Virtual Presentation

Uniform Guidance Update

By Karen Norris, Principal
Kanoco Consulting

Prepared for
Governor’s Office of Planning and Research
State of California
OPR Federal Assistance

Federal Assistance
Get help finding, applying for, and managing federal grants

with a focus on land use and community development, climate risk and resilience, and high road economic development.
Review of Federal Programs

The State Clearinghouse (SCH) serves as the state’s Single Point of Contact for the review of federal assistance applications pursuant to Presidential Executive Order No. 12372. Notification of all federal assistance applications must be provided to the SCH pursuant to Assembly Bill No. 1348, which in turn publishes this information for review and comment by State and local elected officials. SAM Section 0912 requires that departments submit new federal funds through the SCH and then through Finance through a DF-24 notification prior to applying for funds.

The SCH does not administer grant programs or offer any grant funding. Please visit grants.gov for funding opportunities and beta.sam.gov for the online Catalog of Federal Domestic Assistance (CFDA).
Applying for Federal Grants

Intergovernmental Review of Federal Programs

Home

The State Clearinghouse (SCH) serves as the state’s Single Point of Contact for the submission of Federal assistance applications pursuant to Presidential Executive Order No. 12372 and SAM Section 0912. With the signing of Assembly Bill 1348 the State Clearinghouse is responsible for reporting on all federal grants applied for and received in California regardless if they fall under Executive Order 12372. We have developed the new on-line database to assist with that reporting.

These applications must be provided to the SCH, which in turn publishes this information for review by State and local elected officials. The SCH does not administer grant programs or offer any grant funding. Please visit Grants.gov for funding opportunities.

Federal Assistance Application

To apply for a federal assistance program, please upload a copy of your application cover form (Standard Form 424) to the SCH. DO NOT send your full application package or any other supplemental information.

In the appropriate box on Form 424, mark that the federal assistance application was made available for state review under the Executive Order 12372 process before submitting your federal assistance application to the federal funding agency.

* Organization Name

* Email Address

* Catalogue of Federal Domestic Assistance (CFDA)
Federal Grant Resources

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Federal Grants E-List

Review of Federal Programs

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Federal Grants E-List
Learning Objectives
Learning Objectives

• Name past federal regulations, legislation, and other federal actions that impacted the uniform guidance.
• Explain past funding issues that placed grants at risk.
• Identify the Aug 13, 2020 and Feb 22, 2021 updates.
Uniform Guidance Update

A Few Words
A Few Words

The uniform guidance is a living document.

Revisions occur over time as new legislation and other requirements are implemented.
A Few Words

OMB published a proposed revised version of the uniform guidance on 1/22/20.

OMB published the Final Rule 8/13/20.

OMB published correcting amendments 2/22/21.
A Few Words

In addition to OMB, there are other influences such as the President’s Management Agenda, Executive Orders, and Presidential Memos.

Developments in technology and use of data are also changing the way we manage federal funding.
Learning Objective #1

Past Federal Regulations, Legislation, and Other Actions
What Federal Regulations Apply?

• Program statute (USC)
• Federal agency regulation (CFR)
• Uniform guidance (CFR)
• Award agreements.
• Executive orders.
• Presidential memos.
LO1: Key Regulations

Public Laws and Other Actions

1977
Federal Grants & Cooperative Agreement Act

1999
Federal Financial Assistance Management Improvement Act

2006
Federal Funding Accountability & Transparency Act

2009
EO 23120 Reducing Improper Payments
National Defense Authorization Act FAPIIS
American Reinvestment & Recovery Act

2010
Improper Payments Elimination & Recovery Act
LO1: Key Regulations

Public Laws and Other Actions

- **2011**: M-12-01 Council on Financial Assistance Reform
- **2012**: Improper Payments Elimination & Recovery Improvement Act
- **2014**: Digital Accountability & Transparency Act
- **2013/2014**: Uniform Guidance
LO1: Key Regulations

