

OMB's Uniform Guidance

Regulations Overview

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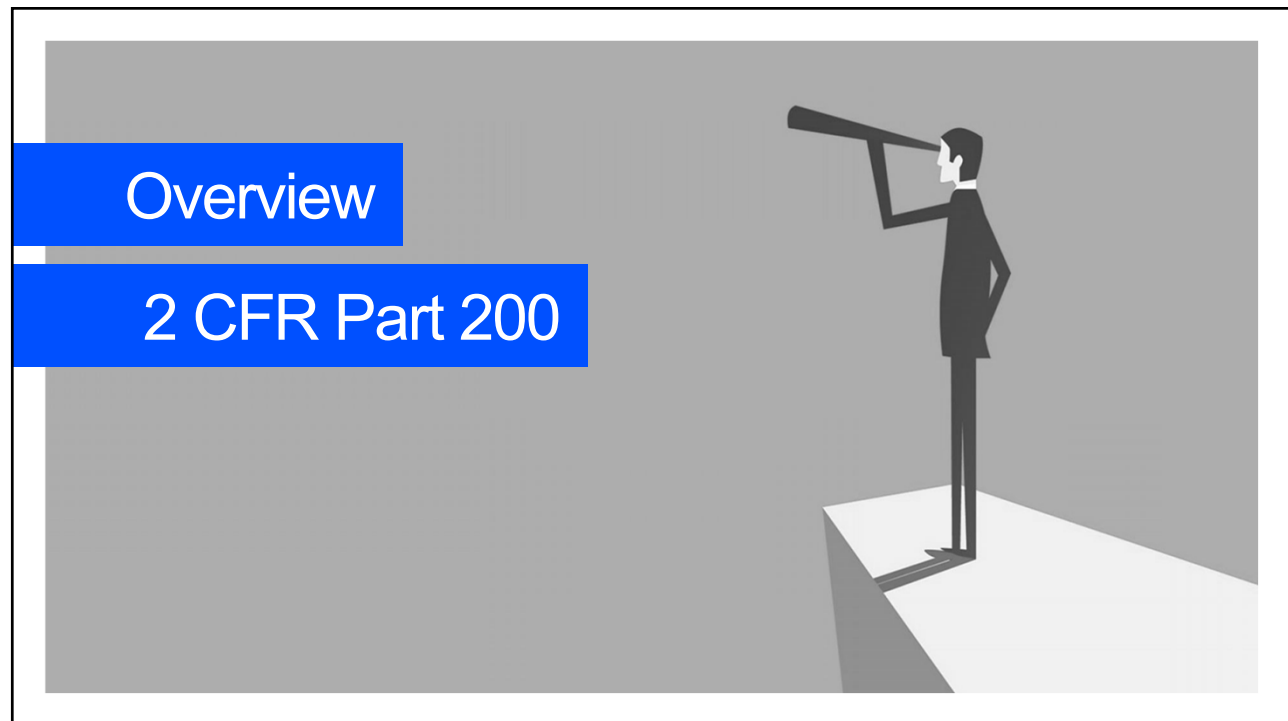
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## Uniform Guidance resources

- Notice of Guidance in Federal Register (Comments regarding the Summary and Description of Changes), 12/2013
- Full Text of 2 CFR Part 200, OMB Uniform Guidance for Federal Financial Assistance, 11/12/2020
- FAQ's issued 05/2021
- Federal departments' implementation
  - ▶ DHHS – 45 CFR Part 75, technical corrections 01/2021
  - ▶ DOL – 2 CFR Part 2900, updated 12/30/2015

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Subpart D. Post-Federal

Award Requirements

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## Subpart D. Post-federal award requirements

### §200.302(b) Financial Management System must:

- Identify funds received and expended
- Disclose accurate, current and complete financial results
- Identify source and application of funds
- Provide effective controls and accountability for funds, property and other assets
- Compare budget to actual results
- Provide for written procedures for payment requirements
- Provide for written procedures for determining allowability of costs

45 CFR 75.302(b)

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## Subpart D. Post-federal award requirements

### §200.303 Internal controls

- Non-Federal entity **must**:
  - (a) Establish and maintain a **system of internal control** that provides for **reasonable assurance** that the entity is managing the award in compliance with Federal statutes, regulations and the terms and conditions of the award
    - Internal controls **should** comply with the Committee of Sponsoring Organizations of the Treadway Commission (COSO) or Green Book
  - (b) Comply with Federal statutes, regulations and terms and conditions of the award

