that when these costs are allowable, they must have the prior approval of the Federal awarding agency. Additional language was added to allow for this approval after the initial budget approval in order to allow for flexibility in implementation. The clarified language addresses both sets of concerns; clarifying conditions for allowability while providing additional flexibility in project management.

200.414 Indirect (F&A) Costs

In response to a wide range of feedback from diverse stakeholders, Section 615 Indirect Costs contained a number of proposals for making indirect costs more transparent and consistent for non-Federal entities. These were well received by most stakeholders who submitted comments, and have mostly been retained as proposed, with some modifications.

Language in paragraph (c) provides for the consistent application of negotiated indirect cost rates, and articulates the conditions under which a Federal awarding agency may use a different rate. These conditions include approval of the Federal awarding agency head (as delegated per standard delegations of authority) based on documented justification, the public availability of established policies for determinations to use other than negotiated rates, the inclusion of notice of such a decision in the announcement of funding opportunity, as well as in any pre-announcement outreach, and notification to OMB of the decision. Comments received regarding these proposals were mostly positive, and indicated that these provisions would likely lead to greater consistency, and transparency in the application of indirect cost rates governmentwide. Some commenters recommended that for even greater consistency decisions about the use of rates be subject to OMB approval rather than Federal agency approval. The COFAR considered this, but ultimately recommends that responsibility for administering Federal financial assistance programs continue to rest with the Federal awarding

agencies, and that the conditions set by OMB for these determinations are stringent enough to ensure that they do not occur without strong justification. The COFAR did not recommend the change.

Language in paragraph (f) provides that any non-Federal entity that has never had a negotiated indirect cost rate may use a de minimis rate of 10% of modified total direct costs. Commenters recommended that this rate should be higher—either at 15% or 20% respectively. They were concerned that because for smaller organizations the capacity to conduct full negotiations is often out of reach, this rate will most likely be the de facto rate rather than the de minimis rate. The COFAR considered the possibility of raising this rate, but ultimately recommended that as an automatic de minimis rate without analysis of actual costs it should stay at a conservative level in order to minimize the possibility that the Federal government over reimburse for these costs. Additional comments also suggested that to further reduce burden for both recipients and the Federal government, this de minimis rate be allowable for use indefinitely, and the COFAR concurred.

Language in paragraph (g) provides an option for entities with an approved federally negotiated indirect cost rate to apply for a one-time extension without further negotiation subject to the approval of the negotiating Federal agency. Commenters responded positively to this option, though some suggested that the extension period be longer, or that additional extensions be allowable. The COFAR considered these, but found it important to renegotiate after an initial 4-year extension period to ensure that such rates continue to be based on actual costs. The COFAR recommended this provision remain as proposed.

200.415 Required Certifications

Comments recommended that in order to better mitigate risks of waste, fraud, and abuse, required certification language be strengthened to include specific language acknowledging the statutory consequences of false certifications. The COFAR concurred with the recommendation.

200.419 Cost Accounting Standards and Disclosure Statement

The NPG proposed deleting the requirements that apply only to IHEs to comply with the Federal Acquisition Regulation (FAR) Cost Accounting Standards (CAS) and to file a Disclosure Statement when their Federal awards total \$25 million or more. Some

commenters responded favorably that this would reduce a source of administrative burden, but others were concerned, stating that this disclosure statement was a critical tool to mitigating waste, fraud, and abuse and opposed its elimination. Since the most likely source of burden occurs when an entity crosses the threshold for the first time, the COFAR recommended reinstating the requirement at the new threshold of \$50 million to be consistent with current FAR requirements.

The COFAR further noted that for most IHEs that have already passed the threshold, the biggest source of burden associated with these requirements arises from uncertainty when awaiting Federal agency approval for a submitted change in a Disclosure Statement. In response, instead of requiring Federal agency approval for changes, the COFAR recommended the final guidance require only that non-Federal entities submit their changes six months in advance of implementing a change. If they receive no indication of an extension of the review period or of concern from a Federal agency, they may proceed with the implementation without further delay. The COFAR's recommended solution would thus continue to require use a valuable tool for mitigating risks of waste, fraud, and abuse while eliminating key sources of administrative burden and uncertainty for non-Federal entities that can lead to unnecessary audit findings.

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 200.420

Some commenters noted concern that the current item of cost for "Communication costs" had been deleted from the proposed guidance. The COFAR considered this, but considered communications costs to be straightforward enough to be easily covered by the guidance in Subtitle II: Basic Considerations. The COFAR notes that all items not specifically covered in the items of cost are subject to the guidance in Subtitle II Basic Considerations, and that this section should be read as a guiding framework for all specific discussions of cost in the section that follow.

200.421 Advertising and Public Relations

Commenters noted that it was important that costs relating to advertising and public relations allow for costs of advertising program outreach and other specific costs necessary to meet the requirements of the federal award. The COFAR recommended the addition.

200.422 Advisory Councils

Commenters were concerned that the proposed guidance disallowed previously allowable costs for

certification language that would better prevent and facilitate prosecution of fraud. Some commenters that allowance for costs based on estimates could result in a lack of sufficient documentation that the costs were in accordance with the work performed.

The COFAR agreed with the recommendations on the risks in this area and the need for a strong system of internal controls to document compliance. This final guidance requires non-Federal entities to comply with a stringent framework of internal control objectives and requirements. The guidance also requires that when interim charges are based on budget estimates, the non-Federal entity's system of internal controls must include processes to ensure necessary adjustments are made such that the final amount charged to Federal awards is proper.

The COFAR considered recommendations from commenters to include specific certification language, but was concerned that requiring specific language at this level would result in audit findings more likely to be based on incorrect documentation rather than uncovering weaknesses in internal control or instances of fraud. Further, the COFAR notes that other certifications included by recipients in their applications and indirect cost rate agreements provide a layer of assurance that can be used in preventing and prosecuting instances of fraud.

The COFAR believes this focus on overall internal controls provides greater accountability as the non-Federal entity must ensure that the total internal control system for documenting personal expenses provides proper accountability and the auditor must test these internal controls as part of the Single Audit requirements in Subpart F. While many non-Federal entities may still find that existing procedures in place such as personal activity reports and similar documentation are the best method for them to meet the internal control requirements, this final guidance does not specifically require them. The focus in this final guidance on overall internal controls mitigates the risk that a non-Federal entity or their auditor will focus solely on prescribed procedures such as reports, certifications, or certification time periods which alone may be ineffective in assuring full accountability.

While this approach may increase burden on non-Federal entities with weak internal controls, the COFAR believes overall it will reduce burden by providing non-Federal entities the ability to implement the internal control systems and business processes that best

fit a non-Federal entity's needs. Also, placing requirements at the internal control objective level is consistent with the requirements in section 200.303 Internal Controls. Specifically, the COFAR recommended stating explicitly that charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. Further clarifications describe the required controls in more detail.

The COFAR received positive feedback on proposed language that provided for Federal agencies to approve alternative methods where proposals are submitted that are more performance oriented or in instances of approved blended funding and recommended it be retained.

