



215 SW Washington Street, Suite 200
Portland, OR 97204


T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

October 17, 2024

To: TRIBAL HOUSING CLIENTS

From:  Ed Clay Goodman and Cari L. Baermann
HOBBS, STRAUS, DEAN & WALKER, LLP

Re: ***OMB 2 C.F.R. Part 200 Final Rule***

On September 30, 2024, the U.S. Office of Management and Budget (OMB) held a tribal listening session to provide an overview of updates to Title 2 of the Code of Federal Regulations (C.F.R.), including 2 C.F.R. Part 200. This memorandum provides a summary of the listening session and of OMB's revisions to the 2 C.F.R. Part 200 regulations.

I. Overview of OMB Final Rule 2 C.F.R. Part 200

During the September 30, 2024 listening session, Deidre Harrison, OMB Deputy Controller; Steven Mackey, OMB Policy Analyst; and Elizabeth Molle-Carr, OMB Tribal Advisor, provided an overview of the updated regulations. On April 22, 2024, OMB published the [Final Rule](#) ("Final Rule") to revise the regulations codified in Title 2 of the C.F.R., including 2 C.F.R. Part 200.¹ The Final Rule, effective on October 1, 2024, revised the generally applicable Federal requirements governing Federal financial assistance.

The OMB staff stated that it revised the regulations with the intent to reduce burdens, clarify existing requirements, and provide additional flexibilities to Federal agencies and Federal financial assistance recipients. Overall, the proposed revisions are beneficial to tribes and tribally designated housing entities (TDHEs), removing some of the burdens previously imposed by the regulations. OMB made numerous plain language revisions to provide additional clarity, while other revisions are more substantive. This memorandum discusses those revisions that are of particular relevance to TDHEs' procurement policies and procedures.

Of particular note, the Final Rule streamlines the procurement requirements applicable to tribal grantees by authorizing tribal grantees to adopt their own procurement policies and standards. Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,046. This is a significant change, as it means that if a tribe or TDHE has its own procurement policies, it does not need to comply with 2 C.F.R. Sections 200.318–200.320 or 200.324–200.326. We discuss these changes to the procurement standards in Section IV below.

¹ Guidance for Federal Financial Assistance, 89 Fed. Reg. 30,046 (Apr. 22, 2024) (to be codified at 2 C.F.R. Part 200).

In addition to the revisions in Part 200, the Final Rule also includes revisions to other parts in 2 C.F.R.: Part 1 (About Title 2 of the Code of Federal Regulations and Subtitle A); Part 25 (Universal Identifier and System for Award Management); Part 170 (Reporting Subaward and Executive Compensation Information); Part 175 (Award Term for Trafficking in Persons); Part 180 (OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)); Part 182 Government-wide Requirements for Drug-Free Workplace (Financial Assistance); and Part 183 (Never Contract with the Enemy). This memorandum focuses solely on the revisions to Part 200.

II. Subpart A—Acronyms and Definitions; and Subpart B—General Provisions

A. Subpart A—Acronyms and Definitions

The Final Rule revised and added to the definitions in Subpart A—Acronyms and Definitions. Mr. Mackey commented that OMB revised the definitions to make them more user-friendly and internally consistent.

The Final Rule adds the terms “Recipient” and “Subrecipient” replaces the term “Non-Federal Entity” with “Recipient and Subrecipient” or “Recipient or Subrecipient” throughout the regulations. Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,047. OMB commented that this change will not affect the existing scope or applicability of the regulations. *Id.* Given that tribes and TDHEs previously fell under the definition of “Non-Federal Entity”, this change also does not appear to significantly change the applicability or impact of the regulations on tribes or TDHEs. The Final Rule defined “Recipient” as “an entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. *Id.* at 30,143. “The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award.” *Id.*; 2 C.F.R. § 200.1. “Subrecipient means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency.” Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,144; 2 C.F.R. § 200.1.

The OMB revised the definition of “Indian Tribe” to include the following underlined language:

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 5304(e). This includes any Indian Tribe identified in the annually published Bureau of Indian Affairs list of “Indian Entities Recognized and Eligible to Receive Services” and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.

Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,141; 2 C.F.R. § 200.1. This broader definition will help clarify the applicability of the 2 C.F.R. Part 200 regulations to tribes, including Alaska Native village or regional village corporations.

