March 8, 2023

Ms. Deidre A. Harrison
U.S. Office of Management and Budget
725 17th St NW
Washington, DC 20503

Dear Ms. Harrison:

Subject: OMB Request for Information (RFI)

On behalf of the American Institute of Certified Public Accountants and its Governmental Audit Quality Center (GAQC), we are pleased to offer the following observations and recommendations to the U.S. Office of Management and Budget (OMB) as it considers and evaluates potential future changes to 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (UG). If OMB is interested in pursuing any of our recommendations, we are happy to meet to further explain and explore potential solutions and specific suggested wording improvements. Our responses below are linked to each of the four questions proposed in the RFI.

**What specific section(s) of 2 CFR would benefit from revision to support the goal of reducing administrative burden?**

*200.100, Purpose, and 200.101, Applicability*. The stated purpose of the UG is to establish uniform requirements for federal awards to ***non-federal entities.*** While 200.101 states that federal awarding agencies may apply subparts A through E of the UG to ***for-profit entities***, there is much inconsistency and confusion when this occurs which has been exacerbated over the past several years due to significant increases in federal funding to for-profits either directly or indirectly through a pass-through entity (PTE). In some cases, federal agencies and PTEs have required a full single audit and, in others, some other type of audit. Further, some for-profits received funding from multiple federal agencies (e.g., U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Health and Human Services (HHS) and/or multiple state PTEs which required them to undergo several audits with differing requirements. We recommend OMB develop one recommended approach to be used government-wide for audits of for-profit entities. For example, one option would be for the auditor opine on a schedule of federal funding under *Government Auditing Standards* (like for-profit healthcare entities receiving the Provider Relief Fund). Another option would be for the entity to undergo an engagement under the AICPA Attestation Standards (i.e., compliance examination engagement like that offered by the U.S. Department of Treasury and the Small Business Administration for pandemic funding). A consistent government-wide approach would alleviate burden to both for-profit recipients and auditors that must muddle through federal agency or PTE requirements that do not make sense, conflict with AICPA Professional Standards, are overly complex, or out-of-date. It would also alleviate the need for recipients to undergo multiple audits with different requirements when funding is received from various federal or PTEs. We are uncertain whether this can be accomplished through a UG update but, if not, OMB and the agencies should undertake a separate effort to address this in the future.

*Subpart E and Related Appendices.* A complete overhaul of the cost principles is needed to better align the requirements with the way in which they are operationalized. That is, having specific sections, broken up individually that encompass the various types of cost, such as direct charges for employees, contractors, beneficiaries, subrecipients, indirect facilities and administration, and fringe benefits. Currently, there are various cost principles and requirements (such as for

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state and local government, tribes, institutions of higher education, or hospitals) and understanding what applies, when, and to whom is a very time consuming, nonvalue added task. For example, section 200.430(h) includes the "Standards for Documentation of Personnel Expenses" which is labeled "Institutions of Higher Education (IHEs)," but it is a section that is also relevant to not-for-profit organizations (NFPs) and some hospitals. More precision, conciseness, and alignment with risk would help reduce administrative burden on auditees and auditors. Separately, there is also much confusion and questions on the requirements for and testing of indirect costs. Due to the size limitations for this response, we will not provide any further detail here. However, we recommend that OMB work to make the indirect cost requirements clearer, consistent among types of recipients, and more user-friendly.

*200.502(b)-(d) Basis for Determining Federal Awards Expended for Loans*. OMB should revise the requirements for certain loans and loan guarantees to achieve some level of burden relief. For example, some not-for-profit organizations receive either a 40-year mortgage loan through a HUD direct loan program or a capital advance which is secured by a mortgage that is typically structured as a forgivable loan where the forgiveness occurs after use restrictions are met for 40 years. Even though there will never likely be a required payoff of the loan, for each of the 40 years, the single audit requirement is triggered (when the audit threshold is met) because HUD has indicated that the HUD-held loans have continuing compliance requirements. There are similar situations with other federal agency programs with loans and loan guarantees. Alternative cost-effective methods should be explored by OMB and the federal agencies to address monitoring compliance with applicable reporting requirements and use restrictions for loans and loan guarantees in lieu of including them in the scope of the single audit. See our related comment below regarding the need for more clarity around loan reporting requirements and continuing compliance requirements.

