



Memorandum

Subject: **ACTION:** 2 CFR 200 Implementation Guidance

Date: December 4, 2014

From: Elissa K. Konove
Chief Financial Officer

In Reply Refer To:
HCFB-31
(HCF-2014-015)

To: Associate Administrators
Chief Counsel
Director, Innovative Program Delivery
Director, Technical Services
Directors of Field Services
Division Administrators
Division Directors

The Office of Management and Budget (OMB) has published [2 CFR Part 200](#) (referred to as the “Supercircular”) to streamline the Government-wide guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. The Supercircular consolidates and eliminates the duplicative guidance found in 8 OMB circulars which includes A-50, Audit Follow-Up, A-87, Cost Principles for State, Local, and Indian Tribal Governments; A-102, Grants and Cooperative Agreements with States and Local Governments; and A-133, Audits of States, Local Governments, and Non-Profit Organizations. The new Supercircular expands requirements in several areas.

The consolidation of the circulars is a key component of a larger effort to more effectively focus Federal resources on improving performance and outcomes, while ensuring the integrity of Federal funds in partnership with State, local, and tribal stakeholders. The Department of Transportation (DOT) will adopt OMB’s revised Government-wide Supercircular with an anticipated effective date on or before December 26, 2014. DOT submitted to OMB an Interim Final Rule (IFR) to adopt the Supercircular regulation under 2 CFR Part 1201. The implementation of the Supercircular will cancel 49 CFR Parts 18 and 19.

The administrative requirements and cost principles will apply to new awards authorized on or after the effective date unless an OMB approved deviation exists. Project modifications made on or after the effective date may be subject to the Supercircular requirements if the Federal agency’s modification also amends the terms and conditions of the Federal award. Existing Federal awards that do not receive incremental funding with new terms and conditions will continue to be governed by the terms and conditions of the Federal award in effect prior to the effective date. Subpart F, Audit requirements, will apply to audits of non-Federal entity fiscal years beginning on or after the effective date. The revised audit requirements are not applicable to fiscal years beginning prior to that date.

The policy implications are wide-ranging across many Federal Highway Administration (FHWA) programs. FHWA will develop and update regulations, policies, guidance and training. The process of developing or updating regulations, policies, guidance and training will take place subsequent to the effective date of the Supercircular. A listing of frequently asked questions and answers is included as Attachment A.

Key Changes Affecting FHWA: Following are some of the key changes in the various subparts of the Supercircular affecting FHWA business processes.

Pre-Federal Award Requirements (2 CFR 200 Subpart C) – The new Supercircular seeks to increase competition for Federal funds awarded under discretionary grant programs. The goal is to improve transparency and make more information available to interested parties:

- **Information contained in a Federal award** (2 CFR 200.210) – Each Federal award must include 15 uniform data sets. Some of the required fields are not currently in the Fiscal Management Information System (FMIS). These fields will be added to FMIS 5.0 when the system is in production. The additional fields include the following:
 - Performance (or project agreement) end date
 - Indirect cost rate
 - Catalog of Federal Domestic Assistance (CFDA) number

In addition, the Office of Acquisition and Grants Management will publish general terms on the FHWA website and reference the site in all FHWA agreements.

Post Federal Award Requirements (2 CFR 200 Subpart D) – The Supercircular includes significant reforms to current administrative requirements (formerly circular A-102). Some of the additional reforms include the following:

- **Performance measurement** (2 CFR 200.301) – Recipients of Federal awards must relate financial data to the performance accomplishments of an award. Recipients must also provide cost information to demonstrate cost effective practices. For FHWA awards made under chapter 1 of Title 23, the requirements of 2 CFR 200.301 do not apply. The Federal-aid highway program performance management measures under Chapter 1 of Title 23 will be set forth in the regulations that implement 23 U.S.C. 150. Under the Supercircular (2 CFR 200.101(b)(3)), where Federal statutes or regulations differ from Supercircular requirements, the provisions of Federal statutes or regulations govern administration of those statutory requirements. Other programs not carried out under chapter 1 of Title 23, such as the Federal Lands Highway Program, may need to address financial and performance data consistent with the requirements in 2 CFR 200.301. In these instances, FHWA must provide enhanced and proactive oversight to ensure goals and milestones are met during the implementation of the program.
- **Greater focus on internal controls** (2 CFR 200.303) – Organizations must establish and maintain effective internal controls over Federal awards to provide reasonable assurance that awards are being managed in compliance with laws and regulations. Non-Federal entities and their auditors will need to exercise judgment in determining the most

appropriate and cost effective internal control in a given circumstance. Non-Federal entities must also take measures to safeguard personally identifiable information.

- **Payment** (2 CFR 200.305) – New restrictions are placed on different types of payments. For States, the Cash Management Improvement Act (CMIA) agreements between the Treasury and the States cover the Federal-aid program’s operation and will minimize the impact of this requirement on FHWA. Under 23 U.S.C. 121, FHWA makes progress payments to States for the Federal share of costs of eligible construction projects or activities incurred to date, plus the Federal share of the value of stockpiled material.
- **Cost sharing or matching** (2 CFR 200.306(a)) – For discretionary research grants, voluntary committed cost sharing cannot be used as a factor during the merit review of applications or proposals for discretionary awards, but may be considered if voluntary cost sharing is consistent with Federal awarding agency regulations and specified in a notice of funding opportunity.
- **Period of performance** (2 CFR 200.309) – This is a significant change to the Federal-aid highway program because it will impose a period when project costs can be incurred, which includes a project agreement start and end date. Current Federal-aid regulations stipulate that costs can only be incurred after the authorization date of a project unless otherwise authorized under 23 CFR 1.9(b). The new provision will require an end date to be included in the agreement after which no additional costs may be incurred and are not eligible for reimbursement.

