THE UNIFORM GUIDANCE SERIES

2 CFR PART 200

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How to Implement OMB's Uniform Guidance – A Major Research University's Plan

By Sara Bible

Now that the Office of Management and Budget (OMB) has issued the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance) (2 CFR Chapter I, Chapter II, Part 200, et al.), institutions will need to interpret the guidance, review and revise policies, procedures and training for implementation in December of 2014. The regulatory reforms are sweeping in that they include, but are not limited to operational areas from pre and post Federal award requirements to cost principles, and audit requirements. While OMB combined eight circulars into one document, for higher educational institutions, the Grant Reform effort replaces OMB Circulars A-21, A-110 and A-133.

Revising policies, procedures and training for all of these areas in less than one year is an enormous charge for institutions. An effective first step is to thoroughly review the Uniform Guidance to understand what has changed. A short cut to understanding what has changed is to read the Major Policy Reforms section in the Summary, as it will help institutions to understand the intent of OMB and the Council on Financial Assistance Reform (COFAR) for the changes in a variety of sections. Then refer to the applicable section for the full text. COFAR webinars and FAQs will provide additional information about the regulations and their appropriate implementation. The Council of Governmental Relations (COGR) is also issuing "first looks" that summarize the regulatory change and whether the outlook of the change is positive or negative for its constituent institutions. It will be critical to work with COGR, FDP and NCURA colleagues to interpret the new regulations and implement effective policies and procedures.

The regulatory changes are so comprehensive that an "all hands on deck" mentality will be needed for successful and timely implementation of revised policies, procedures and training. Several years ago Stanford assembled a group of school and central administrators to proactively review and consider changes to current policies and to review regulatory changes, consider their impact on the research community and implement compliant solutions. The focus is on compliance while minimizing the burden on faculty and administrators. The Research Policy Working Group (RPWG) meets on a monthly basis and will be vital in Stanford's implementation of the Uniform Guidance. Stanford's Director of Training and Communication is a key member of the RPWG and aids the process by challenging the group to write policies that are clear and concise, and that both initial and ongoing training needs are thoughtfully considered and developed throughout the process. The RPWG members that are school representatives take the draft policies and implementation plans back to their faculty and staff for a "road test" to see if they are understandable and can be reasonably implemented. It is critical to obtain input from faculty and administrators on the implications of potential changes in policies and procedures before they are finalized to ensure a smooth and compliant implementation. This method has proved to be successful at Stanford for the past two decades. The extra time spent with the community prior to issuing the policy pays off when the policy is promulgated. Stanford's faculty leadership and the RPWG are poised to take on the responsibility of implementing the regulatory changes within the Uniform Guidance.

Stanford has developed a matrix of the regulatory changes that includes the following:

- ✓ A-21, A-110, or A-133 section
- ✓ Uniform Guidance section
- ✓ Current Stanford policy
- ✓ Staff member responsible for initial edits to current policy

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Editor's Note: A Top-100 research institution sent this initial list of concerns in terms of implementing its plan for The Final Guidance.

Subpart B – General Provisions:

§200.112 Conflict of Interest: This requires reporting COIs back to Federal Agencies. The Agencies must develop their own COI policies, which will most likely vary by agency.

Subpart D – Post-Award:

§200.303 Internal Controls: Given the importance of this section throughout the guidance, but in relation to §200.430(i) below in particular, institutional review of the best practices in the "G*reen Book*" issued by the Comptroller General of the U.S, and also the *"Internal Control Integrated Framework"* issued by COSO, will become essential.

§200.308(c)(5), §200.68 and §200.75 Participant Support Costs (PSCs): These three sections combine to make PSCs an explicit exclusion from MTDC, and a "protected category" in approved budgets (i.e. re-budgeting approved PSCs to other direct costs will require prior approval, as has been the case with NSF).

§200.331 Requirements for pass-through entities: The list of "must" items for subrecipient monitoring is very important to review closely.

Subpart E – Cost Principles:

§200.413(c) Direct Costs: This provides a 4-point test for charging clerical & administrative salaries as direct costs. They must be: integral, specifically identified, explicitly-budgeted or prior-approved, and not also recovered as IDCs.

§200.430 Compensation—Personal Services: Definitions of IBS, Intra-Institution of Higher Education (IHE) Consulting, and Extra Service Pay may have implications for institutional excess compensation policies.

§200.430(i) Standards for Documentation of Personnel Expenses: Deletion of the specific effort certification examples from A-21 raises possibilities for alternate streamlined payroll certification systems in compliance with the provision of this section. ("Charges to Federal awards for salaries and wages must be based on records that accurately reflect the *work performed* … supported by a system of *internal control* which provides reasonable assurance that the charges are accurate, allowable, and properly allocated and *reasonably reflect the total activity* for which the employee is compensated").

§200.431(i) Fringe Benefits: This section could create significant change in accounting for unused accrued leave "when a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment *are allowable as indirect costs* in the year of payment."

§200.453(c) Costs of computing devices: Charging of computing devices as direct costs is allowable for devices that are *essential* and *allocable*, but *not solely dedicated*, to the performance of a Federal award.

§200.415 Required certifications: Adds a new layer of False Claims Act related certifications for annual and final fiscal reports or vouchers subjecting the certifier to potential penalties if done incorrectly. Please note the certification must be signed by an official who is authorized to legally bind the nonfederal entity.

✓ Impact to research community

✓ Implementation Issues

The matrix will be used and updated beginning in the exploratory stages of the review and interpretation of the regulatory reforms and through the policy development, training and implementation phases. With a long list of changes in regulatory requirements it will be important to prioritize what policies need to be addressed early in the process as some of the regulatory changes may require changes to the chart of accounts or accounting systems.

The Federal awarding agencies are required to submit drafts of their implementing regulations to OMB by June 2014. Stanford will take the various new implementing regulations into account as its policies, procedures and training are developed and promulgated.

Fall 2014 will be spent training research administrators on the regulatory changes and revised policies and procedures. Stanford will hold "Road Shows" for schools, departments, and central administrative units. Faculty Forums that condense the information to what is critical for faculty to understand will be held. Based on the feedback received at the various Road Shows, FAQs will be developed and published to provide additional clarification and guidance. Road Shows will continue into winter 2015 in order to address potential issues that are encountered as the regulatory changes and policies are implemented. The RPWG will be essential in bringing implementation issues to the forefront so that they can be resolved.

Stanford, like other institutions of higher education will continue to look to COFAR, COGR, FDP and NCURA for further guidance in the implementation of OMB's Uniform Guidance.

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Focus:
Administrative Requirements

By Michael R. Ludwig

"To deliver on the promise of a 21st Century government that is more efficient, effective and transparent, the Office of Management and Budget (OMB) is streamlining the Federal government's guidance on Administrative Requirements, Cost Principles and Audit Requirements for Federal awards."

This is the opening statement of the Uniform Guidance and summarizes nicely the challenge all of us involved in Federal grant administration (awarding agencies, recipients, and auditing organizations) have in front of us with the opportunity to implement the most comprehensive effort ever to improve processes to apply for, obtain, and manage Federal awards. I have had the opportunity to meet a few times with OMB staff and members of the COFAR Working Group, who are responsible for writing the Uniform Guidance throughout this process, and I am confident that the summary statement reflects the good intentions of these people to make things better. We owe them a big thank you for the monumental effort that went into developing the Uniform Guidance. We also owe it to the researchers we support to keep in mind these principles of efficiency, effectiveness, and transparency as we plan for and implement resulting changes within our institutions. I encourage you to involve faculty researchers as you consider change and look for opportunities to streamline processes and systems that support those researchers' efforts. How we implement these changes at the operational level will have a major impact on the success of reaching the goals of efficiency, effectiveness, and transparency. The remainder of this article focuses on Subparts B, C, and D of the Uniform Guidance (excluding the Procurement and Subrecipient Monitoring sections of Subpart D as those will be covered in subsequent articles) and highlights sections of interest to consider in your implementation planning.