Public Laws and Other Actions

- **2016**
  Grant Oversight New Efficiency (GONE) Act

- **2017**
  M-17-22 Government Reform

- **2018**
  President’s Management Agenda

- **2019**
  Grant Reporting Efficiency & Agreements Transparency (GREAT) Act

- **2020**
  Revised uniform guidance
## LO1: Key Regulations

### Legislation and Digital Assets

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Website</th>
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<tbody>
<tr>
<td>1999</td>
<td>FFAMIA</td>
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<td><a href="http://www.paymentaccuracy.gov">www.paymentaccuracy.gov</a></td>
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<tr>
<td>2012</td>
<td>CCR/others</td>
<td><a href="http://www.SAM.gov">www.SAM.gov</a></td>
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</table>
Executive Orders (EOs)

• An executive order delivers a statement or proclamation from the White House on a wide variety of matters from naming a statue to significant domestic actions.
LO1: Key Regulations

Executive Orders (EOs)

• EOs have the force of law, but bypass Congress.
• [https://www.whitehouse.gov/briefing-room/presidential-actions/](https://www.whitehouse.gov/briefing-room/presidential-actions/).
Executive Orders (EOs)

**Lincoln**  
Emancipation Proclamation

**Truman**  
Integrated Armed Forces

**GW Bush**  
Restricted Public Access to Papers

**Obama**  
Rescinded it
# LO1: Key Regulations

## EOs that Impact Financial Assistance

<table>
<thead>
<tr>
<th>EO</th>
<th>Description</th>
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<tbody>
<tr>
<td>EO 12549</td>
<td>Suspension and Debarment</td>
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<td>EO 13450</td>
<td>Improving Program Performance</td>
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<tr>
<td>EO 13520</td>
<td>Reducing Improper Payments</td>
</tr>
<tr>
<td>EO 13576</td>
<td>Delivering an Efficient Government</td>
</tr>
<tr>
<td>EO 13642</td>
<td>Open Machine-Readable Formats</td>
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</table>
Presidential Memos

• The White House issues memos (through OMB) to federal agencies to take action on a matter.
• These memos can be rescinded by a subsequent presidential administration.
• [https://www.whitehouse.gov/omb/information-for-agencies/memoranda/](https://www.whitehouse.gov/omb/information-for-agencies/memoranda/).
LO1: Key Regulations

Presidential Memos

**Clinton**
Y2K readiness

**GW Bush**
Agencies to post on Grants.gov

**Obama**
Report metrics of Uniform Guidance

**Trump**
Rescinded metrics of Uniform Guidance
## LO1: Key Regulations

### Memos that Impact Financial Assistance

<table>
<thead>
<tr>
<th>Memo</th>
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<tr>
<td>M-11-31</td>
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<td>M-12-01</td>
<td>Council on Financial Assistance Reform</td>
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<td>M-12-02</td>
<td>Suspension and Debarment</td>
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<td>M-14-17</td>
<td>Improving Shared Services</td>
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<td>M-19-16</td>
<td>Shared Services</td>
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Uniform Guidance Updates

Regulations, legislation, and other actions cause updates to Uniform Guidance:

- Improper payments, waste, fraud and abuse
- Risk-based management
- Performance and results
- Accountability and transparency
- Data standards and data analytics
The Uniform Guidance has been, and will continue to be, updated since its first release.

1. DUNS replaced with unique entity identifier
2. FAPIIS provisions added (200.212, App XII)
3. Procurement revised

A. Three-year grace period
B. New procurement threshold (M-18-18)
Learning Objective #2

Funding Levels and Risk
LO2: Funding and Risk

Annual Federal Awards

- Contracts: $507 B
- Financial Assistance: $700 B
- Total: $1.2 T
COVID Funding

• It is anticipated that COVID funding will significantly increase grant funding totals for 2020.
Here’s the Issue: Improper Payments

