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# Understanding and Implementing Revisions to the Uniform Guidance

Crowe LLP

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# Agenda

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Noon – 12:05 PM	Introductions
12:05 – 12:20	Revisions to the Uniform Guidance
12:20 – 12:35	Identifying Higher Risk Provisions
12:35 – 12:55	Implementation Strategies
12:55 – 12:59	Q&A
1:00	Adjourn

# Your Team

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# Learning Objectives

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- Describe the regulatory changes applicable to federal grants
- Assess the risk that the changes may present to your organization's current process and partnerships
- Perform a gap analysis for meeting the current requirements to determine what support your team may need moving forward
- Define the next steps and an action plan to reduce financial and public perception risks posed by the changing rules



# Overview

# Overview

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- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”) codified at Title 2, Part 200 of the Code of Federal Regulations was initially adopted in 2013.
- The federal government has collected feedback since the initial implementation regarding potential revisions that may enhance the effectiveness and clarity of the Uniform Guidance consistent with the requirements of 2 CFR Part 200.109.
- The revision effort included both the Uniform Guidance as well as other provisions of the U.S. Office of Management and Budget’s (“OMB”) guidance for grants and agreements.
- OMB had the following objectives as it assessed potential updates:
  1. To support implementation of the Presidents Management Agenda Results-Oriented Accountability for Grants CAP Goal 8 and other priorities of the Administration;
  2. To meet statutory requirements and align with other authoritative sources requirements; and
  3. To clarify existing requirements.



# Overview

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- Within the Federal Register dated August 13, 2020, OMB communicated the final results of the revision effort.
- The effort revised three existing components of the guidance for grants and agreements while also adding a new part:
  - **2 CFR Part 25** - *Universal Identifier and System for Award Management*;
  - **2 CFR Part 170** - *Reporting Subaward and Executive Compensation Information*;
  - **2 CFR Part 183** - *Never Contract with the Enemy (New Section)*; and
  - **2 CFR Part 200** - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.



# Overview

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- Revisions are effective **November 12, 2020**, except for the following two components that were effective immediately upon publication of the final guidance within the Federal Register:
  - 2 CFR 200.216 - *Prohibition on certain telecommunication and video surveillance services or equipment.*
  - 2 CFR 200.340 - *Termination*



# Revisions to the Uniform Guidance

## 2 CFR Part 25 - Universal Identifier and System for Award Management

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- The previous requirement for full registration in the System for Award Management (“SAM”) provided some confusion to users and did not align with OMB’s expectation.
- OMB updated the regulation by adding “Subpart C – Recipient Requirements of Subrecipients.” The section specifies that subrecipients must obtain and provide unique entity identifiers, but full registration is not required.
- In response to COVID-19, §25.110 waives SAM registration requirement in cases of exigent circumstances. Awarding agencies are, however, responsible for evaluating circumstances.

## 2 CFR Part 170 - Reporting Subaward and Executive Compensation Information

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- Revised to require federal awarding agencies to report Federal awards that equal or exceed micro-purchase threshold.
- Clarified the definitions of applicable entities for consistency, where appropriate.
  - Federal Agency - as defined at 5 U.S.C. 551(1) and clarified by 5 U.S.C.552(f)
  - Non-Federal Agency - as defined by 2 CFR 200.1 including: foreign organization, foreign public entity, domestic or foreign for profit organization.
- Reporting of first-tier subawards, including each action equaling or exceeding \$30,000, is required.
- Reporting will continue to be conducted through [www.fsrs.gov](http://www.fsrs.gov)

# 2 CFR Part 183 - Never Contract with the Enemy

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- Established 2 CFR Part 183.
- Applies to grants cooperative agreements meeting all the following criteria:
  - Exceed \$50,000;
  - Include work performed outside of the United States and U.S. territories; and
  - Are in support of contingency operations in which U.S armed forces are actively engaged.
- Requires increased due diligence and monitoring.
- Allows the Federal Government to examine records of recipients and subawards to ensure funds are not provided directly or indirectly to persons or entities actively opposing U.S. forces.

## 2 CFR Part 183 - Never Contract with the Enemy (Cont.)

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- Non-federal entities are required to comply with Appendix A to Part 183, which requires:
  - Ensuring funds are not provided to covered entities by checking SAM exclusions, collecting certifications from individuals and businesses, or adding a clause or condition to the agreement entered into with the individual or entity;
  - Terminate in whole or in part portions of agreements that include prohibited entities unless written approval is provided by the federal awarding agency to continue; and
  - Flow down provisions of Appendix A to all contracts and subawards that apply the provisions of 2 CFR Part 183.

