FAQs and Comments re: Rules

Updated as of October 13, 2015

Thank you for your comments on GATA. Many of your questions are very timely as they pertain to the Implementation phase of GATA, which has recently started. All of your questions and comments were distributed to the appropriate subcommittees and workgroups and the GATA steering committee.

Based on the work completed to date, here is some background information in relation to your comments.

Please also note that a number of reviewers pointed out grammatical errors on the part of the federal government in certain parts of the 2cfr200. We are not making requests to the federal government for these errors at this point in time.

	Rule Reference	Questions / Comments	Answers
1.	[30 ILCS 708/55(b)]	The State Board of Education is starting the process of preparing our rules (44 IAC 7200) to incorporate your rules thereby incorporating UR 200. GATA requires that your unit review and approve any rulemakings proposed by State agencies [30 ILCS 708/55(b)]. Would you be so kind, please, as to provide me with information about how to request that review and the process to be used?	
2.	§200.308 Revision of budget and program plans (e) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent or $1,000 per detail line item, whichever is greater of the total budget as last	Comment: The placement of the phrase "or $1,000 per detail line item" between the phrases "10 percent" and "of the total budget" would create ambiguity because ''per detail line item" has no direct relationship to the "total". Suggestion1: Move the phrase: . . .exceeds or is expected to exceed "$1,000 per detail line item or" 10% percent of the total budget as last . . . . Suggestion2: Move the phrase: . . .exceeds or is expected to exceed 10% percent of the total budget "or $1,000 per detail line item" as last .	The Budget language did contain an error, thank you for pointing this out. It should have stated …the cumulative amount of such transfers exceeds or is expected to exceed 10 percent per detail line item or $1,000, whichever is greater of the budget as last approved by the Federal awarding agency.

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	approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.		
3	Section 200.205, paragraph (c) *In evaluating risks posed by applicants, the Federal awarding agency ~~may~~ must use a risk-based approach and ~~may consider any items such as the following:~~ at a minimum use the following criteria:* *Financial stability;* *Quality of management systems and ability to meet the management standards prescribed in this part;* *History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and*	How is financial stability to be defined or determined?	Financial Stability is defined in a multitude of ways and perspective. 2 CFR 200 does not include a definition of Financial Stability. It tends to be more of what is instability This does pose a quandary in the Illinois due to the late payment as well as the budget stalemate that we are currently facing. The group is looking at using a commercial vendor to supply Financial condition information, however we have agreed that it would not be fair to penalize our grantees due to situations that are not created by their actions. This is being discussed and is part of the implementation phase currently being conducted. We will pass your comments on to the group.
		How is the quality of management systems to be defined or determined?	The quality of management systems requires the ability to comply with the requirements in 200.300

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	conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards; *Reports and findings from audits performed under Subpart F – Audit Requirements of this part of the reports and findings of any other available audits; and* *The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.*	By whom, where, and how is the history of performance maintained? Without a common or standard grant in-take process and mechanism and subsequent grant management system for establishing and tracking grant reporting requirements and compliance thereto, how can one Federal awarding agency accurately determine an applicant's history of performance? Are Federal awarding agencies sharing recipient's audit information, findings, and non-compliance?	The history of performance is envisioned to be stored electronically for the use of and to be shared by all grant making agencies. We are going to have a standard process for the registration and Pre-Qualification as described below: Our vision in the Pre-Qualification group: Level One • Require all grantees to register on the grantee portal • Determine if the grantee is eligible to apply for a state grant – e.g. if the grantee is included in the Debarred or Suspended (show stopper) • Determine if the grantee meets all other requirements – i.e. has a current DUNS number, is in good standing with the Secretary of State, etc (need to meet requirements before proceeding) Level Two • We are separating the review of the risk posed by the applicant into two areas • fiscal and administrative would be done once centrally in Pre-Qualification • Programmatic risk completed in the application – due to the programmatic risk being tied directly to the program in which they are applying
4.	Section 200.205, paragraph (d) *In addition to this review, the Federal awarding agency must comply with the guidelines on government wide suspension and debarment in 2 CFR*	It is my understanding that SAM verifies against the Secretary of State filing status for the domestic incorporation of the registering entity. Does SAM verify good standing with any other State tracking source, such as the Illinois Attorney General's Charitable Trust database or any other State or Federal awarding agency's internal database(s) of noncompliant recipients? Should these other external	

