

**COUNCIL ON GOVERNMENTAL RELATIONS**  
**1200 New York Ave., NW, Suite 750, Washington DC 20005**  
**(202) 289-6655; (202) 289-6698 (FAX)**

February 20, 2015

TO: COGR Membership

FROM: COGR Staff

SUBJECT: February 2015 Update (*UG related excerpts only*)

**OMB Uniform Guidance and 2 CFR, Part 200**

The interim joint final rule implementing the Uniform Guidance (UG) was published in the [Federal Register](#) (Vol. 79, No. 244, Friday, December 19, 2014) right before the Holidays. It is effective for new awards and for selected funding increments, issued on or after December 26, 2014. The 240-page Federal Register notice was structured with introductory comments at the beginning, followed by a listing of the technical corrections/amendments (pages 75878 through 75889). The bulk and the remainder of the Federal Register notice included a posting of each Agency's implementation plan.

Title 2, Part 200 of the Code of Federal Regulations ([2 CFR, Part 200](#)) has been updated to show the complete Uniform Guidance, with the technical corrections/amendments incorporated. In addition, COGR published the "*COGR Summary of Background and Technical Corrections to the UG*" and shared this with the membership on January 16<sup>th</sup>. The COGR document is designed as a summary of key sections on the Background and Technical Corrections to the UG. That document is available at [www.cogr.edu](http://www.cogr.edu) on the homepage (see Latest News, January 16, 2015).

PLEASE NOTE, the UG was released as an "interim joint final rule," which made the Uniform Guidance effective immediately (i.e., December 26, 2014). However, a public comment period was still required. The 60-day comment period is standard federal protocol and gave our community one last opportunity to address issues of concern. The 60-day public comment period closed on February 17, 2015. COGR submitted a response (see next section below), as did some of your institutions. [All responses](#) can be viewed at the regulations.gov website.

**COGR Response to the December 19, 2014 Federal Register Notice**

COGR submitted its comments to the December 19, 2014 Federal Register Notice, *Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200)*, on February 13<sup>th</sup>. The COGR comments were submitted on behalf of the COGR membership. The COGR letter is available at [www.cogr.edu](http://www.cogr.edu) on the homepage (see Latest News, February 13, 2015).

We did not comment on any specifics of the Agency implementation plans, but rather focused on those areas of the Uniform Guidance that we believe still require policy calibration. However, we did make the following comment (page 12) that speaks to our concern about agency deviations:

*... while the Federal agencies have published thoughtful implementation plans, at times, we are overwhelmed by the deviations that are inherent to each agency plan. In some cases, statutory directives drive these deviations. In other cases, agency culture and policies are the driver. As a result, Uniform Guidance is not always uniform. However, if OMB is committed to assess, clarify, calibrate, and reform, we will make greater strides toward Uniform Guidance, and ultimately toward the goal of reducing administrative burden. **This will require strong OMB leadership that nurtures an intentional partnership, which includes regular meetings and communication between OMB, OIRA, Federal agency representatives, COGR, and other Stakeholders to address deviations and to foster solutions.***

The substance of the COGR letter addressed the following 8 topics:

- 1) Conflict of Interest, § 200.112 – Confirm that this section is only about conflicts in procurement actions.
- 2) Requirements for pass-through entities, § 200.331 – Allow for an Audit/Management Decision “Safe Harbor” when the subrecipient is a peer-institution with a current Single Audit report, and not currently debarred or suspended.
- 3) Procurement Standards, § 200.317 - § 200.326 – Make policy calibrations to codify “research/scientific reasons” as a basis for a sole source procurement and update the micro-purchase threshold from \$3,000 to \$10,000. Also consider exempting research institutions from all of the procurement standards.
- 4) Closeout, § 200.343 – Establish a uniform 120-day closeout model for all agencies, which applies to financial closeout, performance, and other reports.
- 5) DS-2 Requirement, § 200.419 – Update this section to further clarify and facilitate the DS-2 approval process. Also consider eliminating the DS-2 requirement, which is unfairly applicable to higher education only.
- 6) Compensation - fringe benefits, § 200.431 – Make a technical correction to confirm that tuition reimbursement for employees is allowable for undergraduate and graduate education, and further, it is allowable when the tuition reimbursement is applicable to other institutions as institutional policy permits.
- 7) Utility Cost Adjustment (UCA), Appendix III to Part 200 – Issue a policy clarification that makes implementation of the UCA more fair and equitable.
- 8) OMB Leadership and Advancing the Partnership – Provide strong OMB leadership, going forward, so that OMB engages in an assertive agenda that regularly assesses, clarifies, calibrates, and reforms Federal grants policy.

