TEA Statewide Training on the New EDGAR

Day 1

Office for Grants and Federal Fiscal Compliance
Texas Education Agency

March 2–3, 2015
Austin, Texas
Agenda – Day 1

- Introduction
- Other Relevant Sections of EDGAR
- Subpart A—Acronyms and Definitions
- Subpart B—General Provisions
- Subpart C—Pre-Federal Award Requirements
- Subpart D—Post-Federal Award Requirements
Introduction

Background and History
Timelines and Important Dates
Overview of the “New” EDGAR
OMB Revisions

OMB Revised Administrative Rules, Cost Principles, and Audit Rules governing all “nonfederal entities” expending federal awards. (200.69)
Focus

1. Reduce fraud, waste, and abuse
2. Simplicity and consistency
3. Executive order 13563 on regulatory review:
   - increase efficiency
   - strengthen oversight
Current EDGAR

Title 34

- Part 74—Grants to Nonprofit organizations
- Part 75—Direct Grant Programs
- Part 76—State-Administered Programs
- Part 80—Grants to State and Local Governments
- Part 81—General Education Provisions Act (GEPA)
Current EDGAR (continued)

Title 34

- Part 82—Lobbying
- Part 85—Debarment and Suspension
- Part 86—Drug and Alcohol Abuse Prevention
- Part 97—Protection of Human Rights
- Part 98—Student Rights in Research
- Part 99—FERPA
Current EDGAR (continued)

OMB Circulars and ARRA Regulations

- A-21—Cost Principles for Educational Institutions
- A-87—Cost Principles for State, Local, and Indian Tribal Governments
- A-122—Cost Principles for Non-Profit Organizations
- A-133—Audits of States, Local Governments, and Non-Profit Organizations
- 2 CFR Part 176—Awards Terms for Assistance Agreements that Include Funds Under the American Recovery and Reinvestment Act of 2009
# New EDGAR Title 2 CFR 200

<table>
<thead>
<tr>
<th>Now</th>
<th>Starting 12/26/2014</th>
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<tbody>
<tr>
<td>Circulars A-133, A-50</td>
<td>Uniform Guidance Subpart F</td>
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<tr>
<td>EDGAR Parts 75 to 99</td>
<td>EDGAR Parts 75-79 and 81-99</td>
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<tr>
<td>EDGAR Parts 74 and 80</td>
<td>Become part of the Uniform Guidance</td>
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New EDGAR

Title 34
- Part 75—Direct Grant Programs
- Part 76—State-Administered Program
- Part 77—Definitions
- Part 81—General Education Provision Act

Title 2
- Part 200—Administrative Rules, Cost Principles and Audit Rules
- Part 3474—USDE Exceptions and Adopts Part 200 into EDGAR
- Part 3485—Nonprocurement Debarment and Suspension
Except for 2 CFR 200.102 (a) and 2 CFR 200.207 (a), this part gives regulatory effect to the OMB guidance and supplements the guidance as needed.
34 CFR Part 75 Direct Grant Programs

- LEA receives the grant directly from USDE
- USDE is responsible for oversight of the grant
- Typically these are competitive grants (Race to the Top)
34 CFR Part 76 State-Administered Programs

- TEA is responsible for flowing grant funds to subrecipients and for ensuring the appropriate use of funds through oversight and monitoring activities.
- TEA is required by statute and regulations to have subrecipients submit assurances and approvable applications before funds may flow to the subrecipients.
New EDGAR
2 CFR Part 200 of EDGAR

- Subpart A—Acronyms and Definitions
- Subpart B—General Provisions
- Subpart C—Pre-Award Requirements
- Subpart D—Post-Award Requirements
- Subpart E—Cost Principles
- Subpart F—Audit Requirements
- Appendices I-XI
Underlying Rules, Concepts and Processes

- Federal statute is passed by Congress and creates a federal education program or rule
- Different types of statutes
  - Programmatic (NCLB, IDEA)
  - Administrative (Cross-cutting)
  - Appropriation (Specific amount of money for a program)
Regulations
- Drafted and adopted by the federal agency responsible for implementing the statute
- Have the force and effect of law
- Go through formal rulemaking process
- Different regulations:
  - Programmatic (NCLB, IDEA)
  - Administrative (EDGAR)
Nonregulatory Guidance and Policy Letters

- USDE’s interpretation of statues and regulations
- Not same legal authority as statute or regulations
- No formal rulemaking
- Changes may be implemented more quickly
Key Impact