There are a number of sections in Subparts B, C, and D where the impact will be dependent upon the awarding agency implementation of the Guidance. A good example of that is Conflict of interest (200.112). The Uniform Guidance only specifies that the awarding agencies must establish conflict of interest policies and that the recipients must disclose, in writing, potential conflicts of interest. The degree to which this is implemented consistently across awarding agencies and the manner in which it is implemented (think disclosures associated with each proposal versus awards only) will have a major impact on efficiency and effectiveness of the implementation of this requirement.

Another area to keep a watchful eye on is the implementation plans for performance measurement (200.301). This section requires the use of OMB-approved standard forms of which we already have the SF 425 for financial reporting and the RPPR for progress reporting. The definition of Performance goal (200.76) provides additional clarity by identifying discretionary research awards as an example where submitting a technical report (i.e. the RPPR) is acceptable to meeting the requirement for performance measurement. However, section 200.301 continues with *"the Federal awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award."* The *"must"* statements in this section could lead to different interpretations of whether the current standard reporting formats are sufficient. OMB clearly recognizes the importance of consistent implementation of these regulations across Federal agencies and takes responsibility for reviewing the

agency implementations to ensure effective and efficient implementation (see OMB responsibilities 200.107).

The importance of strong internal controls is referenced throughout the Uniform Guidance. If internal controls over Federal funds and the documentation that goes with those processes haven't been reviewed or tested recently at your institution, consider having that completed before December. The Internal control section (200.303) provides three resource documents that may be helpful in evaluating internal controls. Be sure to also read Q III-4 in the Frequently Asked Questions released by COFAR on February 12, 2014, https://cfo.gov/wp-content/uploads/2013/01/2-C.F.R.-200-FAQs-2-12-2014.pdf The FAQ clarifies the purpose of the referenced documents as resources for best practices only.

Program income (200.307) has a significant change in store if not addressed in future FAQ releases. The definition of Program income (200.80) includes "license fees and royalties on patents and copyrights". This definition is consistent with the definition provided in A-110. However, A-110 included an exclusion that recipients were under no obligation to the Federal Government in regards to treating licensing/royalty revenue as program income unless the terms and conditions of the award stated otherwise. The Uniform Guidance has no such exclusion and therefore requires revenue generated from license fees and royalties during the period of performance of the award to be treated as program income. While the instances where this type of program income is generated will be few, we must prepare for the possibility. Coordination between post award units and technology transfer groups will be necessary to establish procedures to identify instances of applicability and to appropriately account for the income.

There are some clear positive outcomes for the recipient community from these Subparts:

Notices of funding opportunities (200.203) must be available for 60 days for most program announcements but no less than 30 days under a special determination by the awarding agency.

Cost sharing or matching (200.306) clarifies that voluntary committed cost sharing cannot be used as a factor in the merit review of applications unless specified in the notice of funding opportunity. This should prevent agencies from compelling institutions to include voluntary committed cost sharing in proposals. If cost sharing is to be considered in the merit review process, the funding announcement must clearly state the evaluation criteria that will be used. This section also clarifies that voluntary committed cost sharing that was not committed in the project budget does not need to be included in the organized research base for calculation of the F&A cost rate.

Revisions of budget and program plans (200.308) include a prior approval requirement for the *"disengagement from the project for more than three months, or a 25% reduction in time devoted to the project, by the project director."* This better reflects that project directors can be away from campus and remain engaged in the project at the proposed levels. Prior approval is only required in the event that disengagement from the project occurs during the absence.

Before I end, I want to encourage you to watch for an upcoming article in *NCURA Magazine* covering the changes to the equipment and procurement standards. I recommend reading those sections of the Uniform Guidance carefully. There are a number of changes that may require both process and system changes. If those changes do impact your organization, alert your property-accounting and purchasing staff quickly to assess the impact of the changes and prioritize IT resources if needed.

Stay informed of the COGR and FDP updates on the implementation of the Uniform Guidance and take advantage of the resources those organizations make available. There is a lot of work going on to assess and recommend best practice alternatives for universities and other research organizations. If we all do our part, we just might be able to stake a claim in the accomplishment of a 21st Century government that is more efficient, effective and transparent.

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References:

CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
http://www.ecfr.gov/cgi-bin/text-idx?SID=704835d27377ef5213a51c149de40cab&node=2:1.1.2.2.1&rgn=div5

Focus:
Cost Principles

By Dan Evon

Many hours of federal effort have resulted in new regulations, ostensibly designed to be more streamlined while maintaining excellent stewardship. This article will focus on the cost principles included in the new regulations. Let's begin with what we should call this new… document? Circular? Code? OMB Circular A-21 was easy. CFR Part 220 wasn't bad (basically A-21 in the Code of Federal Regulations). Both A-81 and the Super Circular had promise, but ultimately weren't adopted. Instead, we got 2 CFR Chapter I, Chapter II, Part 200. Say that in front of a group of faculty three times fast! Another popular term being used to describe these new requirements is "Uniform Guidance," because it serves as guidance to the federal agencies as they strive to release their implementing regulations by June 30, 2014. However, using the word "guidance" to describe administrative requirements runs the risk of diminishing their importance, both internally and externally. I grimace at the thought of using the word "guidance" to an auditor during a "discussion", especially since we treated A-21 as the foundation of our policies. For the sake of simplicity and the purposes of this article, I'll refer to them as the Uniform Administrative Requirements (UAR) and hope that someone comes up with a better name.

Where do you find costing principles in the UAR? They are in Subsection E, or the dot 400's. The .400 series follows a format similar to that of A-21, including groups for:

General Provisions (.400 - .401)

Basic Considerations (.402 - .411)

Direct and Indirect (.412 - .415)

Special Considerations (.416 - .419)

Selected Items of Costs (.420 - .475)

Because these new rules apply to other grantee types (State, Local, and Indian Tribal Governments, non-profits), it is important to look for those provisions that apply to specific grantee types. For example, we should look for those referenced as IHE's (Institutions of Higher Education).

Most of the costing sections of the UAR become effective for awards and amendments on or after December 26, 2014, although early adoptions of entity-wide system changes are possible.

Now that the basics are covered, let us look at what has changed in the 23 pages of Federal Register print. With help from the Council on Governmental Relations (COGR) Costing Committee, here are some of the interesting items that you might consider as you develop your implementation strategies:

.400 Policy – Still has language in part (d) that says we shouldn't have to have significant changes to our internal accounting policies and practices; and language in part (f) regarding the dual role of students; and a new part (g) that prohibits profit;

.401 Application – Part (a) suggests the UAR should be used as a guide in pricing for fixed-price proposals, with part (3) excluding fixed amount awards from their application

.403 Allowability – this section does not appear to have changed, although the language in part (c) could be interpreted as more encompassing of all policies

.404 Reasonable – has a new part about geographic area in (b)

.405 Allocable costs – has a lot about donated services, and does continue the favorable language about equipment use when no longer needed by the project

.413 Direct costs – continues to include language regarding extraordinary utility consumption, and a new part (c) regarding the direct charging of administrative and clerical salaries in certain circumstances

.414 Indirect (F&A) Costs – this is likely to be the subject of a future article, but does include language in part (c) to suggest federal agencies should use our approved F&A rates; a new de minimis rate of 10% MTDC for subcontractors in part (f); and a possible one-time extension of rates in part (g)

.415 Required Certifications – has been significantly enhanced (and might reflect the actual mood of the audit community regarding administrative streamlining)

.418 Costs incurred by state and local governments – still allowable with a cost allocation plan

.419 Cost accounting standards – yes the DS-2 is still required, but there is now a 6 month window for requests for modification to be acted upon (or extended)

.430 Compensation – this section has been restructured and needs to be studied. This is where the effort reporting/payroll certification requirements exist and will be the topic of a future article.