A data field to record the project end date is not currently available in FMIS 4 but will be programmed in FMIS 5. Until FMIS 5 includes the project end date field, States should enter this information in the State Remarks field when a new project agreement is executed or an existing agreement is modified. The period of performance must be based on the States’ estimated project schedule, including required processes to ensure all Federal requirements have been satisfied. Divisions must ensure the estimated period of performance is in line with the States’ established policies, procedures, and project schedules. The agreement end date may be modified as necessary, based on documented revisions to project schedules or other circumstances.

- **Greater responsibilities for subrecipient monitoring** (2 CFR 200.331) – All pass-through entities (e.g., State DOTs) must ensure subrecipients comply with all Federal laws and regulations and monitor performance schedules to ensure they are achieved. Further, Federal award terms are required to be included in the terms of subawards. The Supercircular also expands the use of indirect cost rates to all grants. If applicable, pass-through entities must include (at the time of a subaward) an approved, federally recognized indirect cost rate negotiated between the subrecipient and its cognizant agency if one exists. Other subrecipients who intend to claim reimbursement of indirect cost must develop an indirect cost proposal in accordance with the requirements of the Supercircular and maintain the proposal and related supporting documentation for audit. Where a non-Federal entity only receives funds as a subrecipient, the State DOT will be responsible for negotiating and/or monitoring the subrecipient’s indirect costs.

- **Project closeout** (2 CFR 200.343 thru 200.345) – Recipients are required to submit all eligible incurred costs and required performance and financial reports or project records specified in the project agreement or stewardship and oversight procedures within 90 days after the agreement end date. The project should then be closed no later than one year after receipt and acceptance of all required final reports. FHWA may exercise unilateral authority to close projects in its financial management system if the recipient fails to comply with project closeout requirements. This authority must be based on a risk evaluation by the FHWA division office and advance notice provided to the award recipient.

Cost principles (2 CFR 200 Subpart E and Appendix VII) – The Supercircular is generally consistent with previous cost principles requirements (formerly circular A-87). The Department is seeking clarification from OMB regarding applicability of 2 CFR 200 Subpart E to for-profit organizations. The following are some of the changes affecting FHWA:

- **Indirect costs** (2 CFR 200.412 thru 200.417) – Under the new rules, Federal agencies and pass-through entities must accept a negotiated indirect cost rate if one exists, or negotiate a rate in accordance with Federal guidelines. There are exceptions when a statute or regulation requires it, or if the non-Federal entity receives \$35 million or less in direct Federal funding.
 - Non-Federal entities that have never had a negotiated indirect cost rate may use a de minimis rate of 10 percent of modified total direct costs.
 - Entities with an approved negotiated indirect cost rate can now apply for a one-time extension of up to four years without further negotiation.
- **Narrative cost allocation methods** – Appendix VII(F)(3), State and Local Government and Indian Tribe Indirect Cost Allocation Plans, allows a narrative cost allocation method. FHWA is currently testing several financial management improvement initiatives related to this method due to significant State DOT interest.

Audit Requirements (2 CFR 200 Subpart F) – The Supercircular is generally consistent with previous single audit and other audit requirements (formerly circular A-133). The primary changes affecting how FHWA awards are audited are as follows:

- **Increased threshold for single audits** – A new threshold (increased from \$500,000 to \$750,000) will relieve some non-Federal organizations from the audit requirement.
- **Updated Single Audit Compliance Supplement** – The Single Audit Compliance Supplement will also be updated to reflect the Supercircular.

FHWA Implementation: The following are key activities FHWA will complete to implement the requirements of the Supercircular:

Coordination - The implementation of 2 CFR 200 will require the coordination of many FHWA offices. The initial step to this coordinated effort was the development of the Supercircular implementation plan, which includes a listing of the required activities to comply with the requirements in the Supercircular. The implementation plan will be used to track the status of each activity to completion.

A task force has been selected to coordinate and facilitate the completion of each activity. Task force members include the following:

- Dan Parker, Senior Financial Specialist/HCF
- Jerry Yakowenko, Contract Administration Team Leader/HIF
- Sarah Berman, Agreement Officer/HCF
- Erin Robertson, Budget Analyst/HCF
- Lorrie Lau, Transportation Planner/HEP
- Cindi Ptak, Tribal Transportation Program Team Leader/HFL
- Comaneci Feggins, Management Analyst/HFL
- Andrew Callihan, Financial Program Specialist/RC-FST
- Robert Clark, Division Administrator/FHWA-NJ
- Mark Johnson, Assistant Division Administrator/FHWA-IA
- Karen Holmes, Financial Manager/FHWA-WV
- Eric Purkiss, Financial Manager/FHWA-MI

Communication – Communicating the Supercircular to units within FHWA is imperative to its implementation. Briefings and web conferences designed to communicate the impact of the Supercircular to FHWA units have already occurred. Several briefings have been prepared and delivered to FHWA leadership to keep them abreast of the implementation schedule and impacts to their office. The information has also been communicated via monthly webinars and conference calls. The Resource Center Finance Services Team is developing a webinar on the Supercircular implementation that will be presented to all offices within FHWA prior to the effective date.

Training Development and Updates – The cancellation of 49 CFR Parts 18 and 19, and combining other administrative requirements, cost principles and single audit requirements into the Supercircular will require the development of new training courses and updates to existing training. The National Highway Institute will be working with the different program offices to modify and update existing training impacted by the Supercircular. The Resource Center will also be updating webinars, videos, and other training modules to address the Supercircular requirements. A listing of the training which will be developed or updated is included as Attachment B.

Regulations, Policy and Guidance Updates – FHWA regulations, policies and guidance documents referencing grants administration, cost principles and single audit requirements superseded by the Supercircular must be modified. Once the Supercircular is effective, FHWA will begin developing and revising the impacted documents. Some of the key regulations policies and guidance to be updated include the following:

- 23 CFR 630 Subpart A – Project Authorization and Agreements
- Clarification of Policy on Indirect Costs of State and Local Governments May 5, 2004
- Federal-Aid Guidance Non-Federal Matching Requirements, December 29, 2009
- Various Planning policy and guidance documents
- Recreational Trails Program Guidance
- 23 CFR 420 Planning and Research Program Administration

A complete list of the regulations, policies and guidance to be developed or updated is included as Attachment C.