The combined result of these changes is that non-Federal entities have clear high standards for maintaining a strong system of internal controls over their records to justify costs of salaries and wages, and also additional flexibility in the processes they use to meet these standards. This should allow them to be more accountable for these costs at less expense.

200.431 Compensation—Fringe Benefits

Commenters recommended eliminating a requirement for awarding agency pre-approval for insurance payments based on consistent entity policy for actual payments to or on behalf of employees or former employees for unemployment compensation or workers' compensation. The COFAR agreed and recommends removing the language.

Based on recommendations from diverse comments, the COFAR recommended clarification of the applicability of GAAP to entities using accrual based accounting. The COFAR also recommends that prior approval by the Federal awarding agency or cognizant agency be given before an indirect cost is charged to the Federal award for abnormal or mass severance pay.

Federal agencies recommended that all severance in excess of normal severance policy in accordance with institutional policy or other conditions for allowability discussed in the guidance should be unallowable, not just golden parachute packages. The COFAR recommended the proposed changes to prevent excessive severance payments.

Finally, many commenters commended the inclusion of family-related leave among the examples of types of leave that may be allowed according to the non-Federal entity's

written policies. The COFAR recommended keefbased auf(inc)Tj (commenamTj)

COFAR considered this last requirement to be sufficient for tracking the use of funds, as contingency funds should most properly be charged not as "contingency funds" specifically, but according to the cost category into which they would naturally fall. The COFAR did not recommend any changes to the proposed language.

200.434 Contributions and Donations

Comments suggested that the value of a donated item, whether it is a good or a building, should not be charged to a Federal award as either a direct or indirect cost.

The COFAR concurred and recommended changes accordingly. The COFAR also recommended clarifying that depreciation on donated assets is permitted in accordance with 200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements. The COFAR also recommended consolidation of much this section with section 200.306 Cost Sharing Or Matching.

200.435 Defense and Prosecution of Criminal and Civil Proceedings, Claims, Appeals and Patent Infringements

Commenters recommended that that all costs related to defense of criminal, civil, or administrative proceedings should be completely unallowable, regardless of disposition.

The COFAR considered this but recommended keeping the language as it was originally proposed in order to preserve a wrongly accused defendant's ability to charge the Federal award for legal costs related to charges or claims for which the defendant ultimately receives a favorable disposition.

200.436 Depreciation

Commenters suggested that allowable compensation for the use of their buildings, capital improvements, equipment, and software projects should be based on capitalization in accordance with GAAP instead of the Government Accounting Standards Board Statement Number 51.

The COFAR agreed and recommended changing the language to reflect this change. The COFAR also recommend adding clarification that an asset donated to the non-Federal entity by a third party will have its fair market value documented at the time of the donation and shall be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both.

Commenters noted that proposed language on depreciating assets donated by a third party would prevent

recipients from recovering depreciation on assets that might be purchased under non-Federal awards, but nevertheless used at least in part to support a Federal award. This exclusion would discourage efficiencies to Federal awards that could otherwise be gained through shared use of these assets. The COFAR agreed and recommended the proposed change.

200.437 Employee Health and Welfare Costs

Commenters suggested that allowing costs to improve "morale" in this item as proposed would be difficult to distinguish from the language in the following item that disallows entertainment costs, potentially resulting in opportunities for waste, fraud, and abuse.

The COFAR concurred and, to better mitigate these risks recommended eliminating references to morale, limiting this item to those for Health and Welfare as established in the non-Federal entity's documented policies.

200.438 Entertainment Costs

Many diverse commenters noted the potential for conflicting guidance between this section as proposed and the guidance under 200.437 Employee Health And Welfare Costs, as well as confusion about exceptions for entertainment under the terms and conditions of the award.

In addition to the clarifications to 200.437 Employee Health And Welfare Costs, the COFAR recommended clarifying that any exceptions require a programmatic purpose as well as written prior approval from the Federal awarding agency.

200.439 Equipment and Other Capital Expenditures

Many diverse commenters noted opportunity for clarification in this section. The COFAR recommended addressing most of these either in consolidated definitions in the definitions section or through appropriate consolidations with the language in Subpart D—Post Federal Award Requirements, section Subtitle II

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200.465 Rental Costs of Real Property and Equipment

Commenters requested that an exception for Indian tribes be the provisions that allow “less-than-arm’s-length” transactions only up to the actual costs of ownership. They suggest that this is a matter of tribal autonomy and a way to better support tribal enterprises. The COFAR considered the suggestion but determined that despite the unique government-to-government relationship with Indian tribes and the importance of tribal autonomy, allowing these transactions at higher than the costs of actual ownership would result in undue increases in costs to the Federal government. The COFAR did not recommend the change.

Commenters recommended that rental costs under “sale and lease back” arrangements should only be allowable up to the actual costs of ownership, and not up to the amount that would be allowed had the entity continued to own the property. They also commented that language explaining that for clarity rental costs under “less-than-arm’s length” leases are allowable only up to the amount as explained in paragraph (2) need not include that the costs are allowable up to the amount had the title to the property vested in the institution.

Commenters suggested that the provisions of the General Accepted Accounting Principles should determine whether a lease is a capital lease or not. Commenters also suggested that language should be added prohibiting the charge of home office space and utilities charged to a Federal award.

The COFAR recommended these proposed changes.

200.466 Scholarships and Student Aid Costs

Commenters suggested that this section should reflect the dual role of students and that the language should make clear that voluntary committed cost sharing should not be used as a factor in the review of applications.

The COFAR concurred with the recommended clarifications, but recommended they be more appropriately added in section 200.400 Policy Guide, and section 200.306 Cost Sharing Or Matching, respectively.

200.467 Selling and Marketing Costs

Commenters suggested that a cross-reference to section 200.460 Proposal Costs should be added to the existing cross reference to section 200.421 Advertising and Public Relations as allowable exceptions to the otherwise unallowable costs covered by this section. The COFAR concurred with the recommendation.

200.468 Specialized Service Facilities

Commenters suggested introducing the concept of an “equipment replacement fund”. Their concern is that when federally-funded equipment is being used, the depreciation charges on this equipment are not allowed to be included in the rates charged to users of the equipment. Consequently, this restricts the ability of the non-Federal entity to recover funds that could be used to replace the equipment in the future. Allowing non-Federal entities to establish an “equipment replacement fund” would help to ensure that institutions are in a position to fund future equipment without having to rely on equipment grants from research funding agencies. The COFAR considered this suggestion, but was concerned that allowing such costs would inappropriately increase costs under Federal awards and reduce the benefits intended to be achieved by the Federal award. The COFAR did not recommend the change.

Commenters suggested that examples of costs of services provided by highly complex or specialized facilities operated by the entity are not needed.

The COFAR considered the suggestion and although generally throughout the guidance has declined to include specific examples recommended that in this case the examples be kept as an important way to illustrate the intent of the language.

200.469 Student Activity Costs

Upon review of this section, the COFAR recommended that though it primarily applies to IHEs, expanding this language to all entities would further mitigate risks of waste, fraud, and abuse.