.431 Fringe Benefits – like .430, this section requires a detailed review. However part (b)(3)(i) payments for unused leave at termination or retirement will cause some institutions to change their systems and/or procedures.

.432 Conferences – includes new language regarding dependent care

.433 Contingencies – Includes new language recognizing its allowability for certain construction projects

.436 Depreciation – has new language regarding depreciating and cost sharing that may have F&A implications

.440 Exchange rates – is new and contains a requirement for prior approval if it increases costs, even if it doesn't increase the Federal share of costs

.442 Fund raising and investment management costs – now allows for some costs of physical custody and control of money

.453 Materials and supplies – now includes computing devices in prescribed circumstances

.456 Participant support costs – is new and is now excluded from MTDC

.461 Publication – includes new language recognizing t he cost of publications at the end date

.463 Recruiting – now explicitly allows short term visa costs

.470 Taxes – now includes a part (c) to address Value Added Taxes

.474 Travel – includes new language at part (b)(1) …is necessary to the federal award. Hopefully "necessary" will be converted/interpreted to "benefits" in agency regulation

While not directly included in the cost principles, the UAR uses the term "internal control" 103 times. It also references an "internal control integrated framework" issued by the Committee of Sponsoring Organizations (COSO) that needs to be monitored, or clarified by OMB FAQ or agency regulations.

Hopefully this article has piqued your interest in reviewing the UAR, comparing it to your current policies, and then planning communication and implementation strategies at your institution. While it is important to get in front of new regulations, much of the implementing details will be contingent on how each federal agency incorporates the UAR into their individual agency regulations. Over the next several months be watchful for opportunities to learn more about the UAR, including reading the full UAR; OMB FAQ's; agency regulations; NCURA, COGR, and FDP resources; and other training opportunities.

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Focus:
Implications for Researchers

By Susan Sedwick

Santa Claus came late in 2014 as the Office of Management and Budget (OMB) published its final guidance entitled *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*" (Uniform Guidance) in the Federal Register. The Uniform Guidance which can be found in Title 2 Part 200 of the Code of Federal Regulations (2 CFR 200) combines the requirements of eight longstanding OMB circulars including A-21 *Cost Principles for Educational Institutions*, A-110 *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,* and A-133 *Audits of States, Local Governments and Non-Profit Organizations*.

The Committee on Financial Assistance Reform (CoFAR) undertook this insurmountable task with the intention of (1) streamlining processes associated with the awarding of federal funding, (2) easing the administrative burden on grant applicants and recipients and (3) to reduce the risk of waste, fraud and abuse. The Uniform Guidance will be effective one year from its publication on December 26, 2014. Research administrators are busy analyzing the Uniform Guidance and assessing whether the revised principles will require changes to institutional policies, procedures and practices. While NSF has published, for comment, its implementation plan, it is anticipated that most other agencies will not follow suit and the implementation plans will be issued on or before December 26 as Interim Final Guidance. Institutions cannot wait for these plans to inform their own institutional implementations.

The FDP Faulty Workload Survey II affirmed that federally-funded principal investigators are still spending 42% of their research time on administrative tasks associated with their federal awards. Time will tell if the Uniform Guidance will offer any demonstrable relief or, in some cases, exacerbate the burden. However, some changes will clearly have a direct impact on principal investigators and it is not too soon to start that dialogue on your campus. The following sections of the Uniform Guidance contain deviations from prior OMB circular requirements and should be considered for closer review and discussion with researchers.

- **§200.203 Notices of funding opportunities** Funding Opportunity Announcements must be published in a standard format and made available for a minimum of 60 days prior to the deadline for application except as required by statute or in exigent circumstances in which case a minimum availability of 30 days applies.
- **§200.206 Standard application requirements** Application forms must be pre-approved by OMB.
- **§200.210 Information contained in a Federal award** The format, terms and conditions, and elements of Federal awards are prescribed and include the requirement for the inclusion of a Federal Award Identification Number (FAIN).
- **§200.301 Performance measurement** The guidance requires the use of OMB-approved government-wide standard information collection when providing financial and performance information. We assume the latter will be the Research Performance Progress Report (RPPR) for technical reporting.
- **§200.306 Cost sharing or matching** The NSF model is adopted for all agencies in that voluntary committed cost sharing is not expected and may not normally be considered in the review of research proposals unless statutorily required.
- **§200.307 Program income** While the definition of Program Income remains unchanged, the Uniform Guidance omitted an exclusion for licensing/royalty income at institutions of higher education putting the definition in conflict with the Bayh-Dole Act. A clarification or correction by OMB will be requested by COGR.
- **§200.308 Revision of budget and program plans** The sponsor must be notified of the "disengagement" by the principal investigator/project director for more than three months. The prior requirement called for notice for the "absence".
- **§200.317 - .326 Procurement Standards** State or local geographical preferences for procurement are allowable only for States but not for state supported institutions of higher education. Requirements

for competition in procurement actions under Federal awards for purchases exceeding $3000 could result in significant delays for purchasing materials and supplies particularly using procurement cards. COGR is seeking clarifications regarding these requirements.

- **§200.330 - .332 Subrecipient monitoring and management** These sections contain some of the most onerous revisions to the Federal requirements including the documentation that performance reports from subrecipients were received and were related to invoices, decision was made to categorize transaction mechanisms as subawards versus vendor agreements, Facilities and Administrative Costs rate agreements must be honored and subrecipients without a Federally negotiated rate are afforded a 10% rate calculated on Modified Total Direct Costs (MTDC).
- **§200.332 Fixed amount subawards** In an effort to reduce administrative burden, fixed amount awards are encouraged but limited to cumulative funding not to exceed the Single Acquisition Threshold (currently $150,000) and cannot be used if cost sharing is applicable. **§200.201 Use of grant agreements** and **200.400 Policy guide** prohibit the realization of an increment above actual costs. It is unclear whether this applies solely to "profit" motives or to reasonable residual balances.
- **§200.343 Closeout** Federal agencies are required to close out awards within one year of receipt and acceptance of all required final reports.
- **§200.413 Direct Costs** This section has some very favorable revisions including criteria for charging administrative and clerical salaries as direct costs (services must be integral to the project, specifically justified by the non-Federal recipient, and approved in writing by the sponsor or identified in the awarded budget, and for costs not included in the F&A rate calculation).
- **§200.414 Indirect (F&A) costs All** Federal awarding agencies must accept negotiated rates.
- **§200.415 Required certifications** The Uniform Guidance requires a certification by an authorized official of all financial reports. Certifications that are found to be false or fraudulent may result in criminal, civil and administrative penalties. It is unclear how these certifications will be effected but PIs can assume that authorized officials making these certifications will require assurances by principal investigators.
- **20§0.430 Compensation - personal services** While neither any specific examples nor the terms "effort reporting" or "certification" are mentioned in this section of the Uniform Guidance, after-the-fact validation that the labor distribution is accurate, allowable and properly allocated is still required. Personnel charges that are not confirmed through the use of time cards must still be based on a percentage distribution of total Institutional Base Salary i.e. "effort". This section provides clarification and flexibility for when protocol related costs are allowable as direct costs.
- **§200.432 Conferences** Dependent care during conferences associated with dissemination of research results are allowable as a direct cost but must be treated consistently across all funding sources.
- **§200.440 Exchange rates** Prior agency approval is required for cost increases resulting from fluctuations in exchange rates.
- **§200.453 Materials and supplies costs including costs of computing devices** Computing devices as defined in **§200.20** are allowable as direct costs provided essential and allocable but not solely dedicated to the performance of the project.
- **§200.461 Publication and printing costs** Publication costs for work supported by the Federal government are allowable after the award end date but prior to closeout (See **§200.343 Closeout**).
- **§200.456 Participant support costs** These costs are allowable with prior approval but as defined in **§200.75**, are limited to exclusion from MTDC to conference and training grants.