The Final Rule revised the definition of “Financial obligations” to mean “orders placed for property and services, contracts and subawards made, and similar transactions that require payment by a recipient or subrecipient under a Federal award that will result in expenditures by a recipient or subrecipient under a Federal award.” Guidance for Federal Financial Assistance, 89 Fed. Reg. 30,140; 2 C.F.R. § 200.1. OMB indicated that this revision reflects the fact that obligations sometimes require a future, but not an immediate, expenditure of funds. 89 Fed. Reg. at 30,059.

OMB replaced the term “grants and agreements” with “federal financial assistance” throughout the regulations. However, Mr. Mackey noted that this revision will not significantly change the impact or interpretation of the regulations.

The Final Rule revised the definition of “Micro-purchase” by clarifying that it is “an individual procurement transaction for supplies or services[.]” The revised definition also clarifies the existing rule that Recipients or Subrecipients can use informal procurement methods for micro-purchases. Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,142; 2 C.F.R. § 200.1. The informal procurement methods for micro-purchases are laid out in 2 C.F.R. Section 200.320.

B. Subpart B—General Provisions

The Final Rule revised the mandatory disclosure requirements at 2 C.F.R. § 200.113 to clarify that recipients and subrecipients must “promptly disclose” any credible evidence of a violation of Federal criminal law potentially affecting the Federal award (instead of the previous language of requiring disclosure “in a timely manner”). Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,147.

III. Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

OMB made a number of revisions to Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards. Mr. Mackey noted that OMB made these revisions to make it clearer what fixed amount award requirements apply. The main revisions affecting tribes and TDHEs are revisions to certain requirements for fixed amount awards. One such revision in 2 C.F.R. § 200.201 clarifies that when a recipient completes activities “in accordance with the terms and conditions of the Federal award, the recipient or subrecipient is entitled to any expended funds.” Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,148. The revisions to 2 C.F.R. § 200.201 also clarify record retention requirements for audits and post award certification

requirements, including requiring recipients to report any uncompleted activities and to return any funds associated with uncompleted activities. *Id.*²

The Final Rule revised the 2 C.F.R. § 200.216 regulation prohibiting recipients from obligating or expending federal funds to procure or obtain certain telecommunications and video surveillance services or equipment. *Id.* at 30,152. The Final Rule explains that the prohibition also applies to funds generated as program income. *Id.* at 30,073.

The revisions to 2 C.F.R. § 200.217 expand whistleblower protections for recipients of Federal financial assistance. OMB added a requirement that recipients and subrecipients must inform their employees in writing of Federal whistleblower protections. *Id.*

IV. Subpart D—Post Federal Award Requirements

A. Property Standards

The Final Rule contains a number of revisions to Subpart D of 2 C.F.R. Part 200 (Post Federal Award Requirements) that will affect tribes and TDHEs. OMB also revised 2 C.F.R. Section 200.309 to clarify that “the role of the Federal agency and passthrough entity is to approve an extension to a Federal award.” *Id.* at 30,081.

OMB added a new paragraph to 2 C.F.R. § 200.311 (real property) to introduce guidance on standards for conducting independent appraisals consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655). *Id.* at 30,158. OMB revised 2 C.F.R. Section 200.311(b) to clarify that easements for utility, cable, and similar services that benefit real property are not considered an encumbrance. *Id.* at 30,081.

In 2 C.F.R. § 200.313, which covers equipment, OMB increased the threshold value for equipment from \$5,000 to \$10,000. *Id.* at 30,158. Further, OMB allows tribes to dispose of equipment in accordance with tribal law, but if tribal law does not exist, then tribes must follow the guidance. *Id.*

The regulations 2 C.F.R. § 200.314 (supplies) now states that when a recipient has an “inventory of unused supplies exceeding \$10,000 in aggregate value at the end of the period of performance, and the supplies are not needed for any other Federal award, the recipient or subrecipient may retain or sell the unused supplies . . . The Federal agency or pass-through entity is entitled to compensation[.]” *Id.* at 30,159. OMB revised 2 C.F.R. section 200.314 (a) to clarify that recipients or subrecipients may retain \$1,000 from the Federal share to cover expenses associated with selling and handling supplies. *Id.*

² The guidance states “[a]lthough the recipient is entitled to any remaining funds at the end of the award that were not used to carry out a completed program, if a recipient did not complete certain program activities, the recipient must inform the Federal agency of this. Any funds associated with costs of activities that were not completed must be returned.”

