

The COGR Perspective on the OMB Uniform Guidance: A First Look

COGR Meeting

Thursday, February 27, 2014

Washington Marriott Hotel

Washington, D.C.

Agenda for this Session

- The Big Picture and the Next 12 Months
- High (Low) Lights from the Uniform Guidance – Subparts A thru F, and Appendix III!
- Q&A, Concerns, and Other Comments
- Your take-away ? ... Some issues are immediate and COGR will provide the most timely input possible; however, the deciphering is a marathon and we will address diligently and strategically.

The Big Picture

- Keep membership updated on key focus areas:
Next “Look” in late March – early April
- Ongoing COGR engagement / advocacy with
OMB/COFAR and other Federal officials
- Late June: Agency Plans and refocus, as needed
- December 26, 2014: “Common Interpretations”
and other COGR suggested practices

Presenters

- Subpart A: Susie Sedwick, University of Texas at Austin
- Subparts B, C, D: Mike Ludwig, Purdue University
- Subpart D (Subrecipient Monitoring):
Pamela Webb, University of Minnesota
- Subpart E: Jim Barbret, Wayne State University
- Subpart E (Compensation – personal services):
Jim Luther, Duke University
- Subpart F (Audit): Later Date
- Appendix III: Cindy Hope, University of Alabama

Some Quick Basics

OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements ... OR

Uniform Guidance ... OR

UniGuide ... OR ...

UG ... OR

OmniGuidance ... OR

2 CFR, Chapter 1, Chapter 2, Part 200, et al. ... OR

2 CFR, Part 200 ...

Some Quick Basics

COFAR mailing list, most up-to-date information from OMB, Webcasts, FAQs, etc.

<https://cfo.gov/cofar/>

Questions to OMB/COFAR:

COFAR@omb.eop.gov

Some Quick Basics

Subpart A – Acronyms and Definitions

Subpart B – General Provisions

Subpart C – Pre-award Requirements & Contents of
Federal Awards

Subpart D – Post Federal Award Requirements

Subpart E – Cost Principles

Subpart F – Audit Requirements

Appendices – I Funding Opportunities

II Contract Provisions

III Indirect Costs (F&A)

The Tension

METRICS

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Definitions



- 200.33 *Equipment*
 - 200.12 *Capital assets – includes software*
 - 200.20 *Computing devices*
 - 200.48 *General purpose equipment – includes information technology equipment and systems*
 - 200.58 *Information technology systems – includes computing devices and software*
 - 200.89 *Special purpose equipment*
 - 200.94 *Supplies – clarifies when a computing device is a supply.*

Definitions

- 200.67 *Micro-purchase* – Current threshold set at \$3000.
- 200.68 *Modified Total Direct Cost (MTDC)* – excludes participant support costs, rental costs (not rental of facilities) and Other items may only be excluded when necessary to avoid a serious inequity in the distribution of IDC and with approval of the cognizant agency for indirect costs.
- 200.80 *Program Income* – includes license fees and royalties on patents and copyrights.
- 200.94 *Supplies* – COGR request to include software as a supply and references to intangible property and inventions were not included.



Subpart B: 200.110

200.110 Effective/applicability date

- Uniform implementation date of 12/26/14 for all Subparts, except Subpart F, which will be effective the first FY beginning after 12/26/14
- Generally speaking, the UG will be applicable for new awards and for incremental funding awarded on or after 12/26/14
- Open question remains on how dates apply to negotiating new F&A rates

Subpart B: 200.112

200.112 Conflict of interest

- Requires Federal awarding agencies to establish a conflict of interest policy for Federal awards
- Requires a disclosure to the awarding agency of potential conflicts of interest in accord with that agency's policy
- Institutions should monitor Agencies implementation

Subpart C: 200.210

200.210 Information contained in a Federal award

- Requires the awarding agency to incorporate general terms and conditions either in the award or by reference
- While this does not specifically reference the Research Terms and Conditions, we are seeking additional clarification to confirm applicability