Other Requirements – A list of FHWA deviations will be published in the Final Rule in 2 CFR 1201. The following FHWA statutory exceptions apply under the authority of 2 CFR 200.101(b)(3):

- §200.90 – State.
 - 23 U.S.C. 101 does not include the U.S. Territories in the definition of a State.
- §200.306 – Cost sharing or matching.
 - 23 U.S.C. 121(a) [Stockpile material] allows for costs incurred outside the period of performance to be reimbursed.
 - 23 U.S.C. 133(g)(3) [Bridge Credits], 23 U.S.C. 120(i) [Toll Credits], and 23 U.S.C. 206(h) [Rec Trails Program Administration] allow for the match to be used from costs (credits) incurred outside the period of performance of the Federal award.
- §200.307 – Program income.
 - 23 U.S.C. 156 & 23 CFR 710: Under ROW implementing regulations and 23 U.S.C. 156 (c) “compensation” is not required; proceeds are required to be applied to transportation improvements to satisfy the statute.
- §200.317 – Procurements by States.
 - 23 U.S.C. 112 requires States to use a specific procurement method as opposed to using their policies and procedures for procurements from its non-Federal funds.
 - 23 U.S.C. 114(b) prohibits convict labor and convict produced materials to be used on Federal-aid highways or portions of Federal-aid highways unless the labor is performed by convicts who are on parole, supervised release, or probation.

If you have any questions concerning this memorandum, please contact Mr. Danial Parker in the Office of Financial and Management Programs (HCFB-31) at 720-963-3216.

Attachments

Subpart A – Acronyms and Definitions

1. [What clarification is provided regarding changes to the term contractor, vendor, grantee, and subgrantee?](#)
2. [What is the implications of the definition of a State to Indian tribes and US Territories \(200.90\)?](#)
3. [In section 200.54 Indian tribes were removed from the definition of a state. How will this impact the application process for funds reserved for states? Will tribes no longer qualify \(200.54\)?](#)
4. [What costs can be included in Modified Total Direct Costs \(MTDC\), specifically are road construction projects considered capital expenditures \(200.68\)?](#)

Subpart B – General Provisions

5. [Does an audit conducted in accordance with Subpart F of the Uniform Guidance which implements the Single Audit Act \(SAA\) requirements satisfy the contract audit requirements of FAR based contracts awarded by a Federal agency \(200.101\)?](#)
6. [What is the effective date of implementation for Federal-aid projects \(200.110\)?](#)
7. [How does the effective date apply to indirect cost rates?](#)
8. [When may non-Federal entities begin to submit proposals for indirect cost rates based on the Uniform Guidance \(200.110\)?](#)
9. [How does the effective date impact formula and entitlement programs \(200.110\)?](#)
10. [How does the Uniform Guidance apply to Federal awards made prior to December 26 when some subawards are made prior to December 26 and others are made after December 26 \(200.110\)?](#)
11. [When does the Uniform Guidance become effective \(200.110\)?](#)

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

12. [Is FHWA going to offer Fixed Priced Awards \(200.201\)?](#)
13. [How should the project end date be included under a FMIS authorization \(200.210\)?](#)
14. [Can the project end date be updated or changed after the execution of the project agreement \(200.210\)?](#)

Subpart D – Post Federal Award Requirements

15. [Performance Reports are now a part of sub-recipient monitoring, will FHWA require these reports and are they going to be uniform \(200.301\)?](#)
16. [The word “should” is used throughout section 200. Does it really mean “must”?](#)

17. [Will FHWA provide additional guidance concerning the acquisition of equipment and supplies used in the Federal-aid highway construction program \(200.313\)?](#)
18. [Section 200.313\(a\) of the guidance specifies that title for equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity as a “conditional title”. This is new terminology for those non-Federal entities that have followed Circular A-110. What is meant by “conditional title” and will this affect how non-federal entities have historically accounted for equipment ownership?](#)
19. [Are non-Federal entities expected to change the attributes of their property records and ultimately be required to implement costly changes to their existing equipment inventory systems to meet the Uniform Guidance \(200.313\)?](#)
20. [Do the Uniform Guidance procurement standards apply to recipients and subrecipients \(200.317\)?](#)
21. [Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State \(200.317\)?](#)
22. [How are procurements of micro-purchase and small purchases under the simplified acquisition threshold less burdensome than those above it \(200.320\)?](#)
23. [Will non-Federal entities be required to establish indirect cost rates in accordance with 2 CFR 200.210\(a\)\(15\), 2 CFR 200.331\(a\)\(1\)\(xiii\) and \(a\)\(4\)?](#)
24. [Is it acceptable to require a subrecipient to accept a rate lower than 10% de minimis rate via negotiation, or in lieu of their negotiated indirect cost rate \(200.331\)?](#)
25. [For MPOs that are part of a COG/County, or use a fiscal agent to service their administration, do these MPOs need to develop their own indirect cost rates and single audits separate from their cooperative agency or fiscal agent?](#)
26. [Is FHWA going to adhere to the 90 day project closeout or are we going to offer extensions based on certain criteria \(200.343\)?](#)

Subpart E – Cost Principles

27. [Is the 10 percent de minimis rate for new organizations which have never negotiated an IDC rate available to governmental organizations or tribal government entities which have never negotiated an IDC rate \(200.414\)?](#)
28. [Will the \\$35 million dollar threshold apply to territories such as Puerto Rico, Guam, etc and their ability to use the 10% rate without doing an ICAP \(200.414\)?](#)
29. [What is meant by the term “current negotiated indirect cost rates \(200.414\)?](#)
30. [What is meant by the term “one-time” for a negotiated rate agreement extension \(200.414\)?](#)
31. [When should an institution contact the cognizant agency for indirect costs to request extension of their current negotiated rate \(200.414\)?](#)
32. [How might State DOT with negotiated fixed rates with carry-forward effectively use the option for an extension of a current negotiated rate provided by 200.414\(g\)?](#)
33. [Can an entity extend their rate for up to 4 years even if it’s a really old rate \(say 10 years ago\) Can they only extend for less than 4 years \(200.414\)?](#)
34. [Should a non-Federal entity depreciate the costs of buildings and equipment contributed by a third party \(200.436\)?](#)