<table>
<thead>
<tr>
<th>Year</th>
<th>Improper Payments</th>
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<tr>
<td>2012</td>
<td>$108 billion</td>
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<tr>
<td>2013</td>
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<tr>
<td>2014</td>
<td>$125 billion</td>
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<tr>
<td>2015</td>
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<td>2016</td>
<td>$144 billion</td>
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<td>2017</td>
<td>$141 billion</td>
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<td>2018</td>
<td>$151 billion</td>
</tr>
<tr>
<td>2019</td>
<td>$175 billion</td>
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</table>

GAO Report 20-344
Recovery of Improper Payments

Council of the Inspector General on Integrity and Efficiency (CIGIE) report.
Recovery of Improper Payments

The need for greater stewardship of federal funds and the risk of waste, fraud, and abuse, have resulted, not only in updates to the uniform guidance, but also in recovery audits.
Learning Objective #3

Identify the Updates
Final Rule 8/13/20

• Final Rule was published 8/13/20.
• Final Rule is effective 11/12/20.
• Four parts under the CFR were revised:
  • 2 CFR 25 – DUNS Number.
  • 2 CFR 170 – Subrecipient reporting.
  • 2 CFR 183 – Do not contract with the enemy.
  • 2 CFR 200 – Uniform guidance.
Final Rule and Correcting Amendments


2 CFR 25 – DUNS Number

• July 10, 2019 Federal Register (84 FR 32916).
  • GSA announcement.
  • Unique Entity Identifier (UEI) considered final.
  • Phase-out of DUNS through 2020, extended to April 2022.
  • Non-proprietary 12-digit number.
  • Assigned at SAM.gov renewal.
  • Login.gov authentication.
  • Final Rule 8/13/20 and
  • GSA update 10/26/20 for extension.
LO3: Final Rule

2 CFR 25 – DUNS Number

• Additional information and links:
  • Go to https://www.login.gov to check authentication credentials.
  • Visit www.gsa.gov/entityid to read about the unique entity identifier (UEI) to replace DUNS.
LO3: Final Rule

2 CFR 25 UEI and SAM.gov

• Transition timeline from DUNS to UEI.
  • New UEI received at SAM.gov renewal.
  • Go live: TBD, extended to April 2022.

• Registrants must also provide information on owners, predecessors, parent and subsidiary companies, in addition to the organizational information.
2 CFR 25 Appendix A

• “...you as the recipient must contain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a federal contract or grant within the last three years...”
Updates to All Grants.gov Forms

• Every grant-related form needs to be updated for the DUNS number and uniform guidance revisions.

• As of this writing, Grants.gov indicated all form updates to be completed 9/8/20, and submitted to its training environment.

• All forms will go live – TBD, go to: https://www.grants.gov/web/grants/forms/planne d-uei-updates.html.
2 CFR 170 Subaward Reporting

- Require award and subaward reporting on the OMB-designated, government-wide website.
  - Agencies must report awards over the micro-purchase threshold.
  - Award terms must be included for awards over $30,000.
2 CFR 170 Subaward Reporting

- Reporting includes awards to federal agencies, foreign organizations, foreign public entities, and for-profits.
- Reporting for subawards over $30,000.
2 CFR 183 – Never Contract with the Enemy

• NDAA of 2015 included requirements for the federal contract community not to award federal contracts to hostiles or combatants.

• NDAA of 2015 sunset December 2019.

• New 2 CFR 183 continues the requirement for contract community and extends it to the grant community.

• Applies to grants over $50,000 performed outside the US.
LO3: Final Rule


- Do not contract with the enemy (200.215).
- Better risk assessments for international awards.
- Do not purchase forbidden video surveillance and telecommunications equipment (200.216).
- Cost principles surveillance equipment (200.471)
- 200.216 took effect 8/13/20, not 11/12/20.
Updates for 2 CFR 200 Uniform Guidance
Subpart A – Definitions 200.1

• Separate provision numbers removed.
• All definitions under 200.1 for ease of addition and/or removal.
• Definition of nonfederal entity was not revised:
  • Missing foreign public entity, foreign organizations, for-profits.
  • Also missing federal agency (as a recipient).
  • 2 CFR 25 and 2 CFR 170 definitions were updated.
Applicability 200.101(a)(2)

• Federal agencies may apply Subparts A-E to for-profit entities, foreign public entities, or foreign organizations.
  • Not “must.”