45 CFR 75.303

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## Subpart D. Post-federal award requirements

### §200.303 Internal controls

- Non-Federal entity **must**: *(continued)*
  - (c) Evaluate and monitor compliance
  - (d) Take prompt action for noncompliance
  - (e) Take reasonable measures to safeguard PPII



45 CFR 75.303

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## Subpart D. Post-federal award requirements

### §200.305 Federal Payment

Section title change

Changes

- Section title change

- (b) (1) Minimize the time between transfer of funds and disbursement

Advance payments limited to the **minimum amount needed** and timed with **actual, immediate cash requirements**

Time and amount of advances must be **as close as administratively feasible** to actual disbursements

- (5) **Must** disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments<sup>3</sup>

45 CFR 75.305

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## Subpart D. Post-federal award requirements

### §200.305 Federal payment

(b)(8) Interest-bearing accounts are required for advance payments, unless

(i) Receive less than **\$250,000** in Federal awards annually

(b)(9) Interest earnings over \$500 on advances

**NEW** (i) – (ii) Returning interest on federal awards paid through PMS and federal awards not paid through PMS

**NEW** (b)(10) Funds, principal, and excess cash returns must be directed to the original federal agency payment system

#### Changes

- \$120,000 => \$250,000
- Info to return interest earnings

## Subpart D. Post-federal award requirements

### §200.306(b) Cost sharing or matching

- ▶ YES Verifiable from the recipient's records
- ▶ YES Not included as a cost or match to any other Federally-funded program
- ▶ YES Necessary and reasonable for accomplishment of program objectives
- ▶ YES Allowable under grant conditions and cost principles
- ▶ YES Not financed by any other Federal program, unless authorized by Federal statute
- ▶ YES Provided for in the approved component plan/budget
- ▶ YES Conform to other provisions of this part, as applicable.

45 CFR 75.306

## Subpart D. Post-federal award requirements

### §200.306 Cost sharing or matching (continued)

- (c) Unrecovered indirect may be included as cost sharing or matching
- (d) Value in accordance with cost principles
- (e) Volunteer services
  - ▶ Integral and necessary
  - ▶ Rates for similar work in the organization or labor market
  - ▶ Fringe benefits can be included in the rate calculation

(f) When a 3rd party organization furnishes services of an employee – rate of pay + paid fringe benefits

(g) Donated supplies – reasonable, fair market value



45 CFR 75.306

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## Subpart D. Post-federal award requirements

### §200.306 Cost sharing or matching (continued)

- (i) Value of donated property:
  - (1) Must use an **independent certified appraiser** value donated land and buildings
  - (3) Must use an **independent appraiser to value** donated space



45 CFR 75.306

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## Subpart D. Post-federal award requirements

### §200.308 Revision of budget or program plans

(c) Prior approval required for:

#### **RENUMBERED**

- (1) Change in scope
- (2) Change in key person
- (3) Disengagement of project leader for more than 3 months or a 25% reduction in time
- (4) Costs requiring prior approval

(5) Transfer of funds for participant support costs

(6) Sub awarding any part of a Federal grant

(7) Changes in the amount of the approved match provided by the non-Federal entity

(8) Need for additional Federal funding



45 CFR 75.308

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## Subpart D. Post-federal award requirements

### §200.308 Revision of budget or program plans *(continued)*

**RENUMBER** (f) The Federal agency **may, at its option**, restrict transfer of funds among direct cost categories for cumulative transfers exceeding 10% for grants exceed the Simplified Acquisition Threshold

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## Subpart D. Post-federal award requirements

### §200.311 Real Property

- (a) Title vests in the non-Federal entity
- (c) Must obtain disposition instructions from the awarding agency
  - (1) Retain title after compensating the awarding agency May sell and use proceeds to offset costs of replacement property
  - (2) Sell and compensate awarding agency
  - (3) Transfer title to the awarding agency or to third party designated by the awarding agency

45 CFR 75.318

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## Subpart D. Post-federal award requirements

### §200.313 Equipment

- (a) **Conditional** title vests in the non-Federal entity
- (c) Use:
  - (1) Use in program as long as needed whether or not programs continues to be supported by a Federal award
    - Prior approval to encumber
    - When not needed, may use in the following priorities:
      - (i) Other projects funded by the same Federal agency
      - (ii) Projects funded by other Federal agencies