Subpart F – Audit Requirements

35. [What is the new dollar threshold for Single Audit requirements \(200.501\)?](#)
36. [When will the single audit Compliance Supplement be issued and will it include the new requirements under the Uniform Guidance?](#)

Appendix II – Audit Requirements

37. [Does Appendix V replace Appendix C to Part 225 – State/Local-Wide Central Service Cost Allocation Plans \(SWCAP\)?](#)

Appendix V –

38. [Does Appendix V replace Appendix C to Part 225 – State/Local-Wide Central Service Cost Allocation Plans \(SWCAP\)?](#)

Subpart A – Acronyms and Definitions

1. What clarification is provided regarding changes to the term contractor, vendor, grantee, and subgrantee (200.23 Vendor vs Contractor Clarification)?

In existing guidance, OMB Circular A-133 made a confusing distinction between subrecipients and “vendors”, while other circulars describe either “subawards” or “subcontracts”. Under the Uniform Guidance, when a non-Federal entity provides funds from a Federal award to a non-Federal entity, the non-Federal entity receiving these funds may be either a subrecipient or a contractor. The term contractor is used for purposes of consistency and clarity to replace references in the previous guidance that referred to vendors, though these two terms have always had the same meaning in the previous guidance.

Section 200.330 Subrecipient and Contractor Determinations, as well as section 200.22 Contract and 200.92 Subaward provide guidance on making subrecipient and contractor determinations. This language was largely taken from existing guidance in OMB Circular A-133 on subrecipient and vendor determinations.

As described in the Uniform Guidance, the substance of the award determines how it should be treated, even though the pass-through entity or non-Federal entity receiving the award may call it by a different name. If a pass-through entity makes an award that it calls a “contract”, but which meets the criteria under section 200.330 of a subaward to a subrecipient, the non-Federal entity must comply with the provisions of the Uniform Guidance relevant to subawards. Likewise, any Federal awards that meet the criteria under section 200.330 for the non-Federal entity to be considered a contractor, whether the non-Federal entity providing the funds calls it a “vendor agreement” or a “subcontract”, the non-Federal entity must comply with the provisions of the Uniform Guidance relevant to a contractor.

2. What are the implications of the definition of a State to Indian tribes and US Territories (200.90)? Several sections of the guidance refer to state law, does this include tribal law?

Section 200.54 of the published guidance removes Indian tribes from the definition of State. In some cases, state law includes tribal law. The Council on Financial Assistance Reform (COFAR) will review the Uniform Guidance and, when Federal agencies issue implementing regulations, make technical edits as necessary to ensure that references to tribal law are included where intended.

23 USC 101 does not include territories in the definition of a State. The Final Rule in 2 CFR 1201 will include this deviation.

3. Section 200.54 removed Indian tribes from the definition of a state. How will this impact the application process for funds reserved for states? Will tribes no longer qualify (200.54)?

This should have no impact on the application process for funds reserved for states. These definitions are applicable only to the Uniform Guidance at 2 CFR 200 unless specifically indicated otherwise.

4. What costs can be included in Modified Total Direct Costs (MTDC)? Specifically are road construction projects considered capital expenditures (200.68)?

Road construction projects are considered capital expenditures. Project costs consist of initial costs, capital costs, and the operating and maintenance (O&M) costs associated with the project. Initial costs include the cost of project planning and design. Capital costs include land acquisition, construction of the road, and installation of signals and other control equipment. According to the definition of MTDC, only the first \$25,000 of a subaward or subcontract should be used to apply an indirect cost rate when MTDC is being used. MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first \$25,000 of each subaward or subcontract (regardless of the period of performance of the subawards and subcontracts under the award). MTDC excludes equipment, capital expenditures, rental costs, participant support costs and the portion of each subaward and subcontract 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 FHWA.

Subpart B – General Provisions

5. Does an audit conducted in accordance with Subpart F of the Uniform Guidance which implements the Single Audit Act (SAA) requirements satisfy the contract audit requirements of FAR based contracts awarded by a Federal agency (200.101)?

Generally, the practical answer is NO; the audit required by Subpart F of the Uniform Guidance does not satisfy the audit requirements of the FAR based contracts, including, but not limited to, the Cost Accounting Standards (CAS), Truth in Negotiations Act (TINA), contractor business systems, incurred costs, and indirect costs/overhead rates (see section 200.503(c)). Despite the name, the SAA (31 U.S.C. 7503(b) – Relation to other audit requirements) gives a Federal agency, Inspector General, or the Government Accountability Office (GAO) the authority to conduct additional audits beyond the Single Audit when the agency needs additional audits to carry out its responsibilities under Federal law or regulation. See section 200.503(b) of the Uniform Guidance.

6. What is the effective date of implementation for Federal-aid projects (200.110)?

Grants in existence at the time of the effective date of the new rule will continue to be administered in accordance with 49 CFR Parts 18 and 19, as well as all other circulars/guidance in place at the time of publication, such as cost principles. The Uniform Guidance will apply to all Federal-aid projects with a project agreement executed on or after the December 26, 2014 implementation date. Project modifications made on or after December 26, 2014 may be subject to the Uniform Guidance requirements if the Federal agency's modification also amends the terms and conditions of the Federal award. Existing Federal awards that do not receive incremental funding with new terms and conditions will continue to be governed by the terms and conditions of the Federal award in effect prior to December 26, 2014.