# Revisions to the Uniform Guidance

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- There were numerous revisions made – the majority of which fall into three categories:
  1. Increasing flexibility;
  2. Incorporating statutory requirements; and
  3. Clarifying previous language included in 2 CFR Part 200.
- We will cover key revisions during our discussion today.

# Revisions to the Uniform Guidance (Cont.)

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## 1. Updates to enhance flexibility

- 2 CFR 200.414 - *De Minimis Rate*

- Permits entities with expired negotiated indirect cost rate agreements (“NICRA”) to utilize the 10 percent de minimis indirect cost rate;
- Clarifies that entities using the de minimis indirect cost rate are not required to provide proof of costs that are covered under the rate; and
- Requires posting of NICRAs to public websites.

- 2 CFR 200.344 - *Closeout*

- Extended the time period for pass-through entities to submit closeout reports and liquidation of financial obligations from 90 to 120 days; and
- Subrecipients must continue to submit final reports in the 90 day timeframe.

# Revisions to the Uniform Guidance (Cont.)

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## 2. Updates that incorporate statutory requirements

- 2 CFR 200.216 - *Prohibition on certain telecommunication and video surveillance services or equipment*
  - Entities are prohibited from procuring, obtaining, entering, extending or renewing contracts with the following companies:
    - Huawei Technologies Company
    - Hytera Communications Corporation
    - Hangzhou Hikvision
    - Digital Technology Company
    - Dahua Technology Company.
- 2 CFR 200.320 - *Methods of Procurement To Be Followed*
  - Raise micro-purchase threshold from \$3,500 to \$10,000;
  - Raised simplified acquisition threshold from \$150,000 to \$250,000;
  - Grouped procurement types into three categories: Informal, Formal, and Non-Competitive; and
  - Non-federal entities may request a micro-purchase threshold greater than \$10,000.



# Revisions to the Uniform Guidance (Cont.)

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## 2. Updates that incorporate statutory requirements (cont.)

- 2 CFR 200.322 – *Domestic preferences for procurements*
  - Non-federal entities should provide a preference, to the extent permitted by law and practicable, for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The requirement for be included in all subawards.
- 2 CFR 200.471- *Telecommunication and video surveillance cost*
  - Costs incurred for telecommunication, video surveillance, phones, internet, cloud servers are **allowed unless** they are covered in 2 CFR 200.216

# Revisions to the Uniform Guidance (Cont.)

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## 3. Clarifications

- 2 CFR 200.332 - *Requirements for Pass Through Entities (PTE)*
  - PTEs are responsible for addressing audit findings related to their subaward.
  - PTEs are to use the subrecipient's NICRA. If a NICRA does not exist, the PTE must determine an appropriate rate through either negotiation of a rate or use of the de minimis rate.
  - Inclusion of budget period start and end dates within subawards.
- 2 CFR 200.101 - *Applicability*
  - Clarification that awarding agencies may apply CFR 200 to other federal agencies
  - Recognizes that federal awarding agencies and PTE may issues awards and apply 2 CFR 200 provisions.
- 2 CFR 200.403(h) - *Factors Affecting Allowability of Costs*
  - Clarified that costs must be incurred within the approved budget period and the awarding agency may waive prior written approval requirements for carry forward of unobligated balances.

# Risks To Your Organization

# Risk Assessment

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- As we have discussed, there are a number of changes to the regulatory requirements.
- As a recipient or subrecipient of funding, the natural question to ponder is, “Which of the changes are of greatest risk to my organization?”
- This question may be answered through:
  - A risk assessment process; and
  - Conducting a gap analysis.
- Let’s move through a risk assessment together, based on your portfolio.

# Risk Assessment (Cont.)

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- A number of the significant revisions to the Uniform Guidance impacted subrecipient-related matters, which may result in your considering this compliance area to be other than low risk. Consider:
  - Revisions to 2 CFR Part 200.331 (now 200.332) include subaward data element revisions, requirements pertaining to indirect costs, and more.
  - The requirement to follow-up on audit findings has been clarified, which may require updates to existing procedures.
  - The new requirements will take effect in November, which means your organization will need to pivot quickly.
  - Flow down provisions are included in both Subpart D AND earlier in Subpart C (Never Contract With the Enemy).
- Your organization will need to revise and/or develop subaward templates to help mitigate the risk of noncompliance.

# Risk Assessment (Cont.)

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- For those entities that are recipients of monies from the Coronavirus Relief Fund (“CRF”) through the CARES Act, recall that the subrecipient monitoring-related requirements are provisions that apply to CRF.
- Subaward templates will need to be revised if awards are anticipated to be issued in November (after the effective date of UG).
- Indirect cost rates may not be used for CRF, so this should be factored in when negotiating agreements and budgets leading up to the December 30, 2020, end of the CRF availability period.