The Council on Governmental Relations (COGR) has taken on the monumental task of reviewing the Uniform Guidance and has issued its *COGR Guide to the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.* Periodic updates will be made as COGR's ongoing dialogue with OMB and the Federal agencies, and OMB's additions to its Frequently Asked Questions (FAQs) render clarity. The Federal Demonstration Partnership is also actively seeking opportunities to partner with the Federal agencies to gather data or pursue pilot demonstrations that might provide substantive evidence of the impact on administrative burden for researchers. Readers are encouraged to seek guidance from both COGR and FDP through their public websites.

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Focus:

Property and Procurement Standards

By Erin Fay and Carla Helm

With the current focus on effective stewardship of public monies, the federal government's effort to streamline guidance on administrative requirements, cost principles and audit requirements for federal awards in the form of the new Uniform Guidance will result in some improvements that benefit academic research. However, the new property and procurement requirements in the Guidance may place unintentional, additional burdens on researchers and administrators. It will be important to work collaboratively with COFAR to clarify these areas of concern and to bring the Property and Procurement professionals on your campus into the conversation promptly.

A guiding principle of the new Uniform Guidance is the focus on performance in addition to accountability. In support of this principle, the Property and Procurement Standards sections of the Guidance recommend, or in some cases, require the use of recognized best practices. The new Guidance has been derived largely from OMB Circular A-110 or Circular A-102. The discussion below focuses on those areas of the Guidance which are *requirements.* Requirements are indicated in the Guidance by the use of the term "must", whereas the term "should" is used when the guidance is recommended, but not required.

Although the Guidance is based on established best practices, and much of it is carried forward from the former Circular A-110, some concerns exist. The rules in Circular A-110 were less prescriptive, therefore the new rules may require additional effort on the part of the entity if existing processes don't match the new requirements, and some may require system changes in addition to procedural changes.

Several highlights of the new Guidance, either new or changed from the previous rules in A-110, are discussed below:

Property Standards

Real Property (200.311)

This section explicitly states that title will vest upon acquisition in the non-Federal entity ((a) Title)) and that property only be used for its original purpose unless permission is provided ((b) Use). Language was also added allowing net proceeds from disposition to be used as an offset to the cost of the replacement property ((c)(1)), if the original property is acquired with the same award as the replacement property.

Federally-Owned and Exempt Property (200.312)

This section had one significant wording change (c) and now states that "Absent statutory authority and specific terms and conditions of the Federal award, title to exempt federally-owned property acquired under the Federal award remains with the Federal government." Previously, A-110 stated that "Should a Federal awarding agency not establish conditions title to the exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government."

Equipment (200.313)

This section, arguably, had the most change of the Property Standards. The following new or subtle changes in terminology between the old A-110, section .34 and the new Uniform Guidance have caught the attention of the university community, Council on Governmental Relations (COGR) and Federal Demonstration Partnership (FDP). We hope for additional clarification regarding these items via a COFAR clarification or FAQ:

> The term "conditional title" has been added to section (a) Title. It now states "Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorized the Federal agency to vest title in the non-Federal entity without further obligation to the Federal government, and the Federal agency elects to do so, the title must be a conditional title." It is unclear at this point if this is a new term that has new meaning or if it is a term that has always been effective, just not explicitly used in A-110.

Section (d) Management requirements added that property records include the Federal Award Identification Number (FAIN). Uniform Guidance now states "Property records must…include… the source of funding for the property (including the Federal Award Identification Number - FAIN)". This wording change has the potential to require institutions make changes to their inventory systems to capture this data.

Section (d) also had had a minor wording change that also in unclear to its meaning. "Property records must include…percentage of Federal participation in the project costs for the Federal award under which the property was acquired" is slightly different from the previous A-110 language that simply stated "Information from which one can calculate the percentage of Federal participation in the cost of the equipment…" If percentage is required to be housed in property records, institutions may have to make changes to their inventory systems to calculate and capture that percentage systematically.

Section (d) (1) now states that property records must include "use and condition of the property." The "use" component is new and may require institutions to make systems changes to comply, depending on how "use" is defined.

Additional changes to this section include the addition of the term "vest upon acquisition" and three specific conditions:

1. Use the equipment for the authorized purposes of the project until funding ceases, or until no longer needed for purposes of the project.

2. Not encumber the property without approval of the awarding agency or pass-through entity.

3. Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

Section (b) also had the addition of "A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section."

Section (e) (1) provides clarification by stating "equipment with a FMV $5,000 or less may be retained, sold or otherwise disposed of with no further obligation" and (e) (4) adds clarifying language stating "In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions."

Procurement Standards

The Uniform Guidance contains a number of changes to the procurement standards, which are outlined below:

General Procurement Standards (200.318)

Section 200.318 (b) requires that the entity have adequate oversight of contracts to ensure that contractors comply with contract requirements. It is not required that the entity have a contract management *system*, however they must have processes and procedures to adequately manage and maintain oversight of contracts. This change is less prescriptive than the past A-110 rule which required a system for contract management.

A written code of conduct is required to address organizational conflicts of interest in procurement activities in Section 200.318 (c) (2) if an entity has a parent, affiliate, or subsidiary organization. The new guidance strengthens the language to require a code of conduct for organizational conflicts as well as individual conflicts.

Maintenance of adequate records detailing the history of the procurement is required in Section 200.318 (i) adding several new and arguably unclear requirements including the rationale for the method of procurement and the basis for contract price. There is no dollar threshold expressed in this section. Formerly, A-110 simply required record keeping for purchases over $25,000 and it is unclear whether this same threshold applies. The record keeping requirements in section 200.318 (i) could add significant administrative burden, particularly if the threshold is lower than $25,000.

Competition (200.319)

A new requirement that may impact an institution's processes is the prohibition of using state or local geographic preferences, which is currently a requirement for many state institutions of higher education which are subject to state procurement rules.

Methods of Procurement (200.320)

The $3,000 micro purchase limit is lower than many organizations' existing limit for Procurement Card and other small purchase processes. In addition to the process and system changes, this requirement could pose change management challenges for faculty and staff who may be accustomed to higher dollar thresholds based on state or institutional limits. It will be important to engage early with campus stakeholders on this change, and to track the additional burden this requirement may place on organizations.

