

COUNCIL ON GOVERNMENTAL RELATIONS
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March 18, 2015

March 5 and 6, 2015 Meeting Report
(Uniform Guidance Related Excerpts)

GENERAL DEVELOPMENTS

Regulatory Reform

GAO Review of Research Regulations and Reporting Requirements

In October 2012, Representative Mo Brooks, former Chairman of the House Science, Space and Technology Committee's Subcommittee on Research Education, sent a [letter](#) to the GAO comptroller requesting GAO review the current regulations and reporting requirements imposed on research universities; in particular those related to effort reporting, sub-recipient monitoring and the paper record maintenance required for contractors under FAR. There are indications that GAO may have recently initiated a study. COGR and AAU will meet with GAO staff on March 25.

Research and Development Efficiency Act

H.R. 5056, the R&D Efficiency Act was passed by the house on July 10, 2014 in a previous session of congress but was not passed by the senate. A new version of the Act, [H.R. 1119](#), including an [amendment](#) introduced by Representative Daniel Lipinski, was approved by the House Science, Space, and Technology Committee on March 4, 2015. The bill would direct OSTP to establish a working group to review federal regulations affecting research and research universities and to make recommendations on how to harmonize, streamline and eliminate duplicate requirements and minimize regulatory burden on IHEs performing federally funded research.

COSTING POLICIES

Committee: James Luther, Chair, Duke University; Sara Bible, Stanford University; Kelvin Droegemeier, University of Oklahoma; Joseph Gindhart, Washington University in St. Louis; Cynthia Hope, University of Alabama; Lynn McGinley, University of Maryland, Baltimore; Kim Moreland, University of Wisconsin – Madison; Mary Lee Brown, University of Pennsylvania, ACUA Liaison; Michael Daniels, Northwestern University; Dan Evon, Michigan State University; Michael LeGrand, University of California, Davis; Cathy Snyder, Vanderbilt University

March COGR Meeting Sessions on Uniform Guidance Implementation

The March COGR Meeting included two sessions on the Uniform Guidance Implementation. The PPT presentations for both are available at www.cogr.edu (see Meetings | March 2015 Meeting Presentations).

The Thursday morning session was a Costing Policies breakout session with a panel that included: Lynn McGinley - University of Maryland, Baltimore, Mike Legrand - University of California, Davis, Naomi Schrag - Columbia University, and Joe Gindhart – Washington University in St. Louis. The panel discussion focused on Uniform Guidance implementation issues specific to costing-related aspects of the Uniform Guidance. Compensation & Documentation (formerly effort reporting) and F&A related issues were the primary focus.

The Thursday afternoon session was a general session with a Federal panel that included: Jean Feldman - Head, Policy Office, NSF, Cynthia Montgomery - Deputy Director, Office of Grants and Financial Management, National Institute of Food and Agriculture, USDA, Michelle Bulls - Director, Office of Policy for Extramural Research Administration, NIH, and Victoria Collin - Office of Federal Financial Management, OMB. The Thursday winter storm in the Washington DC-metro area prevented our guests from traveling to the COGR Meeting. However, we were able to establish a speaker phone / call-in alternative and all four participated.

Both sessions informed “Next Steps” that COGR will undertake in terms of issue engagement applicable to the Uniform Guidance implementation. While COGR knows at one level the Uniform Guidance is final and that the chance for significant update is minimal, at another level COGR recognizes agency implementation is fluid and the opportunity for engagement is natural to COGR’s broad goal of reducing regulatory burden. And because OMB is an inseparable partner in the Uniform Guidance implementation, we believe it is appropriate to regularly reach out to OMB and expect dialogue, assessment, and consideration of opportunities to clarify and improve the Uniform Guidance. Several of our “Next Steps” are described in the sections below.

