

COGR Preliminary Assessment of Selected Items – *OMB Uniform Administrative Requirements, Cost Principles, and Administrative Requirements for Federal Awards*

January 14, 2014

Below is COGR's preliminary assessment of selected items from the ***OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule*** released on December 26, 2013 (2 CFR Chapter I, Chapter II, Part 200, et al.)

In this document, we refer to the new guidance as the ***OmniGuidance, or the "OG"***. Our comments are focused on the OG, though in some cases we compare the OG to: 1) the existing Circulars (A-21, A-110, etc.), or 2) the OMB Proposed Guidance (PG) from February 2013. While we recognize and refer to some of the positives below, our initial focus is on "**Concerns**" – these are our first priority and are items that we hope to address with OMB and the COFAR.

Preamble to the Uniform Guidance

The Preamble includes the OMB/COFAR analysis of the key changes between the Proposed Guidance and the final OmniGuidance. COGR suggests exercising close scrutiny when reading the Preamble as any assessment of the OG should be based on the detailed language in the actual Subparts that follow.

Subpart A – Definitions

Initial COGR observations on definitions are intertwined with the applicable sections below.

Subpart B – General Provisions

200.101 Applicability. Applicability has been clarified in table format. Subparts C and D (and 200.111, 200.112, and 200.113 of Subpart B) do not apply to cost reimbursement contracts awarded under the FAR. Subparts E and F are applicable to grants, cooperative agreements and contracts.

200.102 Exceptions. As COGR requested in comments to the PG, agency exceptions to these regulations for classes of Federal awards now must be published on an OMB website.

200.107 OMB Responsibilities. COGR's request for a more robust OMB role was not accepted. Still, under the OG, OMB will provide policy interpretations and agency exceptions will be subject to OMB approval.

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 OG will be applicable for new awards and for incremental funding awarded on or after 12/26/14.

200.112 Conflict of interest. Requires Federal awarding agencies to establish a conflict of interest policy for Federal awards and requires a disclosure to the awarding agency of potential conflicts of interest in accord with that agency's policy. **Concern: Was not in PG - no uniformity in the required policy and creates new reporting burdens.**

Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards

200.203 Notices of funding opportunities. Requires the funding agency to make funding opportunities available for at least 60 days unless the agency makes a determination to have a less than 60 day availability period, but no less than 30 days. The PG stated 30, COGR asked for 90, so 60 days appears to be a compromise.

200.204 Federal awarding agency review of merit of proposals. In a cross-reference to Appendix I, funding announcements should not contain “vague statements that cost sharing is encouraged ...”

200.206 Standard application requirements. Under the PG, Federal agencies desiring to collect information in addition to that approved by OMB would have been required to submit a justification to OMB. Under the OG, the agency may inform the recipients they do not need to provide certain information.

200.210 Information contained in a Federal award. Section (b) 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, it seems to suggest their applicability to awards.

Subpart D – Post Federal Award Requirements Standards for Financial and Program Management

200.301 Performance measurement. 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). This is much stronger language than in the PG. **Concern: COGR objected because of the additional reporting burden it adds, and remains concerned.**

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. **Concern: this was not in the PG, it creates new standards of internal control, and the compliance burden may be large.**

200.306 Cost sharing or matching. Voluntary committed cost sharing is not expected in research proposals and only mandatory cost sharing and cost sharing specifically committed in the project budget must be included in the organized research base. Also, allowable cost share can include F&A on the cost share portion, but only with prior approval of the awarding agency. And for third-party cost share contributions, F&A can be counted.

200.307 Program income. Clarifies that the addition method is the default for handling program income for Institutions of Higher Education (IHEs) and nonprofit research institutions. The definition of program income includes license fees and royalties from patents copyrights etc. While consistent with the Circular A-110 definition, in the PG royalty and license fees were excluded from consideration as program income.

200.313 Equipment. Section (a) Title to equipment is now a “conditional title” vested to the non-federal entity, and per (d)(1) property records must contain “percentage of Federal participation in the project costs for the Federal award under which the property was acquired”; not the acquisition cost of the equipment. The records must also contain “use” of the equipment. **Concern: These changes are not clear and raise a number of questions. This will create added burden to keep additional data elements and additional cost to modify systems to capture those data elements.**

200.318 General Procurement Standards. The equipment screening requirements per the PG were removed as COGR had requested. However, a prescriptive description of records that must be maintained to document the history of the procurement was not removed as COGR had requested. Also, it’s not clear what types of procurement these documentation standards apply to (see 200.320).