We have requested to meet with OMB to address each of the above. With the exception of 8), which is more focused on how OMB interacts with the community going forward, COGR believes that either a correction to the Uniform Guidance is necessary, or OMB should issue a definitive policy clarification memorandum. Victoria Collin from OMB is scheduled to be on a

Federal Panel (see next section below) at the March 5 COGR Meeting and this should be an opportunity to follow up on some of the issues raised in the COGR letter.

### **Uniform Guidance Implementation and the March 5-6, 2015 COGR Meeting**

We have two sessions on the Uniform Guidance Implementation scheduled for Thursday, March 5<sup>th</sup>. The Thursday morning session is a Costing Policies breakout session with a panel that COGR February 2015 Update 5 COGR March 2015 Update includes: Joe Gindhart - Washington University in St. Louis, Lynn McGinley - University of Maryland, Baltimore, Mike Legrand - University of California, Davis, and Naomi Schrag - Columbia University. The panel will address the following:

10:00 – 11:45: A Costing Policies Perspective on the Uniform Guidance. This panel discussion will focus on Uniform Guidance implementation issues specific to costing-related aspects of the Uniform Guidance. In this session, we will address Compensation & Documentation (formerly effort reporting), F&A issues, the DS-2, and other financial and related topics.

The Thursday afternoon session is a general session with a Federal panel that includes: Michelle Bulls - NIH, Victoria Collin - OMB, Jean Feldman - NSF, and Cynthia Montgomery - NIFA/USDA. The Federal panel will address the following:

2:15 – 3:45: Federal Panel: Challenges, Opportunities, and Implementation of Uniform Guidance. Representatives from Federal agencies will address issues-to-date and other topics applicable to the implementation of the Uniform Guidance. We expect to have time at the end of the session for Q&A, *so please come prepared to ask questions.*

COGR will continue to develop updates and guidance on the Uniform Guidance Implementation. These sessions will inform some of COGR's next steps. And throughout the course of the March 5-6 COGR Meeting, we will share the status on the COGR gameplan and strategy for 2015.

### **Grant Closeouts and Related Issues – NO NEW UPDATE, BUT HIGH ON OUR RADAR**

This topic has been on the forefront for almost two years, and will continue to be on the forefront in 2015. Below is a summary of these issues and an update as to where we are currently focused.

#### *NIH Subaccounting Delayed Until October 1, 2015*

We have reported on this topic since the Summer of 2013. At this stage, the issue is settled and the community was successful in securing a delay of the full transition to NIH subaccounting until October 1, 2015. The final version of the policy can be found in [NIH Notice Number: NOT-OD-14-103](#) (July 11, 2014); *Revised Timeline for Administrative Changes to NIH Domestic Awards to Transition to Payment Management System Subaccounts*. NIH non-competing continuation awards that have not yet been transitioned to PMS subaccounts need not be transitioned until the fiscal year beginning October 1, 2015. The Notice is clear that there will be no additional implementation delays and no exceptions will be granted after October 1, 2015.

While the transition has been delayed, grantees are encouraged to continue to revamp systems and business processes during this time to make for a smooth transition.

Other HHS Operating Divisions (e.g., HRSA, CDC, etc.) did not request the October 1, 2015 extension, so non-competing continuation awards for other HHS Operating Divisions already are being transitioned to PMS subaccounts. Note, AHRQ requested the same waiver that was granted to NIH. However, their request was not accepted.

We will follow up on any issues and/or institutional concerns related to the transition to subaccounts in early- to mid-2015.