Meeting with OMB to Review February 13th COGR Response Letter

Despite the fact that the Uniform Guidance is final and that the chance for significant update is minimal, COGR maintains there are open issues that still must be addressed. ***We are scheduled to meet with OMB to review these issues.***

The interim joint final rule implementing the Uniform Guidance was published in the [Federal Register](#) (Vol. 79, No. 244, Friday, December 19, 2014 - *Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*) in December. Title 2, Part 200 of the Code of Federal Regulations ([2 CFR, Part 200](#)) was updated to show the complete Uniform Guidance, with the technical corrections/amendments incorporated. COGR submitted its comments to the December 19, 2014 Federal Register Notice on February 13th. The COGR letter is available at www.cogr.edu on the homepage (see Latest News, February 13, 2015). In the letter, we 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.

In our meeting with OMB, we expect to address these topics. COGR believes each issue should be advanced through either an OMB clarification or a commitment by OMB to further engage. We will provide an update to the Membership after our meeting with OMB.

Federal Agency Perspectives on the Uniform Guidance Implementation

The Thursday afternoon Federal panel covered both the Federal Agency and the OMB perspective on the Uniform Guidance implementation. Victoria Collin from OMB addressed the OMB-specific items; some of these are addressed in the previous section. Jean Feldman from NSF, Cynthia Montgomery from NIFA, and Michelle Bulls from NIH provided the Federal Agency perspective. Several of the significant items discussed included:

- 1) Administrative and Clerical salaries – Direct charging is allowable as specified in 2 CFR 200.413. However, prior approval requirements may vary on an agency-by-agency basis.
- 2) 120-day Financial Closeout – This will be included in the Research Terms and Conditions. Making the 120 days retroactive to all awards is being reviewed on an agency-by-agency basis.
- 3) New funding increments and Carryover funds associated with the new funding increments – Most agencies are covering these under the Uniform Guidance, though there may be agency variation (e.g., DOD).
- 4) Conflict of Interest (2 CFR 200.112) – COGR is monitoring and responding, as appropriate. To-date, EPA and NEA have published new policies and NIFA is developing their policy.
- 5) Agency Guidance and FAQs – These continue to be developed on an agency-by-agency basis. NIH has published Interim Grant General Conditions, corresponding FAQs, and soon will release their updated Grants Policy Statement. NSF and NIFA plan to release FAQs soon.
- 6) Research Terms and Conditions – These are coming, but are at least a few months away. NSF, NIH, and NIFA are participating.

Jean, Cynthia, and Michelle each acknowledged the intra-agency challenge to ensure all grants and program managers are fully up-to-date on agency policy and the many nuances associated with the agency implementation of the Uniform Guidance. When there are inconsistencies within an agency, all three want to be made aware and will address the issue, accordingly.

COGR also is prepared to engage when there are intra-agency inconsistencies, but at the same time, is confident the policy leaders at each agency will aggressively address these issues when they occur. COGR is more focused on inconsistencies across different agencies. We are developing several strategies to elevate the topic of “uniformity” across agencies in those situations when “uniformity” would be rational and reduce burden.

We encourage the Membership to share with COGR any situation that represents an intra-agency inconsistency, an agency deviation from the Uniform Guidance, or any observation that may affect administrative burden. Contact David Kennedy at dkennedy@cogr.edu. COGR is compiling these cases and will share data and anecdotes, as appropriate, with Federal policymakers and other committees and entities engaged in studying the impact of Federal regulation.

Compensation and Documentation, Uniform Guidance Compliance and the Matrix

A portion of the Costing Policies breakout session on Thursday morning was focused on the Compensation and Documentation requirements of the Uniform Guidance (2 CFR 200.430). Naomi Schrag from Columbia University and Joe Gindhart from Washington University in St. Louis led the discussion.

Much of the discussion centered on the importance of reviewing your institution's current written policies and procedures and how they line-up with 2 CFR 200.430. For example, Appointment

Letters, Institutional Base Salary, Incidental Pay, Extra Service Pay, Reasonableness, Level of Precision, Budget Estimates, Significant Changes, and After-the-fact Confirmation, among others, each should be considered within the context of your institution's current written policies and procedures. However, the message presented was not about making knee-jerk, major changes to written policies and procedures, but rather to take the opportunity to review your current written policies and procedures and assess their alignment with 2 CFR 200.430.