200.471 Termination Costs

Commenters suggested that the cross reference to an exception for reimbursement for a predetermined amount under proposed Subpart D—Post Federal Award Requirements, Subtitle II Property Standards did not exist in the document and recommended the cross-reference be deleted.

Commenters suggested that while there is no substantive change in the proposed guidance from the existing circulars, they are unsure why indirect costs are being specifically cited with regard to settlement expenses, and were concerned the citation could be misinterpreted as somehow limiting the allowable indirect costs to only a portion of termination costs. They propose deleting the reference.

The COFAR recommended making both proposed deletions.

200.472 Training and Education Costs

Commenters indicated concern that the language allowing the costs of training and education for employee development is too open-ended and recommended more restrictive language.

The COFAR considered the suggestion, but believes that the basic considerations for allowability in Subtitle II Basic Cvo2 are osid.111 TD (aml Aher m allobrepreted as, gd a -1.ots throughout

recommendfoots t11121112cross-reference be

to Federal agencies that could result from these charges, particularly given the lack of conclusive data available to accurately project these costs. The COFAR concurred with the concern, and so recommended that while these charges should be based on actual costs, the amount recoverable should be limited to an amount equal to 1.3% of the IHE's indirect cost rate until such time as OMB and Federal agencies can better understand the cost implications of full reimbursement of actual costs and the potential implication for Federal programs.

Appendix V State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans

Under existing requirements, any "major local government" is required to submit a Cost Allocation Plan to its cognizant agency for indirect cost on an annual basis in order to claim its central services costs against Federal awards. The "major local governments" subject to this requirement, along with each cognizant agency assignment, are listed in the **Federal Register** notice dated January 6, 1986 (available at: [http://www.federalregister.gov](#)://

[http://www.federalregister.gov](#) / 2013 / 12 / 26 / 78606 / 1

business information would be redacted under exemption 4 under the Act.

To fully address this problem, the COFAR would need to explore with the audit community whether auditing standards could allow for financial statements that do not include this sensitive information in the first place. Since this solution is beyond the reach of the COFAR at this time, the COFAR recommended adding an option to allow Indian Tribes to opt out of having the Federal Audit Clearinghouse publish their reports. If an Indian tribe were to exercise this option, it would be responsible for providing its audit report to any pass-through entities as appropriate.

Commenters recommended additional language to make explicit that the Federal Audit Clearinghouse is the repository of record and authoritative source for single audit reports. Federal agencies, pass-through entities, and others interested should therefore obtain it by accessing the clearinghouse rather than requesting it directly from the non-Federal entity. The COFAR agreed that the proposed addition would likely reduce administrative burden and recommended the addition.

Commenters also recommended that the section include language to allow for exceptions to reporting deadlines particularly in cases of emergency. The COFAR considered this, but noted that such language would likely lead to an administratively burdensome process of frequent requests and denials of the extension period. In cases of true emergency, OMB and Federal agencies together often issue pre-emptive extensions of the deadline. The COFAR did not recommend further changes to the language.

Further comments noted possible confusion over the deadline for report submission if it falls on a holiday. The COFAR also recommended changes to clarify that if the due date falls on a Saturday, Sunday, or Federal legal holiday, the reporting package is due the next business day.

200.513 Responsibilities

Commenters recommended that the proposed language on quality control reviews be revised back to current OMB Circular A-133 for reviews that are risk based, which is more in line with agency capacity for reviews. The COFAR concurred with the recommendation. The COFAR further recommended further language to require a governmentwide audit quality project every six years similar to those done in the past to take a meaningful look at audit quality governmentwide

and make substantive changes where needed.

Commenters noted that the responsibility to coordinate a management decision for cross-cutting findings is one that Federal agencies struggle to accomplish currently. The COFAR considered this and agreed, but recommended the language remain as an articulation of the best policy. The Single Audit resolution pilot project currently under supervision of the COFAR is aimed at addressing some of the difficulties currently found in implementation.

Commenters noted that the proposed requirement to submit management decisions to the Federal Audit Clearinghouse is one they concur with, but find that significant work would need to be done to coordinate the management decision process at a governmentwide level before this could feasibly be implemented. The COFAR concurred and struck the proposed language, as well as language that would allow other Federal agencies and pass-through entities to rely on cross-cutting management decisions from Cognizant or Oversight Agencies for Audit. The COFAR further notes that the Single Audit resolution pilot project currently under supervision of the COFAR will hopefully result in lessons learned and best practices that can facilitate the implementation of this policy in the future.

Commenters responded positively to new provisions that would strengthen the audit-follow-up process including the appointment of Senior Accountable Officials, implementation of metrics, and encouragement of cooperative audit resolution techniques. These revisions would effectively strengthen the follow-up process and reduce risk of repeated findings of waste, fraud, and abuse.

Some commenters posed questions about the role of the Senior Accountable Official for Audit and how it would align with responsibilities of the Office of Inspectors General. Similar questions were posed about the role of the designated key single audit coordinator. The COFAR considered these and recommended clarifications that the Senior Accountable Official is intended to be a policy official of the awarding agency who can be responsible for overseeing agency management's role in audit resolution. The COFAR also recommended the key single audit coordinator be renamed the key management single audit liaison, and notes that neither of these roles should in any way impact existing responsibilities of Inspectors General, but rather as the COFAR moves toward greater governmentwide coordination of

the audit resolution process, these officials will be accountable for implementing that coordination and ensuring best results.

200.514 Scope of Audit

Several commenters indicated sections where they recommended further references to Generally Accepted Government Auditing Standards (GAGAS). The COFAR considered these but noted that language in this section states upfront that Single Audits shall be conducted in accordance with GAGAS, and recommends that further repetition of this language throughout the document be avoided as unnecessary. The COFAR further recommended conforming changes to eliminate duplicative references throughout the guidance.

200.515 Audit Reporting

Commenters recommended several minor technical edits throughout this section to align with auditing standards which the COFAR recommended. Commenters also recommended new language to note that nothing in this section should preclude combining of audit reporting required by this section with reporting required by section 200.512 Report Submission. The COFAR considered that such an addition would be useful if future advances in technology allow more consolidated reporting in the future, and recommended the addition.

200.516 Audit Findings

Some commenters requested that the proposed threshold for questioned costs of \$25,000 be lowered, even below the existing threshold to a level of zero. Other commenters asked that it be raised higher than \$25,000, and recommended that the level be set on a sliding scale as a percentage of total dollars awarded per program.

The COFAR considered these recommendations, and noted that for purposes of accountability, types of compliance requirements are reviewed with levels of materiality in mind. The questioned cost threshold serves in most cases to dramatically lower the level at which a finding would otherwise be considered material and be reported. The threshold is a valuable tool that provides assurance that questioned costs above it will under no circumstances go unreported regardless of materiality. Based on these considerations, the COFAR recommended that the proposed threshold of \$25,000 be accepted.

200.718 Major Program Determination

The Government Accountability Office (GAO) commented that step 1 of the major program determination would be more easily understood if presented in a table. The COFAR concurred and recommended the new format for ease of comprehension among readers.