Five procurement methods are authorized in Section 200.320 (a) through (f) – note (e) was accidently excluded as a typographical error: (1) small dollar purchases, (2) informal competition, (3) formal, advertised sealed bids, (4) competitive proposals, and (5) sole source procurements. A-110 did not identify these five specific methods, nor were there prescriptive rules around procurement methodology. For example, Section 200.323 (a) includes a new requirement to "make independent estimates before receiving bids or proposals". The process for meeting this requirement is unclear, and there is no further guidance regarding this requirement. Section 200.323 (b) requires profit to be negotiated as a separate element on *all* sole source procurements. This implies that the requirement applies to all sole source orders above $3,000. This could cause significant delays to the ordering process and ultimately to the timely receipt of goods and services by researchers, as this was not required in the past; simply that some form of cost/price analysis be performed.

Contract Provisions (Appendix II)

Your institution's grant terms and conditions which apply to contractors (formerly called vendors) and are attached to contracts, will require revision to reflect the updated "Contract Provisions for Non-Federal Entity Contracts under Federal Awards" (Appendix II to Part 200). Many of the same provisions have been carried forward from the A-110, but note that four new contract provisions are required: (A) remedies for breach of contract terms, (B) termination for cause and convenience, (K) procurement of Recovered Materials (200.322), and (H) mandatory standards and policies relating to energy efficiency.

COGR and others are seeking clarification from COFAR on some of these requirements. Stay informed of updates on these clarifications by checking the COFAR website frequently, and keep current with the other relevant professional associations that your institution belongs to, as they may have articles and webcasts on the Uniform Guidance. Also consider engaging with your internal teams as appropriate, to assist with interpreting how the new requirements may intersect with existing institutional, local or state rules.

If you haven't already, start preparing for the changes by working with your process partners and stakeholders, in order to make the transition to the new rules as seamless and efficient as possible for your faculty and staff. **If staff and leaders on your campus responsible for Property and Procurement are not already aware of and involved in the discussion of the new Uniform Guidance, share this article and get the conversation started today!**

Finally, watch for upcoming articles in the *NCURA Magazine* covering effort reporting and F&A rate implications. Both sections of Uniform Guidance are likely to impact most of our institution's practices, policies and potentially our systems.

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Focus:
Indirect (F&A) Cost Rates

By Cynthia Hope

For those of you who never stopped using the term "Indirect Cost", you are in luck! The Uniform Guidance (UG) has generally gone back to that terminology, using "Facilities and Administrative" only three times. There are, of course, more substantive changes affecting rate development and application. This article will focus on the proposal, rather than on the application, of Indirect Cost rates.

We first need to know the effective date of the UG in relation to Indirect Cost proposals. The UG fails to mention it but Frequently Asked Questions (FAQs) released in August include clarification that "Non-Federal entities may begin to submit actual cost proposals based on the Uniform Guidance when they are due for fiscal years that begin on or after December 26, 2014." As institutions generally negotiate predetermined rates applicable to future years, it seems logical that a proposal could be based on the UG if it will be used in setting rates for years in which the UG will be applicable, but clarification was needed. The language in the FAQ is not simple to follow but, "cost proposals… are due for" the fiscal years for which they will be used to set rates so, if the first year for which the cost proposal will be used to set rates begins on or after December 26th, 2014, the proposal may be based on the UG. An example is given that states that the proposal can be based on the UG when setting rates for FY 2016 (i.e. FY 2014 base years).

The effective date for application of the UG to indirect cost proposals is particularly important to us because of the change in allocation of utility costs. Under A-21, certain institutions that had used utility cost studies prior to those being disallowed were given a 1.3 percent addition to their research rates, called a Utility Cost Adjustment (UCA). Research space, of course, uses more utilities than other space but that 1.3 percent UCA was never granted more broadly under A-21. The UG now allows up to a 1.3 percent UCA but it must be supported by either submetering, which was previously disallowed below the building level, or application of a relative energy utilization index (REUI) to research space. While institutions not currently receiving the 1.3 percent UCA are anxious to apply the UG to their indirect cost proposals, those with the automatic 1.3 percent UCA may be concerned about the additional burden of documenting the UCA and, perhaps, whether it will reach 1.3 percent.

The FAQs posted in August also address a concern over depreciation on buildings constructed with partial federal funding. In substance, the language in the UG states that none of the depreciation on such a building can be included in an institution's Indirect Cost rate. An earlier FAQ clarifies that this only applies in cases of cost sharing or matching but this is still a deviation from A-21 and potentially unfair. An August FAQ states that OMB will issue a technical clarification, as depreciation on the institutional contribution is allowable, even in cases of cost sharing or matching.

Another depreciation issue is related to equipment purchased with funds from sponsors other than the federal government. Rather than excluding this depreciation until the end of the sponsored agreement, it will be excluded only if the equipment is "acquired solely for the performance of a non-Federal award." There is no additional guidance in the UG or the FAQs and we may find application of this change to be a topic of debate with our rate setting agencies.

Other UG changes directly impacting proposal preparation include:

- The availability of the one-time rate extension of up to four years, which is well explained in the August FAQs.
- Participant support costs are excluded from the Modified Total Direct Cost Base.
- Changes to interest allowability and categories of Library users.

Changes that will more indirectly impact the Indirect Cost rate proposal, such as cost sharing and the treatment of administrative salaries and computing devices will also need our attention so stay tuned.

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Focus:
Effort Reporting

By Julie Cole & Jim Luther

A long series of debates and discussions have culminated in the present language provided in the new Uniform Guidance (UG). Starting in 1967 with a revision to OMB Circular A-21 that introduced the concept of effort reporting to present day, the Office of Management and Budget and the national research community have debated the best method of ensuring that the costs of personnel charged to sponsored projects met the test of allowability, allocability and reasonableness. The new Uniform Guidance (UG) attempts to offer options for universities in managing and reporting effort.

Addressing the issue of compensation has been a considerable challenge, as the UG must apply to a wide range of recipients. The UG resolves this dilemma by including a special section applicable to Institutions of Higher Education (IHEs) only. Compensation is discussed in Section 200.430, and contains broad language which refers to all recipients. Section 200.430 (h) directly addresses effort in Institutions of Higher education (IHEs).

Section 200.430 (h) states: *It is recognized that teaching, research, service and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.* This acknowledgement of the unique nature of research in higher education is a positive step and helpful in bridging the divide between federal and institutional viewpoints of how effort is best assigned to sponsored activities.

Section 200.430 (h) (4) (ii) defines the concept of Institutional Base Salary (IBS), new to the Circular environment and definitely an acceptance on COFAR's part that universities are different. *The non-Federal entity establishes a consistent written definition of work covered by institutional base salary (IBS) which is specific enough to determine when work beyond that level has occurred. This may be described in appointment letter or other documentation.* It is interesting to note that additional language has been included that affirms the requirement for supporting documentation as represented in formal appointment letters, etc.

Another significant change is the recognition of certain activities in direct support of research that will impact the charging of personnel such as lab managers and other dedicated research support staff. The rewording of OMB A-21 Section J.10 to recognize support personnel functions associated with research endeavors is a major change, opening the door to directly charging individuals who support PIs, thus having the potential impact of reduction of administrative burden on researchers. This practice may have been common among institutions for some time, but generally carried the institutional concerns that auditors might challenge these costs. Clarification in the UG addresses this in a fairly straightforward manner. The specific UG language change is noted below:

- (i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, *developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects*, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

A word of caution, however, is that the UG's increased emphasis on internal controls strongly argues for the necessity of an internal verification as to the allocability of these personnel to individual projects.