45 CFR 75.320

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## Subpart D. Post-federal award requirements

### §200.313 Equipment

#### (c) Use: *(continued)*

- (2) User fees may be charged if appropriate when equipment is used by other programs
- (3) Cannot be used to provide services for less than private companies charge
- (4) Use as trade-in without prior approval



45 CFR 75.320

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## Subpart D. Post-federal award requirements

### §200.313 Equipment *(continued)*

#### (e) Disposition

- (1) FMV \$5,000 or less, prior approval not needed to dispose of and no further **responsibility** to the awarding agency
- (2) FMV greater than \$5,000, must ask for instructions:
  - No response in 120 days, may keep or sell but must pay awarding agency its share of proceeds of FMV
  - Non-Federal entity may keep \$500 of proceeds

45 CFR 75.320

Changes  
obligation => responsibility

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## Subpart D. Post-federal award requirements

### §200.318 General procurement standards

(a) Must **have and** use documented procurement procedures **consistent with** state, local, and tribal laws and regulations

Documented procurement procedures must conform to procurement standards

(c)(1) Must maintain written standards of conduct covering real or apparent conflicts of interest in the selection, award, or administration of a contract

- Employees, officers or agents (includes Board members)
- Members of their immediate families, partners, or employers
- Organization

45 CFR 75.327

Changes  
Documented procedures  
language

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## Subpart D. Post-federal award requirements

### §200.318 (c)(1) *(continued)*

- Employees, officers or agents (includes Board members) must **neither solicit nor accept** gratuities, favors, or anything of monetary value
- May set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value (*must be defined*)
- Written policies must include **disciplinary actions** for violations



45 CFR 75.327

## Subpart D. Post-federal award requirements

### §200.318 General procurement standards

- (d) Avoid purchasing unnecessary or **duplicative** items. Lease vs. purchase analysis where appropriate.
- (e) Encouraged to enter into state and local intergovernmental or inter-entity agreements.
- (f) Encouraged to use Federal excess and surplus property.

45 CFR 75.327

## Subpart D. Post-federal award requirements

### §200.318 General procurement standards *(continued)*

(h) Award contracts to **responsible contractors**. Consider integrity, compliance with public policy, records of past performance and financial and technical resources.

(i) Maintain **records with rationale** for the method of procurement, selection of contract type, contractor selection and basis for price.

(k) Non-federal entity is **responsible for settlement** of all contractual and administrative issue.

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## Subpart D. Post-federal award requirements

### §200.319 Competition

#### **RENUMBER**

- (a) Full and open competition;
- (c) No state, local or tribal preferences unless mandated by Federal statute;
- (d) Must have written procedures; name brands used only as a description;
- (e) Pre-qualified contractors: Must ensure lists are current and include enough qualified sources to ensure competition;
- NEW (f)** Noncompetitive procurements can only be awarded in accordance with methods of procurement section.



45 CFR 75.328

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## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

#### (a) Informal Procurement Method

- Up to the simplified acquisition threshold
  - See definition section
  - or a lower threshold established by the non-federal entity
- Expedite the completion of transactions and minimize the administrative burden

#### (b) Formal Procurement Method

- Over the simplified acquisition threshold
  - or a lower threshold established by the non-federal entity
- Follow documented procedures
- Public advertising

#### (c) Noncompetitive

- Specific circumstances
- 1 or more apply

## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

#### **RENUMBER** (a) Informal procurement methods

##### (1) Micro-purchase

(i) Distribution – To the **maximum** extent practicable, NFE **should** distribute equitably among qualified suppliers.

(ii) Awards - May be awarded without competitive quotes if price is considered reasonable **based on research, experience, purchase history, or other information and documents it accordingly.**

**Purchase cards can be used if procedures are documented and approved.**

## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

(a)(1) Informal procurement method, Micro-purchase *(continued)*

(iii) – (v) Thresholds

NFEs are responsible for establishing appropriate threshold based on:

- ▶ **Internal controls, evaluation of risk, documented procurement procedures**

NFEs may increase threshold over the federally-defined threshold (in FAR)

- ▶ Documentation – must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

**(A) Qualification as a low-risk auditee for most recent audit;**

**(B) Annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or**

**(C) For public institutions, a higher threshold consistent with state law.**

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## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