Commenters noted the inconsistency of the single audit threshold at \$750,000, the Type A/B program threshold at \$500,000, and the threshold for an entity to have a Type A program at \$1,000,000. Commenters suggested that the level of the threshold for major programs needed to be raised consistent with the threshold for the Single Audit as a whole at \$750,000 to ensure consistent coverage. The COFAR recommended the modification that all three thresholds be the same at \$750,000 consistent with the single audit threshold.

Commenters also recommended additional language to clarify the criteria under the step 2 determination of Type A programs which are low-risk. The COFAR recommended the addition.

200.520 Criteria for a Low-Risk Auditee

Members of the audit community and states commented on the criteria for a low-risk auditee that includes whether the financial statements were prepared in accordance with GAAP. Members of the audit community note that GAAP is the preferred method, and states note that state law sometimes provides for other methods of preparation. The COFAR considered this and recommended revised language to allow for exceptions where state law requires otherwise.

200.521 Management Decision

Upon review of the structure of the proposed guidance, the COFAR recommended that this section be moved to the end of the document.

Commenters suggested that auditees should be required to initiate corrective action as rapidly as possible, and not wait until audit reports are submitted. The COFAR recommended the addition. Commenters also noted that while they supported the ultimate publication of management decisions through the Federal audit clearinghouse, this is not a change that they are prepared to implement immediately. As a result, the COFAR recommended that this be added to the current Single Audit Resolution Pilot currently underway within the COFAR, and that based on the results of the pilot, the COFAR work with Federal agencies to begin implementation of publication of management decisions in 2016.

Appendix XI Compliance Supplement

While most commenters were in favor of the proposed reduction of the number of types of compliance requirements in the compliance supplement, many voiced concern about the process that would implement such changes. Comments questioned whether Federal agencies adding back provisions under special tests and provisions would result in increased administrative burden and requested that such fundamental changes be subject to a public notice and comment period. Since the Compliance Supplement is published as part of a separate process, no final changes are made at this time, but the COFAR recommended that any future changes to the compliance supplement be made based on available evidence on past findings and the potential impact of non-compliance for each type of compliance requirement. The COFAR further recommends that further public outreach be conducted prior to making any structural changes to the format of the compliance supplement to mitigate potential risks of an inadvertent increase in administrative burden.

List of Subjects in 2 CFR Parts 200, 215, 220, 225, and 230

Accounting, Auditing, Colleges and universities, State and local governments, Grant programs, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements.

Norman Dong,

Director, Office of Management and Budget

For the reasons stated in the preamble, under the Authority of the Chief Financial Officer Act of 1990 (31 U.S.C. 503), the Office of Management and Budget amends 2 CFR Chapters I and II as set forth below:

Chapter I—Office Of Management and Budget Governmentwide Guidance for Grants and Agreements

- 1. Remove the subchapter headings for Subchapters A through G from Chapter I.

Chapter II—Office of Management and Budget Guidance

- 2. The heading of chapter II is revised to read as set forth above.
- 3. Add part 200 to read as follows:

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**Subpart A—Acronyms and Definitions**

Acronyms

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- 200.5 Audit finding.
- 200.6 Auditee.
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- 200.9 Central service cost allocation plan.
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- 200.11 CFDA program title.
- 200.12 Capital assets.
- 200.13 Capital expenditures.
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- 200.18 Cognizant agency for audit.
- 200.19 Cognizant agency for indirect costs.
- 200.20 Computing devices.
- 200.21 Compliance supplement.
- 200.22 Contract.
- 200.23 Contractor.
- 200.24 Cooperative agreement.
- 200.25 Cooperative audit resolution.
- 200.26 Corrective action.
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- 200.31 Disallowed costs.
- 200.32 Data Universal Numbering System (DUNS) number.
- 200.33 Equipment.
- 200.34 Expenditures.
- 200.35 Federal agency.
- 200.36 Federal Audit Clearinghouse (FAC).
- 200.37 Federal awarding agency.
- 200.38 Federal award.
- 200.39 Federal award date.
- 200.40 Federal financial assistance.
- 200.41 Federal interest.
- 200.42 Federal program.
- 200.43 Federal share.
- 200.44 Final cost objective.
- 200.45 Fixed amount awards.
- 200.46 Foreign public entity.
- 200.47 Foreign organization.
- 200.48 General purpose equipment.
- 200.49 Generally Accepted Accounting Principles (GAAP).
- 200.50 Generally Accepted Government Auditing Standards (GAGAS).
- 200.51 Grant agreement.
- 200.52 Hospital.
- 200.53 Improper payment.
- 200.54 Indian tribe (or "federally recognized Indian tribe").
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- 200.56 Indirect (facilities & administrative) costs.
- 200.57 Indirect cost rate proposal.
- 200.58 Information technology systems.

- 200.59 Intangible property.
- 200.60 Intermediate cost objective.
- 200.61 Internal controls.
- 200.62 Internal control over compliance requirements for Federal awards.
- 200.63 Loan.
- 200.64 Local government.
- 200.65 Major program.
- 200.66 Management decision.
- 200.67 Micro-purchase.
- 200.68 Modified Total Direct Cost (MTDC).

- 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.
- 200.436 Depreciation.
- 200.437 Employee health and welfare costs.
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- 200.439 Equipment and other capital expenditures.
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- 200.441 Fines, penalties, damages and other settlements.
- 200.442 Fund raising and investment management costs.
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Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans

Appendix VI to Part 200—Public Assistance Cost Allocation Plans

Appendix VII to Part 220—States and Local Government and Indian Tribe Indirect Cost Proposals

Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200

Appendix IX to Part 200—Hospital Cost Principles

Appendix X to Part 200—Data Collection Form (Form SF-SAC)

Appendix XI to Part 200—Compliance Supplement

Authority: 31 U.S.C. 503

Subpart A—Acronyms and Definitions

Acronyms

§ 200.0 Acronyms.

ACRONYM TERM

- CAS Cost Accounting Standards
- CFDA Catalog of Federal Domestic Assistance
- CFR Code of Federal Regulations
- CMIA Cash Management Improvement Act
- COG Councils Of Governments
- COSO Committee of Sponsoring Organizations of the Treadway Commission
- D&B Dun and Bradstreet
- DUNS Data Universal Numbering System
- EPA Environmental Protection Agency
- ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301–1461)
- EUI Energy Usage Index
- F&A Facilities and Administration
- FAC Federal Audit Clearinghouse
- FAIN Federal Award Identification Number

- FAPIS Federal Awardee Performance and Integrity Information System
- FAR Federal Acquisition Regulation
- FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109–282, as amended by section 6202(a) of Public Law 110–252 (31 U.S.C. 6101)
- FICA Federal Insurance Contributions Act
- FOIA Freedom of Information Act
- FR Federal Register
- FTE Full-time equivalent
- GAAP Generally Accepted Accounting Principles
- GAGAS Generally Accepted Government Accounting Standards
- GAO General Accounting Office
- GOCO Government owned, contractor operated
- GSA General Services Administration
- IBS Institutional Base Salary
- IHE Institutions of Higher Education
- IRC Internal Revenue Code
- ISDEAA Indian Self-Determination and Education and Assistance Act
- MTC Modified Total Cost
- MTDC Modified Total Direct Cost
- OMB Office of Management and Budget
- PII Personally Identifiable Information
- PRHP Post-retirement Health Plans
- PTE Pass-through Entity
- REUI Relative Energy Usage Index
- SAM System for Award Management
- SFA Student Financial Aid
- SNAP Supplemental Nutrition Assistance Program
- SPOC Single Point of Contact
- TANF Temporary Assistance for Needy Families
- TFM Treasury Financial Manual
- U.S.C. United States Code
- VAT Value Added Tax

§ 200.1 Definitions.