In a similar vein, the UG addresses the issue of direct charging clerical and administrative staff in Section 200.413 (c) but establishes certain limitations that may cause institutions to reexamine how they review proposals and track requested categories of funds.

IHEs may need to develop definitions of what is considered "integral" to sponsored projects and be able to anticipate the necessity of obtaining prior approval for these costs.

Much of the former prescriptive language for frequency, specific methodologies and other effort reporting requirements have been removed or modified. Periodic certifications of effort are no longer explicitly required and previously described acceptable methods of allocating payroll to sponsored projects have been removed. Instead, there is increased emphasis on internal controls as the desired mechanism for ensuring that effort is appropriately managed.

The UG's emphasis on the application of internal controls is very clear. Eliminating specific reporting requirement methods and timelines certainly provides institutions with greater flexibility. The guidance removes the requirement that institutions develop extensive policies and procedures for effort reporting in order to comply with the guidance previously found in OMB Circular A-21. It is interesting to note that the phrases "suitable means of verification" and firsthand knowledge" are no longer in the regulations. Additionally the Examples of Acceptable Methods for Payroll Distribution have been eliminated as well. However, charges for non-exempt personnel must still be supported by records indicating total hours worked each day. Cost sharing or matching personnel charges must meet the same documentation and reporting standards as direct charges.

While the elimination of specific effort reporting requirements seems to provide more flexibility for entities to design and implement processes that best fit their own environments, the internal control requirements in the UG establish clear standards for acceptability of those controls. Internal control requirements are outlined in §200.303. The new language provides a blueprint for institutions when developing their internal controls processes or evaluating their current processes and policies.

As a result, entities have more flexibility in devising their internal controls, , provided they consistently apply and adhere to those controls to meet the standards and document accordingly in their policies and procedures. Valuable lessons may be learned from the ongoing "Payroll Certifications – A Proposed Alternative to Effort Reporting" initiative that is underway with the Federal Demonstration Partnership (FDP). Several institutions are working with their cognizant and applicable auditors to pilot a project focused process that would replace the traditional effort certification process. This model may hold significant promise for many institutions.

As institutions consider "where to go from here", one might theorize that institutions will generally fall into three categories. Group One might be universities that have transitioned to an online effort system over the past 5 – 10 years, invested the financial, cultural, and personnel resources to make the change, and embraced or at least accepted the electronic process as an improvement over the previous paper process. This group may be less likely to change their internal system to adjust to the flexibility afforded by the UG until there is a clear value proposition and reduced risk due to the uncertain compliance environment. Group Two might be those institutions that have received internal or external audit effort findings, perhaps experienced grumbling from within with regard to their current legacy system -be that paper or electronic – and accepted the reality that they must change or revise their current practices. Group Three might be those institutions that are not at all clear on their next steps, and may not have a complete picture of their own internal processes sufficient to make informed decisions regarding change. For Group Two and Three, the questions are not only whether they decide to be early adopters of change, but what do they need to know about their current systems and practices and how aggressive they want to be in making changes.

On the continuum of options, the minimalist approach may be to ensure current systems meet the new guidance and consider reducing the frequency of certification from monthly or quarterly to semiannually /by semester or annually. There may be a decision to place a higher reliance on the inherent existing controls within their payroll distribution system and the day-to- day interactions between research administrators and the faculty they support. On the other side of the continuum is a complete replacement of their system from the ground up. Somewhere in the middle of this broad spectrum of choices is an essential component: each institution should review current internal controls, documentation levels, and process to ensure minimal compliance.

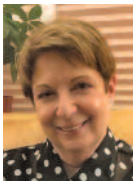
In both cases, the August 29, 2014 release of the FAQs does provide some guidance. It is clear that there is an expectation that effort management changes will require proactive coordination with your cognizant agency and documentation within your CASB DS-2. In some cases, institutions may want to submit a CASB DS-2 change on 12/27/14 (the first day they are allowed for submission) and initiate conversations. The cognizant agency has 6 months to respond or it is assumed that the change is permissible.

What about the audit community? Certainly, the audit community will be required to assess the internal control structure based upon a much broader set of guidelines. The current audit

approach is based upon years of experience with A-21 and rigid institutional effort reporting systems. It will be interesting to observe how audit processes are adjusted to the new guidance and how auditors will revise procedures and modify staff training to meet the new standards. It is unclear how auditors will determine what constitutes an auditable "system of internal control which provides reasonable assurance". In the short term, the audit approach for this issue could vary among firms and Federal agencies. It will take auditors several years and iterative processes to establish consistent standards and institutions can likely expect an unsettled audit environment until this aspect of the UG is ultimately resolved.

Summary

The UG succeeds in addressing much of the debate over Effort and Effort Reporting. The recognition of the unique nature of IHEs is a major step forward. The acceptance of directly charging project support personnel is welcome, although these changes will require institutions to review and perhaps strengthen their own internal definitions and processes to ensure they meet the new guidance. Perhaps the most compelling change is the shift from prescriptive requirements to institutional decision-making in regard to internal controls. Here the UG offers both promise and concern. The stated expectation for internal controls very clearly places the burden on institutions to have well documented policies and procedures to ensure their effort reporting practices satisfy Federal requirements. The end result may be that good practices and systems will simply remain in place. However, those institutions that do not currently have good controls, policies and/or procedures will likely need to immediately address these needs. The UG's less prescriptive approach to documenting salary charges should enable grantees to modify existing practices so that administrative burden is reduced. It is however, incumbent on grantee institutions to ensure that sufficient internal controls are maintained, and it is likely that all IHE's will need to consider how compliant their current effort reporting processes are in light of the new UG language.



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Focus: Subawards

By Pamela Webb

The Uniform Guidance contains a myriad of changes relative to subawards, and many of the changes are embedded or referenced in sections that go beyond the main subaward sections of the Uniform Guidance (200.330, 200.331, and 200.332). This compendium highlights some of the most significant changes and applicable sections pertinent to this topic.

Subrecipient F&A Rates (200.331, 200.414). A major change in the Uniform Guidance (UG) is related to payment of subrecipient's F&A rates. Except if the awarding federal program is subject to a reduced F&A rate (e.g., statutory or regulatory F&A reduction or exception granted by the federal agency head per 200.414), a pass-through entity is now obligated to pay a subrecipient's federally negotiated F&A rate, or, if the subrecipient has never had a federally negotiated rate, to either give them a de minimus F&A rate of 10% MTDC or to negotiate an F&A rate with the subrecipient.

A subrecipient can voluntarily opt to forego F&A, but a pass-through entity cannot force or entice a subrecipient to give up the 10% MTDC to which they are entitled (see OMB FAQ .331-6). To avoid downstream disagreements, pass-through entities may wish to take steps to document that their subrecipients, choosing to forego their de minimus 10% F&A do so voluntarily.

A challenging issue will be what to do about already-submitted proposals priced under the current rules but awarded under the UG. Will the pass-through entity be obligated to use their own direct costs to pay the subrecipient's F&A, or will the subrecipient's approved proposal budget be considered proof that the subrecipient already voluntarily agreed to a lower rate? Watch for additional clarification from OMB or in agency implementation plans about the best way to handle this potentially contentious situation. An odd new wrinkle is OMB FAQ .331-2, which indicates that a federal award could impose a limit of the number of layers (tiers) beyond which the requirement to pay indirect costs is no longer applicable.