# Risk Assessment (Cont.)

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- The revisions to the Uniform Guidance also impact procurement and allowable cost requirements. Consider:
  - Prohibitions on purchasing telecommunications items produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
  - Purchase of video surveillance, telecommunications equipment and other items purchased by certain vendors prescribed in regulation;
  - Telecommunications or video surveillance services by entities referred to above; and
  - Changes regarding costs having to be incurred during budget periods and the same cost not having been used to match or meet cost share requirements in the current or prior periods are all relevant.
- These revisions impact your written procedures regarding procurement and allowability of costs and also influence indirect cost pools, which cannot contain unallowable costs.
- The sizes of the prohibited companies and their global operation as producers incorporates risk as one now has to be aware of which organizations are subsidiaries and otherwise related to the companies.

# Gap Analysis

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- For most organizations receiving funds from the U.S. Government (directly or indirectly), the risk analysis will likely result in your concluding the changes require action and your organization is not low risk.
- Conducting a gap analysis should help your organization to prepare. To perform a gap analysis, consider the following steps:
  1. Identify a point person to serve as the coordinator for your gap analysis;
  2. Identify all revisions and updates to the OMB guidance;
  3. Assess your policies and procedures to ascertain whether your current rules comply with the new Uniform Guidance (differences represent a “gap”);
  4. Modify policies and procedures to bring your organization into alignment by November 12<sup>th</sup>; and
  5. Develop a communication plan to educate your organization’s members of changes prior to the effective date.



# **Implementation Steps and Action Plan**

# Implementation Steps and Action Plan

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- As an output of the gap analysis, your organization should develop an action plan. Items to consider include:
  - Does your organization have the internal expertise and bandwidth to address identified gaps timely?
  - Is training necessary in order to implement the changes?
  - Third Party Risk Management: Are revisions to standard agreements necessary so that subrecipients and contractors are aware of requirements as well?
  - How will these changes potentially impact timing of projects if agreements may be delayed?
  - What is a reasonable timeline for your organization to implement and are discussions with your auditor in advance needed?
- Consider having your internal audit or internal compliance teams conduct an analysis or pre-audit assessment before year-end so you detect issues **first**.

# Implementation Steps and Action Plan (Cont.)

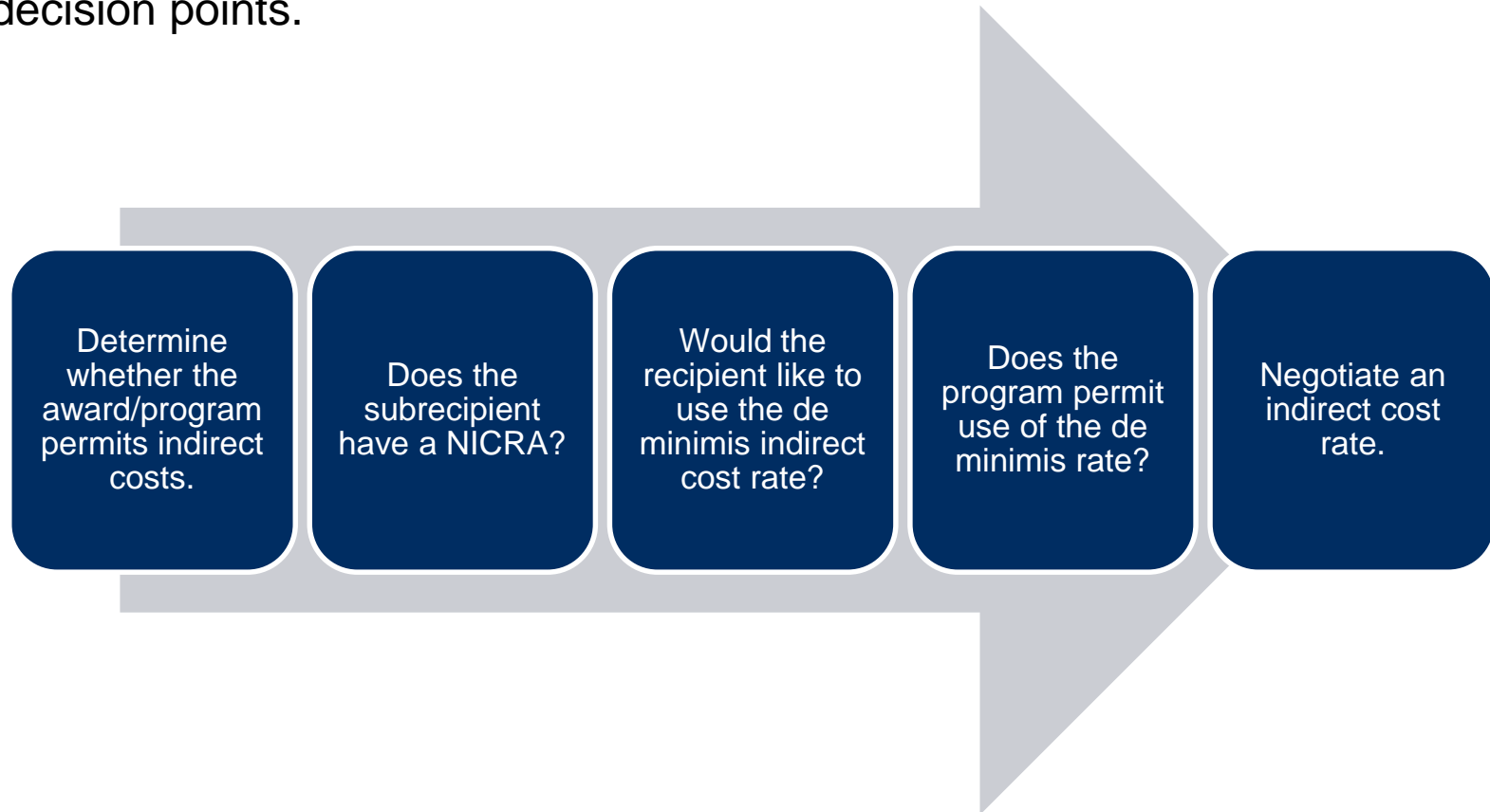
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- Let's focus our attention on two high of the higher risk areas: indirect costs and procure-to-pay processes.
- Thinking through indirect costs first, there are two key risks:
  1. Failure to include all required flow down provisions and data elements in subawards; and
  2. Negotiation of and use of the indirect cost rate.
- Item 1 (Flow Down and Data Elements) is fairly easy to address:
  - Revise agreement templates to include flow downs, all required items per 2 CFR Part 200.332, and current/new code references; and
  - Communicate revisions to subawardees during project kickoff meetings.