These are the definitions for terms used in this Part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities. These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections.

§ 200.2 Acquisition cost.

means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in

Assignment, and Rate Determination for Nonprofit Organizations, paragraph C.1.

(c) For state and local governments: Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans, paragraph F.1.

§ 200.20 Computing devices.

means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. See also §§ 200.94 Supplies and 200.58 Information technology systems.

§ 200.21 Compliance supplement.

means Appendix XI to Part 200—Compliance Supplement (previously known as the Circular A–133 Compliance Supplement).

§ 200.22 Contract.

means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this Part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see § 200.92 Subaward).

§ 200.23 Contractor.

means an entity that receives a contract as defined in § 200.22 Contract.

§ 200.24 Cooperative agreement.

means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity’s direct benefit or use;

(b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) The term does not include:

(1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(2) An agreement that provides only:

- (i) Direct United States Government cash assistance to an individual;
- (ii) A subsidy;
- (iii) A loan;
- (iv) A loan guarantee; or
- (v) Insurance.

§ 200.25 Cooperative audit resolution.

means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

- (a) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;
- (b) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(c) A focus on current conditions and corrective action going forward;

(d) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(e) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

§ 200.26 Corrective action.

means action taken by the auditee that:

- (a) Corrects identified deficiencies;
- (b) Produces recommended improvements; or
- (c) Demonstrates that audit findings are either invalid or do not warrant auditee action.

§ 200.27 Cost allocation plan.

means central service cost allocation plan or public assistance cost allocation plan.

§ 200.28 Cost objective.

means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular

service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in Subpart E—Cost Principles of this Part. See also §§ 200.44 Final cost objective and 200.60 Intermediate cost objective.

§ 200.29 Cost sharing or matching.

means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). See also § 200.306 Cost sharing or matching.

§ 200.30 Cross-cutting audit finding.

means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

§ 200.31 Disallowed costs.

means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

§ 200.32 Data Universal Numbering System (DUNS) number.

means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify entities. A non-Federal entity is required to have a DUNS number in order to apply for, receive, and report on a Federal award. A DUNS number may be obtained from D&B by telephone (currently 866–705–5711) or the Internet (currently at www.dunandbradstreet.com).

§ 200.33 Equipment.

means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also §§ 200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.

§ 200.34 Expenditures.

means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(a) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(b) For reports prepared on a cash basis, expenditures are the sum of:

- (1) Cash disbursements for direct charges for property and services;
- (2) The amount of indirect expense charged;
- (3) The value of third-party in-kind contributions applied; and
- (4) The amount of cash advance payments and payments made to subrecipients.

(c) For reports prepared on an accrual basis, expenditures are the sum of:

- (1) Cash disbursements for direct charges for property and services;
- (2) The amount of indirect expense incurred;
- (3) The value of third-party in-kind contributions applied; and
- (4) The net increase or decrease in the amounts owed by the non-Federal entity for:
 - (i) Goods and other property received;
 - (ii) Services performed by employees, contractors, subrecipients, and other payees; and
 - (iii) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

§ 200.35 Federal agency.

means an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

§ 200.36 Federal Audit Clearinghouse (FAC).

means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the reporting packages required by Subpart F—Audit Requirements of this Part. The mailing address of the FAC is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132 and the web address is:

organization under the International
Organizations Immunities Act (22
U.S.C. 288–288f);
(c) An entity owned (in whole or in

§ 200.60 Intermediate cost objective.

“ ” means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also § 200.28 Cost objective and § 200.44 Final cost objective.

§ 200.61 Internal controls.

“ ” means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (a) Effectiveness and efficiency of operations;
- (b) Reliability of reporting for internal and external use; and
- (c) Compliance with applicable laws and regulations.

§ 200.62 Internal control over compliance requirements for Federal awards.

“ ” means a process implemented by a non-Federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for Federal awards:

- (a) Transactions are properly recorded and accounted for, in order to:
 - (1) Permit the preparation of reliable financial statements and Federal reports;
 - (2) Maintain accountability over assets; and
 - (3) Demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;
- (b) Transactions are executed in compliance with:
 - (1) Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal program; and
 - (2) Any other Federal statutes and regulations that are identified in the Compliance Supplement; and

(c) Funds, property, and 1 -1.1Tw T* (re) Funds, pr (c.004cou6aablomagainl clorocfrom the)Tj unauthatezlamnaloolsdisposcondiions.

(c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

§ 200.71 Obligations.

When used in connection with a non-Federal entity's utilization of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

§ 200.72 Office of Management and Budget (OMB).

means the Executive Office of the President, Office of Management and Budget.

§ 200.73 Oversight agency for audit.

means the Federal awarding agency that provides the predominant amount of funding directly to a non-Federal entity not assigned a cognizant agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513 Responsibilities, paragraph (b).

§ 200.74 Pass-through entity.

means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

§ 200.75 Participant support costs.

means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

§ 200.76 Performance goal.

means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

§ 200.77 Period of performance.

means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal

award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award (see §§ 200.210 Information contained in a Federal award paragraph (a)(5) and 200.331 Requirements for pass-through entities, paragraph (a)(1)(iv)).

§ 200.78 Personal property.

means property other than real property. It may be tangible, having physical existence, or intangible.

§ 200.79 Personally Identifiable Information (PII).

P means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public Web sites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

§ 200.80 Program income.

P means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. (See § 200.77 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal

§ 200.87 Research and Development (R&D).

means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

“Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

§ 200.88 Simplified acquisition threshold.

means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this Part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation. (Also see definition of § 200.67 Micro-purchase.)

§ 200.89 Special purpose equipment.

means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also §§ 200.33 Equipment and 200.48 General purpose equipment.

§ 200.90 State.

means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

§ 200.91 Student Financial Aid (SFA).

means Federal awards under those programs of general student

assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070–1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

§ 200.92 Subaward.

means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

§ 200.93 Subrecipient.

means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

§ 200.94 Supplies.

means all tangible personal property other than those described in § 200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also §§ 200.20 Computing devices and 200.33 Equipment.

§ 200.95 Termination.

means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

§ 200.96 Third-party in-kind contributions.

means the value of non-cash contributions (i.e., property or services) that—

(a) Benefit a federally assisted project or program; and

(b) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

§ 200.97 Unliquidated obligations.

means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

§ 200.98 Unobligated balance.

means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

§ 200.99 Voluntary committed cost sharing.

means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award.