*200.507, Program-Specific Audits*. OMB should consider revising the type of engagement for program-specific audits to a compliance examination engagement. This would alleviate the need for recipients with one program to prepare a Schedule of Expenditures of Federal Awards (SEFA) using a recognized basis of accounting that is often at odds with SEFA presentation requirements and for auditors to opine on such a problematic schedule. It would, however, still offer the same high level of assurance on program compliance. We believe OMB can accomplish this through the UG since the Single Audit Act includes very little detail on what a program-specific audit must include. If this recommendation is not taken, OMB should review the existing program-specific audit requirements, refresh them, and make them easier to understand.

*200.513, Federal Agency Responsibilities, and Appendix XI, Compliance Supplement*. OMB should revise these sections to clarify that OMB has the authority (and responsibility) to require agencies to make changes to their submitted OMB *Compliance Supplement* (Supplement) sections: (1) when the sections do not meet Supplement protocols; (2) when they include requirements to be tested that lack auditable criteria; or (3) they establish audit or reporting requirements that go beyond the UG. We have seen many agencies include unsupported audit and reporting requirements in Supplement program sections without any formal due process. OMB should have the authority to override these types of efforts as they significantly increase the administrative burden for both recipients and auditors in a non-transparent manner. Further, OMB should consider the following areas:

- Six-Requirement Mandate. OMB should require agencies to perform data analytics to determine whether any of the six requirements subject to audit have few audit findings reported or where agencies are allowing findings to repeat with no federal action taken. In these cases, OMB should require agencies to remove such requirements from the scope of the single audit.
- Special Tests and Provisions. Several agencies use this compliance requirement to add significant requirements well beyond what we believe was intended when the six-requirement

mandate was established by OMB (e.g., the U.S Department of Education's Student Financial Assistance cluster). OMB should establish a limit for the number of special tests that can be included for each individual program or cluster.

- Subrecipient Requirements. Agencies should be required to provide greater clarity in the Supplement around which compliance requirements are applicable and subject to audit for subrecipients. Auditors of subrecipients often spend much time and judgment determining what to test at the subrecipient level leading to a diversity in audit coverage.
- Programs Not Included in the Supplement. An analysis should be made of the Federal Audit Clearinghouse (FAC) over the last 6-9 years (i.e., to cover several three-year cycles) and agencies should be required to include all programs audited frequently in the Supplement. Otherwise, thousands of individual auditors are burdened with trying to determine the requirements, objectives, and procedures for these programs. Additionally, agencies with programs audited less frequently and thus not included in the Supplement should be required to identify the requirements that are subject to audit when an auditor encounters those programs (i.e., up to six requirements). Such a listing could be included in Part 2 or 7 of the Supplement. Otherwise, Part 7 of the Supplement should at least be revised to instruct auditors that they only need to identify up to six requirements to be tested.

*200.519(c)(2), Criteria for Federal Program Risk*. This section allows federal agencies, with the concurrence of OMB, to identify federal programs that are "higher risk." During the pandemic more higher risk programs were identified by federal agencies than usual but with little transparency about why. To enhance consistency, OMB should establish specific criteria in the UG for agencies to use when determining whether a program is higher risk. Further, Appendix IV of the Supplement required that new pandemic type A programs on the higher risk list be audited as a major program for as long as they appeared on the list. This interpretation is not consistent with 200.519 which assumes a program's inclusion on the "higher" risk list is one of a number of factors the auditor considers but not a de facto "high" risk designation. With the expiration of pandemic funding on the horizon and infrastructure funding increasing, OMB should revisit the guidance in this section to be clear on the implications to auditors when programs are identified as higher risk.

*UG FAQs*. OMB should incorporate 2 CFR Frequently Asked Questions directly into the UG to make it more user-friendly, eliminate the need for auditors and recipients to go to a separate location for guidance, and alleviate the risk that the guidance will be overlooked.

