

# From Compliance to Performance

Presented by:  
*Karen Norris, Principal*  
*kanoco - A Karen Norris Company*

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# From Compliance to Performance

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## Learning Objectives

1. Recognize the structure of the uniform guidance and the focus on accountability.
2. Explore the federal interest to reduce risk through key legislation that affects the uniform guidance.
3. Raise awareness of key provisions in the uniform guidance that impact performance.
4. Identify steps that can be taken to transition from compliance to performance.

# From Compliance to Performance

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## A Few Words

# From Compliance to Performance

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## A Few Words

The uniform guidance became effective for federal agencies on Dec. 26, 2013 and for nonfederal entities on Dec. 26, 2014.

Numerous legislative actions affected, and continue to affect, the development of the uniform guidance.

# From Compliance to Performance

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## A Few Words

The uniform guidance and these legislative actions focus on performance and accountability.

# Learning Objective #1

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## Structure of the Uniform Guidance

# L01: Structure

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## Two Over-Riding Priorities

- Reduce administrative burden.
- Prevent waste, fraud and abuse.

# L01: Structure

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## Nine Objectives

- Eliminate duplicative and conflicting guidance.
- **Focus on performance over compliance.**
- Encourage efficient use of IT and shared services.
- Provide for consistent and transparent treatment of costs.



# L01: Structure

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## Nine Objectives

- Limit allowable costs to make best use of federal resources.
- Set standard business processes for data.
- Encourage family-friendly policies.
- Strengthen oversight.
- Target audit on risk of waste, fraud and abuse.

# L01: Structure

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## **Uniform Guidance (2 CFR 200)**

- 6 subparts.
- 12 appendices.

*Specific information is located in multiple places.*

# L01: Structure

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## **Uniform Guidance (2 CFR 200)**

- Subpart A: Definitions § 200.xx's
- Subpart B: General Provisions § 200.100's
- Subpart C: Pre-Award § 200.200's
- Subpart D: Post-Award § 200.300's
- Subpart E: Cost Principles § 200.400's
- Subpart F: Audit § 200.500's

# LO1: Structure

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## Subpart A

- Definitions and acronyms.
- § 200.01 - § 200.99.
- Review Subpart A.

# L01: Structure

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## Here's Why

- Some definitions are new ( § 200.45 fixed amount awards)
- Some definitions were removed ( § 200.32 DUNS number).
- Some definitions raise questions ( § 200.69 nonfederal entity).

# L01: Structure

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## Definition of Nonfederal Entity (§200.69)

- “Nonfederal entity means a state, local government, Indian tribe, institution of higher education or nonprofit organization that carries out a federal award as a recipient or subrecipient.”
- Who/what is missing?

# LO1: Structure

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## Missing

- For-profits.
- International organizations.
- Foreign governments.
- Individuals.

*An auditor would reason that the uniform guidance is not applicable to these nonfederal entities.*

# L01: Structure

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## Applicability

- Subpart B General Provisions
- Applicability ( § 200.101 (c))

*Federal awarding agencies may apply Subparts A-E to for-profits, foreign public entities or foreign organizations.*

*What about Subpart F? What about must?*



# L01: Structure

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## Subpart B

- General provisions.
- § 200.100 – § 200.113.
- Applicability and exceptions.
- Flow down.
- Conflict of interest.
- Mandatory disclosures.

# LO1: Structure

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## Subpart C

- Pre-Award.
- § 200.200 – § 200.213.
- Subpart C must be read with Appendix I and Appendix XII.
- Merit review of proposals.
- Risk review of applicants.

# LO1: Structure

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## Subpart D

- Post-Award.
- § 200.300 – § 200.345.
- Pass-through provisions ( § § 200.330-.332).
- Procurement provisions ( § § 200.317-.326).
- Remedies ( § 200.338).

# LO1: Structure

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## Subpart E

- Cost principles.
- § 200.400 – § 200.475.
- Other cost principles (45 CFR 75 for hospitals and 48 CFR 31.2 under the FAR).
- Prior written approvals ( § 200.407).
- Indirect costs ( § 200.414).