• Questions remain about Subpart F audit and federal agencies who receive awards from other federal agencies.

• This does not match the revised language in 2 CFR 25 and 2 CFR 170.
Effective Dates (200.110)

• Final Rule was effective 11/12/20.
• Correcting amendments effective 2/22/21.
• Existing indirect cost rates, as of 11/12/20, remain in effect until they expire, based on nonfederal entity fiscal year.
Effective Date (cont)

- Negotiated indirect cost rates remain in place until re-negotiated.
- Changes to indirect rates become effective at the nonfederal entity’s next fiscal year.
Program Planning and Design 200.202 (New)

• Grants and cooperative agreements must achieve program goals and objectives.

• Supports PMA.

• Granting agencies to hold recipients accountable for performance.

• Reflects Evidence Act to advance data and “evidence-building functions.”

• Logic models may be used.
Public Notice of Funding Opportunities 200.203

- Catalog of Federal Domestic Assistance (CFDA).
- CFDA becomes Assistance Listings.
- Old website www.cfda.gov.
- Listing must align with federal agency’s strategic plan and Part 6 of OMB A-11 to include performance measures, management, and required reporting.
New 200.215 Do Not Contract with the Enemy

• New provision 200.215 to align with 2 CFR 183, never contract with the enemy.

• Applies to federal grants and cooperative agreements over $50,000 to be implemented outside the United States.
New 200.216 Prohibition on Certain Equipment

• Communications and video surveillance.
• List of known companies to avoid.
• Other companies, as identified by Secretary of Defense, National Intelligence Director, or FBI.
• Takes effect immediately, as of 8/13/20.
• Relates to new 200.471 in cost principles.
Performance Measurement (200.301)

• Federal awarding agencies and nonfederal entities must measure performance.
• Performance goals, indicators, and milestones must be included in award agreement (200.211).
• Must align with Evidence Act.
Internal Control 200.303

• M-16-17.
• GAO Green Book and COSO Model.
• OMB Circular A-123 Enterprise Risk Management and Internal Controls.
  • Agencies to work with a risk-based strategy.
  • Agencies to improve accountability.
  • Growing importance in uniform guidance of internal control 200.303.
## Five Components of Internal Control

<table>
<thead>
<tr>
<th>Control Environment</th>
<th>Risk Assessment</th>
<th>Control Activities</th>
<th>Information &amp; Communication</th>
<th>Monitoring Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Demonstrates commitment to competence</td>
<td>9. Identifies and analyzes significant change</td>
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<tr>
<td>5. Enforces accountability</td>
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</table>
Period of Performance (200.309)

- Revisions to PoP include no-cost extensions, terminations, and renewal periods of awards.
- New closeout provision includes focus on end of PoP.
Procurement (200.317 – 200.327)

• Three-fiscal year grace period for procurement, ended FY 2018.

• FY 2019 first year all nonfederal entities must follow the procurement provisions.

• Previous citations 200.317-200.326, now 200.317-200.327.

• Some new and revised requirements.
Procurement Thresholds (200.320)

• NDAA 2017 and 2018 raised procurement thresholds.
  • Micro-purchase from $3,500 to $10,000.
  • Simplified Acquisition Threshold from $150,000 to $250,000.
• Uniform guidance is now updated with additional options.
FAR is updated with the new procurement thresholds.