*Agency Adoption of the UG*. HHS has still not adopted the last update to the UG. OMB should require agencies to adopt the final revised UG within a certain timeframe after issuance and request that agencies limit differences from UG in individual agency adoptions. A lack of agency adoption and transparency about differences from UG leads to burden for recipients and auditors who are left trying to determine the status of adoptions, what changes agencies have made, and the implications when an agency has not adopted.

*Effective Date*. OMB should be aware of the potential burden of implementing the revised UG when defining the effective date. OMB should also keep in mind that there is likely a need for two effective dates. One for recipients in terms of when they need to begin complying with the new UG compliance requirements (which has been defined in past UG revisions based on awards issued after a certain date) and a second effective date for the audit requirements which relate to recipient fiscal year ends. OMB should also look back at the original UG implementation which required two separate Part 3 Supplement sections during the transition period for testing compliance for awards issued pre-UG and post-UG.

**What specific section(s) of 2 CFR have been interpreted differently by federal agencies and recipients leading to inconsistent implementation of federal financial assistance?**

*200.10, Definitions*. The terms subrecipients and contractors are both defined in the UG but there is no definition of "beneficiary." However, the definition of subaward and subrecipient infer that a beneficiary can only be an individual that would not be subject to single audit rules. During the pandemic, Treasury broadened the use of the term beneficiary to include organizations which were not subject to single audit. However, diversity occurred due to a lack of understanding and clarity. For example, some state PTEs issued standard subawards to organizations for the Coronavirus Relief Fund that identified the recipients as subrecipients (with the funding subject to audit on the SEFA), whereas other state PTEs provided the same funding in very similar circumstances but modified their subawards to call the recipient organizations beneficiaries and the funding was not subject to single audit. OMB should define "beneficiary" and whether a beneficiary can be an organization, as well as confirm that beneficiaries are not subject to single audit rules. OMB should also similarly revise section 200.331, *Subrecipient and Contractor Determinations*, to clearly articulate PTE responsibilities for identifying beneficiaries in subawards.

*200.101, Applicability*. There are many questions about the treatment of Federal Acquisition Regulation (FAR) contracts and whether/when they should be included in the scope of a single audit. The diversity of opinions between agencies and recipients on this topic leads to inconsistency. Table 1 to Paragraph (b) states that "Contracts and subcontracts, except for fixed price contacts and subcontracts, awarded under the Federal Acquisition Regulation" are to be subject to the audit requirements under Subpart F. Since the FAR lists five different types of fixed price contracts (e.g., firm fixed price, fixed price incentive, fixed ceiling contracts with retroactive price redetermination, etc.), it is not clear which are contemplated in 200.101. Is it just firm fixed price or all five listed in the FAR? Adding to the confusion, Subpart F section 200.502 refers to "cost-reimbursement contracts under the FAR" regarding when an expenditure occurs. Other questions that auditors struggle with include: What are common situations that result in a FAR contract? Are there certain entities that receive FAR contracts or is it just Research & Development organizations? When is the FAR applicable to NFP and governmental entities? Which federal agencies use FAR contracts? Should a "cost plus fixed fee" contract report both the costs and related fees or just the cost, or is it not subject to SEFA reporting? Are Time and Materials contracts to be included? Where is the guidance for situations when funds are passed through to subrecipients (often the agreements are silent about FAR applicability)? This is an area that needs clearer guidance from OMB to enhance consistency.

*200.504, Frequency of Audits*. OMB should provide guidance for auditing stub periods that result from a change in year-end due to mergers, acquisitions, creation of new entities, and dispositions of entities. This type of activity happens frequently, especially in industries like healthcare. Such guidance should clarify whether and how thresholds should be modified based on the length of time of the stub period. Currently, nonfederal entities must contact their cognizant or oversight agency on a case-by-case basis which leads to diversity in treatment. Further, OMB should also provide guidance on when entities in these situations can be considered to have had a single audit in the preceding two audit periods under 200.520, *Criteria for a Low-Risk Auditee*. Currently, judgement is needed in practice.