# LO1: Structure

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## Subpart F

- Audit requirements.
- § 200.500 – § 200.521.
- Federal agency provisions.
- Auditee provisions.
- Auditor provisions.

# L01: Structure

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## Appendices

- Appendix I: Pre-Award program announcement.
- Appendix II: List of national policy requirements.
- Appendix III-VII: Indirect costs.

*Based on type of nonfederal entity.*

# L01: Structure

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## Appendices

- Appendix VIII: Very large nonprofits (exception).
- Appendix IX: Hospital cost principles (exception).
- Appendix X: SF-SAC.
- Appendix XI: Compliance Supplement.
- Appendix XII: Integrity and Performance.

# L01: Structure

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## Cost Principles

- Three sets of cost principles:
  - Subpart E (2 CFR 200).
  - App. IX Hospital cost principles (45 CFR 75).
  - FAR (48 CFR 31.2) for contracts under grants.

*Based on type of nonfederal entity.*



# L01: Structure

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## Specific Information in Multiple Places

- Pre-Award.
  - Subpart C ( § 200.200's).
  - Appendix I.

# L01: Structure

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## Specific Information in Multiple Places

- Indirect costs:
  - Subpart A Definitions ( § 200.56, § 200.57).
  - Subpart E Cost principles ( § 200.414).
  - Appendices III-VII.

*Based on type of nonfederal entity.*

# L01: Structure

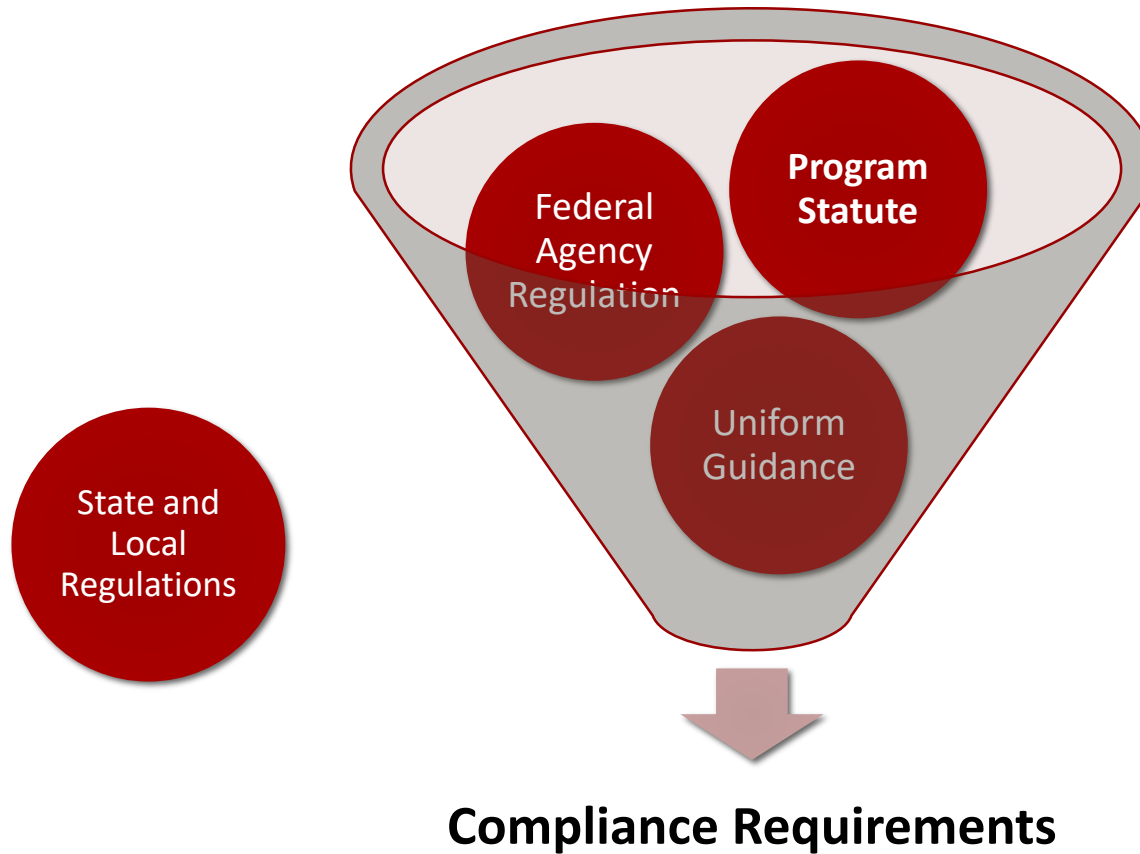
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## **Other Compliance Requirements**

- Federal agency regulation.
- Program statute/public law.
- State/local regulations.