(a)(1) Informal procurement method, Micro-purchase *(continued)*

Threshold increases – NFE is responsible for determining and documenting an appropriate threshold based on

- **Internal controls, evaluation of risk, documented procurement procedures**

(iii) <\$10,000	(iv) \$10,000 - \$50,000	(v) >\$50,000
<ul style="list-style-type: none"> <li>▪ 48 CFR 2.1</li> <li>▪ 200.1 Definitions – micro-purchase threshold</li> </ul>	<ul style="list-style-type: none"> <li>▪ Annual self certification</li> <li>▪ Must maintain documentation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Cognizant agency approval</li> <li>▪ Submit request with required documentation</li> </ul>

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## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

#### **RENUMBER (a)** Informal procurement

##### (2) Small purchases

(i) Procedures – Price or rate quote must be obtained from adequate number of qualified sources, as determined by NFE.

(ii) Threshold – NFE is responsible for determining **based on internal controls, evaluation of risk and documented procurement procedures.**

**Must not exceed SAT threshold established by 48 CFR 2.1.**

## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

#### **RENUMBER (b)** Formal procurement methods

##### (1) Sealed bids

- Publicly solicited
- Firm fixed-price contract (lump sum or unit price) is awarded to responsible bidder whose bid conforms with all material terms and conditions of invitation for bids, is the lowest in price.
- Preferred method for procuring construction, if conditions apply.

45 CFR 75.329

## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

(b)(1) Formal procurement methods, Sealed bids *(continued)*

(i) Conditions

- (A) Complete, adequate and realistic specifications
- (B) Two or more responsible bidders
- (C) Selection can be made principally on price

45 CFR 75.329

## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

(b)(1) Formal procurement methods, Sealed bids *(continued)*

(ii) Requirements:

- (A) Solicited from adequate number of qualified sources; sufficient response time; publicly advertised (local and tribal gov'ts).
- (B) Invitations include all information needed for proper response.
- (C) Opened as specified in invitation; publicly opened (local and tribal gov'ts).
- (D) Firm fixed price contract awarded.
- (E) Bids may be rejected if there is a sound documented reason.

45 CFR 75.329

## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

#### (b) Formal procurement methods *(continued)*

(2) Proposals. Generally used when conditions not appropriate for sealed bids. Awarded in accordance with following requirements:

- (i) Proposals publicized and identify all evaluation factors and their relative importance; adequate number of qualified offerors; consider any response to maximum extent practical.
- (ii) Written method for conducting technical evaluations and making selections.
- (iii) Contract awarded to proposer most advantageous to the NFE, with price and other factors considered.

45 CFR 75.320

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## Subpart D. Post-federal award requirements

### §200.320 Methods of procurement to be followed

#### **RENUMBER** (c) Noncompetitive procurement

Can be awarded if one or more of the following apply:

- NEW** (1) Less than micro-purchase threshold;
- (2) Available only from a single source;
- (3) Emergency;
- (4) Express authorization for a noncompetitive procurement from awarding agency; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

45 CFR 75.320

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## Subpart D. Post-federal award requirements

**§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.** (A labor surplus area is designated by the Dept. of Labor.)

- (a) Non-federal entities must take all necessary affirmative steps to assure minority businesses, women's business enterprises and labor surplus area firms are used when possible.

<https://www.doleta.gov/programs/lisa.cfm>

45 CFR 75.330

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## Performance and Financial Monitoring and Reporting

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## Subpart D. Post-federal award requirements

### **RENUMBER** §200.329 (a-f) Monitoring and reporting program performance

45 CFR 75.342

			
Monitor your own activities - assure compliance & performance goals are met	Clearly articulate performance has a standard against which to be measured	Annual reports by NFE and/or PTE due 90 calendar days after reporting period	Quarterly/ semiannual reports due 30 calendar days after reporting period

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## Subpart D. Post-federal award requirements

### **RENUMBER** §200.329 (a-f) Monitoring and reporting program performance

45 CFR 75.342

			
Final report due 120 days after period of performance end date; to PTE within 90 days	Inform funding source of problems, delays, or adverse conditions which materially impair the ability to meet objectives	Inform funding source of favorable developments which enable meeting objectives sooner or at less cost or produce more/different beneficial results	The Federal awarding agency may make site visits as warranted by program needs

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## Subpart D. Post-federal award requirements

### **RENUMBER** §200.331 Subrecipient and contractor determinations

- A pass-through entity must make **case-by-case** determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor.