Fixed Amount / Fixed Price Subawards (200.45, 200.201, 200.332). The UG uses a new term of "fixed amount" award that includes fixed-price or fixed-rate awards and subawards. Four major changes include:

- ✓ a total cost limit per fixed-amount subaward of $150,000 (the simplified acquisition threshold)
- ✓ the need to obtain prior written agency approval to enter into fixed amount subawards
- ✓ a restriction that a fixed amount subaward may not be used if it involves mandatory cost-sharing (salary "over the cap" is not considered cost-sharing)
- ✓ a requirement to certify to the pass-through entity at the end of the federal award that the project or activity was completed or the level of effort was expended

This last requirement also indicates that the price must be adjusted if the work was not completed or the effort was not expended. In the absence of other instructions from an agency, the certification process should occur as a part of the closeout process. The OMB FAQs (.201-3) and Section 200.308 specify when a cost adjustment may be needed and the mechanisms for its calculation. Interestingly, the OMB FAQ .332-1 specifies that more than one fixed amount subaward with the same subrecipient is allowable if needed to complete the work contemplated under the Federal award, provided that each subaward has its own distinct statement of work, price, and deliverables.

Updated Risk Assessment Guidelines (200.331). Section 331 makes it clear that a pass-through entity is obligated to evaluate a subrecipient's risk of non-compliance with federal statutes, regulations, and conditions of the subaward for the express purpose of defining appropriate monitoring activities. Although there is an obligation to evaluate risk, the pass-through entity may decide how it wishes to go about that risk assessment. The UG suggests certain factors be included in the assessment:

- ✓ the subrecipient's prior experience with the same or similar subawards
- ✓ the results of previous audits (including whether or not the subrecipient receives a Single Audit)
- ✓ whether the subrecipient has new personnel or new or substantially changed systems
- ✓ the extent and results of federal awarding-agency monitoring

Note that the increase in the threshold for an entity to need a Single Audit (from $500,000 of federal funds expended to a new threshold of $750,000) will likely increase the risk assessment/monitoring burden on pass-through entities, since fewer entities will have a Single Audit available for review. FDP is working on a risk assessment template that is expected to be available for general use within the next few months. At the present time, management decisions issued by federal agencies are not available to pass-through entities; OMB has recognized that this is an area that still needs to be addressed in order to adequately streamline subrecipient risk assessment and monitoring. Risk-assessment works in close connection with the subrecipient monitoring obligations outlined below.

Updated Subrecipient Monitoring Guidelines (200.331). Section 331(d) specifies both mandatory and as-needed subrecipient monitoring obligations. This section is helpful in that it is clearer about subrecipient monitoring expectations, but also serves to emphasize the importance that the federal government is placing on subrecipient monitoring.

Mandatory monitoring obligations include:

- ✓ the pass-through entity's review of subrecipient technical and financial reports
- ✓ following up and ensuring that the subrecipient takes timely and appropriate action on deficiencies detected through audits/on-site reviews, and other means
- ✓ issuing a management decision for audit findings as required in Section 200.521
- ✓ verifying that a subrecipient received its mandatory Single Audit if the entity exceeded the $750,000 threshold (increased from $500,000) for federal funds expended in the previous fiscal year
- ✓ considering whether monitoring findings require the pass-through entity's records to be adjusted
- ✓ determining whether enforcement action is needed against noncompliant subrecipients (See 200.338)

Optional (dependent upon risk) monitoring tools include providing subrecipients with training and technical assistance on program-related matters; performing on-site reviews, and arranging for agreed-upon procedures for engagements (see 200.425.).

See the companion article by Mary Lee Brown on UG audit provisions to learn more about the changes in timing for audit review and its impact on subrecipient monitoring.

Mandatory New Data Elements Required in the Subaward (200.331). This section spells out data elements that pass-through entities are obligated to include in their subawards. In addition to perennial favorites like the CFDA number and title (okay, we weren't always good about including CFDA title, but the requirement was there all along!), we now have new requirements, such as:

- ✓ the subrecipient's DUNS number
- ✓ the subrecipient's name on the subaward will be required to match their registered DUNS name
- ✓ the Federal Award ID Number (FAIN)
- ✓ the total amount and award date of the parent Federal award
- ✓ the federal award project description (read: title) for FFATA reporting purposes
- ✓ the name of the federal awarding agency
- ✓ an indication of whether the award is R&D (the federal agency will specify this in our parent award)

The Federal Demonstration Partnership (FDP) is updating its subaward templates to include these new data elements, and those templates will be available for general use on the FDP web site thefdp.org by the time the UG goes into effect.

Contractor versus Subrecipient Determinations (200.92, 200.93, 200.23, 200.331). Although the characteristics of a vendor and a subrecipient have remained essentially the same, the terminology has changed and the roles/responsibilities clarified. The UG adds clarity by specifying that the pass-through entity holds the responsibility for deciding whether any given arrangement constitutes a subaward (carrying out a portion of the federal award, creating a federal assistance relationship) or a contractor agreement (obtaining goods and services for the pass-through entity's own use, creating a procurement relationship).

The term "contractor" has replaced the term "vendor" and the terms "contract" and "subaward" are defined clearly as the legal instruments received by contractors and subrecipients, respectively.

Federal agencies have the option to "*supply and require recipients to comply with additional guidance to support these determinations*." It is not yet known whether agencies will choose to require this new documentation (Note: NSF has, thankfully, chosen not to add this requirement.)

Subaward Financial and Progress Reports (200.331, 200.328). Section 331 specifies that pass-through entities must specify any required financial or programmatic reports needed in their subawards, and that pass-through entities are responsible for reviewing such reports. Section 328 documents frequency and content of such reports. While many of us already have mechanisms to review financial reports (e.g., invoices that are annotated to denote review and approval prior to payment), we will want to ask ourselves whether we have adequate processes in place to document programmatic report receipt, review, and long-term storage for access by auditors evaluating our subrecipient monitoring.

Prompt Payments and Withholding of Payment on Subawards (200.305). When issuing payments on cost-reimbursement subawards, pass-through entities are expected to issue payment on allowable costs within 30 calendar days after receipt of the billing, unless the pass-through entity "*reasonably believes the payment to be improper*." This clear timing expectation as well as the new emphasis on timely closeout of awards may prompt some of us to review our processes to ensure timely approval of invoices and closeout documents, and potentially improve documentation on the rationale for temporary withholding of payments.

Payment may not be withheld from subrecipients unless the problems cited are reasons included in 200.305 (including non-conformance with the project objectives or terms of the subaward), or in conformance with 200.207, or 200.338. Guidance for mechanisms to address performance issues and enforcement of subaward terms are also included in these sections.

Retaining "Profit" earned on Fixed Price Subawards (and Awards) (200.201, 200.400). OMB FAQ .400-1 makes it clear that excess revenue over expense (an unexpended balance) on a fixed amount award or subaward will not be considered profit as long as the price for the original fixed price transaction was properly established. This clarification is important since recipients may not "*earn or keep any profit resulting from Federal financial assistance, unless expressly authorized by the terms and conditions of the Federal award*." "Properly established" in this context means that the cost of the subaward was determined in accordance with the cost principles in the UG (Section E) and/or using past experience with similar types of work for which outcomes and their costs can be reliably predicted. (See OMB FAQ .201-1)

Watch for 2015 Compliance Supplement, Section M. Since the Compliance Supplement provides instructions to auditors on how they should review and test our internal controls, the next supplement should be telling in terms of how auditors expect to test the updated risk assessment and subrecipient monitoring expectations listed in the UG. The next Compliance Supplement is currently expected to be released in April 2015. Previous circulars are available at: http://www.whitehouse.gov/omb/circulars_default

Discerning When a Subaward is and is not Subject to the UG: OMB FAQ .110-12 makes it clear that the terms of the parent award determine whether a subaward is subject to the UG. Thus, if a new or modified subaward is issued under an existing award still subject to the current rules, then that subaward is also governed by the current rules. Conversely, if the parent award is subject to the UG, any subaward actions issued under that award will be subject to the UG. The incremental funding actions will be trickier – if an agency determines that an existing award will become subject to the UG at the time of its next incremental funding or award action, then presumably subawards will become subject to the UG at the time of their next subaward actions too. Close attention to agency guidance and implementation plans will be needed to guide us.