# L01: Structure

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# LO1: Structure

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## What Takes Precedence?

- Program statute/public law (USC).
- Federal agency regulation (CFR).
- Uniform guidance (CFR).

*Generally follow most restrictive provision.*

# Learning Objective #2

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## **Federal Interest in Risk – History of Legislation**

# L02: History of Legislation

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## **1999: FFAMIA**

- Federal Financial Assistance Management Improvement Act.
- PL 106-107.
- Created a digital asset, Grants.gov.
- “To improve the effectiveness and performance of federal financial assistance programs.

# L02: History of Legislation

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## **2006: FFATA**

- Federal Funding Accountability and Transparency Act.
- PL 109-282.
- Created a digital asset, USAspending.gov
- Recipients, subrecipients report awards
- All nonfederal entities register in SAM.gov



# L01: Legislation and Funding

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## **2009: ARRA**

- American Recovery and Reinvestment Act.
- PL 111-5.
- Created a digital asset, Recovery.gov.
- Recovery Operations Center (data analytics).
- Fraud-Risk Score Card.
- Investigations and recovery of funds.

# L02: History of Legislation

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## **2009: Duncan Hunter (NDAA), Section 872**

- Duncan Hunter National Defense Authorization Act (NDAA)
- PL 110-417.
- Created a digital asset, FAPIIS.gov.
- Pre-award risk assessments for federal contracts.

# L02: History of Legislation

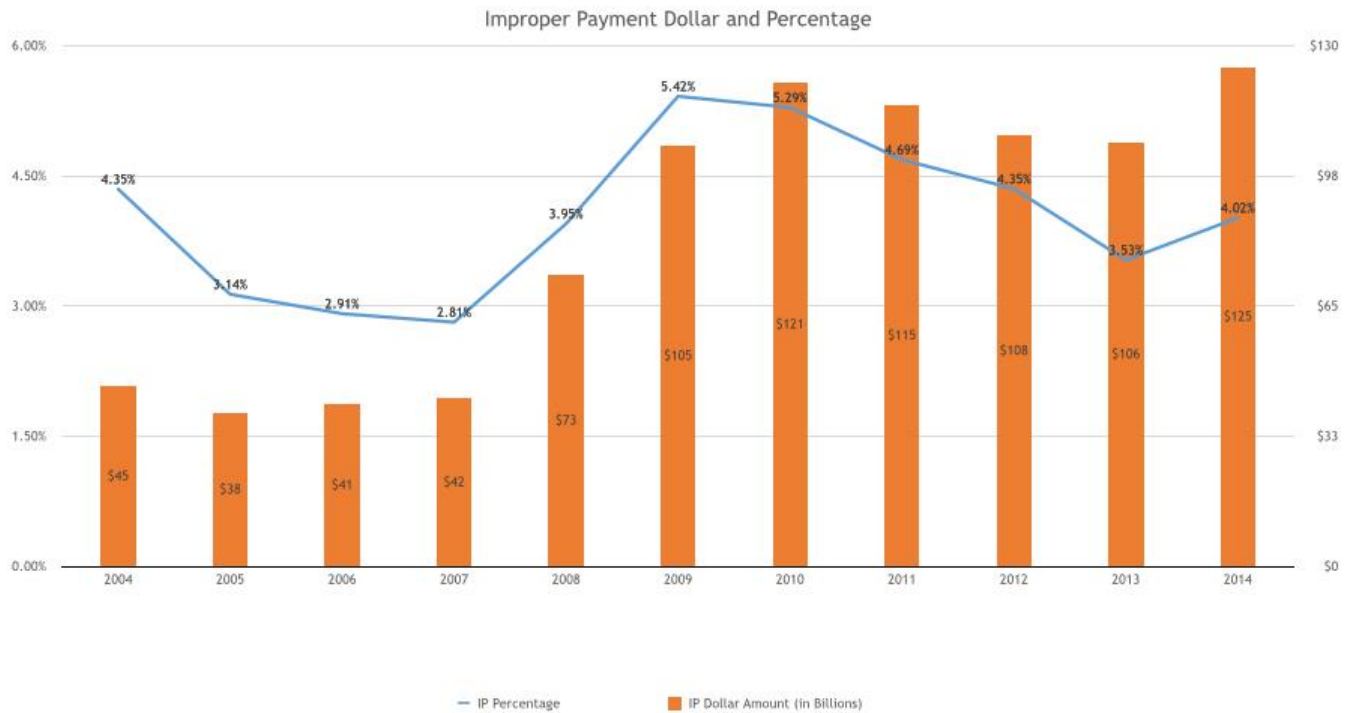
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## **2010: IPERA**