Most important at this stage may be an internal assessment of your current written policies and procedures, which includes both a review to ensure policy requirements in 2 CFR 200.430 are met and a review of the internal controls that are in place to provide assurance that your written policies and procedures are working as they are described.

Another important consideration may be for your institution to assess whether selected policies and procedures need to be updated, and if so, what will be the “effective date” for implementing new policies and procedures. Whereas it is clear that the effective date of the Uniform Guidance was December 26, 2014, OMB, the COFAR, and the Agencies have regularly defined caveats. For example, at the award level, most agencies have specified the UG is applicable to new awards and new funding increments only, so a cohort of awards remains covered by Circulars A-110/A-21. At the same time, at least one agency (i.e., DOD) has taken the stand that even the new funding increments will remain covered by A-110/A-21.

This creates the dilemma: Inevitably, an institution will have some awards covered by the UG and others by A-110/A-21. In the case of 2 CFR 200.430, ***COGR is formulating a position that an “institution-defined effective date”, applicable to those selected policies and procedures that need to be updated, is the most practical and compliant manner to transition from A-21, J.10 to 2 CFR 200.430.*** Under this model, it may be appropriate to coordinate the “institution-defined effective date” with the new fiscal year or with some other benchmark date at your institution.

OMB and the COFAR have acknowledged the challenge that UG implementation will have in selected situations, such as in the case of implementing 2 CFR 200.430. COGR has raised the “institution-defined effective date” model to OMB as an effective approach for transitioning to full compliance with 2 CFR 200.430. This also would be helpful to the Single Audit community and would establish a reasonable audit standard that does not unfairly place institutions in a position of non-compliance. We are asking OMB to approve this approach through either an FAQ or an OMB Clarification memo. Also, we are reaching out to the Single Audit community to get feedback on this approach.

COGR’s commitment is to be an active voice in shaping guidance and effective practices as your institutions implement 2 CFR 200.430. To assist you with possible changes in your written policies and procedures, ***COGR is developing a Matrix that will include excerpts from A-21, J.10; 2 CFR 200.430; and COGR observations, examples, and preliminary interpretations.*** We expect the Matrix to be a living document that we will update, periodically, throughout 2015, and as needed, into 2016. We are targeting Version 1 to be available later this Spring. We will keep the Membership updated on all activities related to Compensation and Documentation.

F&A and the Uniform Guidance

The other portion of the Costing Policies breakout session on Thursday morning was focused on the F&A requirements of the Uniform Guidance. Lynn McGinley from the University of Maryland, Baltimore, and Mike Legrand from the University of California, led the discussion. The discussion focused on those F&A topics located in various sections of the Uniform Guidance. Several of the significant items addressed included:

- 1) Direct charging of administrative and clerical salaries (2 CFR 200.413) and the potential impact on the Department Administration (DA) component of the F&A rate.
- 2) Implementation of the 1.3% Utility Cost Allowance (2 CFR Appendix III, B.4.c to Part 200) and an update on COGR's position in the February 13th response letter to OMB.
- 3) Treatment of salaries over the NIH salary cap and the interpretation that they should be excluded from the research base (2 CFR Appendix III, A.1.a.(3) to Part 200).
- 4) Clarifying the DS-2 approval process (2 CFR 200.419) and an update on COGR's position in the February 13th response letter to OMB.
- 5) Advocating to OMB that tuition reimbursement for employees (2 CFR 200.431) should remain allowable for undergraduate and graduate education, as well as when the tuition reimbursement is applicable to other institutions.

As we suggested in the previous section on Compensation and Documentation, COGR's commitment is to be an active voice in shaping guidance and effective practices as your institutions implement new rules applicable to developing your F&A rate proposals and the corresponding DS-2. We are engaging in each of the issues described above and will update the Membership as we learn more. Also, we encourage you to keep COGR updated on issues raised in your F&A rate negotiations. While we may not intervene in a specific negotiation, if the issue in question may affect the broader COGR membership, it may be appropriate for COGR to elevate the issue.