Subpart B—General Provisions**§ 200.100 Purpose.**

(a)(1) This Part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101 Applicability. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 Exceptions and 200.210 Information contained in a Federal award, or unless specifically required by Federal statute, regulation, or Executive Order.

(2) This Part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) Administrative requirements. Subparts B through D of this Part set

(2) Federal award of cost-reimbursement contract under the FAR to a non-Federal entity. When a non-Federal entity is awarded a cost-reimbursement contract, only Subpart D—Post Federal Award Requirements of this Part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards (in addition to any FAR related requirements for subaward monitoring), Subpart E—Cost Principles of this Part and Subpart F—Audit Requirements of this Part are incorporated by reference into the contract. However, when the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this Part except for Subpart F—Audit Requirements of this Part when they are in conflict. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR subpart 31.2 and subpart 31.603 are always unallowable. For requirements other than those covered in Subpart D—Post Federal Award Requirements of this Part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards, Subpart E—Cost Principles of this Part and Subpart F—Audit Requirements of this Part, the terms of the contract and the FAR apply.

(3) With the exception of Subpart F—Audit Requirements of this Part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this Part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450–458ddd–2.

(c) Federal agencies may apply subparts A through E of this Part to for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.

(d) Except for § 200.202 Requirement to provide public notice of Federal financial assistance programs and §§ 200.330 Subrecipient and contractor

determinations through 200.332 Fixed amount Subawards of Subpart D—Post Federal Award Requirements of this Part, the requirements in Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards, Subpart D—Post Federal Award Requirements of this Part, and Subpart E—Cost Principles of this Part do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grant Awards for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary award program) and both the Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant Award (42 U.S.C. 300x–21 to 300x–35 and 42 U.S.C. 300x–51 to 300x64) and the Mental Health Service for the Homeless Block Grant Award (42 U.S.C. 300x to 300x–9) under the Public Health Services Act.

(2) Federal awards to local education agencies under 20 U.S.C. 7702–7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990 (Secretary's nm22s ent s (ops00 Td ((4 wards authorized under)Tjryry lic Health 2 St703bt90,morized u2avi21.13. foreign government.

(d) Except for § 200.202 Requirement

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has been included in the CFDA as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must submit the following information to GSA:

(1) Program Description, Purpose, Goals and Measurement. A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11;

(2) Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(3) Projected total amount of funds available for the program. Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) Anticipated Source of Available Funds: The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (e.g., Treasury Account Symbol(s));

(5) General Eligibility Requirements: The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g., type of non-Federal entity); and

(6) Applicability of Single Audit Requirements as required by Subpart F—Audit Requirements of this Part.

§ 200.203 Notices of funding opportunities.

For competitive grants and cooperative agreements, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) Summary Information in Notices of Funding Opportunities. The Federal awarding agency must display the following information posted on the OMB-designated governmentwide Web

site for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) Federal Awarding Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Catalog of Federal Financial Assistance (CFDA) Number(s);

(6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.

(b) The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.

(c) Full Text of Funding Opportunities. The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to Appendix I to Part 200—Full Text of Notice of Funding Opportunity to this Part.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414 Indirect (F&A) costs, paragraph (b)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also

§ 200.205 Federal awarding agency review of risk posed by applicants. See also 2 CFR Part 27.

(6) Federal Award Administration Information. See also § 200.210 Information contained in a Federal award.

§ 200.204 Federal awarding agency review of merit of proposals.

For competitive grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this Part, Full text of the Funding Opportunity.) See also § 200.203 Notices of funding opportunities.

§ 200.205 Federal awarding agency review of risk posed by applicants.

(a) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information, such as Federal Awardee Performance and Integrity Information System (FAPIIS), Dun and Bradstreet, and "Do Not Pay". See also suspension and debarment requirements at 2 CFR Part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(b) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.203 Notices of funding opportunities.

(c) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:

(1) Financial stability;

(2) Quality of management systems and ability to meet the management standards prescribed in this Part;

awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(4) Reports and findings from audits performed under Subpart F—Audit Requirements of this Part or the reports and findings of any other available audits; and

(5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(d) In addition to this review, the Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR Part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions. Whenever practicable, these specific terms and conditions also should be shared on a public Web site and in notices of funding opportunities (as outlined in § 200.203 Notices of funding opportunities) in addition to being included in a Federal award. See also § 200.206 Standard application requirements.

(d) Federal Award Performance Goals. The Federal awarding agency must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The Federal awarding agency may include program-specific requirements, as applicable. These requirements should be aligned with agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Preparation, Submission and Execution of the Budget Part 6 for definitions of strategic objectives and performance goals.

(e) Any other information required by the Federal awarding agency.

§ 200.211 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide Web site (at time of publication, www.fda.gov).

(b) Nothing in this section may be construed as requiring the publication of information otherwise exempt under

the Freedom of Information Act (5 U.S.C. 552), or controlled unclassified information pursuant to Executive Order 13556.

Subpart D—Post Federal Award Requirements Standards for Financial and Program Management

§ 200.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 CFR Part 170 Reporting Subaward and Executive Compensation Information. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

§ 200.301 Performance measurement.

The Federal awarding agency must require the recipient to use OMB-approved governmentwide standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned governmentwide standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons

learned, and spread the adoption of promising practices. The Federal awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in § 200.210 Information contained in a Federal award. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made.

§ 200.302 Financial management.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 200.450 Lobbying.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.333 Retention requirements for records, 200.334 Requests for transfer of records, 200.335 Methods for collection, transmission and storage of information, 200.336 Access to records, and 200.337 Restrictions on public access to records):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.327 Financial reporting and 200.328 Monitoring and reporting program performance. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its

records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand.

Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraphs (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in (1) above at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated indirect cost rate or, a rate in accordance with § 200.414 Indirect (F&A) costs, paragraph (d), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land

for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be

allowed, provided that the Federal awarding agency has approved the charges. See also § 200.420 Considerations for selected items of cost.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR Part 24.

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

§ 200.307 Program income.

(a) General. Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

(b) Cost of generating program income. If authorized by Federal

regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(c) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.

(d) Property. Proceeds from the sale of real property or equipment are not program income; such proceeds will be handled in accordance with the requirements of Subpart D—Post Federal Award Requirements of ed ty1p(etud8ide 20

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must be used for the purposes and under the conditions of the Federal award.

(3) Cost sharing or matching. With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.

(f) Income after the period of performance. There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 200.343 Closeout.

§ 200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see § 200.43 Federal share) or only the Federal share, depending upon Federal awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this Part or 45 CFR Part 74 Appendix E, “Principles for

Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR Part 31, “Contract Cost Principles and Procedures,” as applicable.

(5) The transfer of funds budgeted for participant support costs as defined in § 200.75 Participant support costs to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the amount of approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB. See also §§ 200.102 Exceptions and 200.407 Prior written approval (prior approval).

(d) Except for requirements listed in paragraph (c)(1) of this section, the Federal awarding agency are authorized, at their option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient’s risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458 Pre-award costs.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."