“All administrative requirements, program manuals, handbooks, and other nonregulatory materials that are inconsistent with the requirements of this part must be superseded upon implementation of this part.” (200.105)
The Major Changes in Federal Grants Management

1. Focus on Outcomes
2. Performance Metrics
3. Risk Assessments
5. Equipment Use
6. Micro Purchases
7. Corrective Action
8. Family Friendly Policies
9. False Claims Certifications
10. Audit Thresholds
Uniform Guidance Effective Date

- **Effective December 26, 2014**
- Applies to all *new* federal awards to TEA on or after this date
- Any carryover funds will follow *current* rules, *not* the rules from original grant award
- Read your NOGA
EDGAR Training

- Statewide Training March 2015 (Austin)
- ESC Cluster Site Training Sessions:
  - March 27, 2015 – ESC 4 (Houston)
  - April 14, 2015 – ESC 17 (Lubbock)
  - April 16, 2015 – ESC 20 (San Antonio)
  - April 21, 2015 – ESC 10 (Richardson)
  - April 22, 2015 – ESC 7 (Kilgore)
- ACET Conference (Austin) – April 7-9
The Uniform Guidance Web Page
Other Relevant Sections of EDGAR

Title 34
Title 2
Part 76
Part 3474
Title 34

- Part 75—Direct Grant Programs
- Part 76—State-Administered Programs
- Part 77—Definitions
- Part 81—General Education Provisions Act (GEPA)
Part 76 – State-Administered Programs

- Allowable Costs (76.530)
  - Use of funds for religion and real property and construction prohibited

- Indirect Cost Rates (76.560)
  - Information on restricted indirect cost rates and how to calculate the rate

- General Administrative Responsibilities (76.700)
  - State and subgrantee compliance with all federal requirements
  - Fiscal control and procedures for proper disbursement of federal funds
Part 76 – State-Administered Programs (continued)

- Obligations (76.707–76.710)
- Records (76.730)
- Procedures to Ensure Compliance (76.770–76.783)
## When Obligations Are Made

<table>
<thead>
<tr>
<th>Type of Obligation</th>
<th>When Obligation Occurs</th>
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<tr>
<td>Acquisition of Property</td>
<td>Date of Binding Written Commitment</td>
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<tr>
<td>Personal Services by Employee</td>
<td>When Services Are Performed</td>
</tr>
<tr>
<td>Personal Services by Contractor</td>
<td>Date of Binding Written Commitment</td>
</tr>
<tr>
<td>Travel</td>
<td>When Travel is Taken</td>
</tr>
<tr>
<td>Approved Pre–Agreement Cost</td>
<td>On the first day of the grant or subgrant performance period</td>
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</table>
Title 2

- Part 200—Cost/Administrative/Audit Rules
- Part 3474—USDE Exceptions
- Part 3485—Nonprocurement Debarment and Suspension
New EDGAR
2 CFR Part 200 of EDGAR

- **Subpart A**—Acronyms and Definitions
- **Subpart B**—General Provisions
- **Subpart C**—Pre-Award Requirements
- **Subpart D**—Post-Award Requirements
- **Subpart E**—Cost Principles
- **Subpart F**—Audit Requirements
- Appendices I-XI
Subpart A—Acronyms and Definitions

Cooperative Audit Resolution
Cost Objectives
Equipment
Supplies
The use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust and developing an understanding between the Federal agency and non-Federal entity
Program function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc.
200.33 – Equipment

- Equipment: tangible, nonexpendible, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

- Grantee may also use its own definition of equipment as long as the definition would at least include all equipment defined above.
A process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operations;
- Reliability of reporting for internal and external use; and
- Compliance with applicable laws and regulations.
200.94 – Supplies

- All tangible personal property other than equipment
  - **NEW** Computing devices are supplies if less than $5,000
  - **NEW** Computing devices 200.20
    - Machines used to acquire, store, analyze, process, public data and other information electronically
    - Includes accessories for printing, transmitting and receiving or storing electronic information
Subpart B—General Provisions

Conflict of Interest

Mandatory Disclosures
200.112 – Conflict of Interest

- The Federal awarding agency (USDE) must establish conflict of interest policies for Federal awards.
- All non-federal entities must establish conflict of interest policies and disclose in writing any potential conflict of interest to the federal awarding agency in accordance with applicable Federal awarding agency policy NEW.
Non-federal entities must disclose in writing, in a timely manner:

- All violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award
- Failure to make disclosures can result in remedies for noncompliance (200.338)
Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Requirements of Pass-through Entities
Requirements of Pass-through Entities