Grant Closeouts and Related Issues – IMPORTANT UPDATES

This topic has been on the forefront for two years and we have included regular summaries in our COGR Updates. A number of important updates have taken place since the COGR Update on February 20th and these are described below.

120-day Grant Closeout Model

In the [NIH Interim Grant General Conditions](#), Section 10 states: *Recipients must submit a final FFR, final progress report, and Final Invention Statement and Certification within 120 calendar days of the end of grant support. The reports become overdue the day after the 120 day period ends.* We are thankful for the new NIH closeout model.

At the same time, Federal agency leaders are addressing a 120-day closeout model within the context of updating Research Terms and Conditions (RTCs), though the 120-days will be specific to financial closeout only. Also, DOD currently is finalizing DOD-specific Terms and

Conditions for the Uniform Guidance, and our understanding is that they are establishing a 120-day closeout model, again, specific to financial closeout only.

The above are positive developments, though the following still needs addressed:

- 1) How do we encourage all Federal sponsors to adopt a uniform 120-day financial closeout model? In the case of HHS, only NIH has adopted the 120-day model.
- 2) Will the 120-day financial closeout model be applied retroactively to all awards and not just those issued under the UG? In the case of NIH, it will be retroactive.
- 3) How can we be assured that the corresponding payment systems (e.g., PMS for NIH, ACM\$ for NSF, etc.) are programmed to accept the 120-day financial closeout model?
- 4) Will we be able to request an extension beyond 120 days? Even though compliance and timely closeouts will increase dramatically, extensions still may be necessary.
- 5) If extensions 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) If we have submitted the FFR and complied with the 120 days, but then determine a revised FFR is necessary, will we be able to request additional funds?
- 7) Will Federal agencies, besides NIH, consider incorporating programmatic reports into an “across-the-board” 120-day closeout model?

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 Subaccounting and Final Transition on October 1, 2015

While we were successful in securing a delay of the full transition to NIH subaccounting until October 1, 2015, this date will quickly approach. The final version of the NIH subaccounting 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.

We will follow up on any issues and/or institutional concerns related to the transition to NIH subaccounts at the June Meeting, or as necessary, prior to the June Meeting.

Payment Management System (PMS) and “Budget Period”

In response to the [April 2012 GAO](#) report on *Action Needed to Improve the Timeliness of Grant Closeouts by Federal Agencies*, the Division of Payment Management (DPM) initiated a change to the PMS that would have tied access to PMS to the end of the budget period rather than the end of the project period. In effect, cash requests from PMS could have been denied if funds were not expended by the end of the budget period. COGR wrote to the Director of the Program

Support Center at HHS (the entity responsible for PMS oversight) last September and expressed concern. NIH raised similar concerns. COGR's understanding is that this issue has been resolved and that cash requests from PMS will remain tied to the end of the project period. However, we encourage the COGR Membership to remain on the alert for unusual experiences you encounter when using the PMS to request cash payments from NIH or any HHS Operating Division.

CONTRACTS AND INTELLECTUAL PROPERTY

Committee: David Winwood, Chair, Louisiana State University; Cindy Kiel, University of California, Davis; Alexandra McKeown, The Johns Hopkins University; Cordell Overby, University of Delaware; Patrick Schlesinger, University of California, Berkeley; Kevin Wozniak, Georgia Institute of Technology; Catherine Innes, North Carolina State University; Fred Reinhart, University of Massachusetts; John Ritter, Princeton University; Wendy Streitz, University of California

HHS Publishes Proposed Revision to HHS Acquisition Regulations (HHSAR)

On March 2 HHS proposed a revision to the HHS Acquisition Regulations (HHSAR; 80 FR 11266). This is the first full revision of the HHSAR since 2009, although some correcting amendments were made in 2010.

The revision updates the HHSAR to reflect changes in the FAR over this period. It also incorporates new requirements included in appropriations acts, and removes what HHS considers to be internal procedures from the HHSAR.