(d) The Federal government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e) Freedom of Information Act (FOIA).

(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(i) Research findings are published in a peer-reviewed scientific or technical journal; or

(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or

communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples).

Research data also do not include:

(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The property was or shall be used to improve the property.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and
(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes,

and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§ 200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical

requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.



subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 200.334 Requests for transfer of records.

The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 200.335 Methods for collection, transmission and storage of information.

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deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment

closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports.

Post-Closeout Adjustments and

cost principles will be affected by the

type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 Depreciation and 200.468 Specialized service facilities, for areas of potential application in the matter of Federal financing of activities.)

§ 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this Part:

- (a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (b) § 200.306 Cost sharing or matching;
- (c) § 200.307 Program income;
- (d) § 200.308 Revision of budget and program plans;
- (e) § 200.332 Fixed amount subawards;
- (f) § 200.413 Direct costs, paragraph (c);
- (g) § 200.430 Compensation—personal services, paragraph (h);

(h) § 200.431 Compensation—fringe benefits;

(i) § 200.438 Entertainment costs;

(j) § 200.439 Equipment and other capital expenditures;

(k) § 200.440 Exchange rates;

(l) § 200.441 Fines, penalties, damages and other settlements;

(m) § 200.442 Fund raising and investment management costs;

(n) § 200.445 Goods or services for personal use;

(o) § 200.447 Insurance and indemnification;

(p) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(q) § 200.455 Organization costs;

(r) § 200.456 Participant support costs;

(s) § 200.458 Pre-award costs;

(t) § 200.462 Rearrangement and reconversion costs;

(u) § 200.467 Selling and marketing costs; and

(v) § 200.474 Travel costs.

§ 200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this Part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart, are only applicable to certain types of non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§ 200.412 Classification of costs through 200.415 Required certifications) of this subpart;

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 Cost allocation plans and indirect cost proposals and 200.417 Interagency service) of this subpart; and

(c) Special Considerations for Institutions of Higher Education (§§ 200.418 Costs incurred by states and local governments and 200.419 Cost accounting standards and disclosure statement) of this subpart.

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal

awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this Part, §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance.

§ 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

- (1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or
- (2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of

unallowable costs included in the base year proposal used to establish the rate.

Direct and Indirect (F&A) Costs

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§ 200.413 Direct costs.

(a) General. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405 Allocable costs.

(b) Application to Federal awards. Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

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justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under § 200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 200.331 Requirements for pass-through entities, paragraph (a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III–VII as follows:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans; and

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (d)(1)(B) may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until

such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a federally negotiated indirect cost rate may apply for a one-time extension of a current negotiated indirect cost rates for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate.

§ 200.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or 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: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).”

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 200.414 Indirect (F&A) costs, paragraph (f), the Federal government may either disallow

all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by non-profit organizations as appropriate that they did not meet the definition of a major corporation as defined in § 200.414 Indirect (F&A) costs, paragraph (a).

(d) See also § 200.450 Lobbying for another required certification.

Special Considerations for States, Local Governments and Indian Tribes

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in Appendices IV, V and VI to this part.

§ 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200—State/Local Government and Indian Tribe- Wide Central Service Cost Allocation Plans.

Special Considerations For Institutions Of Higher Education

§ 200.418 Costs incurred by states and local government

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

- (a) The costs meet the requirements of

must be applied in determining allowability. See also § 200.102 Exceptions.

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs.

unallowable, except as provided for in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph (B)(9) Student Administration and Services, as student activity costs.

§ 200.430 Compensation—personal services.

(a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this Part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

(b) Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) Professional activities outside the non-Federal entity. Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other

non-organizational activities undertaken for extra outside pay, the Federal government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and
(2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) Unallowable costs.

(1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

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period during which the faculty member worked on the award.

(3) Intra-Institution of Higher Education (IHE) consulting. Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, amount

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(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy

workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy and they are allocated as indirect costs.

(f) Automobiles. That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) Pension Plan Costs. Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month

period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or pay-as-you-go method. Inverts to an , allowable actuarial cost e((ibto retirees or their)Tj 0 Tw Ticiaries.667 74..

ension or inure osts calculated using an actuarial cost-based method recognized

year if they are fuor that year

allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an

to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor.

The value of these services is not allowable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306 Cost sharing or matching.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in § 200.306 Cost sharing or matching.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of Subpart D of this Part. The value of the donations must be determined in accordance with §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance. Where donations are treated as indirect

costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) Definitions for the purposes of this section.

(1) _____ means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

either directly as a result of the

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§ 200.439 Equipment and other capital expenditures.

(a) See §§ 200.13 Capital expenditures, 200.33 Equipment, 200.89 Special purpose equipment, 200.48 General purpose equipment, 200.2 Acquisition cost, and 200.12 Capital assets.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land

severance pay are allowable subject to the following provisions:

- (1) The type of coverage and the

may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For

costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after September 23, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to "full coverage" under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), "Cost of Money as an Element of the Cost of Facilities Capital", and CAS 417 (48 CFR 9904.417), "Cost of Money as an Element of the Cost of Capital Assets Under Construction".

§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Governmentwide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the

performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C.

§§ 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413 Direct costs.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with.

(See also § 200.415 Required certifications.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 200.302 Financial management with respect to lobbying costs during any particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this Part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

§ 200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is

lobbying are unallowable. See also

resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal

these items are set forth in this section. They are to be used in conjunction with the other provisions of this Part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 Equipment, paragraph (d)), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see Subpart D—Post Federal Award Requirements of this Part, §§ 200.338 Remedies for Noncompliance through 200.342 Effects of Suspension and termination); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414 Indirect (F&A) costs. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§ 200.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 200.473 Transportation costs.

Costs incurred for transportation

transportation services are allowable when such

intended to be used in the performance of the

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432 Conferences.

(3) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11, (“Travel and Subsistence Expenses; Mileage Allowances”), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(d) Commercial air travel.

(1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

- (i) Require circuitous routing;
- (ii) Require travel during unreasonable hours;
- (iii) Excessively prolong travel;
- (iv) Result in additional costs that would offset the transportation savings; or
- (v) Offer accommodations not reasonably adequate for the traveler’s medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal government will generally not question a non-Federal entity’s determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(e) Air travel by other than commercial carrier. Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

§ 200.475 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.474 Travel costs.

Subpart F—Audit Requirements

General

§ 200.500 Purpose.

This Part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

Audits

§ 200.501 Audit requirements.

(a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity’s fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this Part.

(b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity’s fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity’s fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this Part.

(f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this Part. The payments received for goods or services provided as a contractor are not Federal awards. Section § 200.330 Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) Compliance responsibility for contractors. In most cases, the auditee’s compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor’s records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) For-profit subrecipient. Since this Part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient’s compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 200.331 Requirements for pass-through entities.

§ 200.502 Basis for determining Federal awards expended.

including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

(b) Loan and loan guarantees (loans). Since the Federal government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the audit period; plus

(2) Beginning of the audit period balance of loans from previous years for which the Federal government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Loan and loan guarantees (loans) at IHEs. When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this Part when the Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) Endowment funds. The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.