7. How does the effective date apply to indirect cost rates (200.110)?

Existing negotiated indirect cost rates will remain in place until they are re-negotiated. The “effective date” of changes to indirect cost rates must be based upon the date that a newly re-negotiated rate goes into effect for a specific non-Federal entity’s fiscal year. Therefore, for indirect cost rates and cost allocation plans, FHWA will use the Uniform Guidance both in generating proposals for and negotiating a new rate (when the rate is due to be re-negotiated) for non-Federal entity fiscal years starting on or after December 26, 2014. For example, the Uniform Guidance eliminates the concept of “use allowance” for depreciation. Nevertheless, non-Federal entities with negotiated rates that are based on “use allowance”, will continue to use their existing rate until the rate is due to be re-negotiated.

8. When may non-Federal entities begin to submit proposals for indirect cost rates based on the Uniform Guidance (200.110)?

Non-Federal entities may begin to submit actual cost proposals based on the Uniform Guidance when they are due for fiscal years that begin on or after December 26, 2014. For example, if a non-Federal entity is required to submit a rate proposal based on FY 2014 actual costs to set rates for FY 2016, it can use the provisions in the Uniform Guidance.

9. How does the effective date impact formula and entitlement programs (200.110)?

The effective date in section 200.110 applies to formula and entitlement awards that are covered by the Uniform Guidance.

10. How does the Uniform Guidance apply to Federal awards made before December 26, 2014 when some subawards are made before December 26, 2014 and others are made after December 26, 2014 (200.110)?

The effective date of the Uniform Guidance for subawards is the same as the effective date of the Federal award from which the subaward is made. The requirements for a subaward, no matter when made, flow from the requirements of the original Federal award from the Federal awarding agency.

11. When does the Uniform Guidance become effective (200.110)?

The effective date is covered in section 200.110. Federal agencies must implement the requirements to be effective by December 26, 2014. Subpart F, Audit requirements, will apply to audits of non-Federal entity fiscal years beginning on or after December 26, 2014. The revised audit requirements are not applicable to fiscal years beginning before that date. Administrative requirements and cost principles will apply to new awards and to funding increments, in cases where the Federal agency considers funding increments to be an opportunity to modify the terms and conditions of the Federal award on or after December 26, 2014. Existing Federal awards that do not receive incremental funding with new terms and conditions on or after the December 26, 2014 effective date, will continue to be governed by the terms and conditions of the Federal award.

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

12. Will FHWA offer Fixed Priced Awards (200,201)?

No. A Fixed Price or Fixed Amount Award cannot be used in programs which require a mandatory cost sharing or match. FHWA is also a “reimbursable” program which bases the reimbursements on costs incurred. A Fixed Price Award amount may not reflect actual costs incurred.

13. How should the project end date be included under a FMIS authorization (200.210)?

FMIS 4 does not include a data field to record the project end date. FMIS 5 will include the project end date data field. Until such time when entering the agreement end date becomes mandatory in FMIS 5, States should enter the information in the State Remarks field when a new project agreement is executed. The period of performance must be based on the States estimated project schedule, including required processes to ensure all Federal requirements have been satisfied. Divisions must ensure the estimated period of performance is in line with the States established policies, procedures, and project schedules.

14. Can the project end date be updated or changed after the execution of the project agreement (200.210)?

Yes. However, the extension of a project end date would have to reflect a delay in the project which is beyond the control of the recipient/subrecipient or based on changes to the project agreement which would have an impact on the project end date (e.g. change in project scope). Any extension or modification to the project end date would have to be authorized by the awarding agency.

Subpart D – Post Federal Award Requirements

15. Performance Reports are now a part of sub-recipient monitoring. Will FHWA require these reports, and are they going to be uniform (200.301)?

Recipients of Federal awards must relate financial data to the performance accomplishments of an award. Recipients must also provide cost information to demonstrate cost effective practices. The Federal-aid highway program performance management measures under Chapter 1 of Title 23 will be set forth in the regulations that implement 23 U.S.C. 150. . Under the Uniform Guidance (2 CFR 200.101(a)(3)), where Federal statutes or regulations differ from the Uniform Guidance requirements, the provisions of Federal statutes or regulations govern administration of those requirements. Accordingly, for FHWA awards made under chapter 1 of Title 23, the requirements of 2 CFR 200.301 do not apply. Other programs not carried out under chapter 1 of Title 23 may need to address financial and performance data consistent with the requirements in 2 CFR 200.301. In these instances, FHWA must provide enhanced and proactive oversight to ensure goals and milestones are met during the implementation of the program.

16. The word “should” is used throughout section 200. Does it really mean “must”?

No. The word “must” is used throughout part 200 to indicate requirements. The word “should” is used to indicate best practices or recommended approaches.

17. Will FHWA provide additional guidance concerning the acquisition of equipment and supplies used in the Federal-aid highway construction program (200.313)?

Yes. The Office of Program Administration is developing guidance concerning the use, management and disposition of equipment and supplies that may be acquired through a Federal-aid highway construction project. This guidance should be available during FY 2015.

18. Section 200.313(a) of the guidance specifies that title for equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity as a “conditional title”. This is new terminology for those non-Federal entities that have followed Circular A-110. What is meant by “conditional title” and how will this affect non-Federal entities?

The Uniform Guidance does not change how non-Federal entities should account for equipment ownership. The concept of “conditional title” has not changed. It simply means that equipment ownership vests in the non-Federal entity at the time of acquisition and that it is contingent on meeting the requirements for use, management, and disposition of the equipment as required in section 200.313.

19. Are non-Federal entities expected to change the attributes of their property records implement changes to their existing equipment inventory systems to meet the Uniform Guidance (200.313)?

No. The, the Uniform Guidance does not change requirements for property records. The requirements for property records ensure that the non-Federal entity maintains an equipment inventory system with an effective process of controls to account for and track equipment that has been acquired with Federal funds. Non-Federal entities do not need to change their equipment inventory systems or the data elements contained in those systems, if they comply with the current requirements in Circular A-110.

20. Do the Uniform Guidance procurement standards apply to recipients and subrecipients (200.317)?

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. For FHWA programs, subrecipients of States shall follow State policies and procedures or other policies and procedures approved by the State (see Q&A 21).

21. Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State (200.317)?

Yes. The USDOT requested and received an OMB waiver of the requirements in 2 CFR 200.317 concerning procurement by subrecipients. This waiver provides an exception to the requirement for all subrecipients of a state to follow the procurement requirements in Sections 200.318 through 200.326. The waiver will allow States and subrecipients to continue to use state-approved procurement procedures as they did under part 18 prior to the adoption of the Uniform Guidance.

22. How are procurements of micro-purchase, and small purchases under the simplified acquisition threshold less burdensome than those above it (200.320)?

In summary, all purchases under the simplified acquisition threshold (including micro-purchases) require fewer terms and conditions, are subject to a less stringent competition standard than purchases over the simplified acquisition threshold, can be solicited informally, and do not require a cost or price analysis. Section 200.320 describes the five methods of procurements –

- (1) micro-purchase (less than to \$3,000),
- (2) small purchase (less than \$150,000),
- (3) sealed bids purchases (more than \$150,000),
- (4) competitive proposal purchases (more than \$150,000), and
- (5) Noncompetitive purchases (special circumstances which are applicable for all purchase levels).

All five procurement types must comply with the Procurement Standards in section 200.318, which can be summarized generally as follows:

- (1) the purchase complies with the non-Federal entity's documented procedures in place,
- (2) purchases are necessary,
- (3) open competition (to the extent required by each method),
- (4) conflict of interest policy and
- (5) proper documentation for the purchases.

Purchases of supplies or services under \$3,000 are treated as "micro-purchases." The purchase orders may be awarded without soliciting any competitive quotations if the non-Federal entity considers the costs to be reasonable. The non-Federal entity must, to the extent practicable, distribute these purchases equitably among qualified suppliers. For example, a purchase of computer paper in the amount of \$2,000 can be treated as "a micro-purchase." No rate competitive quotations are necessary for the purchase. A cost or price analysis is not required. However, in accordance with the non-Federal entity's written policies, which may include strategic sourcing or bulk purchase arrangements as described in section 200.318 and addressed in FAQ .320-4, the non-Federal entity must consider whether to make the purchase from any one of a number of office supply stores. Such policies may dictate the purchase of computer paper to rotate among qualified suppliers if they offer the same rates.

Purchases under the simplified acquisition threshold are purchases for goods or services meeting the small purchase threshold (currently at \$150,000). Therefore, all purchases between \$3,000 and \$150,000 can use the "small purchase procedures" stated in section 200.320 (b)

which describes the procedures as “relatively simple and informal.” It states that “price or rate quotations must be obtained from an adequate number of qualified sources.” It leaves the discretion of the non-Federal entity written policy to determine the “adequate” number of qualified sources (i.e., any number greater than one) and the methods of methods of obtaining the price or rate quotations (e.g., it can be in writing, orally, vendor price list on website, or generated via online search engine). Section 200.323 also excludes the small purchases from any requirements for cost or price analysis..

For purchases over the simplified acquisition threshold (currently at \$150,000), the more prescriptive methods of either sealed bids (if the non-Federal entity has very specific parameters for the purchase) or competitive proposals apply.

23. Are non-Federal entities required to establish indirect cost rates in accordance with 2 CFR 200.210(a)(15), 2 CFR 200.331(a)(1)(xiii) and (a)(4)?

No. Non-Federal entities that are able to allocate and charge 100% of their costs directly may continue to do so. Claiming reimbursement for indirect costs is never mandatory; a non-Federal entity may conclude that the amount it would recover would be immaterial and not worth the effort.

24. May a State require a subrecipient to accept a rate lower than 10% de minimis rate via negotiation, or in lieu of its negotiated indirect cost rate (200.331)?

No. If the subrecipient already has a negotiated indirect cost rate with the Federal government, it must use the negotiated rate. Pass-through entities may not force or entice a proposed subrecipient who lacks a negotiated rate to accept less than the de minimis rate. The cost principles are designed to provide that the Federal awards pay their fair share of the costs recognized under these principals. (See section 200.100(c).) Pass-through entities may, but are not required, to negotiate a rate with a proposed subrecipient who asks to do so.

25. For MPOs that are part of a COG/County, or use a fiscal agent to service their administration, do these MPOs need to develop their own indirect cost rates and single audits separate from their cooperative agency or fiscal agent?

The MPO (subrecipient) may claim an indirect cost rate using the following procedures (200.331(a)(4)):

- (1) The de minimis indirect cost rate of 10%,
- (2) Develop their own ICAP, and negotiate their own rate with the State (pass-through entity), or
- (3) Use the indirect cost rate of cooperative agency or fiscal agent, if there's a negotiated rate with the State (pass-through entity).

All MPOs that expends \$750,000 or more in a fiscal year must have a single or program-specific audit (200.331(a)(5) and 200.501(f)). The MPO may have its own single audit performed; or,

depending on the terms of the Cooperative/Administrative Agreement, the MPO's may be part of their cooperative agency's or their fiscal agent's single audit.

26. Is FHWA going to adhere to the 90 day project closeout or will it offer extensions based on certain criteria (200.343)?

FHWA may grant extensions on a case by case basis. According to the Uniform Guidance, recipients are required to submit all performance and financial reports specified in the project within 90 days after the agreement period end date. The project should then be closed by FHWA no later than 1 year after receipt and acceptance of all required final reports". FHWA has drafted guidance to reflect these requirements.

Subpart E – Cost Principles

27. Is the 10 percent de minimis rate for new organizations which have never negotiated an IDC rate available to governmental organizations or tribal government entities which have never negotiated an IDC rate (200.414)?