- Improper Payments Elimination and Recovery Act.
- PL 111-204.
- Created digital asset, [Paymentaccuracy.gov](http://Paymentaccuracy.gov).
- Reduce improper payments \$50B by 2012.
- Federal agencies held accountable for funds.

# L02: History of Legislation

## Paymentaccuracy.gov



# L02: History of Legislation

Agency	Payment Recapture Audits		Overpayments Recaptured Outside of Payment Recaptures	
	Amount Identified	Amount Recovered	Amount Identified	Amount Recovered
Department of Agriculture	\$0.6M	\$0.7M	\$300.5M	\$234.5M
Department of Commerce	\$0.0M	\$0.0M	\$9.4M	\$7.2M
Department of Defense-- Military	\$6.5M	\$2.0M	\$513.2M	\$462.6M
Department of Education	\$74.4M	\$33.8M	\$0.0M	\$0.0M

# L02: History of Legislation

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## 2012: IPERIA

- Improper Payments Elimination and Recovery Improvement Act.
- PL 112-248.
- OMB to set annual targets for federal agencies.
- Federal agencies must report high risk programs.
- Federal agencies disclose to OIG actions and plans to recover funds.

# L02: History of Legislation

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## **2013-2014: Uniform Guidance**

- 2 CFR 200.
- Combined eight prior OMB circulars.
- Effective for federal agencies Dec. 26, 2013.
- Effective for nonfederal entities Dec. 26, 2014.
- Updated as legislation is enacted.

# L02: History of Legislation

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## **2014: DATA Act**

- Digital Accountability and Transparency Act.
- PL 113-101.
- Pilot stage.
- To expand upon FFATA.
- To detect and prevent waste, fraud and abuse.
- To improve digital asset, USAspending.gov.
- To standardize data elements.



# L02: History of Legislation

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## **2015: Duncan Hunter (NDAA) Amended**

- FAPIIS.gov to merge with SAM.gov.
- Expanded requirements from federal contracts to federal grants.
- Proposals can be denied due to risk, applicant considered not qualified for federal funds.
- Uniform guidance was amended Sept. 2015.

# L02: History of Legislation

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## **2016: GONE Act**

- Grants Oversight New Efficiency Act.
- PL 114-117.
- Improve closeout process.
- Federal agencies to report annually to OIG.
  - List all grants.
  - List 30 oldest grants.
  - Provide plan to close out oldest grants.

# L02: History of Legislation

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## Funding Trends (Authorization and Appropriation)

- \$600B annually in federal awards.
- \$100B annually in improper payments.
  - \$180M to 20,000 individuals who were dead.
  - \$230M to 14,000 fugitives or jailed felons.

# L02: History of Legislation

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## GAO Closeout Report 2011

- \$794M unspent funds in expired grant accounts.
- Another \$126M unspent in automated payment systems.
  - \$111M unspent 5 years.
  - \$9.5M unspent 10 years.
  - \$595M attributed to 8,260 HHS grants.
- 28,000 expired accounts with zero balances.

# L02: History of Legislation

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## GAO Closeout Report 2015

- \$994M unspent funds in expired grant accounts.
- Expired accounts with 0 balances.
  - 28,000 reduced to 5,906.
  - 359 of 5,906 were from 2011 report, others new.
  - Bank fees for expired accounts totaled \$29,000.

