

Ohio Office of Budget and Management

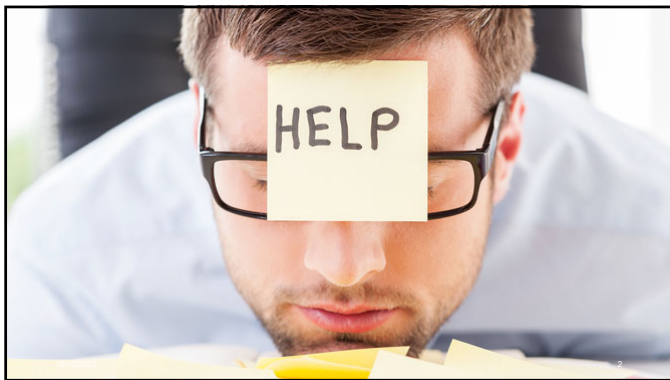
If you think compliance is expensive – try non-compliance!

Stacie Massey, MBA
Ohio Grants Partnership

Mike DeWine, Governor of Ohio
Mike DeWine, Director

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Mike DeWine, Director

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Mike DeWine, Director



Today's Topics

- Compliance Framework
- Uniform Guidance
- Build or Strengthen Your Compliance Framework
- Non-Compliance Case Studies



What is a compliance framework?

10/10/2022 4

Key Compliance Framework Areas

People	Systems
Policies	Procedures
Environment	Template Resources

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Framework Considerations

- Align with federal regulations?
- Continuous improvement or evaluation?
- Reporting or performance metrics ready?
- Audit ready?



What is the Uniform Guidance?

- Government-wide framework for grants management
- Authoritative set of rules and requirements for Federal awards

Structure of Uniform Guidance

2 CFR Paragraph	Subpart	Definition
200.0	A	Acronyms and definitions
200.100	B	General provisions of guidance (purpose and applicability)
200.200	C	Pre-federal award requirements and content of awards
200.300	D	Post-award requirements
200.400	E	Cost principles
200.500	F	Audit requirements (includes legacy A-133 requirements)
Appendices to Part 200	I-XII	Additional guidance on topics such as indirect cost principles and the OMB compliance supplement

Post-Award Key Concepts – Cost Principles (2 CFR 200.403)

- Necessary and reasonable
- Allocable
- Conforming to limitations or exclusions
- Consistent with policies, regulations, and procedures
- Costs are treated consistently
- Determined in accordance with GAAP
- Not included as a match or cost-share
- Adequately documented
- Incurred during the budget period



Post-Award Key Concepts

- Always track federal funds separate in a **Special Revenue Fund**
- Each Federal award should be tracked with a **unique identifier**
- Expenditure of Federal funds **over \$750,000** in an entity's fiscal year will require a Single Audit
- Federal funds should **always be a supplement** to your program and cannot replace budgeted expenditures (that is called supplanting)



Post Award Key Concepts

Be familiar with what **types of expenditures** are allowed.




Know the **budget period, period of performance, and liquidation period.**


Be aware if your grant has a **match or maintenance of effort** requirement.

- Unless specifically allowed, you **cannot** match Federal funds with Federal funds.
- In-kind match may be allowed, but **documentation** is important.






Post-Award Key Concepts


-  Personnel costs directly charged should ensure appropriate documentation.
-  Salaries of administrative & clerical staff should normally be treated as indirect (may have exception).
-  Indirect costs must either have an approved rate or use the de minimis rate.



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Post Award Key Concepts

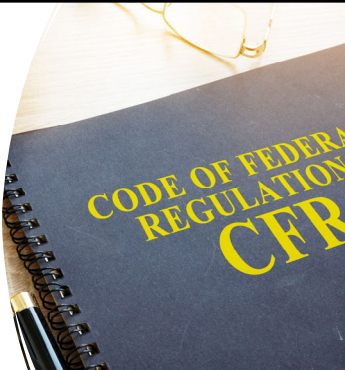
-  Documentation and record retention
-  Properly handle interest and program income
-  Transfers of equipment or funds to other entities



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What procurement rules apply?

- 2 CFR 200.317 allows for a State to follow the same policies and procedures it uses for procurement from its non-federal funds
- All other non-federal entities must follow 2 CFR 200.318 through 327



Follow the most restrictive procurement requirements!

