

**Before the  
OFFICE OF MANAGEMENT AND BUDGET  
EXECUTIVE OFFICE OF THE PRESIDENT**

Guidance for Grants and Agreements	)	2 CFR Part 200
Proposed Rule	)	OMB-2023-0007
	)	
	)	

**COMMENTS OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (NTCA)<sup>1</sup> hereby submits these comments in response to the Office of Management and Budget (OMB) request for feedback on title 2 of the Code of Federal Regulations (CFR), subtitle A, chapters I and II.<sup>2</sup> OMB indicates that it will be proposing revisions to these provisions in 2023 and anticipates publishing the final update by December. NTCA appreciates the opportunity to comment in this proceeding as federal agencies have determined that, in certain cases, recipients or sub-recipients of federal funds for the deployment of broadband services must comply with the requirements of 2 CFR.<sup>3</sup>

OMB identifies the following goals of the forthcoming revision:

- (1) Revise guidance to incorporate statutory requirements and administration priorities;
- (2) Revise guidance to reduce agency and recipient burden;
- (3) Clarify guidance by addressing sections that recipients or agencies have interpreted in different ways; and
- (4) Clarify guidance by rewriting applicable sections in plain English, improving flow, and addressing inconsistent terms of use.<sup>4</sup>

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<sup>1</sup> NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

<sup>2</sup> 88 FR 8480.

<sup>3</sup> See, e.g., Funding Opportunity Announcement and solicitation of Applications for the Rural eConnectivity Pilot Program (Reconnect Program), 84 FR 67913,67923 and Notice of Funding Opportunity for the Broadband Equity Access and Deployment (BEAD) Program. <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>

<sup>4</sup> 88 FR 8481.

Among other things, OMB requests that commenters identify specific sections of 2 CFR that: would benefit from revision to support the goal of reducing administrative burden, and/or have been interpreted differently by Federal agencies and recipients leading to inconsistent implementation of Federal financial assistance.<sup>5</sup>

Reform of federal policies relating to grants and cooperative agreements has been undertaken to “ensure the highest integrity in the financial management and operation of Federal programs and to strengthen accountability for Federal dollars by improving policies that protect against waste, fraud and abuse.”<sup>6</sup> At the same time, OMB has sought to minimize time spent complying with unnecessarily burdensome administrative requirements, and “re-orient recipients toward achieving program objectives.”<sup>7</sup> These same goals should inform OMB as it offers guidance to agencies and current or potential recipients considering recent awards made, or to be made, available.

There are sections in 2 CFR that may be useful to protect against waste, fraud and abuse in certain program/project grants, general operating grants and other funding programs of a continuing or unspecified nature, but that create unnecessary burdens or even insurmountable obstacles when applied to fixed awards with clearly defined deliverables or that are used for the one-time act of deploying or upgrading capital intensive infrastructure. OMB guidance should make it clear to administering Federal agencies and fund recipients that there is flexibility in the applicability of 2 CFR so that sections can be and should be waived for categories of awards, or

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<sup>5</sup> Id.

<sup>6</sup> OMB-2013-0001-0001

<sup>7</sup> Id.

interpreted and applied in a manner that upholds the intent of the rule section but does not create unnecessary burden in light of the particular nature of the award or contract in question.

As a timely and pertinent example, Federal funds have been made available or will soon become available through a variety of programs for the deployment of broadband to unserved and underserved locations. A significant portion of the funds from these fixed awards will ultimately help expand or upgrade existing networks and will be used by current providers to invest in materials and services to offer broadband according to narrowly defined criteria and within established deadlines. Potential applicability of certain sections of 2 CFR, including those regarding program income and the procurement process, are proving not only unnecessary and burdensome, but are creating barriers to companies who seek to participate in the programs and expand service in furtherance of underlying congressional and programmatic objectives.

To offer more specific examples,<sup>8</sup> Section 200.307 imposes certain restrictions on use of program income. Section (e)(2) provides that program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.

Application of this rule to fixed broadband awards is counterintuitive as the provider would also be contributing capital and must have the ability to reinvest profits into other parts of the network, in furtherance of the goals of the funding award and the ultimate delivery of better broadband service to consumers. Similarly, the revision of budget and program plans set forth within Section 200.308 are unnecessary for fixed awards. Prior approvals for things such as changes in key personnel, transfer of funds to other categories of expense or deviations from

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<sup>8</sup> The examples are offered for illustrative purposes only and do not, and are not intended to, represent a full list of sections of 2 CFR that are problematic and for which flexibility in their application should be advised.

budget are not issues that require governmental action when an award is for a fixed amount and for a specific purpose that will be subject to post-hoc verification and compliance obligations.

Strict application of the procurement requirements of 2 CFR are similarly counterintuitive for certain funding awards. Beginning at Section 200.318, these provisions require providers who are subgrantees in the BEAD program, for example, to submit an application to deploy broadband to households for a fixed amount, but then to conduct a secondary competitive procurement process after winning an award based on that bid for work that was identified and included in the fixed amount bid. The original bid upon which the award was predicated would at that point become meaningless – and, in today’s economic environment, almost certainly will result in the award “winner” paying more than originally estimated for the same work. Moreover, there is the real risk in light of today’s workforce and supply chain shortages that rebidding the project post-award will result in delays to commence broadband network construction or, in the worst cases, a complete inability to locate contractors or supplies needed to fulfill the terms of the award. None of these outcomes serves the congressional demand for broadband, and none represents an efficient economic result.

Likewise, Section 200.320 requires awardees generally to obtain competing proposals for goods and services, but its application is illogical for fixed amount contracts that seek to build upon and leverage existing assets and systems used to operate broadband networks. There are limited suppliers of broadband equipment, and equipment from new manufacturers may not be able to be integrated with an existing network. Broadband providers also have existing relationships with vendors, network engineers, and consultants that contemplate a continuing relationship to deliver service on an ongoing basis. The more complicated procurement process

affords no cost savings in this circumstance, but would in fact raise cost, delay builds, and introduce uncertainty and administrative burden.

Other aspects of 2 CFR may also warrant examination by expert agencies in the context of their unique programs, and these agencies should be given flexibility to adjust and adapt the requirements of these provisions as necessary to advance and fulfill their mission while reasonably balancing concerns about accountability and potential waste. The OMB should conduct this review with the goal of re-orienting funding programs toward program objectives and each agency's expertise and experience with serving those objectives, rather than rigid application of potentially burdensome and unnecessary regulations. It should not only confirm to Federal agencies and fund recipients that there is flexibility in the application of 2 CFR, but also that they possess and should exercise their authority to waive certain provisions or adjust them if application thwarts the goals of the program or would add administrative delay, cost or uncertainty without a corresponding demonstrable benefit. In short, OMB should make clear to Federal agencies and other administering bodies that thoughtful analysis and conscious decision-making should be used in administering the provisions of 2 CFR, such that specific sections within this title will be applied when deemed necessary and appropriate to achieve a proper balance between program goals and accountability in lieu of unyielding adherence to the entirety of 2 CFR in each instance.

Respectfully submitted,



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