200.319 Competition. Section (b) prohibits the use of statutorily imposed state or local geographical preferences in the procurement. COGR had pointed out that this could create conflict for public universities having to follow State laws, which may require such considerations.

200.320 Methods of procurement to be followed. A prescriptive list of 5 procurement methods are provided. COGR had requested to return to the Circular A-110 language which was simple and allowed flexibility to select a method that yields the best outcome. There is a new category of “micro-purchase” which appears to allow purchases of up to \$3,000 without competition. However the implication then is that purchases over \$3,000 would have to be competitive in some way. **Concern: This could have implications on procurement card programs at many Universities.**

200.328 Monitoring and reporting program performance. Section (b)(2)(i) includes the following: “Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful.” COGR requested removal of these requirements citing additional reporting burden requiring performance and financial data to be linked. **Concern: This is the same issue described above in 200.301.**

200.330 Subrecipient and contractor determinations. COGR had requested removal of the sentence which allows the Federal awarding agency to supply and require recipients to comply with additional guidance to support the determination of a subrecipient versus contractor. **Concern: This leaves open the possibility that different agencies will require institutions to document their classification determinations on a case-by-case basis, and deploy different guidance. This could significantly increase burden on recipients and require them to operate under different rules.**

200.331 Requirements for pass-through entities. Provides a required list of data elements that the pass-through entity must include in the subaward. Most are standard; however, “Total Amount of the Federal Award” is not relevant and could lead to confusion as to the award amount. Also, the subrecipient’s F&A rate, or a 10% de minimus rate, must be used. In regard to “monitoring activities” and opportunities to reduce burden via a “safe harbor” for subawardees already subject to the single audit; the COGR recommendations to the PG were largely ignored. **Concern: Potential new burdens for Subrecipient Monitoring.**

200.332 Fixed amount subawards. The flexibility to issue fixed amount subawards up to the simplified acquisition threshold that was proposed in the PG now requires prior approval of the awarding agency. Implies that fixed price subawards over the simplified acquisition threshold are not allowed. **Concern: Removes existing authority from pass-through entities to decide on the instrument used for a subaward and increases burden.**

200.335 Methods for collection, transmission and storage of information. Provides that award related information should be stored and transmitted whenever practical in machine readable electronic formats.

Subpart E – Cost Principles

200.400 Policy guide. Per COGR’s request, the following language was added back to the OG: “ ... the dual role of students as both trainees and employees contributing to the completion of Federal awards for research must be recognized in the application of these principles.”

200.400 Allocable costs. Per COGR’s request, the following language was added back to the OG: “Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required.”

200.413 Direct costs. As proposed in the PG, direct charging of administrative and clerical salaries may be appropriate if all of the following conditions are met: (1) integral to a project or activity; (2) individuals can be specifically identified; (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.

200.414 Indirect (F&A) costs. Per (c), “Federal Agency Acceptance of Negotiated Indirect Cost Rates”, and as proposed in the PG, the negotiated rates must be accepted by all Federal awarding agencies. A different rate may be used when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification. Also, per (g) any non-Federal entity that has a federally negotiated indirect cost rate may apply for a one-time extension of a current negotiated indirect cost rates for a period of up to four years.

200.415 Required certifications. Annual and final fiscal reports or vouchers requesting payment must include a certification, signed by an official who is authorized to legally bind the non-Federal entity includes language stating: “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.”

Concern: Unnecessarily harsh language appears to devalue the federal partnership.