The Procurement "Claw"

Procurement "Claw" (Sections 200.317-326)

General Standards:
 A. Documented Policies
 B. Necessary
 C. Full & Open Competition
 D. Conflict of Interest
 E. Documentation
 i. Cost & Price Analysis
 ii. Vendor Selection

Source:
 Innovation Exchange April 2021, OMB Updates: 2 CFR Revisions and M-21-30
<https://www.cfo.gov/wp-content/uploads/2021/April-Grants-Innovation-Exchange.pdf>

The Procurement "Claw"
 (Sections 200.320)


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Informal Procurement Methods
2 CFR 200.320

Micro-purchases
Responsible for determining and documenting micro-purchase threshold based on internal controls, evaluation of risk, and documented procurement procedures not to exceed the FAR (\$10K or less, unless self-certify up to \$50K)





Informal Procurement Methods
2 CFR 200.320

Small Purchases
Responsible for determining an appropriate SAT based on internal controls, evaluation of risk, and documentation of procurement procedures not to exceed the threshold in the FAR (currently \$250K)

Formal Procurement Methods
2 CFR 200.320

Exceeds the SAT (over \$250K or lower threshold determined by recipient)

- Sealed Bids
- Proposals





Can only be used if one or more of the following circumstances apply:


1. Aggregate dollar amount does not exceed the micro-purchase threshold;
2. Only from a single source;
3. Public exigency or emergency;
4. Authorization granted from the Federal awarding agency or pass-through entity in response to a written request from the non-Federal entity; or
5. Competition is determined inadequate after solicitation of a number of sources.

Non-Competitive Procurement (Sole Source)
2 CFR 200.320



- Must perform either a cost or price analysis over the SAT (\$250K)
- Must negotiate profit as a separate element of the price when:
 - No price competition or
 - A cost analysis is performed

Contract Cost and Price
2 CFR 200.324



Suspension and Debarment
2 CFR 200.214; 2 CFR Part 180



Never contract with the enemy
2 CFR 200.215; 2 CFR Part 183

Expected to exceed \$50,000 within the period of performance

Appendix A to 2 CFR Part 183 provisions to all contracts and subawards under the award



Prohibition on certain telecommunications and video surveillance services or equipment

2 CFR 200.216

Domestic preferences for procurements
2 CFR 200.322

To the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.





All the iron, steel, manufactured products, and construction materials used in infrastructure projects are produced in the United States

Build America, Buy America Act
Pub. L. No. 117-58, §§ 70901-52



Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms
2 CFR 200.321

Must take necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Contract Provisions - 2 CFR 200.327

Contracts must contain the applicable provisions outlined in Appendix II of 2 CFR Part 200, as applicable

Threshold	Applicable Provisions
50	<ul style="list-style-type: none"> • Equal Employment Opportunity – All Federally assigned construction contracts. • Rights to Inventions Made Under a Contract or Agreement – use in any funding agreement requiring experimental, developmental, or research work. • Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment • Never Contract with the Enemy • Domestic preferences for procurement* <p>* May be revised to align with the Buy American Act</p>

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Threshold	Applicable Provisions
\$2,000	<ul style="list-style-type: none"> Davis Bacon Act (federally assisted construction contracts) Copeland Anti-Kickback Act (federally assisted construction contracts)
\$10,000	<ul style="list-style-type: none"> Procurement of Recovered Materials Termination Provisions (cause/default and convenience)
\$25,000	<ul style="list-style-type: none"> Debarment and Suspension – required to check SAM exclusions prior to any award of \$25k or greater
\$100,000	<ul style="list-style-type: none"> Contract Work Hours and Safety Standard Act – applies to all contracts involving the employment of mechanics or laborers Byrd Anti-Lobbying Amendment
\$150,000	<ul style="list-style-type: none"> Clean Air Act and Federal Water Pollution Control Act – applies to contracts and subawards
\$250,000/ SAT	<ul style="list-style-type: none"> Contracts awarded must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms; must provide sanctions and penalties as appropriate





Equipment and Inventory Key Concepts

- Physical inventory
- Adequate safeguards
- Adequate maintenance procedures
- Disposition