*200.512, Report Submission*. This section requires recipients to submit the data collection form and reporting package within *the earlier of 30 calendar days after receipt of the auditor's report(s),* or nine months after the end of the audit period. The italicized wording has been interpreted differently by various parties because the date of the "receipt of the auditor's report" is not well defined or documented. However, it is important as it impacts whether a recipient can be considered a low-risk auditee in the following year. The only date formally documented by

auditors is the report date (i.e., date of opinion on compliance). That date is likely before many recipients receive the report. For example, some recipients do not deem a report to be "received" until it has been presented and accepted by a governing body which is likely well after the opinion date. Appendix VII of the Supplement avoids this issue altogether by only focusing the auditor's determination of timeliness on the 9-month portion of the deadline. We have opposed previous FAC efforts to include a "date of receipt of auditor's report(s)" field on the DCF as it is not clearly defined. If OMB wants to track the 30-day aspect of the submission deadline, a clear definition of the rule needs to be provided. Unfortunately, the 30-day wording appears in the Single Audit Act. However, we recommend OMB explore whether it can still provide regulatory guidance on its application to enhance consistency. For example, perhaps OMB could state that 30 days after receipt is practically defined as 60 calendar days after the compliance audit report date. That would assist those that need time to schedule governing body acceptance meetings and offer a definitive deadline that could be tracked.

*200.516. Audit Findings*. There is a current diversity in opinion on whether an auditor must report a finding when it is known that a recipient will be late in filing the current year UG report submission (i.e., past the 9-month deadline). Our view has always been that the late filing tracking is used for purposes of determining an entity's low-risk status for the following year and that a finding is not required. This view aligns with the Supplement which states that auditors should not be instructed to test and write findings for matters the agencies already know. However, we regularly hear from members that they are being challenged by some federal agencies who assert that a finding should be reported in the current year since the auditor is aware the filing will be late. If this is the OMB/agency position, it should be clearly explained in the UG. Further, if it is to be reported, the UG needs to explain how. For example, what type of compliance requirement should the finding be attached to and which programs? We have heard that some agencies assert it is a cross-cutting finding that would be attached to all programs, with others saying it attaches to all major programs, and even others saying it attaches only to the program(s) that caused the delay. If reporting is desired, a more simplistic approach would be to have it reported as a financial reporting finding in the audit report issued under *Government Auditing Standards* which would avoid impacting future individual program-risk assessments.

**What specific section(s) of 2 CFR would benefit from improved clarity or more precise language?**

*Subpart E.* Allowable cost criteria need to be fully developed for healthcare entities. Currently, 45 CFR Part 75, Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals" is not adequate. The AICPA has been making this recommendation for many years and no action has been taken. It is time for OMB and HHS to make a serious effort to make needed updates. Until such time, Appendix IX should include procedures to be used by hospitals to request the ability to deviate from 45 CFR Part 75 as it now exists. Additionally, we offer two other specific suggestions for Subpart E. First, it should address situations where an entity pays for an asset or subscription that goes past the grant period. Currently, there is no guidance for situations where a prepaid asset can be used beyond the life of the grant. Second, section 200.468 should be expanded to include non-specialized service centers. The National Institutes of Health (NIH) has guidance in the form of a question-and-answer document that can be incorporated since many, if not most institutions, follow the NIH guidance.

*200.317 – 200.327, Procurement Standards*. OMB should clarify the methods of procurement and when they apply. The following questions illustrate the challenges encountered. Is the method of procurement based on a total purchase order (PO) amount or individual transactions? What happens when the total PO encompasses multiple periods? What are the criteria (for both recipients and auditors) for evaluating the following italicized words from section 200.320 "*To the maximum extent practicable*, the non-federal entity should distribute micro-purchases

*equitably* among qualified suppliers?" How does the auditor determine questioned costs if a total PO amount was deemed insufficient based on the method of procurement? There is also confusion on the recently increased micro-purchase thresholds and we have found that many recipients overlook the approval requirement to increase a threshold above that in the CFR.