200.419 Cost accounting standards and disclosure statement. After being eliminated in the PG, the OG adds back compliance with the four CASB standards and maintenance of a DS-2. The threshold is set at \$50 million, rather than the \$25 million per Circular A-21. A proposed change to the DS-2 should be proposed to the Federal cognizant agency for indirect costs six months prior to implementation and must be approved within the six months, unless the cognizant agency specifies additional time is needed to review the proposed change. **Concern: Not clear as to why a burden reduction proposed in the PG is added back in the OG.**

200.430 Compensation - personal services. In general, this section is an improvement over both Circular A-21 and the PG. The elimination of any reference to “certification” may suggest that an effort reporting system is not required and that the institution’s official payroll system should be the basis for confirming payroll charges to federal awards. **Concern: While this may suggest effort reporting is no longer required, institutions should proceed with caution prior to making final decisions.**

200.431 Compensation - fringe benefits. Per section (a)(3)(i): “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.” **Concern: Was not in PG and would create a significant change in accounting for unused leave.**

200.436 Depreciation. Section (c)(3) states that the acquisition cost will exclude “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 appears to be a typographical error as this portion should be allowable. Section (c)(4) states that the acquisition cost will exclude “Any asset acquired solely for the performance of a non-Federal award” – this provides more flexibility for the allowability of equipment depreciation on non-federal awards.

200.449 Interest. Several requirements that are of concern include: limiting reimbursement to that of the least expensive alternative, the 25% equity contribution requirement, and disallowance of interest on fully depreciated assets.

200.453 Materials and supplies costs, including costs of computing devices. As proposed in the PG, “Materials and supplies used for the performance of a Federal award may be charged as direct costs. 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.”

200.459 Professional service costs. The costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill are allowable, but are subject to number of factors, which may create administrative challenges to justify the use of these services.

200.461 Publication and printing costs. As addressed by COGR in our response to the PG, the OG includes the following: “The non-Federal entity may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.”

200.463 Recruitment costs. Per section (d) and subject to several conditions: “Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award.”

Subpart F – Audit Requirements

COGR observations will be provided in subsequent documents.

Appendix III – Indirect (F&A) Costs Identification, and Rate Determination for Institutions of Higher Educations (IHEs)

A.2.e.(2) Order of distribution. As requested by COGR, the reference to Library in the proposed order of distribution was removed.

B.4.(c) Operations and maintenance expenses. As proposed in the PG, a form of the utility cost adjustment is available to all IHEs. However, per the OG, it is capped at 1.3 percentage points. The guidance for computing the adjustment remains somewhat confusing and it states that research laboratory space (not research space) should be weighted according to the relative energy utilization index (REUI). Weighting of other types of space (e.g., classrooms) is not specifically addressed, but will need to be interpreted in a manner that recognizes that certain types of space require reduced weighting factors.

B.6 Department administration expenses. The language from Circular A-21, F.6.b.(2), which was removed in the PG and eliminated the restriction on the allowability of administrative and clerical salaries, also was eliminated in the OG. Also see 200.413 above.

B.8 Library expenses. Per COGR’s request, the professional employee category can include post-doctorate fellows and graduate students. Also per COGR’s request, the other users category can be based on a reasonable factor as determined by institutional records to account for all other users of library facilities.

C.2. The distribution basis. The OG references the definition of MTDC, as included in Subpart A. Definitions (section 200.68). Participant support costs are listed as an exclusion in the definition. In addition, the definition includes the following as an exclusion: “the portion of each subaward and subcontract in excess of \$25,000.” **Concern: Some agencies may continue to maintain that a vendor contract greater than \$25,000 is a subcontract subject to the MTDC exclusion.**

C.7 Fixed rates for the life of the sponsored agreement. As requested by COGR, the language from Circular A-21 was restored: “Federal agencies must use the negotiated rates except as provided in paragraph (e) of § 200.414 Indirect (F&A) costs, for indirect (F&A) costs in effect at the time of the initial award throughout the life of the Federal award.”

C.8. Limitation on reimbursement of administrative costs. The OG, unfortunately, restored language that had been eliminated in the PG. Consequently, institutions still are restricted from changing 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. **Concern: Not clear as to why a change proposed in the PG, which would allow institutions to implement more efficient responsibility center budgeting models, is added back in the OG.**

C-11. Negotiation and approval of indirect (F&A) rate. The OG incorporated the COGR request to remove language that would have required institutions to provide copies and supporting documentation to all interested agencies. The OG did not accept COGR’s recommendation regarding cognizant providing copies within reasonable timeframe prior to negotiations, nor did it accept COGR’s recommendation requesting OMB assistance in situations where there is an impasse between the institution and the cognizant agency. **Concern: OMB assistance is provided in similar situations for other stakeholders and should be available to IHEs, as well.**