B. Use of Tribal Procurement Procedures

OMB made numerous revisions to the procurement standards in 2 C.F.R. Part 200. First, in recognition of tribal sovereignty, OMB revised 2 C.F.R. Section 200.317 to allow Indian Tribes to follow their own policies and procedures. *Id.* at 30,160. The regulations now provide that:

A State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327. All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in §§ 200.318 through 200.327.

Id.; 2 C.F.R. § 200.317.

The revisions to 2 C.F.R. Section 200.317 are a significant change. Under the updated regulation, if a tribe has its own procurement policies and procedures, the tribe no longer needs to comply with the procurements standards laid out at 2 C.F.R. Sections 200.318–200.320 or 200.324–200.326.³ We discuss these regulations further below. However, a tribe must still comply with 2 C.F.R. Sections 200.321 (contracting with small businesses), 200.322 (domestic preferences for procurements), 200.323 (procurement of recovered materials), and 200.327 (contracts must contain Appendix II contract provisions). Additionally, Mr. Mackey stated all of the regulations in 2 C.F.R. Part 200 aside from 2 C.F.R. Sections 200.318–200.320 would still apply to the tribe, to the same extent that those regulations would apply to a tribe not using its own procurement policies. This includes the general definitions in 2 C.F.R. Part 200, including the definition of a simplified acquisition threshold.

1. Applicability to Tribal Organizations and TDHEs

However, there is also some uncertainty as to whether the revisions to 2 C.F.R. Section 200.317 apply to tribal organizations (“Tribal Organization”). In its revisions to 2 C.F.R. 200.317, OMB did not specifically state that a “tribal organization” could use its own procurement procedures. In contrast, in another part of the regulations (2 C.F.R. § 200.512),⁴ OMB did specifically reference both “Indian Tribe” and “Tribal Organization”, as that term is defined in the

³ 2 C.F.R. Section 200.318 covers general procurement standards; 2 C.F.R. Section 200.319 lays out the standards for competitive procurement; and 2 C.F.R. Section 200.320 covers procurement methods (informal and formal procurement); 2 C.F.R. Section 200.324 covers contract cost and price; 2 C.F.R. Section 200.325 requires recipients to make its procurement documentation available to the federal awarding agency; and 2 C.F.R. Section 200.326 covers bonding requirements.

⁴ That Section provides that “[a]n auditee that is an Indian Tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(1)) may opt not to authorize the FAC to make the reporting package publicly available on a website.” 2 C.F.R. § 200.512(b)(3) (emphasis added).

Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA).⁵ The fact that OMB specifically used the term “Tribal Organization” in 2 C.F.R. Section 200.512, but not in 2 C.F.R. Section 200.317, could imply that OMB did not intend 2 C.F.R. Section 200.317 to apply to Tribal Organizations. Further, it is uncertain whether “Tribal Organization” would qualify as an “Indian Tribe” as that term is used in 2 C.F.R. Section 200.317, since the definition of “Indian Tribe” in 2 C.F.R. Section 200.1 does not include “Tribal Organization”.

During the listening session with OMB, several participants asked for clarification on this point, of whether 2 C.F.R. Section 200.317 applies to Tribal Organizations and TDHEs. Mr. Mackey remarked that 2 C.F.R. Section 200.317 would likely apply to an entity that is legally tied to a tribe, allowing that Tribal Organization to be able to use their own policies. However, he remarked that he could not give a definitive answer, as it would depend on the specific legal status of the Tribal Organization and how each particular federal agency interprets 2 C.F.R. Section 200.317. Because certain federal agencies might interpret 2 C.F.R. Section 200.317 as not applying to Tribal Organizations, it would be advisable for Tribal Organizations to continue to follow the procurement standards in 2 C.F.R. Sections 200.318 through 200.327 until HUD or other federal agency granting a relevant award issues guidance on this regulation.