Subpart D: 200.301

200.301 Performance measurement

- The Federal awarding agency must require the recipient to use OMB-approved government-wide standard information collections when providing financial and performance information
- As appropriate and in accordance with the information collections, the funding agency must require recipient to relate financial data to performance requirements of the federal award and must provide cost information to demonstrate cost effective practices (e.g. unit cost data)
- Concern: Raises concern over how the “must” language will be interpreted and implemented by the Agencies

Subpart D: 200.303

200.303 Internal controls

- Requires recipients to have internal controls in compliance with guidance in “Standards for Internal Control in the Federal Government” and “Internal Control Integrated Framework” issued by COSO
- COFAR clarified in the recent FAQ release that there is no expectation or requirement that internal controls be documented or evaluated prescriptively to these guidelines
- Provided as source documents for best practices

Subpart D: 200.313

200.313 Equipment

- Property records must contain “percentage of Federal participation in the project costs for the Federal award under which the property was acquired
- Records must contain “use” of the equipment.
- Concern: These changes are not clear and raise a number of questions
- Creates added burden to keep additional data elements and additional cost to modify systems to capture those data elements

Subpart D: 200.319

200.319 Competition

- Prohibits the use of statutorily imposed state or local geographical preferences in the procurement
- This could create conflict for public universities having to follow State laws, which may require such considerations

Subpart D: 200.320

200.320 Methods of procurement to be followed

- A prescriptive list of 5 procurement methods are provided
- New category of “micro-purchase” which appears to allow purchases of up to \$3,000 without competition
- Implication is that purchases over \$3,000 would have to be competitive in some way
- Concern: This could have implications on procurement card programs and bid thresholds at many Universities
- Seems to be a prime prospect for metrics

Subrecipient Monitoring

- **200.331 F&A improvements**
 - Sponsors (agency and pass-through) obligated to honor subrecipient's negotiated F&A rate
 - Subrecipients without a negotiated rate can get an automatic 10% MTDC F&A rate or can negotiate a rate with the pass-through entity
- **200.330 Vendor vs. subrecipient classification**
 - Nice clarification that pass-through entity gets to determine the classification
 - Each agency may supply and report pass-through entities to comply with additional guidance to support their classifications
- **200.331 Increased burdens for subaward issuance**
 - Agency prior approval required before using a fixed price subawards
 - New limit on size of fixed price subawards (\$150K)
 - New mandatory list of data elements that have to be included in each subaward
 - Clarification that if you want reports from your subrecipient, you must include the requirement in your subaward
 - Increase in number of subrecipients without audit reports (threshold raised from \$500K per year in federal expenditures to \$750K)

Subrecipient Monitoring

- 200.331 Increase/decrease in burden in subaward risk assessment (to impact monitoring)
 - Pass-through entities required to use Federal Audit Clearinghouse to verify audit reports (also 200.512)
 - Explicit obligation to assess risk of each potential subrecipient, but options for how to do that risk assessment (“may include consideration of such factors as..)
- 200.331 Probable increase in subrecipient monitoring burdens
 - Explicit lists of mandatory and optional factors to be included in subrecipient monitoring
 - New obligation to review financial/performance reports
 - No audit review/management decision relief at this time
 - The time period to issue a management decision is 6 months from acceptance of the audit report in the FAC (200.521)

Q&A on Subrecipient Monitoring

(for future discussion)

Mandatory Obligations

- Subaward used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and condition of the subaward, and performance goals are achieved.
- Reviewing financial and programmatic reports required by the pass-through entity
- Following up and ensuring timely and appropriate action on all deficiencies pertaining to the subaward detected through audits, on-site reviews, and other means
- Issuing an audit management decision (per 220.521)

Optional Based on Risk

- Provide subrecipient training and technical assistance on program-related matters
- On-side reviews of subrecipient programmatic operations
- Arranging for agreed-upon-procedures audits (200.425)
- Verify that subrecipient is audited if such is required (200.501)
- Consider whether the results of subrecipient audits, on-site reviews, or other monitoring indicate adjustments to pass-through entity's records
- Consider taking enforcement action against non-compliant subrecipient (200.338)

200.430 Compensation – Personal Services

- Preamble on pages 78601 is very informative
 - Demonstrates that COFAR adjusted regulations based on IHE input and tried to balance with regulator's perspective
 - **More flexibility** but a requirement to “comply with a **stringent framework of internal control objectives and requirements**”
 - Acknowledges that many entities may continue to rely on existing procedures and systems

200.430 Compensation – Personal Services

More Flexibility...But stringent framework of internal controls...