45 CFR 75.351

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## Contractor or subrecipient?

### Contractor

- Provides goods or services as a normal part of business
- Generally, a for-profit business
- Provides similar goods or services to many purchasers
- Operates in a competitive environment
- Provides ancillary goods or services
- Not subject to the regulations

**VS**

### Subrecipient

- Helps carry out the program
- Generally, another NPO
- Determines eligibility
- Performance objectives
- Responsible for program decision-making
- Must adhere to regulations
- Funds used to carry out the program rather than providing goods or services

2 CFR 200.331 and 45 CFR 75.351

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## Subpart D. Post-federal award requirements

### **RENUMBER** §200.331 Subrecipient and contractor determinations *(continued)*

(c) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the **substance of the relationship** is more important than the form of the agreement. All the characteristics listed above may not be present in all cases.

45 CFR 75.351

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## Subpart D. Post-federal award requirements

### **RENUMBER** § 200.332 Requirements for pass-through entities

- (a) List of required information for every subaward, including:
1. Federal Award Identification (13 items required to be disclosed).
  2. All requirements, regulations and terms and conditions of the award.
  3. Any additional requirements imposed by the pass-thru entity in order for pass-thru entity to meet its responsibilities to the Federal awarding agency.
  4. An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient, or a de minimis indirect cost rate of 10% of MTDC.
  5. Subrecipient must allow access to records.
  6. Terms and conditions of closeout.

45 CFR 75.352

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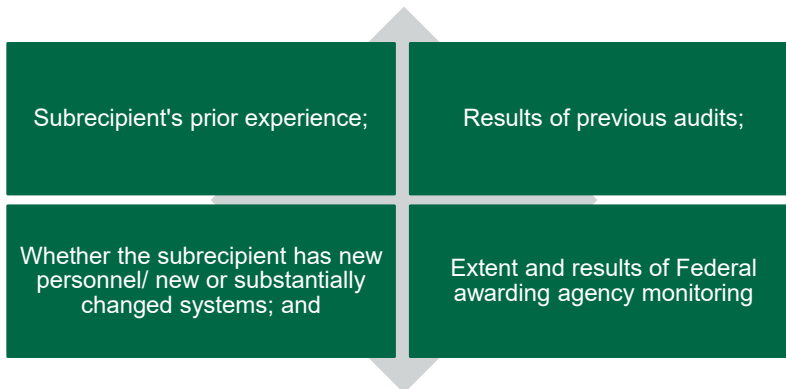
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## Subpart D. Post-federal award requirements

### **RENUMBER** §200.332(b)(1-4) Requirements for pass-through entities *(continued)*

- Evaluate subrecipient's risk of noncompliance:



45 CFR 75.352

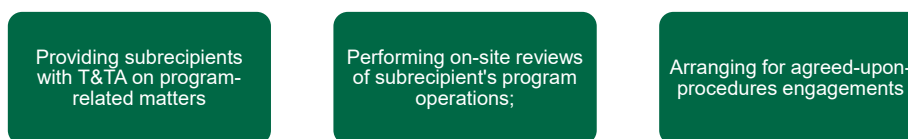
## Subpart D. Post-federal award requirements

### **RENUMBER** § 200.332 Requirements for pass-through entities *(continued)*

(d)(1-4) PTE monitoring of the subrecipient must include:



(e)(1-3) PTE monitoring tools





## Subpart D. Post-federal award requirements

### **RENUMBER** §200.332 Requirements for pass-through entities *(continued)*

- (f) Verify that every subrecipient is **audited** as required.
- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that **necessitate adjustments** to the pass-through entity's own records.
- (h) Consider taking **enforcement** action against noncompliant subrecipients.

45 CFR 75.352

## Subpart D. Post-federal award requirements

### **RENUMBER** §200.334 Retention requirements for records

- All records pertinent to an award must be retained for **3 years** from the date of submission of the final report.
- Must be retained **through the resolution** of any litigation, claim or audit that has begun before the 3-year period.
- Can be extended if notified in writing.