Our review of the revision does not indicate particular problems or concerns. There is new material on patent and data rights in Subpart 327 and the related clauses in 352.227. These all appear consistent with the FAR. Of note is an addition in 352.227-70 that explicitly provides that contractors may publish the results of their work under the contract. This has been a concern with other agencies, and occasionally with HHS, so it's refreshing to see explicit recognition of the right to publish in the HHSAR.

While not of particular concern, Subpart 335 on Cost Sharing is worth mentioning. The approach is based on the FAR, but exactly opposite to that of the Uniform Guidance for federal assistance. Under the FAR, cost sharing is encouraged, and there are guidelines as to the amount, based on the expected benefits to the contractor. COGR is getting increasing questions about inconsistencies between the Uniform Guidance and FAR. It is important to keep in mind that the FAR governs procurement contracts, and takes precedence over the Uniform Guidance for contracts except where the FAR specifically incorporates provisions in the Uniform Guidance (i.e. Cost Principles).

Comments are due May 1. At this time COGR does not anticipate submitting comments. However, COGR members are encouraged to contact us (Robert Hardy or Jacquelyn Bendall) with any concerns about the revision.

RESEARCH COMPLIANCE AND ADMINISTRATION

Committee: Michael Ludwig, Chair, University of Chicago; Lois Brako, University of Michigan; Pamela Caudill, Harvard University; Kerry Peluso, Emory University; Suzanne Rivera, Case Western Reserve University; James Tracy, University of Kentucky; Pamela Webb, University of Minnesota; Walter Goldschmidts, Cold Spring Harbor Laboratory; Jennifer Lassner, University of Iowa; Steve Martin, Indiana University; Lisa Mosley, Arizona State University

EPA Interim Financial Assistance Conflict of Interest Policy

COGR has received feedback from the member community regarding EPA's recently released Interim Financial Assistance Conflict of Interest Policy to comply with 2 CFR 200.112. EPA issued its policy to ensure that the Agency met the requirement in 2 C.F.R. 200.112 for nonfederal entities to provide written COI disclosures. While EPA believes that the disclosure provisions of the policy are fully consistent with Section 200.112, our take is that the interim policy establishes requirements for recipients including but not limited to requiring new disclosures from Faculty and other researchers and personnel, including contractors and subrecipients that goes *beyond* the written standards of conduct required in Uniform Guidance part, 2 CFR 200.318 (c) (1) and (2) FAQ 200.112-1 below.

“The conflict of interest policy in 2 CFR 200.112 refers to conflicts that might arise around how a non-Federal entity expends funds under a Federal award. These types of decisions include, for example, selection of a subrecipient or procurements as described in section 200.318.”

We have been told that the EPA has initiated the feedback process by sending letters to EPA's non-Tribal recipients asking for comments by March 31, 2015. In addition, EPA is in the process of starting consultation with the Agency's Tribal partners to obtain their feedback.

COGR's two primary concerns requested that EPA remove the requirement to disclose, on a project-by-project basis, contracting and subaward COIs that violate 2 CFR 200.318, instead allowing recipient organizations to manage COIs on an institutional basis. The second request asked that EPA immediately remove the requirement for disclosures relating to COI violations of EPA's Competition Policy. In COGR's view, compliance with that Policy's COI requirements is an EPA, and not a recipient, responsibility.

EPA anticipates receiving comments from the recipient community on the issue raised by COGR's first request and has been told that in order to ensure that all viewpoints are fully and fairly considered, the EPA will address our request as part of the stakeholder comment process noted above, a process to be completed by September 2015.

With regard to the second request, EPA is reviewing that now and anticipates a final decision in April 2015. COGR's letter to the EPA can be found on the website <http://www.cogr.edu>.

We will keep the membership informed on further updates. If you see other policies being implemented that go beyond the requirements in the Uniform Guidance, please contact Jackie Bendall at jbendall@cogr.edu.
http://www.epa.gov/ogd/epa_interim_financial_assistance_coi_policy.htm