Yes. A non-Federal entity may use the 10 percent de minimis indirect cost rate if it meets the requirements of 200.414 (f). These requirements include limiting availability to organizations that have never received a negotiated indirect cost rate, except for those described in Appendix VII of Part 200, paragraph (D)(1)(b) "governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal..." State and local government departments that have never negotiated indirect cost rates with the Federal government and receive less than \$35 million in direct Federal funding per year may use the 10% de minimis indirect cost rate, and must keep the documentation of this decision on file. Federally recognized Indian tribes that have never negotiated an indirect cost rate with the Federal government may also use the 10% de minimis rate and must also keep the documentation of this decision on file.

28. Will the \$35 million dollar threshold apply to territories such as Guam, and the Virgin Islands and may they use the 10% rate without developing an ICAP (200.414)?

Yes. OMB has approved the department's deviation on the definition of a state. 23 USC 101 does not include the territories in its definition. However, the requirement to develop an ICAP in order to claim indirect costs should not change based on the Uniform Guidance or 23 USC 101. If a recipient/subrecipient receives more than \$35 million in Federal funding they will be required to prepare an ICAP and submit it for approval. If any of the territories receive \$35 million or less annually in Federal funds, provisions of a de minimis rate should apply. It is unlikely that any of the territories would be able to consider a de minimis rate based on their FY 2104 Federal funding level.

29. What is meant by the term "current negotiated indirect cost rates (200.414)?

Section 200.414(g) of the Uniform Guidance states: "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." A current negotiated indirect cost rate is the

negotiated rate *in effect* (i.e., *not expired*) when the non-Federal entity requests a rate extension. The negotiated rates must be accepted by all Federal awarding agencies.

30. What is meant by the term “one-time” for a negotiated rate agreement extension (200.414)?

FHWA will consider rate extension requests only once in a rate negotiation cycle. For example, a non-Federal entity with a current negotiated rate for July 1, 2015 to June 30, 2016 requests an extension of that rate for 3 years, until June 30, 2019. If approved by the cognizant agency for indirect costs, the non-Federal entity is required to submit a proposal and request a negotiation of an indirect cost rate for the period beginning July 1, 2019. Assuming these are predetermined rates effective until June 30, 2023, the non-Federal entity could then request an extension of the current negotiated rate at the end of this approved period, before submission of a proposal for negotiated rates in the next period. If FHWA grants an extension the non-Federal entity may not request a rate review until the extension period ends. Current negotiated rates include “predetermined” and “final” rates.

31. When should a State contact FHWA to request extension of their current negotiated indirect cost rate (200.414)?

States should submit such requests 60 days before the due date for the next indirect cost proposal. FHWA will consider extension requests submitted later than that on a case by case basis.

32. How might State DOT with negotiated fixed rates with carry-forward effectively use the option for an extension of a current negotiated rate provided by 200.414(g)?

FHWA cannot extend fixed-rate with carry-forward agreements. If a non-Federal entity with a fixed-rate with carry-forward agreement would like to take advantage of the flexibilities in this provision of the Uniform Guidance, it would need to first negotiate a final or predetermined rate, which could then be extended, subject to the approval of the FHWA. The carry-forward for the last fixed year would have to be resolved in accordance with FHWA requirements.

33. Can an entity extend its rate for up to 4 years even if it is a really old rate (say 10 years ago)? Can the entity only extend for less than 4 years (200.414)?

The Uniform Guidance in section 200.414 states that any non-Federal entity with a federally negotiated indirect cost rate may apply for a one-time extension for a period of up to 4 years. FHWA must review and consider approval of the State DOT’s extension request.

A requests for an extension may be for periods of less than 4 years. FHWA must review and consider approval of the extension period.

34. Should a non-Federal entity depreciate the costs of buildings and equipment contributed by a third party (200.436)?

A non-Federal entity can either depreciate the cost of buildings and equipment donated by a third party or claim the fair market value of the donation as part of the non-Federal match

requirement. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For this purpose, the acquisition cost will exclude:

- (1) The cost of land;
- (2) Any portion of the cost of buildings and equipment borne by or donated by the Federal government, irrespective of where title was originally vested or where it is presently located;
- (3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity, or where law or agreement prohibits recovery; and
- (4) Any asset acquired solely for the performance of a non-Federal award.

Subpart F – Audit Requirements

35. What is the new dollar threshold for Single Audit requirements (200.501)?

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 Subpart F of the Uniform Guidance. A State DOT would not qualify for a "program specific" audit under Subpart F because those non-Federal entities administer multiple Federal programs.

36. When will OMB issue the single audit Compliance Supplement and will it include the new requirements under the Uniform Guidance?

OMB expects to release the 2015 Compliance Supplement in April 2015. This supplement will implement changes to complement the Uniform Guidance, such as streamlining the audit objectives and procedures for the 14 types of compliance requirements. OMB conducted outreach efforts to non-Federal stakeholders when developing the 2015 Supplement.

Appendix II

37. Will FHWA develop guidance concerning the required contract provisions in Appendix II for Federal-aid construction contracts (Appendix II)?

Yes. The Office of Program Administration will develop guidance concerning the applicability of Appendix II requirements in conjunction with Form FHWA-1273 for Federal-aid construction projects. This guidance should be available in FY 2015.

Appendix V

38. Does Appendix V replace Appendix C to Part 225 – State/Local-Wide Central Service Cost Allocation Plans (SWCAP)?

Yes, Appendix V to part 200 replaces Appendix C to Part 225 and provides guidance on the preparation, submission and approval of Statewide Cost Allocation Plans (SWCAP).