- 200.205 – Federal Awarding Agency Review of Risk Posed by Applicants
- 200.207 – Specific Conditions
- 200.331 – Requirements for Pass-through Entities
- 200.338 – Remedies for Noncompliance
NEW Must have in place a framework for evaluating risks posed by applicants, which may include reviewing:

- Financial Stability
- Quality of Management System
- History of Performance
- Audit Reports
- Applicant’s ability to effectively implement program
Federal agency or pass-through agency may impose additional Federal award conditions:

- Requiring reimbursement
- Witholding authority to proceed until evidence of acceptable performance
- Additional detailed reporting
- Additional project monitoring
- Require grantee to obtain technical or management assistance
- Establish additional prior approvals
200.207(b-c) – Specific Conditions

Right to Notice:
  ◦ Nature of additional requirements
  ◦ Reason why imposed
  ◦ Nature of the action needed to remove the requirements
  ◦ Time for completing actions
  ◦ Method for requesting reconsideration

Specific conditions must be removed once corrected.
200.331 – Requirements for Pass-through Entities

**NEW** All pass-through entities must:

- Ensure subawards are clearly identified with specific data
- Evaluate subrecipient’s risk of noncompliance
  - Prior experience with same or similar subawards
  - Results of previous audits
  - Whether new personnel or new or substantially changed systems
  - Extent and results of Federal monitoring
All pass-through entities must:

- Consider imposing specific conditions
- Monitor as necessary to ensure subaward is used for authorized purposes, which must include:
  - Reviewing financial and programmatic reports
  - Ensure timely and appropriate action to correct all deficiencies, and
  - Issue management decision for audit findings as required under 200.521
NEW All pass-through entities must:

- Depending on assessment of risk, monitoring tools may be useful to ensure proper accountability and compliance with program requirements and achievement of performance goals:
  - Training and technical assistance on program-related matters
  - On-site or desk reviews
  - Arranging for “agreed-upon procedures” engagements (200.425)
200.331 – Requirements for Pass-through Entities (continued)

- **NEW** All pass-through entities must:
  - Verify subrecipients have audits as required in Subpart F
  - Consider whether results require adjustments to the pass-through entity’s own records
  - Consider taking enforcement actions (200.338)
If noncompliance cannot be remedied with Specific Conditions, the entity may take one or more of the following actions:

- Temporarily withhold cash payment pending correction
- Disallow all or part of the cost
- Wholly or partly suspend or terminate the Federal award (200.339)
- Initiate suspension or debarment (2 CFR Part 180)
- Withhold further Federal awards for the program
- Take other remedies that may be legally available
Subpart D—Post-Federal Award Requirements

Financial Management Rules
Procurement
Property Management
200.302(b) – Financial Management Rules

- NEW Identification of Awards
- Financial Reporting
- Accounting Records
- Internal Control
- Budget Control
- NEW Written Cash Management Procedures
- NEW Written Allowability Procedures
Identification of Awards NEW

- All federal “awards” received and expended
  - The name of the federal “program”
  - Identification # of award
  - CFDA Title and Number
  - Federal Award I.D. #
  - Fiscal Year of Award
  - Federal Agency
  - Pass-Through (If State Administered)
Accurate, current, complete disclosure of financial results of each award in accordance with 200.327 and 200.328

**NEW** 200.327 – Federal awarding agency can only collect OMB approved data elements, no less than annually, no more than quarterly

**NEW** 200.328 – Non federal entity must submit performance reports at intervals required by federal agency or pass through
Financial Reporting (continued)

- Annual performance reports due 90 days after reporting period
- Quarterly performance reports due 30 days after reporting period
NEW Performance Metrics

- Compare actual accomplishments to objectives (quantify to extent possible)
- Reasons goals were not met if appropriate
- Additional pertinent information
- Significant developments
  - Problems, delays, adverse conditions
  - Favorable developments
Accounting Records

Combined 80.20(b)(2) and 80.20(b)(6):

- Source Documentation Must Be Kept On:
  - Federal Awards
  - Authorizations
  - Obligations
  - Unobligated balances
  - Assets
  - Expenditures
  - Income
  - **NEW** Interest (*Eliminated liabilities*)
Internal Controls

Essentially same as previous 80.20(b)(3):

- Effective control over and accountability for:
  - All funds
  - Property
  - Other assets

- Must adequately safeguard all assets
- Use assets solely for authorized purpose
Internal controls “should” be in compliance with:

- Comptroller General’s “Standards for Internal Control Integrated Framework” and
- “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)
200.303 – Internal Controls