*200.502, Basis for Determining Federal Awards Expended.* We have several recommendations where this section would benefit from clarity to ensure consistent application as follows: (1) Pandemic funding evidenced that the guidance in this paragraph needs to be enhanced and updated. For example, awards were provided that permitted out-of-period amounts to be claimed (i.e., going back a year or more), awards were provided that allowed entities to recoup lost revenue, and funding was provided based on federal agency allocation calculations, but awards were not finalized until a later time. To enable consistent treatment and understanding by AICPA members, the AICPA GAQC issued a nonauthoritative practice aid, *Guidance on the Reporting of COVID-19 Awards on an Accrual Basis SEFA*. Its underlying premise was that for an award to be included on the SEFA, two things must occur. First, there must be an award. Second, the underlying activity must have occurred (e.g., cost incurred (or lost revenue as applicable)). While the pandemic is ending, these types of awards could be used in the future and 200.502 should address them. (2) This section states that the ***receipt or use*** of program income is the basis for determining when federal awards are expended. More specificity should be provided to enhance consistency in reporting program income, and consideration should also be given about whether program income should be reported on the SEFA at all. (3) More definitive guidance should be provided as to when fixed amount awards are to be reported on the SEFA; and (4) It is unclear to some NFP recipients that receive federal funding from a for-profit entity whether those funds should be included on the SEFA. This section should include guidance clarifying that the federal nature of funding no longer exists once federal funds are passed down from a for-profit entity.

*200.502(b)-(d), Basis for Determining Federal Awards Expended for Loans*. As noted earlier, loan and loan guarantee programs can be an area of confusion, specifically in determining what goes on the SEFA, what is required to be tested in the year of loan origination vs. subsequent periods, and loans that do not contain continuing compliance requirements (e.g., the Economic Injury Disaster Loans program). More precise definitions and requirements would make it easier for auditors to execute their testing in a consistent manner to address the stated audit objectives provided in the Supplement. OMB should also more clearly define the concept of what constitutes continuing compliance requirements that make a loan retain federal character for purposes of determining federal awards expended and require agencies to clearly state in the Supplement whether programs involving loans have continuing compliance requirements. Otherwise, the determination is left to each individual auditor resulting in a diversity in practice. Further, there is confusion by recipients and auditors about when loans go on the SEFA and in what amount. Part of the confusion, beyond determining if there are continuing compliance requirements, is that 200.502(b)(1) refers to the "value of new loans made or *received* during the audit period." However, the lead-in to this section in 200.502(a) states that the determination of when a federal award is expended must be based on when the activity related to the Federal award occurs which for loans is "the *use* of loan proceeds under loan and loan guarantee programs." This language (i.e., received versus used) has caused great confusion in practice.

*200.509, Auditor Selection.* The provisions in this section have received varying interpretations by some agencies and recipients. At a minimum, OMB should clarify that the UG procurement rules are only required for the selection of auditors when audit costs are being charged to a federal program. We have heard that some agencies have insisted that recipients follow the UG procurement rules even when audit costs are not being charged to a federal program. Another option would be for OMB to eliminate the procurement requirement for external audit services as some believe it is having a negative impact on quality by considering all audits and auditors as the same, while encouraging non-federal entities to select the lowest bid, regardless of the qualifications of the auditor.

*200.514(a), Defining the Entity to be Audited.* Pandemic funding significantly expanded awardees with diverse entity and organizational structures. For example, the Provider Relief Fund went to many healthcare organizations (both not-for-profit and for-profit) that had parent organizations and many subsidiaries. The wording in 200.514(a) permits recipients to opt for a series of audits and refers to the audit covering "departments, agencies, and other organizational units." Many have struggled to interpret this wording and how it applies to the complex organizational structures encountered today in industries like healthcare. OMB should consider whether updates can be made to this language to address implications of more complex structures. Further, as we have commented on previously, this section provides certain grantees with leeway in terms of whether a UG audit is required. For example, under today's rules, if a government's transportation department expends $350,000 in federal funds and the same government's health department expends another $400,000 in federal funds, the government can state that its intention is to meet the single audit requirement through the "series of audits" provision in this section and not undergo a single audit. The government would also not need to prepare separate financial statements and a schedule of expenditures of federal awards as described in this section because none of the "pieces" are over $750,000. This situation arose frequently during the pandemic with entities including parent organizations and multiple subsidiaries.