- Micro-purchase up to $10,000.
- Simplified acquisition (small purchase) up to $250,000.
Informal Procurement Methods (200.320(a))

- Nonfederal entity may increase the micro-purchase level beyond the FAR designated $10,000:
  - Micro-purchase up to $50,000 with documented justification.
  - Micro-purchase over $50,000 with federal agency approval.
- Increased values must be authorized under state, local tribal laws.
Significance of Procurement Thresholds

• A purchase below the simplified acquisition threshold is considered a small or informal purchase (200.320(a)).
  • No need for a bid process.
  • Adequate number (2-3) price quotes.
  • Much simpler procurement.
Procurement and Buy American (200.321) (New)

• Nonfederal entities are encouraged to use goods, products, and materials that are produced in the United States.
Grant Reporting (200.329)

- Grant Reporting Efficiency and Agreements Transparency (GREAT) Act.
- Enacted into law 12/30/19.
- May change grant reporting requirements – TBD.
LO3: Final Rule

GREAT Act

• Government-wide data standards in one year.
• Implement new standards in two years.
• Publish grant reports on government-wide website.
Machine-Readable Formats 200.336

- OMB to clarify collection, transmission, and storage of data.
- Supports Evidence Act.
LO3: Final Rule

Closeout 200.343 200.344

• Subrecipients to submit final reports to pass-through entities within 90 days of the end of period of performance.

• Recipients (including pass-throughs) must submit final report to federal agencies by 120 days, increased from 90 days.

• Federal agencies must complete closeout by one year after end of period of performance.
Closeout 200.344(h) - NEW

- If nonfederal entity does not submit all reports on time, federal agency must close the project using the information available within one year of the end date of period of performance.
Closeout 200.344 (i) - NEW

• If the federal agency must close out the project using the information available, the federal agency must report the nonfederal entity in FAPIIS as a material failure to comply with award terms and conditions.
LO3: Final Rule

Indirect Costs/De Minimis Rate 200.414(f)

• Expanded use of the *de minimis* rate – any nonfederal entity that does not currently have a negotiated rate may elect to use the 10% *de minimis* rate on MTDC, unless a state/local/tribal agency expending more than $35M in federal awards a year (Appendix VII).

• All negotiated rate agreements will be posted on a new public website.
Selected Items of Cost (200.420-476)

• New item of cost 200.471.

• Allowability of telecommunications and video surveillance equipment, except for exclusions noted in 200.216.
February 2021 Correcting Amendments

• Definition citations corrected to 200.1 and all definitions are listed alphabetically.

• Exceptions may be adjusted with federal agency approval (200.102).

• Pre-award risk assessments updated to reflect the Payment Integrity Information Act (PIIA) of 2019.

• Intergovernmental procurement agreements are encouraged (200.318(e)).
February 2021 Correcting Amendments

• Pass-through entities must resolve subaward audit findings (200.332).
• Cost allocation plan requirements (200.416) are contained in appendices V, VI, VII.
• Auditees must follow procurement standards when selecting an auditor.
• Auditors must report significant or material deficiencies (200.514 and 200.516).
• Hospital cost principles remain at 2 CFR 75 (App IX).
2020 Compliance Supplement, App XI

• Reduce administrative burden.
• Decrease compliance tests from 12 to 6 per program.
• Part 2 Matrix identifies the compliance tests per program.
Second Compliance Supplement in 2020

• Considered an addendum.
• Relates to COVID funding.
Timeline of Changes

• 1/22/20 proposed rule published in FR.
• 3/23/20 public comments were due.
• OMB reviewed public comments and incorporated some, as appropriate.
• Final Rule published in the FR, 8/13/20.
• Final Rule took effect 11/12/20.
• Correcting amendments to Uniform Guidance released 2/22/21.
Timeline of Changes

- Federal agency regulations and nonfederal entity local policies and procedures may need to be updated to align with the revised uniform guidance.
Uniform Guidance Updates

Q & A
Please be reminded:

This presentation is intended to provide general information and does not constitute legal or financial advice. Please consult with your legal and financial advisors. I hope, however, that the information helps provide some insights as you further pursue your work in the grants community.
Prepared For

- Governor’s Office of Planning and Research.
- State of California.
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