(f) Free rent. Free rent received by itself is not considered a Federal award expended under this Part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this Part.

(g) Valuing non-cash assets (to be reported to the auditor under the provisions of the Federal award). Free, loan guarantee, or other non-cash assets that are reimbursed to the Federal government must be valued as if they were cash. Awards expended under the Federal award that are not considered Federal awards expended under this Part.

(h) Limitation on the amount of Federal awards expended under this Part. The amount of Federal awards expended under this Part shall not exceed the amount of Federal awards expended under this Part.

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(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this Part biennially.

§ 200.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this Part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.338 Remedies for noncompliance.

§ 200.506 Audit costs.

See § 200.425 Audit services.

§ 200.507 Program-specific audits.

(a) Program-specific audit guide available. In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including Federal awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available.

(1) When a program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the scheduleial major prog2r7gT20pr and pass-through entitiesn, a(200.5it gudRs7cooeable.c audi-up,dedraiesph -0.00ram-spe can be)Tj muncov(noncomplpl Th)T (major prog220pr andr7gT p schedule of expenditure

selection, and ensure it is properly performed and submitted when due in accordance with § 200.512 Report submission.

(b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510 Financial statements.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511 Audit findings follow-up, paragraph (b) and § 200.511 Audit findings follow-up, paragraph (c), respectively.

(d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this Part.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary

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Federal Agencies**§ 200.513 Responsibilities.**

(a)(1) 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 direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2009, 2014, 2019 and every fifth year thereafter. For example, audit cognizance for periods ending in 2011 through 2015 will be determined based on Federal awards expended in 2009.

(3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a statistically reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. This governmentwide audit quality project must be performed once every 6 years beginning in 2018 or at such other interval as determined by OMB, and the results must be public.

(iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.

(iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.

(v) Advise the auditor, Federal awarding agencies, and, where appropriate, any

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(6) Provide OMB with the name of a key management single audit liaison who must:

(i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal government.

(ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal awarding agency's program management personnel related to the single audit process.

(iv) Promote the Federal awarding agency's use of cooperative audit resolution mechanisms.

(v) Coordinate the Federal awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.

(vi) Organize the Federal cognizant



plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear,

logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable Federal award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to

(6) Identification of questioned costs findings

awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 200.502 Basis for determining Federal awards

(4) For biennial audits permitted under § 200.504 Frequency of audits, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) Step two.

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be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) Inherent risk of the Federal program.

(1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs

quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency's funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (e.g., if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (e.g., grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the "substantial involvement" that the Federal awarding agency expects to have or should reference where the potential applicant can find that information (e.g., in the funding opportunity description in A. Program Description—Required or Federal award administration information in section D. Application and Submission Information). If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. Federal agencies should make clear whether an applicant's failure to meet an eligibility

criterion by the time of an application deadline will result in the Federal awarding agency returning the application without review or, even though an application may be reviewed, will preclude the Federal awarding agency from making a Federal award. Key elements to be addressed are:

1. **Eligibility of Applicants**

Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply.

Eligibility also can be expressed by

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3. **D**

¹ With respect to electronic methods for providing information about funding opportunities or

accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must d t82Hdd T* (B,ficht (42 U.RegU.Sft80 U.S.C). Violble toto T* Clean Clean ironntal, Prodogon Cot ftj PA. 12lean23.d 84.d)Tj 1H 74M app, eyall emsitedienery appllervTj T* bstitutiolantr regul T*n for

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to Federal awards, unless otherwise indicated in an award.

2. **Base period.**

a. **Definition.** A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. **Objective.** The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the

(3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must

exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 200.413 Direct costs, paragraph (c) and 200.468 Specialized service facilities.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. *Special Projects*

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They are to be treated as salaries and expenses of the head of such organization, assistants, and immediate staff, and as

1 - 1.112 Table 1

conducted in 0 - 1.75 TD as student share of general expenses, including salaries and wages of (1 - 1.112 Table 1) purchased and appropriate share of state 3 - 1.112 Table 1) of the total expenses, and

conducted locally (a. The expenses on 9. Special project expense, and S) Trs \- those that have been incurred for the operation of the library, including the cost of

to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect (F&A) costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group of Federal awards performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. If a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect (F&A) costs, provisions should be made for a separate indirect (F&A) cost pool applicable to such work. The separate indirect (F&A) cost pool should be developed during the regular course of the rate determination process and the separate indirect (F&A) cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect (F&A) cost rate differs significantly from that which would have been obtained under subsection a, and (2) the volume of work to which such rate would apply is material in relation to other Federal awards at the institution.

2. *(b)*

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.68 Modified Total Direct Cost (MTDC). For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

3. *(c)*

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an offset before allocation to instruction, organized research, other

sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. *(d)*

Public Law 87-638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the "indirect costs" (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the F&A (F&A) costs in determined (F&A) costs will be an

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expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. *(b) (5) - ACP*

a. Notwithstanding the provisions of subsection 1.a, an institution may elect to claim a fixed allowance for the "Administration" portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the "Administration" portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, General administration and general expenses, Section B.6, Departmental administration expenses, Section B.7, Sponsored projects administration, and Section B.9, Student administration and services.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. *(b) (5) - ACP*

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination shall include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. *(b) (5) - ACP*
(&) *(b) (5) - ACP*

a. Cognizant agency for indirect costs is defined in Subpart A—Acronyms and Definitions.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD),



2. *Indirect (F&A) Costs*

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards with an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 200.414 Indirect (F&A) costs of Part 200.)

b. Except as otherwise provided in § 200.414 Indirect (F&A) costs paragraph (e) of this Part, a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with § 200.414 Indirect (F&A) costs paragraph (f) of this Part, organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and

upward or downward adjustments to indirect cost rates before the next fiscal year. If the cognizant agency for indirect costs is not a Federal agency, the cognizant agency for indirect costs must be established by the cognizant agency for indirect costs. (See also § 200.414 Indirect (F&A) costs of Part 200.)

state and local hospitals, libraries and health districts.

—Indian tribal governments, territorial governments, and state and local park and recreational districts.

—State and local labor departments.

—School districts and state and local education agencies.

—State and local agriculture departments.

—State and local airport and port authorities and transit districts.

—State and local economic development districts.

—State and local housing and development districts.

—State and local water and sewer districts.

2. *et al.*

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to maximize the effectiveness of the plan.

0. The government has the right to use the information for the purpose of the program.

include all programs administered by the state public assistance agency.

2. means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are

proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. **P**

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based.

Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only the indirect cost proposal will be submitted with the indirect cost proposal.)

submitted with the indirect cost proposal.

1.25 non-costs incurred by the organization. The indirect cost proposal must include a summary table of indirect costs for the period for which the proposal applies, and a copy of the financial data upon which the rate is based.

developed, and submitted to the cognizant agency for indirect costs, within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington, DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Noblis, Inc., Falls Church, Virginia