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	part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.	and internal sources also restrict Federal awards, subawards and contracts with those parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities, notwithstanding the appeals process noted within Section 200.204?	
5.	The DOL exceptions to the Uniform Guidance (at 2 CFR 2900) make the Uniform Guidance applicable to for-profit and foreign entities receiving DOL funds. Some for-profit entities may obtain single audits, not program-specific audits.	Many federal agencies have exceptions to the Uniform Guidance. DOL, for example, requires expenditures to be reported on the accrual basis, whereas the Uniform Guidance does not require this. However, if the funds are DOL funds, our grant agreements would reference the DOL exceptions to the Uniform Guidance, so that may not be an issue.	We agree that some Federal agencies have granted exceptions to many of the requirements including the Single Audit. One of the reasons that "For profit" entities are not subject to the Single Audit is due to the size and complexity of their operations and their Financial Statements. The cost the Federal Government would incur for the financial statement portion of the audit would outweigh the benefit. Therefore a program audit is limited to the programmatic financial statements.
6.	The Uniform Guidance allows states to follow their own procurement policies. The Illinois Procurement Code allows IGAs between state agencies and grants (when the purpose of the award is not to procure an end product for the direct benefit or use of the state agency	Some state agencies may have grant conditions and terms that are more restrictive than those in the Uniform Guidance. For example, DCEO's grant agreements have the following provisions: • DCEO requires that advances of grant funds be kept in an interest-bearing account. The Uniform Guidance has the same requirement, but it allows for exceptions. • DCEO requires bonding for all staff handling cash in the amount of the higher of $100,000 or the largest cash draw. There is no similar requirement in the federal regulations	GATA will automatically accept all Federal exceptions to the rules and under the Act is required to have a process in place for State grant making agencies to request exceptions for state grants. The objectives to GATA is to have a uniform process to remove redundancies and lessen the administrative burden while allowing flexibility for unique and specific grant requirements imposed by state and federal statutes and regulations. Each State grant making agency has been assigned to review the federal exceptions to the grants and provide those to the

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	making the grant) to be made without procurement. It is not clear if this will change under GATA. If we are adopting the funding opportunities and other rules that apply to federal agencies, it suggests that it might.		Grant Accountability and Transparency Unit. The Grant Agreement Subcommittee is working on a Uniform Grant Agreement, they are also charged with reviewing the same issues with the IGAs.
7.	Audit Requirements (Section 200.501) (h)(2)(i)(2) and (3) state that the audit is to be "paid for and arranged by the pass-through entity."	Does this refer to the state agency that is passing federal funds through to a grantee, a grantee passing state or federal funds through to a sub-grantee, or both? Please clarify this.	The section you are referring to "…state that the audit is to be "paid for and arranged by the pass-through entity." Are in regard to the "Agreed Upon Procedures" audit only. The Financial Statement Audit can be charged via indirect cost and the Single Audit is allowed as a direct cost of the grant (s) must be arranged and paid for by the auditee (awardee entity). The only other audit that is allowed to be charged to the award (grant) is the Agreed Upon Procedures Audit. Paid for and arranged by" covers all pass-through entities, including the State passing through funds to sub awardees, and sub awardees passing through funds to a 2nd tier sub awardees and so on.
8.	Audit Requirements (Section 200.501) (h)(2)(i)(2) and (3) refer to subrecipients that "are deemed to be high risk."	While the proposed Section 200.205 itemizes the minimum criteria to examine when determining risk, I was not able to locate a procedure for assigning a level of risk.	The process of assigning a level of risk is being determined in the Implementation phase. As you know, we are required under the Uniform guidance to assess the risk posed by the applicant. The rules in section .207 require the pass-through awarding entity to notify the applicant as to (1) the nature of the additional requirements; (2) the reason why the additional requirements are being imposed; (3) the nature of the action needed to remove the additional requirements;

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			(4) the time allowed for completing the actions (if applicable); (5) the method for requesting reconsideration of the additional requirements imposed; and any special conditions must be promptly removed once the conditions that prompted them have been corrected.
		If agencies may be determined to be at "high risk," does this imply that agencies may also be determined to be at "medium risk" or "low risk"?	Based on the work completed in both the Pre-qualification workgroup (address fiscal and administrative risk) and Programmatic Risk workgroup it is the intention to rate grantee applicants as low, medium and high risk based on the minimum criteria set forth in section .205.
		Is there a process by which an agency can appeal the determination of risk?	The current vision is to complete the financial and administrative risk assessment as part of the grantee registration that will be conducted once and all of the grant making agencies will rely on the risk assessment.
		How and when will agencies be notified of their risk status? Should this determination be made before an RFP is issued?	The grantee will be notified of the outcome of the risk assessment at the completion of the pre-qualification stage in accordance with the rules stated above in 200.207. The programmatic risk will be completed as part of the grant application process. The grantee will be notified once of the programmatic risk as part of the application process award notice and prior to signing the grant agreement
		Would this be grounds for the appeal or protest of an award decision?	The Subcommittee felt the appeal process was already in place based on (3) and (5) above, however, your comments will be passed on in the deliberations during the implementation phase.