### *Changes to the Payment Management System (PMS)*

COGR continues to closely follow developments related to access to the PMS, both at the end of the award and at the end of the budget period. At the core of the issue is the Division of Payment Management's (DPM's) oversight and use of PMS to more closely monitor large, unexpired grant balances and to improve the timeliness of grant closeouts. This issue was elevated in the [April 2012 GAO](#) report on *Action Needed to Improve the Timeliness of Grant Closeouts by Federal Agencies*. DPM, in response to the GAO report, is committed to reconfigure the PMS to include more checks that will allow for better compliance with the 90-day closeout period.

COGR is sensitive to the fact that the issues from the April 2012 GAO report must be addressed. However, we are paying close attention to any new configuration of PMS that may potentially create new administrative burden, as well as create challenges to making cash payment requests. ***If your institution has had a denied cash payment in PMS due to 90-days past closeout (or 90-days past the end of the budget period) as it relates to NIH or any other HHS Operating Division***, please contact David Kennedy at [dkennedy@cogr.edu](mailto:dkennedy@cogr.edu). We encourage the COGR Membership to be on the alert for unusual experiences you encounter when using the PMS to request cash payments from any HHS Operating Division.

### *Transition to a 120-day Grant Closeout Model*

There is momentum on the transition from the longstanding 90-day grant closeout model to a 120-day model. COGR's understanding is that Federal agency leaders are addressing the 120-day closeout model within the context of updating Research Terms and Conditions. In addition, COGR addressed this topic in its comments to the December 19, 2014 Federal Register Notice (see earlier section) ***with the recommendation that an OMB policy calibration of the Uniform Guidance is the best way to establish a uniform 120-day closeout model for all agencies***. As COGR follows the development of a 120-day closeout model, some of the other issues that will need to be addressed include:

- 1) How do we encourage all Federal sponsors to participate?
- 2) Will the 120-day standard be applied to all functions; i.e., financial reports, programmatic reports, and cash draws from federal payment systems?
- 3) Will we be able to request exceptions? Even though compliance and timely closeouts should increase dramatically under the new model, exceptions still may be necessary.

- 4) How would exceptional cases be operationalized at the agency level? What documentation would be required?
- 5) If exceptions are allowed for cash draws beyond 120 days, will there be a threshold that requires special documentation? For example, the NSF threshold is \$10,000 and above.
- 6) Could the new model be applied retroactively to all awards and not just those issued under the UG?

We will keep the Membership posted on the progress of implementing a 120-day closeout model and the other issues that may need to be addressed.

### **NIH Interim General Grant Conditions Implementing New HHS Grants Regulations (Uniform Guidance) Notice Number: NOT-OD-15-065**

NIH issued February 5<sup>th</sup> Interim General Grant Conditions implementing OMB's Uniform Guidance at 45 CFR Part 75. The current policy is reiterated to provide recipients with further context (e.g., cost considerations, NIH standard terms of award, special award conditions, and grants appeal procedures). The Interim General Grant Conditions document serves as the applicable terms and conditions effective for Notices of Award (NoA) issued on or after December 26, 2014, that obligate new or supplemental funds until revised Research Terms and Conditions become effective. COGR is seeking your feedback and will be keeping an ongoing list of problematic areas to be addressed. For more information see <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-15-065.html>

### **EPA Interim Financial Assistance Conflicts of Interest Policy**

The December Meeting Report mentioned OMB Uniform Guidance – Transition 2015 and the challenges associated with varying implementation policies and practices. Among them, is the Environmental Protection Agency's (EPA) Interim Financial Assistance Conflicts of Interest Policy [http://www.epa.gov/ogd/epa\\_interim\\_financial\\_assistance\\_coi\\_policy.htm](http://www.epa.gov/ogd/epa_interim_financial_assistance_coi_policy.htm). We've heard from many of our members that the policy goes beyond the requirements stated in the Uniform Guidance creating overly burdensome requirements. As a result, we've collected your comments and in response have submitted COGR's letter dated February 20, 2015. We have been told by the EPA that comments to this interim policy are being collected until March 31, 2015. COGR will keep the membership posted on the progress of this issue. The letter is posted on the COGR [website](#).