*GONE Act enacted 2016.*

# L02: History of Legislation

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## Findings

- Federal funds are not being expended as intended/awarded.
- Unacceptable levels:
  - Improper payments.
  - Unspent funds.
  - Waste, fraud and abuse.
  - Risk

# Learning Objective #3

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## **Key Provisions for Program and Financial Performance**

# L03: Key Provisions

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## **Mandatory Disclosures ( § 200.113)**

- Nonfederal entities must disclose in writing any fraud, bribery or gratuity violations.
- Best practice – nonfederal entities that conduct fundraising as a standard business practice may want to consider a written gift policy to avoid appearance of gratuity violations.



# L03: Key Provisions

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## **Standard Data Elements ( § 200.203, App. I)**

- Six standard data elements in notices of funding opportunities.

# L03: Key Provisions

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## **Merit Review of Proposals ( § 200.204)**

- Federal agencies must design and execute a merit review of proposals.

# L03: Key Provisions

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## **Pre-Award Review of Risk ( § 200.205)**

- Federal agencies to review risks of applicants prior to making an award for competitive and formula grants.
- Federal agencies must comply with guidelines on suspension and debarment.
- Federal agencies must comply with guidelines on integrity and business ethics.

# L03: Key Provisions

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## **Risk Review of Applicant ( § 200.205)**

- Federal agencies must have a framework for evaluating the risks posed by applicants before making an award.
  - Financial stability.
  - Quality of management system.
  - History of performance.
  - Audit reports.
  - Applicant ability to implement program.

# L03: Key Provisions

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## **Specific Conditions ( § 200.207)**

- If awarding to a recipient with elevated risk, federal agencies must impose specific conditions to mitigate deficiencies.
- Once deficiency is corrected, federal agencies must amend award agreement to remove the specific condition(s) and lower the risk assessment.

# L03: Key Provisions

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## **Standard Awards ( § 200.210, § 200.331 )**

- Federal agencies and pass-through entities must include standard elements in award agreements.
- Awards must include intended performance outcomes and a timeline for accomplishment.

# L03: Key Provisions

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## **Determinations ( § 200.212)**

- Federal agencies must conduct an integrity review of applicants:
  - Make a determination.
  - Review and/or post in FAPIIS, as appropriate.
  - Data retained in FAPIIS for five years.
- An applicant denied an award based on risk and/or integrity is determined “not qualified” for federal funds.

# L03: Key Provisions

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## **IRD, Inc. Determination**

- International Relief and Development, Inc.
  - USAID contractor.
  - Awarded \$2.25B in contracts 2007-2013.
  - USAID reported IRD in FAPIIS Jan. 26, 2015 for serious misconduct.
- IRD filed suit against USAID.



# L03: Key Provisions

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## **IRD Determination**

- USAID withdrew the determination.
- IRD refused to withdraw the law suit citing irreparable harm to IRD's reputation.
- IRD changed its name to Blumont.

# L03: Key Provisions

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## **Making Determinations (§200.212)**

- If a federal agency discovers a deficiency, irregularity or misconduct, review the matter (with attorney).
- Where appropriate, address the deficiency.
- Determine if deficiency should trigger a reporting obligation in FAPIIS.
- Report, as appropriate.

# L03: Key Provisions

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## **Financial Data ( § 200.301)**

- Nonfederal entities must relate financial data to performance accomplishments.
- Reporting should reflect programmatic and financial progress.

# L03: Key Provisions

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## **Internal Control ( § 200.303)**

- Nonfederal entities must have written policies and procedures as part of a system of internal control.
- Nonfederal entities must provide “reasonable assurance” for proper stewardship of federal funds.

# L03: Key Provisions

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## **Procurement ( § § 200.317-.326)**

- Nonfederal entities must have written procurement policies and procedures.
- Nonfederal entities must ensure full and open competition and eliminate unfair competitive advantage.
- Contractors that develop or draft specifications on bids or proposals cannot compete.

# L03: Key Provisions

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## **Performance and Data ( § 200.328)**

- Performance reports must use OMB-approved government-wide standard information collections.