- Internal Controls must ensure compliance with federal statutes, regulations, terms of the award.
- Entities must:
  - Evaluate and monitor compliance
  - Take prompt action when instances of noncompliance are identified
  - Safeguard protected personally identifiable information
Budget Control

- Same as current rule 80.20(b)(4)
- Comparison of expenditures with budget amounts for each award
Recipients are required to report deviations from budget or project scope or objectives and request prior approval from the Federal awarding agency for budget and program plan revisions.
Specifically, must request prior approval if the following occurs:

- Change in scope or the objective of the project or program (cannot be waived);
- Change in a key person specified in the application or the Federal award;
- The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator;
Specifically, must request prior approval if the following occurs:

- The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval under the selected items of cost in Subpart E;
- The transfer of funds budgeted for “participant support costs” to other categories of expense;
- “Participant support costs” essentially means training costs, including food and travel.
200.308 – Revision of Budget and Program Plans (continued)

- Specifically, must request prior approval if the following occurs:
  - The subawarding, transferring, or contracting out of any work under a Federal award, unless described in the application and funded in the approved Federal award
  - Doesn’t include acquisition of supplies, material, equipment, or general support services
Specifically, must request prior approval if the following occurs:

- Changes in the approved cost-sharing or matching provided by the non-Federal entity; and
- The need arises for additional Federal funds to complete the project.
Waivers can also authorize recipients to:

- Incur project costs 90 days before the award
  - All of these costs are incurred at the risk of the recipient
  - If the award isn’t granted, will not be reimbursed
- Extend the period of performance by up to 12 months without prior approval unless:
  - The terms and conditions of the Federal award prohibit the extension
  - The extension requires additional Federal funds or
  - The extension involves any change in the approved objectives or scope of the project
A non-federal entity may charge to the Federal award only allowable costs incurred:
- During the period of performance; and
- Before the Federal awarding agency or pass-through entity made the Federal award, if the costs were authorized.

Period of performance length is dependent on type of grant.
- State-Administered Grants – “Tydings” Period
- Direct Grants – “Expanded Authorities” Doctrine
Written Cash Management Procedures

- **NEW** Written Procedures to implement the requirements of 200.305
200.305 – Payment

- For states, payments are governed by Treasury –State CMIA agreements 31 CFR Part 205
  - No Change
- For all other non federal entities, payments must minimize time elapsing between draw from G-5 and disbursement (not obligation)
Written procedures must describe whether non-federal entity uses:

- Advance Payments (preferred)
- Reimbursement
- Working Capital Advance
NEW Advances must be maintained in insured accounts

NEW Pass through cannot require separate depository accounts

NEW Accounts must be interest bearing unless:
- Aggregate federal awards under $120,000
- Account not expected to earn more than $500 per year
- Bank requires minimum balance so high, that account not feasible
- A foreign government or banking system prohibits interest bearing accounts.
NEW Interest amounts up to $500 may be retained by non federal entity for administrative purposes

- Previously $100 for State and local governments
- Previously $250 for IHEs and Non-profits.

NEW Interest earned must be remitted annually to HHS Payment Management System.
**NEW** Written procedures for determining allowability of costs in accordance with Subpart E—Cost Principles

- Procedures can not simply restate the Uniform Guidance Subpart E
- Should explain the process used throughout the grant development and budget process
  - Training tool and guide for employees
Procurement

- 200.330 – Contract vs. Grant
- 200.318 – General Procurement Standards
- 200.319 – Competition
- 200.320 – Methods of Procurement
- 200.323 – Contract Cost and Price
- Appendix II(H) – Suspension and Debarment Rules for Contracts
Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

- Costs of generating program income may only be deducted if:
  - Authorized by federal regulations or the Federal award;
  - Costs are incidental and not charged to the Federal award.
200.307 – Program Income (continued)

- Property from the sale of real property or equipment is not program income – apply post award property rules
- Program Income Must Be Deducted from Total Allowable Costs (except for IHEs and Research Non-profits)
  - With prior approval may add to Federal award
Procurement

- 200.330 – Contract vs. Grant
- 200.317 – Procurement by States
- 200.318 – General Procurement Standards
- 200.319 – Competition
- 200.320 – Methods of Procurement to be Followed
- 200.323 – Contract Cost and Price
200.330 – Contract vs. Grant

- No change from the current requirement.

- Entities must clearly determine what is a subgrant and what is a contract.
200.317 – Procurement by States

- Still provides flexibility for States

- All other nonfederal entities follow policies and procedures under Section 200.318-200.326
All nonfederal entities must have documented procurement procedures which reflect applicable Federal, State, and local laws and regulations.
Must maintain written standard of conduct, including conflict of interest policy.