*200.516, Audit Findings*. Currently there is much judgment used by each auditor about whether certain instances of noncompliance result in questioned costs. OMB should explore defining whether certain common instances of noncompliance should result in questioned costs. For example, if there are instances of noncompliance relating to subrecipient monitoring, are entire subrecipient payments questioned? Or, if an auditor does not see evidence of two quotes on a $30K client purchase, would that purchase be reported as a questioned cost if the amount is deemed to be reasonable based on online quotes? What if there are issues with reports filed with federal agencies, are there questioned costs? Adding more guidance in this area would help advance more consistency in the reporting of questioned costs.

*200.511, Summary Schedule of Prior Audit Findings and Corrective Action Plan.* This section should more clearly delineate auditee and auditor responsibilities including requiring them both to be placed on recipient letterhead to reinforce they are recipient responsibilities. Note that the UG FAQs already require this for the Corrective Action Plan (CAP). Additionally, when performing the necessary follow-up procedures on prior year findings where the finding relates to a program that will not be tested as major, should the auditor write a finding if the prior year finding was not corrected? The UG section 200.516, Audit Findings, requires the Schedule of Findings and Questioned Costs to include all reportable findings for major programs and for non-major programs that have questioned costs that are greater than $25,000. It does not seem to encompass the situation described here likely leading to a diversity in how auditors are reporting.

*Section 200.521. Management Decision*. This section states that the federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. OMB should clarify that failure of an agency to meet this deadline means that the CAP as submitted by the recipient has been accepted without exception. Our members have had client situations where the agency issued the Management Decision well after 6 months but asserted that the 6-month deadline does not limit actions agencies can take after that time.

**What specific suggestions do you have for otherwise improving the language of 2 CFR (e.g., consistent use of terms, other suggested edits)?**

*200.10, Definitions.* Consider adding a definition to define what constitutes an indirect cost. While there is guidance elsewhere in UG, it would be helpful to ensure everyone is working from the same definition.

*200.305, Cash Management*. OMB is proposing a change to Part 3 of the Supplement concerning Cash Management and the definition of "paid." We recommend that any changes made to clarify this matter in the Supplement also be made consistently in this section.

*200.516(a)(1) Audit findings***.** OMB should eliminate the requirement to report a federal award finding for significant instances of abuse. The 2018 edition of *Government Auditing Standards* (the Yellow Book) eliminated the responsibility to report abuse but includes application guidance instructing that evaluating internal control in a government environment may include considering internal control deficiencies that result in waste or abuse. That application guidance would also apply to the compliance audit performed in a single audit such that abuse resulting from control deficiencies would still be reported.

*200.516(b)(7), Audit Findings*. This subsection states that each audit finding should report whether the sampling was a statistically valid sample. Since statistical sampling is not required in a single audit, many findings simply state that a statistical sample was not used. We question how useful this statement is in an audit finding and recommend OMB remove this from the summary of audit finding requirements in this section.

*Suspension and Debarment.* OMB should move the suspension and debarment requirements from 2 CFR 180 to Subpart D of 2 CFR 200 under post-award requirements. While there is a reference to 2 CFR 180 today, it is hard to understand all the criteria when it is not located in one place.

*Required Written Policies and Procedures.* We suggest the UG add a consolidated list of required recipient written policies and procedures. While they are included throughout various Subparts, this would be helpful to new recipients to assist in understanding the requirements.

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We appreciate the opportunity to provide these observations and recommendations for consideration by OMB. Please feel free to reach out with any questions.

Sincerely,

Mary M. Foelster

Mary M. Foelster
Senior Director
Governmental Auditing and Accounting

cc: GAQC Executive Committee