- More Flexibility
 - No requirement for “activity/effort reports”, Removed reference to “certification/certify”
 - Eliminated
 - J.10.c(1)f: requirement for “independent internal evaluation”
 - Examples of acceptable Methods for Payroll Distribution
 - Added concept of IBS
 - (ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred
 - Allowable activities:
 - Added language to allow for “developing and maintaining protocols” “managing and securing project-specific data, coordinating research subjects...”
 - Also added
 - (2) For records which meet the standards ...not be required to provide additional support or documentation for the work performed...

200.430 Compensation – Personal Services

More Flexibility...But stringent framework of internal controls...

- But stringent framework of internal controls...
 - “Control” or “Internal Control” is mentioned 16 times in the preamble
 - “This final guidance requires non-Federal entities to comply with a stringent framework of internal control objectives and requirements.”
 - Reasonable Assurance that charges are accurate, allowable, & properly allocated
 - Emphasis on written policies and “consistent definition of work covered by IBS”
 - Continued focus on “processes to review after-the-fact” / Must reflect the work performed
 - 200.303 Internal Controls
 - These internal controls should be in compliance with... COSO framework
 - COSO: Integrated Framework of Control Environment, Risk Assessment, Control Activities, Information and Communication, & Monitoring Activities

Overview - Higher Education and Standards for Documentation

- Section (h) is specific to Higher Ed - Identifies special conditions for
 - Allowable Activities, Incidental Activities , Extra Service Pay, Periods outside the academic year, etc.
- Section (i) is “Standards for Documentation of Personnel Expenses”
 - Charges must reflect actual work performed and records must be
 - Supported by internal controls & Incorporated into official records
 - Reasonable reflects total activity & Encompass federal and other activities on an integrated basis (can use subsidiary records)
 - Support the employees wages among cost objectives
 - Budget estimates are allowable if
 - System produces reasonable approximation
 - Significant changes are incorporated in timely manner (1 – 2 months)
 - Entities internal controls support after-the-fact review

For non-Federal entity that do not meet these standards, the Federal government may require personnel activity reports

200.430 Compensation – Personal Services

- Where to from here?
 - Changes look promising but details are not clear on auditor interpretation, specifically as it relates to Internal Controls.
 - Review current system in light of Internal Control standards (COSO)? How are your written policies?
 - FDP Project Certification may inform/drive the discussion.
 - Wait for OIG audit and hope you are not first.....

200.407 Prior Written Approval

“Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs.”

- Do not confuse with standard prior approval requirements
- Identifies those “sensitive” areas where institution may not feel 100% comfortable
- Written approval may help justification

200.413 Direct Costs (c)

Clerical & Admin Salaries

“The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

1. Administrative or clerical services are integral to a project or activity;
 2. Individuals involved can be specifically identified with the project or activity;
 3. Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
 4. The costs are not also recovered as indirect costs.”
- Removal of “major project” requirement
 - Recognition of administrative workload

200.415 Required Certifications

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).”

- Extremely strong language may find opposition

“...signed by an official who is authorized to legally bind the non-Federal entity”

- May require signature authority/delegation at institution

200.419 Cost Accounting Standards

- The maintenance of the DS-2 is still with us
- Threshold increased to \$50 million
- Prescriptive update process –

“An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs six months in advance of a disclosed practices being changed to comply with a new or modified standard, or when practices are changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the six months period.”

200.431 a(3)(i) Fringe Benefits

“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.”

- Was not in the Proposed Guidance
- Would require a significant change in accounting for unused leave
- Handle as accrual via fringe benefit – could increase 3-10 points
- Looking to further clarification – *allowable* method vs. *only* method

200.451 Losses on Other awards or contracts

“ ... Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.”

- New wording since A-21
- Does everyone include writing off of overdrafts in base?