Mr. Mackey further commented that since TDHEs are not specifically mentioned in the 2 C.F.R. Part 200 regulations, he could not give an answer as to whether 2 C.F.R. Section 200.317 specifically applies to TDHEs. However, we interpret “Indian Tribe” as including TDHEs, regardless of whether 2 C.F.R. Section 200.317 applies to Tribal Organizations, because TDHEs are not Tribal Organizations as defined under ISDEAA. Further, HUD treated TDHEs the same way it treated Tribes under the prior version of the 2 C.F.R. Part 200 regulations. We expect that HUD is therefore likely to interpret 2 C.F.R. Section 200.317 as allowing TDHEs to use their own procurement policies. However, to reduce the risk of a HUD finding that a TDHE is in noncompliance, it may be useful for each TDHE to have their parent tribe ratify and confirm the TDHE’s procurement policy.

2. Applicability to NAHASDA-Funded Projects

In addition to the uncertainty as to whether 2 C.F.R. Section 200.317 applies to TDHEs, there is a conflict as to whether the revisions to 2 C.F.R. Section 200.317 apply to projects funded by Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). The current NAHASDA regulations (24 C.F.R. Part 1000) specifically state that 2 C.F.R. Section 200.317 does not apply to NAHASDA projects (this was language adopted before the change to 200.317 to add tribes). 24 C.F.R. § 1000.26. TDHE has not yet updated the TDHE regulations to reflect the changes in 2 C.F.R. Section 200.317. As a result, we think it is advisable for tribes and TDHE for the time-being to follow the procurement standards set out in 2 C.F.R. Sections 200.318

⁵ “Tribal organization” means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant[.]”

through 200.327 on TDHE-funded projects, even if a tribe or TDHE has its own procurement procedures.

We are seeking confirmation from TDHE that it will update the TDHE regulations to specifically state that 2 C.F.R. Section 200.317 does apply to TDHE-funded projects. Since TDHE would need to engage in public rulemaking to update the TDHE regulations, we are also confirming whether TDHE will issue a public housing notice or guidance in the meantime. The public housing notice or guidance could state that, notwithstanding 24 C.F.R. Section 1000.26, TDHE will interpret the 2 C.F.R. Section 200.317 exception as applying to tribes and TDHE on TDHE-funded projects. However, until TDHE either updates the TDHE regulations or issues a public housing notice on 2 C.F.R. Section 200.317, it is advisable for tribes and TDHE to still comply with the procurement standards laid out in 2 C.F.R. Sections 200.318 through 200.327 for TDHE-funded projects.

C. Changes to Procurement Standards

If a tribe or TDHE does not have its own procurement policies and procedures, it will still need to comply with the procurement standards described in 2 C.F.R. Sections 200.318 through 200.327. The Final Rule made revisions to the procurement standards and procedures, which we describe below.

First, OMB revised the procurement standards in 2 C.F.R. Section 200.318. OMB revised the conflict of interest provisions in 2 C.F.R. Section 200.318(c)(1) to add a “board member” as an individual that is prohibited from participating in the selection, award, or administration of a contract if they have a real or apparent conflict of interest. *Id.* at 30,160. The revisions also include a requirement that contractors must consider proper classification of employees, consistent with the Fair Labor Standards Act, as part of the process of awarding contracts to responsible contractors. *Id.* Further, OMB added a new paragraph (*I*) in 2 C.F.R. Section 200.318 to clarify that the procurement standards in Part 200 do not prohibit recipients or subrecipients from taking a number of steps to provide protections for employee protections or to address high poverty in disadvantaged communities, among other things, so long as practices are consistent with the U.S. Constitution and other Federal statutes and regulations. *Id.* at 30,084.

In 2 C.F.R. Section 200.319, OMB removed the prohibition on using geographic preference requirements when conducting procurements. *Id.* at 30,161–30,162. The Final Rule also revised 2 C.F.R. Section 200.319 to state that the regulations “do not prohibit recipients or subrecipients from developing “written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs,” as well as certain compensation and benefits. *Id.* at 30,162.

In 2 C.F.R. Section 200.320, OMB made numerous revisions to the paragraphs covering informal procurement methods (micro-purchases and simplified acquisitions), formal procurement methods (sealed bids or proposals), and noncompetitive procurement methods. First, OMB replaced the term “small purchases” with “simplified acquisitions”, consistent with this revision throughout the 2 C.F.R. Part 200 regulations. *Id.* at 30,162. This change does not affect the price

threshold at which formal procurement methods are required. The Final Rule adds a beneficial clarification that a federal agency, recipient, or subrecipient may exercise their judgment to determine what number is “adequate” when obtaining quotations from an “adequate number of qualified sources.” *Id.* at 30,162. OMB also removed the requirements that tribal governments must open sealed bids in public when conducting formal procurement. 2 C.F.R. § 200.320(b)(1)(ii)(C).