A conflict of interest arises when any of the following has a financial or other interest in the firm selected for award:

- Employee, officer or agent
- Any member of that person’s immediate family
- That person’s partner
- An organization which employs, or is about to employ, any of the above or has a financial interest in the firm selected for award
All procurement transactions must be conducted with full and open competition.
  - Must have protest procedures to handle disputes

To eliminate unfair advantage, contractors that develop or draft specifications, requirements, statement of work, and invitations for bids or RFPs must be excluded from competing for such procurements.
Situations that restrict competition:

- Unreasonable requirements on firms to qualify to do business
- Requiring unnecessary experience or excessive bonding
- Noncompetitive pricing practices
- Noncompetitive awards to consultants on retainer
- Organizational conflicts of interest (see 200.318(c)(2))
- Specifying a brand name instead of allowing “an equal”
- Any arbitrary action in the procurement process
Must prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposal, except where applicable Federal statutes expressly mandate or encourage geographic preference.

- Does not preempt state licensing laws
- Exception: architectural and engineering services (if provides appropriate number of qualified firms)
200.320 – Methods of Procurement

- NEW Micro-purchase
- Small purchase procedures
- Competitive sealed bids
- Competitive proposals
- Noncompetitive proposals
NEW Acquisition of supplies and services under $3,000 or less.
- $2,000 for construction subject to the Davis-Bacon Act

May be awarded without soliciting competitive quotations if nonfederal entity considers the cost reasonable.

To the extent practicable must distribute micro-purchases equitably among qualified suppliers.
200.320(b) – Small Purchase Procedures

- Good or service that costs $150,000 or less
  - NEW Simplified Acquisition Threshold was raised under 200.88
  - Organization may set lower threshold
- Must obtain price or rate quotes from an adequate number of qualified sources
- “Relatively simply and informal”
200.320(b) – Small Purchase Procedures

- Good or service that costs $150,000 or less
  - NEW Simplified Acquisition Threshold was raised under 200.88
  - Organization may set lower threshold
- Must obtain price or rate quotes from an adequate number of qualified sources
- “Relatively simply and informal”
200.320(c) – Sealed Bids

- Over $150,000
  - Organization may set lower threshold
- Bids are publically solicited
- Appropriate when:
  - A complete, adequate and realistic specification or description of good or service is available;
  - Two or more responsible bidders are willing and able to compete effectively for the business;
  - Selection of vendor can be made principally based on price and it’s a firm fixed price contract.
Sealed bids must:

- Provide sufficient time to submit bids;
- Include all specifications so bidder can properly respond; and
- Be publicly opened at time and place announced in invitation for bids.

Any and all bids may be rejected if there is a sound documented reason.

Award is made to the lowest responsive and responsible bidder.
200.320(d) – Competitive Proposals

- Over $150,000
  - Organization may set lower threshold
- Award contract to responsible vendor whose proposal is most advantageous to the program, considering price and other factors.
- Generally used when sealed bid is not appropriate.
200.320(d) – Competitive Proposals (continued)

- Request for proposal (RFP) must be publicized and identify all evaluation factors and their relative importance identified.
- Proposals must be solicited from an adequate number of sources.
- Must have method for evaluating proposals and selecting the vendor.
- Contracts must be awarded to the responsible vendor whose proposal is most advantageous to the program, considering price and other factors.
200.320(f) – Noncompetitive Proposals

- Appropriate only when:
  - The item is only available from a single source;
  - There is a public emergency that will not permit delay;

- NEW The Federal awarding agency or pass-through expressly authorizes noncompetitive proposals in response to a written request from a non-Federal entity; or

- After soliciting a number of sources, competition is determined inadequate.
NEW Must perform a cost or price analysis in connection with every procurement action over $150,000, including contract modifications.

Independent estimate before receiving bids or proposals.

- Cost analysis generally means evaluating the separate cost elements that make up the total price (including profit).
- Price analysis generally means evaluating the total price.
Appendix II(H) – Suspension and Debarment Rules for Contracts

- Cannot contract with vendor who has been suspended or debarred
  - Excluded Parties List System in the System for Award Management (SAM)

- 2 CFR Part 180 (OMB Debarment and Suspension Rules) and 2 CFR 3485 (USDE Rules)
For contracts over $25,000 you must verify that the person with whom you intend to do business is not excluded or disqualified.

This MUST be done by either:

- Checking SAM; or
- Collecting a certification from that person; or
- Adding a clause or condition to the covered transaction with that person.
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