200.453 Materials and supplies costs, including costs of computing devices

- Connected with 200.94 which is definition of supplies –
“*Supplies* means all tangible personal property other than those described in § 200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.”
- Acknowledgement of computing devices as a supply cost

200.474 (c) (1) Travel Costs

“Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

- (i) The costs are a direct result of the individual’s travel for the Federal award;
 - (ii) The costs are consistent with the non-Federal entity’s documented travel policy for all entity travel; and
 - (iii) Are only temporary during the travel period”
- May require one to rethink Travel Policy
 - Consistency with all funds

F&A Rate Administration

Indirect (F&A) costs - 200.414

- (c) and (f) covered earlier – agency acceptance and 10% de minimis
- (g) Allows a one-time extension of Federally negotiated F&A rates for up to four years
 - Subject to the review and approval of the cognizant agency for indirect costs.
 - If an extension is granted the non-Federal entity may not request a rate review until the extension period ends.
 - At the end of the extension, the non-Federal entity must negotiate a new rate.

F&A Rate Calculation

Depreciation – 200.436

- Depreciation on cost sharing and matching
 - (c) “The computation of depreciation must be based on the acquisition cost of the assets involved... the acquisition cost will exclude:”
 - ...(3) “Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity, or where law or agreement prohibits recovery”
 - This new rule makes depreciation on matching/cost sharing contributions to construction and major instrumentation unallowable. (See 2/12/14 FAQ)
- ***Does this apply only to contributions made after 12/26/14?***

F&A Rate Calculation

Depreciation – 200.436 (continued)

- (c) “... the acquisition cost will exclude:”
 - ...(4) “Any asset acquired solely for the performance of a non-Federal award.”
 - Previously, depreciation on equipment charged directly to non-Federal awards was excluded up until expiration of the non-Federal awards.
- University requirements removed:
 - Documentation of the process for assuring reasonableness of costs of large research facilities.
 - Assurance that depreciation recoveries were used to acquire or improve research facilities (was top 100 only).

F&A Rate Calculation

Interest – 200.449

- No longer a specific requirement for a lease/purchase analysis but,
 - (c)(4) “The non-Federal entity limits ... interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.”
- Interest related to financing acquisitions of intangible capital assets is specifically allowed
 - For fiscal years beginning on or after 1/1/16.

F&A Rate Calculation

Operation and Maintenance Expenses – Appendix III

B. 4.

- No longer an automatic 1.3% Utility Cost Adjustment (UCA) for 65 universities. Instead,
- A utility cost adjustment of up to 1.3% may be included, per two computation alternatives...
 - “Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.”
 - Relative energy utilization index (REUI) applied to research laboratory space.

F&A Rate Calculation

Cost Sharing – 200.306

- Restrictions on Voluntary Committed (discussed earlier)
- Only mandatory or committed in the BUDGET included in organized research base for computing F&A
 - 2/12/14 FAQ states that OMB Clarification of Uncommitted Cost Sharing is still in effect
 - NIH Salary Cap?
 - What's Real Impact? (i.e. space versus base)

F&A Rate Calculation

Modified Total Direct Costs (MTDC)

- Participant Support costs are now a standard exclusion
- Not new but, lack of definition for “subcontract” is increasingly problematic
 - MTDC excludes “the portion of each subaward and subcontract in excess of \$25,000”
 - Some agencies insist vendor agreements/contracts for purchased services, supplies, etc. are “subcontracts”
 - Rental costs occasionally comes up too

Direct Charging

Limitation on Reimbursement of Administrative Costs - Appendix III C. 8. (for Universities)

- b. “Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits.”
- And, consistency requirements are still around
 - 200.403(d) “A cost may not be assigned to a Federal award as a direct cost if any other costs incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost”
 - This requirement is repeated in other sections

Direct Charging

Administrative and clerical staff salaries - 200.413

- Direct charging may be appropriate if...(described earlier)
 - *If the cost meets all of the criteria, is it still normally indirect or has there been a change in accounting treatment?*

Computing Devices

- Materials and Supplies - 200.453 (New Rule)
 - (c) “In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.”
 - *If the device has to be essential and allocable to an award to be a direct charge, is it still normally indirect or has there been a change in accounting treatment?*