In 2 C.F.R. Section 200.321, OMB added “veteran-owned business” to the types of businesses that federal award recipients and subrecipients are encouraged to consider for procurement contracts. Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,162.

The Final Rule revised 2 C.F.R. Section 200.329 (monitoring and reporting program performance) to relieve some of the reporting burden on recipients. First, OMB added language to state that “[t]he Federal agency or pass-through entity may not collect performance reports more frequently than quarterly unless a specific condition has been implemented” and that the Federal agency “should align the due dates of performance reports and financial reports.” *Id.* at 30,165; 2 C.F.R. Section 200.329(b). Second, the revisions state that “[r]eporting requirements should not solicit information from the recipient or subrecipient that is not necessary for the effective monitoring or evaluation of the Federal award.” Guidance for Federal Financial Assistance, 89 Fed. Reg. at 30,165; 2 C.F.R. Section 200.329(b).

V. Subpart E—Cost Principles

OMB also made a number of revisions to Subpart E of 2 C.F.R. Part 200 regarding Cost Principles, which we discuss below. Mr. Mackey commented that overall, OMB reduced the number of items that require a federal agency’s prior approval, thereby reducing the burden on tribes.

In 2 C.F.R. Section 200.400(g) (policy guide), OMB added language to clarify that any unexpended funds remaining upon conclusion of a fixed amount award are not considered profit, provided that “the required activities of a fixed amount award were completed in accordance with the terms and conditions of the award[.]” *Id.* at 30,090.

The Final Rule also includes revisions to 2 C.F.R. Section 200.403(h) (factors affecting allowability of costs) to clarify that allowable administrative closeout costs may be incurred until the final report is due. *Id.* Costs associated with termination are allowable if specified in a termination notice by the agency. *Id.*

OMB edited the list of costs requiring prior written approval from a federal agency under 2 C.F.R. Section 200.407. OMB removed the requirement to obtain prior written approval for real property (2 C.F.R. § 200.311), equipment (2 C.F.R. § 200.313), entertainment costs (2 C.F.R. § 200.438), participant support costs (2 C.F.R. § 200.456), selling and marketing costs (2 C.F.R. § 200.467), and taxes (2 C.F.R. § 200.470). *Id.* at 30,172.

OMB revised 2 C.F.R. Section 200.413 (direct costs) to more accurately reflect staff costs as direct costs by changing "staff salaries" to "employee salaries and fringe benefits." *Id.* at 30,173. OMB also made a number of revisions to 2 C.F.R. Section 200.414 (indirect cost rates). First, for recipients and subrecipients that do not have a current Federal negotiated indirect cost rate, OMB raised the *de minimis* rate that the recipients and subrecipients could charge to 15%. *Id.* Paragraph (f) clarifies that neither Federal agencies nor pass-through entities may require recipients and subrecipients to use a *de minimis* rate lower than 15% unless required by statute or regulations. *Id.* at 30,174. However, a recipient or subrecipient can elect to use a lower rate than the *de minimis* rate, or negotiate a different rate. *Id.* Similarly, OMB revised 2 C.F.R. Section 200.417 to increase the indirect rate that a tribal operating department can use for providing services from 10% to 15%, to be consistent with the *de minimis* rate. *Id.* at 30,175.

In the Final Rule, OMB clarified that 2 C.F.R. Section 200.427 (bonds) applies to both recipients and subrecipients. *Id.* at 30,176. OMB also revised 2 C.F.R. Section 200.431(g)(6)(v), which relates to compensation and fringe benefits. OMB added a clarification that “[p]ayments for unfunded pension costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded pension costs directly to a Federal award if those unfunded pension costs are not allocable to that award.” *Id.* at 30,180. The Final Rule also added a provision at 2 C.F.R. Section 200.431(h)(5) clarifying that payments for unfunded post-retirement health plan (PHRP) costs must be charged in accordance with allocation principles and a recipient or subrecipient may not charge unfunded PHRP costs to the award if they are not allocable. *Id.*