Tagging and Inventory Records


Equipment purchased *must be* tagged and tracked

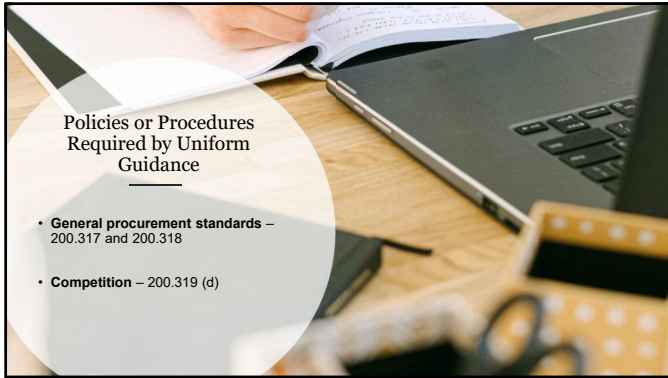
Property records *must be* maintained



Policies or Procedures Required by Uniform Guidance

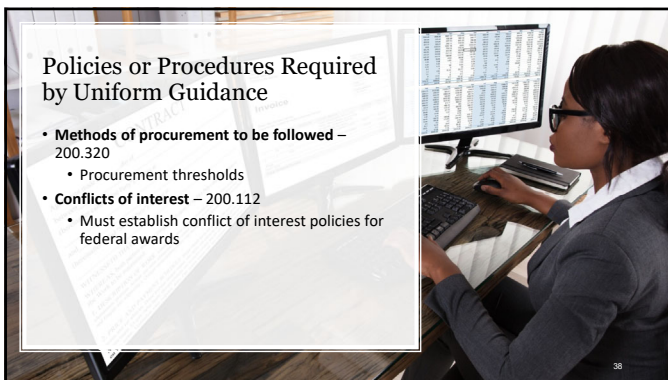
- Financial Management – 200.302(b)(6)
- Federal Payment – 200.305
- Allowable costs – 200.302 (b)(7)





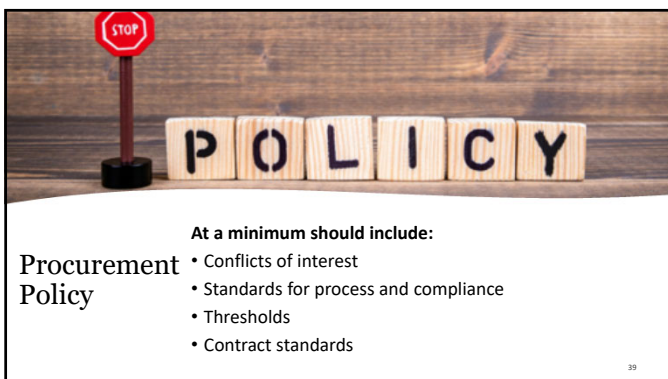
Policies or Procedures Required by Uniform Guidance

- **General procurement standards** – 200.317 and 200.318
- **Competition** – 200.319 (d)



Policies or Procedures Required by Uniform Guidance

- **Methods of procurement to be followed** – 200.320
 - Procurement thresholds
- **Conflicts of interest** – 200.112
 - Must establish conflict of interest policies for federal awards



Procurement Policy

At a minimum should include:

- Conflicts of interest
- Standards for process and compliance
- Thresholds
- Contract standards

Policies or Procedures Necessary to Comply with Uniform Guidance

- **Mandatory disclosures** – 200.113
- **Internal controls** – 200.303
- **Equipment** – 200.313
- **Requirements for pass-through entities** - 200.332
- **Retention requirements for records** – 200.334
- **Compensation** – 200.430
- **Travel costs** – 200.474



Strengthening the Framework



Conduct a Compliance Inventory and Assessment




Consider Internal Controls

- Control Environment
- Risk Assessment
- Control Activities
- Information and Communication
- Monitoring



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Staying Current

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Periodic Evaluation and Adjustment



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A man in a dark suit and red tie sits at a desk with a laptop. He has a stressed expression and his hands are pressed against his temples. The background is a plain wall.

Case Study #1 – Not Following Uniform Guidance

Questioned costs totaled **nearly \$5 million** in the following categories:

- Unsupported Allocations
- Transactions Outside the Performance Period
- Misclassification of Expenditures
- Unsupported Transactions
- Unrelated to Grant Activity

Source: U.S. DHS Office of Inspector General report, Ohio Law Enforcement Terrorism Prevention Program 2004-2006
https://www.oig.dhs.gov/assets/Merrill/OIG_11-60_Mar11.pdf

A man in a grey suit and white shirt stands against a white background. He has a shocked expression and his hands are covering his face. The background is a plain wall.

How did this happen?

Payroll Expenditures

\$2.8 million in Questioned Costs



\$1.9 million in Questioned Costs

- Unsupported Allocations-\$365K
- Outside the Performance Period-\$789k
- Misclassification of Expenditures- \$345k

Non-Payroll Expenditures



Non-Payroll Expenditures (continued)

\$1.9 million in Questioned Costs

- Unsupported Transactions- \$269k
- Unrelated to Grant Activity-\$222k



Case Study #2 – Procurement

Procurement practices by 14 subrecipients led to a questioned cost of **\$3.5 million**

US DHS, Office of the Inspector General report, Ohio's Management of Homeland Security Grant Program https://www.oig.dhs.gov/news/Mgmt2019OHG_15-08_jan19.pdf

How did this happen?

Confusion on procurement requirements

Failed to keep documentation

Final Thoughts

- Non-compliance can require an organization to pay back funds and damage their reputation.
- Learn from others compliance pitfalls.
- Never too late to evaluate and update your process to align to federal requirements.