# Implementation Steps and Action Plan (Cont.)

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- Item 2 (Negotiation and Use of Indirect Cost Rate) is more challenging.
- Let's consider the negotiation process with a subrecipient and applicable decision points.



# Implementation Steps and Action Plan (Cont.)

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- If you are responsible for negotiating the indirect cost rate negotiation, you and the subrecipient must be aware of how to apply the rate and calculate it.
- The de minimis indirect cost rate requires use of the modified total direct cost base.
- The calculation of 10 percent is not required to be supported; but, consistent application is required which necessitates existence of a policy or procedure.
- Correct application of the base is also essential.

*Modified Total Direct Costs* means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

# Implementation Steps and Action Plan (Cont.)

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- In calculating or negotiating the rate, some items to consider include:
  - If basing the rate on a previously negotiated rate, the PTE may elect not to require supporting documentation.
  - If basing the rate on other than a previously negotiated rate, the PTE should be prepared to support the calculation through methods such as:
    - Reviewing financial statements;
    - Review and analysis of cost pool components; and
    - Review and assessment of cost allocation and cost allowability procedures.
- A key item to consider is the need for training as many grants managers and administrators may not have been trained to understand financial records and financial statements or to negotiate rate calculations.

# Implementation Steps and Action Plan (Cont.)

- Is the rate calculation, below, reasonable? What are some questions you may need to ask?

Account	Cost Classification	Balance
Direct Labor and Fringe Benefits	Direct	\$1,600,000
Indirect Labor and Fringe Benefits	Indirect	\$830,000
Board Meetings and Associated Travel	Indirect	\$90,450
Program Marketing and Advertising (Required by Grant Agreement)	Direct	\$322,500
Supplies	Indirect	34,000
Subawards > \$25,000	Direct	\$1,050,000
Subawards < \$25,000	Direct	\$185,000
Travel for Program Delivery	Direct	\$32,000
Unallowable Costs		\$29,750
Modified Total Direct Costs		\$2,139,500
Total Allowable Indirect Costs		\$864,000
Indirect Cost Rate (MTDC Base)		40.38%

# Implementation Steps and Action Plan (Cont.)

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- When implementing the revised guidance, you should also consider costs that are normally reimbursable or otherwise allowable and may require due diligence. Consider:
  - Analysis of costs planned to carry forward to another budget period will be needed. Previously, the funds were considered to still be available due to a longer period of performance.
  - One will need to analyze the providers of telecommunications and other security type services and goods. This includes those costs included in the cost pool for the NICRA.
  - Costs used to meet matching or cost share requirements from prior periods.
- Invest the time now to understand the requirements and train personnel so as to avoid potential findings during your upcoming audits.



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