# L03: Key Provisions

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## **Pass-through Monitoring ( § 200.331)**

- Pass-through entities must monitor subrecipients and correct deficiencies.
- Pass-through entities must reassess risk after progress reports.
- Best practice to assess pre-award risk.

# L03: Key Provisions

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## **Data ( § 200.335)**

- Recipients to use open and machine-readable formats for data collections.



# L03: Key Provisions

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## Remedies ( § 200.338)

- Remedies for noncompliance:
  - Temporarily withhold payments.
  - Disallow costs.
  - Partially or wholly suspend or terminate award.
  - Suspension or debarment.
  - More...

# L03: Key Provisions

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## Closeout ( § 200.343)

- Federal agencies and pass-through entities must complete all closeout actions no later than one year after receipt of all required final reports.

# L03: Key Provisions

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## Payment Documentation ( § 200.403)

- Documentation must support payment for expenses to ensure they are allowable, allocable, necessary and reasonable.
  - Receipts.
  - Purchase orders.
  - Invoices.
  - Time records.

# L03: Key Provisions

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## **Prior Written Approvals ( § 200.407)**

- Nonfederal entities must seek prior approval from the federal awarding agency under 22 circumstances listed in the provision.

# L03: Key Provisions

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## **Selected Items of Cost ( § § 200.420-.475)**

- Nonfederal entities must comply with 55 items of cost to determine allowability.

# L03: Key Provisions

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## **Audit ( § 200.513)**

- Federal agencies to create a single audit accountable official:
  - To provide oversight of audits.
  - To reduce improper payments, waste, fraud, abuse.
  - To improve federal outcomes.

# L03: Key Provisions

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## **Audit Findings ( § 200.513)**

- Awarding agencies must reduce the number of outstanding audit findings.
  - Senior accountable official.
  - Cooperative audit resolution.

# L03: Key Provisions

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## **Audit Metrics ( § 200.513)**

- Awarding agencies must implement audit-risk metrics.
  - Timeliness of report submissions.
  - Number of audits without auditor opinion on major programs.
  - Number of repeat findings.



# L03: Key Provisions

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## Integrity (Appendix XII)

- Nonfederal entities to submit mandatory disclosures, over \$10M in awards:
  - Civil proceedings (fault, fine).
  - Criminal proceedings.
  - Administrative proceedings (fault, fine, penalty, appeals board).

# Learning Objective #4

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## Steps To Take

# L04: Steps To Take

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## **Know Your Risk Rating (§200.205)**

- Self-assess.
- Review award documents.
- Work with awarding agency.

# L04: Steps To Take

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## Know Your Technology (§200.335)

- Open machine-readable formats.
- 57 data elements defined in DATA Act.
- Check the DATA Act pilot site at [www.fedspendingtransparency.github.io](http://www.fedspendingtransparency.github.io).

*Does your current system have the capacity?*

# L04: Steps To Take

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## **Know Your Items of Cost (§200.420-.475)**

- Understand what is allowable/unallowable.
- Note any new items of cost.
- Add new items of cost to local chart of accounts.

# L04: Steps To Take

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## **Know Prior Written Approvals (§200.407)**

- Understand what costs require prior written approval.
- Review list.
- Provide training to program managers.

# L04: Steps To Take

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## **Align Procurement with Uniform Guidance**

- Review procurement provisions
- ( § 200.317- § 200.326)
- Note what has changed.
- Update local procurement policy as needed.
- Provide training to program managers.

# L04: Steps To Take

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## **Update Policies and Procedures**

- What's the same.
- What's new (family-friendly policies).
- What has changed (procurement).
- Provide training.



# L04: Steps To Take

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## **Correct Open Audit Findings (§200.513)**

- Avoid recurring findings.
- Learn about cooperative audit resolution.

# From Compliance to Performance

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**Additional Q&A?**

# From Compliance to Performance

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## Contact Information



Karen Norris, Principal  
**kanoco**

*A Karen Norris Company*  
Guidance you trust.  
knorris@kanoco.com  
301-613-1277

*subject matter expert*

*federal grants compliance, consulting, writing, editing*