

2 CFR Part 200
Series #3 – New Citations Subparts B - F

This is the third of a series of new federal grant information, which is dedicated to the topic of new citations found in 2 Code of Federal Regulation (CFR) Part 200 “*Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Grants*”. This series will discuss the 11 new citations for **Subparts B through Subpart F**.

The following table illustrates Subparts B - F eleven (11) new citations, which are marked in yellow highlights. The table provides the number of citations per subparts, the number of new citations, and percentage of new citations.

Subpart	# of Citations	# of New Citations	Percent New Citation by Subpart
Subpart A – Acronyms and Definitions	99	25	9.47%
Subpart B – General Provisions	13	3	1.14%
Subpart C – Pre-Federal Awards Requirements & Contents of Federal Awards	11	3	1.14%
Subpart D – Post-Federal Awards Requirements	45	0	0.00%
Subpart E – Cost-Principles	75	5	1.89%
Subpart F – Audits Requirements	21	0	0.00%
Total	264	36	13.64%

Provided below in direct quotations from 2 CFR Part 200 **Subparts B through Subpart F** are new citations. TAASA provided citation analysis directly before each citation, for convenience in reading and comprehension of the actual citation. If you need financial technical assistance on this subject or other financial grant related topics, please email financial@taasa.org, or contact Mark Hernandez at mhernandez@taasa.org, or call his direct line (737) 333-9941.

Subpart A – Acronyms and Definitions (*Please review series #2 for new definitions*)

Subpart B – General Provisions (3 new items)

200.111 English language

TAASA Analysis:

(a) is specifically for federal agencies and not a requirement for non-federal entities. Non-federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

(b) is specifically for non-federal entities. This section specifically addresses English as the controlling language, in the event of inconsistency in translations.

Actual Citation:

“(a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.

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(b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

What does the citation mean?

- Section (a) requires the use of English language for all federal agencies to announce grant opportunities, grant applications and federal awards.”

200.112 Conflict of interest

TAASA Analysis:

The new 2 CFR Part 200 emphasizes internal control, including fraud, waste, and abuse. All local centers should have conflict of interest policies and procedures.

Actual Citation:

“The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.”

200.113 Mandatory disclosures

TAASA Analysis:

Again, 2 CFR Part 200 emphasizes internal control, including fraud, waste, and abuse. All local centers are required to provide mandatory disclosures for any of the violations described below.

Actual Citation:

“The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)”

Subpart C – Pre-Federal Awards Requirements & Contents of Federal Awards (3 new items)

200.206 Standard application requirements (based on Paperwork Reduction Act (PRA) requirements)

TAASA Analysis:

This citation is for federal agencies only.

Actual Citation:

“(a) *Paperwork clearances*. The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320, Controlling Paperwork Burdens on the Public.

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Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.”

200.209 Pre-award costs.

TAASA Analysis:

Local centers should seek guidance from federal or pass-through agencies regarding pre-award costs. Some federal or pass-through agencies may limit or not allow pre-award costs.

Actual Citation:

“For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see §200.458 Pre-award costs.”

200.211 Public access to Federal award information

TAASA Analysis:

This citation is for federal agencies only. Pass-through agencies are required to provide FFATA information for awarded subrecipients. This is not a requirement for local centers.

Actual Citation:

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

(b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:

- 1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 42.15;
- 2) Information that was entered prior to April 15, 2011; or
- 3) Information that is withdrawn during the 14-calendar day waiting period by the Federal Government official.

(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556. [78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43309, July 22, 2015]”

Subpart D – Post-Federal Awards Requirements (no new items)

Subpart E – Cost-Principles (5 new items)

200.412 Classification of costs.

TAASA Analysis:

This citation is for the consistent treatment of costs for federal awards, in order to avoid duplicate charges of federal expenditures.

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Actual Citation:

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

200.419 Cost accounting standards and disclosure statement.

TAASA Analysis:

This citation is for Institutes of Higher Education (IHE) only. This is not a requirement for local centers.

Actual Citation:

“(a) An IHE that receives aggregate Federal awards totaling \$50 million or more in Federal awards subject to this part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

(b) *Disclosure statement.* An IHE that receives aggregate Federal awards totaling \$50 million or more subject to this part during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs). With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$50 million or more in Federal awards.

- 1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.
- 2) An IHE is responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the six months period. Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.
- 3) *Cost and funding adjustments.* Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount

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of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

- 4) *Overpayments*. Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.
- 5) *Compliant cost accounting practice changes*. Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.
- 6) *Responsibilities*. The cognizant agency for indirect cost must:
 - i. Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.
 - ii. Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.
 - iii. Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]"

200.429 Commencement and convocation costs.

TAASA Analysis:

This citation is for Institutes of Higher Education (IHE) only. This is not a requirement for local centers.

Actual Citation:

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

200.440 Exchange rates.

TAASA Analysis:

This citation is regarding exchange rate, which will not impact local centers.

Actual Citation:

"(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

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(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]”

200.448 Intellectual property

TAASA Analysis:

This citation is new and provides detail information on how to account for costs regarding intellectual property. Revenue from intellectual property may be considered program income. Local centers should contact the granting agency to discuss treatment of program income.

Actual Citation:

“(a) *Patent costs.*

- 1) The following costs related to securing patents and copyrights are allowable:
 - i. Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;
 - ii. Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and
 - iii. General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also §200.459 Professional service costs).
- 2) The following costs related to securing patents and copyrights are unallowable:
 - i. Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;
 - ii. Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights.*

- 1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:
 - i. The Federal Government already has a license or the right to free use of the patent or copyright.
 - ii. The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.
 - iii. The patent or copyright is considered to be unenforceable.
 - iv. The patent or copyright is expired.
- 2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:
 - i. Royalties paid to persons, including corporations, affiliated with the non-Federal entity.
 - ii. Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.
 - iii. Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

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- 3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]”

200.470 Taxes (including Value Added Tax)

TAASA Analysis:

(a) is specifically for state, local government, Indian tribe and is not a requirement for local centers.

(b) is specifically for nonprofit organizations and institutions of higher education (IHE). This section details what taxes are allowable or unallowable expenditures.

- In general, any taxable expenditures that a nonprofit are required to pay are allowable expenditures
- Exceptions are where nonprofit organizations received federal exempt status, such as 501(c)3 tax exempts status. The nonprofit organization must use the tax exemption certification, in order to not be charged the tax expenditure. If the nonprofit organization does not use the tax exemption, the tax expenditure will be considered an unallowable expenditure.
- In some cases, nonprofit organizations will make payments to local governments in lieu of taxes. In this case the payment will be allowable taxable expenditure.

(c) is for all non-federal entities regarding the treatment of Value Added Tax (VAT) Foreign taxes.

Actual Citation:

“(a) For states, local governments and Indian tribes:

- 1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.
- 2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.
- 3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

- 1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:
 - i. Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the Federal awarding agency makes available the necessary exemption certificates,
 - ii. Special assessments on land which represent capital improvements, and
 - iii. Federal income taxes.
- 2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or

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cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.”

Subpart F – Audits Requirements (no new items)