OMB revised 2 C.F.R. Section 200.432 (conferences) to allow for dependent-care costs associated with participants attending or partaking in program-related conferences, which allows for more employees of lesser means to participate in educational programming. *Id.* at 30,181. OMB also allows for conference costs to be paid by a sponsor of the conference rather than the recipient or subrecipient and that these costs can also include attendance fees. *Id.* The Final Rule also revised 2 C.F.R. Section 200.434(g)(2) (contributions and donations) to clarify that the value of donations of “personal property and use of space” are allowable as a cost share. *Id.*

The Final Rule revised 2 C.F.R. Section 200.456 (participant support costs) to remove prior approval requirements for participant support costs. *Id.* at 30,188. The regulations define “Participant Support Costs” as “direct costs that support participants (see definition for Participant in § 200.1) and their involvement in a Federal award, such as stipends, subsistence allowances, travel allowances, registration fees, temporary dependent care, and per diem paid directly to or on behalf of participants.” 2 C.F.R. § 200.1. However, OMB revised 2 C.F.R. Section 200.458 (pre-award costs) to clarify that written approval is still required for pre-award costs. *Id.* at 30,189.

OMB added a paragraph to 2 C.F.R. Section 200.472(b) to address closeout costs after awards are terminated. *Id.* at 30,192. The regulations at 2 C.F.R. Section 200.472(b) now clarify that termination costs include closeout costs and allows recipients and subrecipients to charge administrative costs associated with the closeout of a Federal award. *Id.*

VI. Subpart F—Audit Requirements

In 2 C.F.R. Section 200.501, the Final Rule increased the single audit threshold from \$750,000 to \$1,000,000. *Id.* at 30,101. This revision may decrease some of the burden on tribes and TDHEs, as it increases the threshold for which tribes and TDHEs must have a single or program-specific audit conducted for a given year.

VII. Appendices

OMB completely revised the Notice of Funding Opportunity (NOFO) template, located in Appendix I of 2 C.F.R. Part 200. Mr. Mackey stated that OMB's revisions are intended to reduce administrative burdens and unnecessary obstacles for applying to Federal financial assistance. *Id.* at 30,104. More specifically, the changes are intended to:

(1) follow plain language principles; (2) group similar items together to streamline content; (3) align sections more closely to the application process; (4) include basic information at the top of a funding opportunity so that applicants can more easily make decisions about whether or not to apply; (5) clearly define what must be included in a section of the funding opportunity versus what is at an agency's discretion; and (6) provide flexibility to agencies while also giving applicants a common way to find information in every funding opportunity.

Id.

VIII. Questions and comments

During OMB's September 30, 2024, tribal listening session, OMB opened up the call to participants to ask questions and provide feedback on the updated 2 C.F.R. Part 200 regulations. The questions and comments provided by participants are noted below. Tribes may contact OMB at MBX.OMB.grants@omb.eop.gov with additional questions.

- For existing multi-year awards that were awarded prior to 2024, but are still in effect since they are multi-year awards, are tribes able to increase the indirect amount to the new *de minimis* rate of 15%?
 - Under 2 C.F.R. Section 200.413, if the award is already in place, the 15% can be applied to the award going forward *if* the award is being amended to add additional funds each year. If an agency does not amend an existing award to add additional funds, the agency can, but is not required to, allow the recipient to use the 15 % increased rate.
- Can OMB outline how it changed the definition of federal financial assistance in 2 C.F.R. Section 200.101?
 - OMB did not significantly change the definition of federal financial assistance.
- Are the changes to the regulations applicable to grants ending prior to October 1, 2024, or do the changes apply to other grants?
 - The Final Rule and updated regulations are effective for grants issued after October 1, 2024. The updated regulations do not apply to grant awards that are already in

place. Agencies should be engaging with recipients to implement the updated regulations to the new awards.

- For the changes to the single audit threshold, does the threshold increase apply to the first full fiscal year of the recipient that starts after October 1, 2024?
 - Yes. See [Coffa.gov](https://www.coffa.gov) for implementation guidance.
- If a tribe has their own procurement policy and applies it to all funds, does this mean that all terms of the tribal policy applies, including threshold amounts and definitions?
 - The general definitions 2 C.F.R. Part 200 of still apply. The only terms that would not apply are 2 C.F.R. Sections 200.318–200.320 and 200.324–200.326.

Conclusion

If you have any questions about this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com) or Cari Baermann (cbaermann@hobbsstrauss.com); both may be reached by phone at 503-242-1745.