National Highway Institute (NHI) and Other Training Updates Based on 2 CFR 200 Implementation

Course Title	Office	Target Date
134077 - Contract Administration Core Curriculum Training	HIPA/NHI	TBD
151021 – Administration of FHWA Planning and Research Funds	HEP/NHI	12/31/2015
151046 - FHWA Planning and Research Grants: History, Sources, and Regulations - WEB-BASED	HEP/NHI	12/31/2015
151047 - FHWA Planning and Research Grants: Common Grant Rule - WEB-BASED	HEP/NHI	12/31/2015
151048 - FHWA Planning and Research Grants: Cost Principles - WEB-BASED	HEP/NHI	12/31/2015
151049 - FHWA Planning and Research Grants: Audits - WEB-BASED	HEP/NHI	12/31/2015
231028 - Using the AASHTO Audit Guide for the Procurement and Administration of A/E Contracts	HIPA/NHI	TBD
231029 - Using the AASHTO Audit Guide for the Development of A/E Consultant Indirect Cost Rates	HIPA/NHI	TBD
231030 - Using the AASHTO Audit Guide for Auditing and Oversight of A/E Consultant Indirect Costs	HIPA/NHI	TBD
310109 - Federal-Aid 101	HIPA/NHI	TBD
310115 - Introducing Highway Federal-Aid	HIPA/NHI	TBD
Develop Training on Cost Principles for State, Local and Indian Tribal Governments	RC-FST	12/5/2014
Update Federal-aid Essentials for LPA Training Modules	RC-FST	TBD
Update FM Boot Camp Material	RC-FST	12/5/2014

FHWA Regulation/Policy/Guidance Update Requirements - 2 CFR 200

Course Title	Office	Target Date
23 CFR 172	HIPA-20	TBD
23 CFR 420 – Planning and Research Program Administration (this will need to be updated thru NPRM with Research)	HEP/HRT	12/31/2015
23 CFR 627	HIPA-20	TBD
23 CFR 630.106	HCF	4/30/2015
23 CFR 635A	HIPA-30	TBD
Acquisition Procedural Memorandum APM #004 - Closeout of Acquisition Vehicles	HCFA-10	11/30/2014
Acquisition Procedural Memorandum APM #009 - Invoice Processing	HCFA-32	11/30/2014
Agreements Checklists – Pre/Post Award	HCFA-30	1/31/2015
Agreements Checklists – Procurement Requests	HCFA-10	10/15/2014
Assistance Agreement Templates	HCFA-32	12/19/2014
Assistance Agreements Manual	HCFA-30	1/31/2015
Clarification of Policy on Indirect Costs of State and Local Governments, May 5, 2004	HCF	3/31/2015
Eligibility of Membership Dues for FHWA/FTA Planning Funds - October 8, 2002	HEP	12/26/2014
Establish Website of Agreement Terms & Conditions	HCFA-10	10/15/2014
Federal-Aid Guidance Non-Federal Matching Requirements, December 29, 2009	HCF	9/30/2015
FHWA Order 4410.1	HCFA-10	11/15/2014
FHWA Policy for Contractor Certification of Costs in Accordance with Federal Acquisition Regulations (FAR) to Establish Indirect Cost Rates on Engineering and Design-related Services Contracts Order No. 4470.1A found at http://www.fhwa.dot.gov/legsregs/directives/orders/44701a.cfm	HIPA	TBD
FHWA Risk Assessment for On-Boarding Tribes (Location - TTP SharePoint Site)	HFL	3/31/2015
FHWA, State DOT, and MPO Rights to Copyrighted and Patented Items Developed with FHWA Planning and Research Funds - March 1, 2004	HEP	12/26/2014
Field Planners Guidebook: Statewide Planning and Research (SPR) Work Program and Unified Planning	HEP	12/26/2014
FIRE Toolkit (Location - TTP SharePoint Site)	HCF	3/31/2015
Funding for Bridge Inspection Equipment and Access Features, HIBT-30 October 5, 2005 memo	HIBT-30	
Guidance on Transportation Enhancements Activities	HEP	3/31/2015
Guidance on Use of FHWA Planning and Research Funds for Travel and Training - January 29, 2004	HEP	12/26/2014
HIPA-10 February 13, 2012 memo: "Local Public Agency Stewardship Issues"	HIPA-40	TBD
HIPA-20 Consultant Services web page	HIPA-20	TBD
HIPA-30 Construction Program Guide: "Contractor Furnished Equipment / Supplies"	HIPA	TBD
HIPA-30 Construction Program Guide: "Source Documentation and Determination of Pay Quantities"	HIPA	TBD
HIPA-30 Contract Administration Core Curriculum Manual	HIPA-30	TBD
HIPA-30 May 5, 1993 memo: "Equipment Purchases for State Construction Engineering Use"	HIPA-30	TBD

HIPA-40 Federal –aid Highway Program Stewardship and Oversight Agreement Guidance: Documenting State Assumption of Federal0aid Project Oversight and FHWA Program Oversight Measures (March 2014).	HIPA-40	TBD
Indirect Cost Allocation Dispute Resolution Process for State DOTs found at http://www.fhwa.dot.gov/legsregs/directives/policy/ind080808.htm	HCF	3/31/2015
Indirect Costs Eligibility and Other TEA-21 Revisions to Title 23 U.S.C. Section 302, September 24, 1998	HCF	3/31/2015
Prior Approvals for Non-Construction Grants & Cooperative Agreements to State & Local Governments;	HEP	12/26/2014
Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers found at http://www.fhwa.dot.gov/programadmin/172qa.cfm	HIPA-20	TBD
Program Income Under Federal Grants;	HEP	12/26/2014
Project Funds Management/Close-out Policy	HCF	4/30/2015
Recreational Trails Program Federal Share and Matching Provisions Guidance	HEP	3/31/2015
Recreational Trails Program Guidance	HEP	3/31/2015
Scenic Byways Program Grant Information	HEP	3/31/2015
Stewardship and Oversight of Federal-Aid Projects Administered by Local Public Agencies - Attachments B & C to the August 15, 2014 FHWA Order	HIPA-40	TBD
TE Questions and Answers	HEP	3/31/2015
Third Party In-Kind Contributions As Match For FHWA Planning Funds;	HEP	12/26/2014
Tribal Program Agreement (Location - TTP SharePoint Site)	HFL	3/31/2015
TTP On-Boarding Guide (Location - TTP SharePoint Site)	HFL	3/31/2015
TTP Program Review Template (Location - TTP SharePoint Site)	HFL	3/31/2015
Use of FHWA Planning & Research Funds for Conferences and Other Meetings - December 8, 2006	HEP	12/26/2014