45 CFR 75.361

## Subpart D. Post-federal award requirements

### **RENUMBER §200.336** Methods for collection, transmission and storage of information

- Should collect, transmit and store award-related information in **open and machine-readable formats** rather than paper.
- Machine-readable format – standard computer language that can be read automatically by a web browser or computer system.
- Can scan paper records if there are quality controls, the electronic records provide **reasonable safeguards** against alteration and are readable.



### **RENUMBER §200.337** Access to records

(c) Awarding and pass-through entities have access to records as long as they exist.

45 CFR 75.363 and 75.364

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## Subpart D. Post-federal award requirements

### **RENUMBER §200.344** Closeout

- (a) Recipient must submit no later than **120 calendar days** after the end of the period of performance, all financial, performance and other reports required; Subrecipient no later than **90 calendar days**. Extensions may be approved.
- (b) Liquidate all obligations no later than 120 calendar days after the end of the period of performance. May be extended.
- (g) Awarding agency **must promptly** complete all closeout actions no later than 1 year after receipt and acceptance of all final reports.

Close out actions include actions in grants management and payment systems.

45 CFR 75.381

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## Subpart D. Post-federal award requirements

### **RENUMBER** §200.344 Closeout *(continued)*

**NEW (h)** NFE does not submit all reports, awarding agency must proceed to close out with information available within one year of the period of performance date.

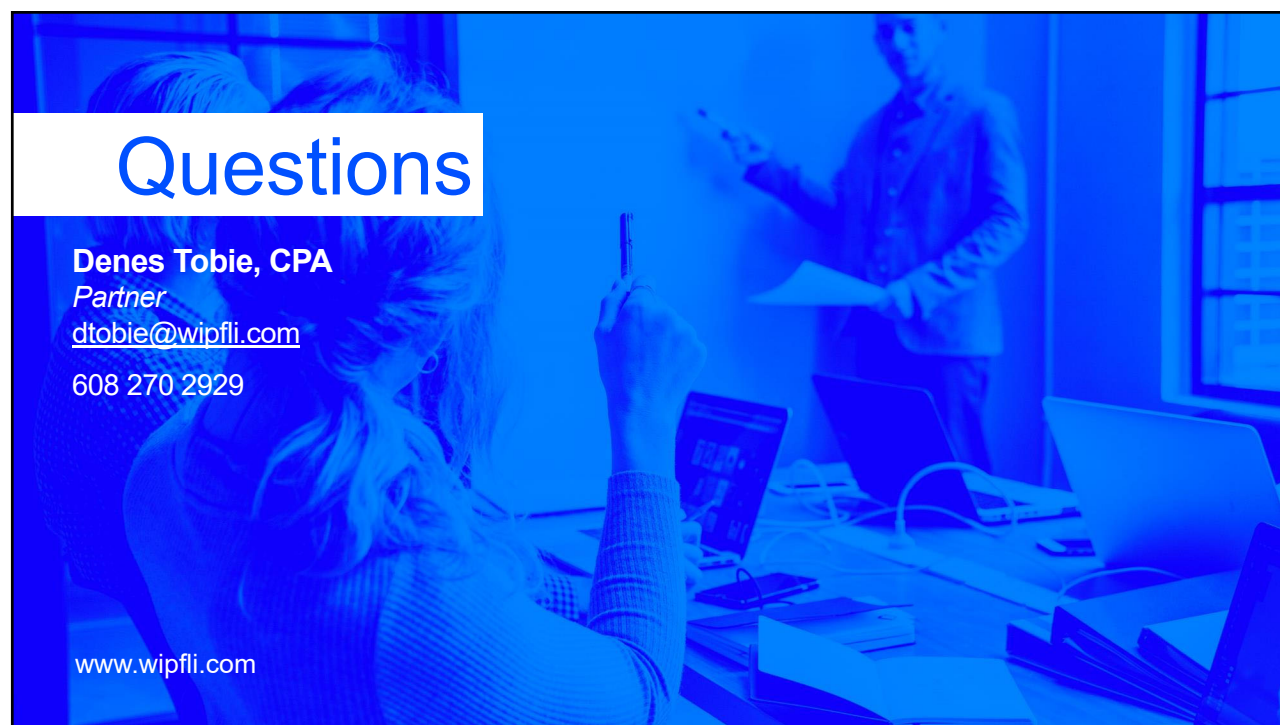
**NEW (i)** NFE does not submit all reports within one year, awarding agency must report material failure to comply.

45 CFR 75.381

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# Questions

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