Pass-through Entities Expected to Retrieve Subrecipient Audits from the Federal Audit Clearinghouse (FAC) (200.512). Section (b), Data Collection tells us that "*All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.*" As pass-through entities, we will no longer have an option to collect audits or audit verifications directly from our subrecipients subject to the Single Audit, but instead are expected to access the FAC https://harvester.census.gov/fac/dissem/accessoptions.html to review that information. Complete audit reports are not yet available in the FAC but are expected to be added in the next 12-18 months. Until then, one presumes that it is still acceptable to ask subrecipients for their audit reports or summaries if their current (more limited) FAC data doesn't provide sufficient information.

Conflict of Interest (200.112). OMB FAQ .112-1 reminds us that the conflict of interest provisions in the UG refer to conflicts that might arise around how a non-federal entity expends funds under a federal award. This includes selection of subrecipients, so universities will want to verify that they have a process in place for screening and management of potential conflicts-of-interest arising between their organization/PI and their subrecipients.

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Focus:
Audit Requirements

By Mary Lee Brown

The Uniform Guidance (UG) reforms pertaining to audit requirements merge and align Circulars A-133 (Single Audit) and Circular A-50 (Audit Follow Up). The relevant portions within the UG are Subpart F sections 200.500 – 200.521; Appendix X-Data Collection Form (Form SF-SAC); and Appendix XI –Compliance Supplement.

If you have been following this series of articles since the March/April issue, by now you are all too aware that the objective of the reform is to reduce both administrative burden and risk of waste, fraud, and abuse. Consistent with that objective the Audit Requirements contain several changes that ostensibly allow federal agency oversight and resolution resources to focus on higher-dollar, higher-risk awards and improper-payments thereby mitigating overall risk of waste, fraud, and abuse across the government. According to COFAR, the audit requirements guidance also serve to improve transparency and accountability by making the single audit reports available to the public online, and encourages federal agencies to take a more collaborative approach to audit resolution in order to better resolve underlying weaknesses in internal control. The following is a discussion of the more-significant changes in the sections comprising Subpart F.

Audit Threshold (200.501) The dollar threshold that triggers the requirement for a Single Audit is increased from $500,000 to $750,000 in federal award spending in a fiscal year. The increased threshold eliminates the audit requirement for approximately 5,000 entities and targets federal oversight resources where most federal dollars are at risk by maintaining audit coverage for over 99% of the dollars and 87% of the entities that are currently subject to the Single Audit. It should be noted, however, that the elimination of the 5,000 entities previously subject to the Single Audit will increase the sub-recipient risk assessment and monitoring burden on pass-through entities that can no longer rely on the Single Audit report in the monitoring process.

Relation to other audit requirements (200.503) In instances where a federal agency conducts audits, in addition to the Single Audit, this section contains explicit language requiring federal agencies or pass-through entities to review the Federal Audit Clearinghouse (FAC) for existing audits and to rely on and use those to the extent possible prior to commencing an additional audit. Any additional audits must be planned and performed in such a way as to build upon work performed by other auditors and not be duplicative of other audits of federal awards. Importantly, this language does not limit the authority of federal agencies or Inspector General to conduct additional audits.

Auditees:

Financial Statements (200.510) The Schedule of Expenditures of Federal Awards (SEFA) now requires auditees to include the total amount provided to subrecipients from each federal program. Under the A-133 guidance this was a "to the extent practical" requirement.

Report Submission (200.512) This includes language making it explicit that the FAC is the repository of record and authoritative source for Single Audit reporting packages and anyone interested in the reporting package including all federal fgencies, pass-through entities and any others, must obtain it via the FAC. With this distinction, subrecipients are relieved of the burdens of having to submit Single Audit reporting packages to each pass-through entity, and pass-through entities are relieved of the three-year retention requirement for subrecipient reports. However, an unintended consequence of this change is the impact on the timing requirements associated with management decisions, discussed later in this article.

A new requirement states that auditees and auditors must make sure that the reporting package does not include any protected personally-identifiable-information. Additionally, among the many certifications included in the statement signed by the senior level representative of the auditee, as part of the data collection form (SF-FAC), are two new items: a certification that the package does not include any protected personally-identifiable-information; and the FAC is authorized to make the reporting package and the form publicly available on a Web site. Whereas previously electronic submissions of reporting packages were not precluded, the UG now requires electronic submission to the FAC and the FAC must make the reporting packages available to the public, and is responsible for follow-up with auditees that have not submitted the required reporting packages.

Federal Agencies:

Responsibilities (200.513) In this section, responsibilities of the Cognizant Audit Agency, Oversight Agency for Audit and the Federal Awarding Agency are articulated. Pass-through entities' responsibilities previously included in the A-133 are now covered in the Subpart D-Post Federal Award Requirements section 200.331. A new Single Audit Liaison is to be named by each federal agency to serve as the point of contact for the single audit process, and accountable for promoting interagency coordination relating to audit resolution and utility of the FAC. The UG dropped language from the A-133 which allowed the Cognizant Audit agency to consider and grant requests for extensions to the Single Audit report submission due date.

Audit Findings (200.516) The threshold for known questioned-costs was raised from $10,000 to $25,000 resulting in some burden relief by eliminating reportable audit findings that fall below the new threshold.

Major Program determination (200.518) The major program determination has changed by increasing the minimum threshold for a Type A program to $750,000 to be consistent with the Single Audit threshold.

Management Decisions (200.521) There is no real change in the responsibilities among the Cognizant Agency for Audit, the federal awarding agency, and the pass-through entity; each is responsible for issuing management decisions on audit findings that relate to federal awards it makes or in the case of the cognizant coordinating a decision among multiple federal agencies.

However, a new burden occurs for pass-through entities in meeting the time requirements (*Section .521(d)*) for issuing the management decision "*within six months of acceptance of the audit report by the FAC*". Meeting the six-month deadline becomes a challenge as there is no longer a trigger to notify the pass-through entity when a subrecipient Single Audit reporting package has been posted. Previously, the receipt of a subrecipient reporting package by the pass-through would trigger the review and determination of whether a management decision was called for, and simultaneously trigger the timing requirements for issuing a management decision. Consequently, a pass-through entity will need to implement a potentially labor-intensive manual task of regularly checking the FAC for the Single Audit reports of all its subrecipients.

Appendix XI - Compliance Supplement COFAR has indicated that it is engaging in public outreach prior to making structural changes to the Supplement format. The FY2015 Compliance Supplement will be the first to have instructions and guidance that take into account the changes effected by the UG. That supplement is currently being drafted and is anticipated to be released sometime around April 2015. There is speculation regarding whether some number of the current 14 compliance requirements will be eliminated.

In summary, the changes incorporated in UG Audit Requirements result in a reduced pool of audited entities and focus audit oversight and attention on highest areas of risk for waste, fraud, and abuse of federal program (i.e. taxpayer) dollars.

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Reference

2 C.F.R. 200: Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards