

COGR sessions on the Uniform Guidance

October 23 & 24, 2014

Thursday morning

David Kennedy (COGR Research Compliance and Administration committee staff)

Overall Implementation: [slides on our website](#)

- It is the eleventh hour.
- Discussion of the COFAR FAQs, video on webcast (coming soon), COGR Guide v. 2. (On website)
- **Ongoing engagement with COFAR: COGR letters discussing possible changes (“technical corrections”) to the guidance before it becomes effective.** (On website.)
 - 9/26: Clarify MTDC definition and of subcontract. Issue: NIH program officer interpretation of subcontract to include vendor relationships.
 - 10/9: Technical corrections needed because IGs are not seeing FAQ as authoritative.
 - 10/10: Because of irrelevance, either scrap DS-2 or only require of entities with \$50 million in CAS-covered contracts. Backed up with COGR survey requested by COFAR.
- **COGR is meeting with COFAR in mid-November and is hopeful that meeting will result in technical corrections. Recommendation: don’t work on DS-2 until this is resolved.**
- **COGR expects to release a checklist or similar tool to check readiness about December 1.**
- 2015: COFAR will be examining metrics to see how well UG is working to reduce burden. (See OMB blog post about metrics and related memo on our website.)
- Top 15 (highest priority based on COGR committee discussions) areas to look into for possible policy/procedure changes; most are discussed in the most recent COFAR FAQs. These are not listed here in priority order, but in order they appear in the UG; TC indicates an area for which technical corrections are anticipated or hoped for. Many of these get more detailed discussion later in the meeting:
 - 200.110 Effective /Applicability Date of UG to each award. (2 sets of rules active?)
 - 200.112 Conflict of Interest: Procurement, not objectivity in research (TC)
 - 200.303 Internal Controls: Must v “should” (TC)
 - 200.306 Cost Sharing: formally incorporate 2001 OMB Voluntary Uncommitted Cost Share Memo (TC) (I have added a link to this memo to our website.)
 - 200.307 Program Income: conflict between Bayh-Dole Act and UG (TC)
 - 200.317-326 Procurement Standards: effective 7/1/16, but work ahead.
 - 200.331 Requirements for Pass-Through Entities: New requirements, new burden
 - 200.332 Fixed Amount Subawards: FAQ helps, still challenges (TC)
 - 200.343 Closeouts: new opportunity for 120 days, agency terms and conditions not yet ready
 - 200.413 (453, 463, etc.) Direct Costs: What Faculty Need to Know!
 - 200.414 Indirect Costs: 4 year rate extension, 1.3% utility cost allowance
 - 200.419 Cost Accounting Standards & DS-2: 11th hour push on, cautious optimism (TC)
 - 200.430 Compensation: effort reporting or something better? Opportunities and challenges with this.

- 200.431 Compensation: fringe benefits/terminal leave. FAQ helpful, more clarification needed (TC)
- 200.436 Depreciation: FAQ clarifies institutional share as allowable cost. (TC)
- Advice: Watch COFAR website. Pay attention to material from trusted sources (COGR, FDP, NCURA, etc.). Leverage many in the institution plan for training and roll-out. Expect technical corrections to the UG and agency plans sometime before December 26, but this might be December 24. Find comfort with uncertainty.

Cindy Hope (AVP Research, Alabama) and Mary Lee Brown (AVP Audit, Penn)

Internal Controls: [slides on our website](#)

- We got what we asked for: less prescriptive regulations, more reliant on controls.
- Definitions of controls in 200.61 and .62.
- Primarily based on the COSO framework (updated version 05/13) and the Green Book (updated 9/14 to comply with COSO-2). Auditors see no large changes in COSO-2.
- Issues: documentation of controls with respect to the new COSO framework; monitoring of the effectiveness of those controls.
- Internal audit foci: Internal controls, procurement, subrecipient monitoring, performance reporting, effort reporting.
- NOTE: The section on internal controls was moved from the audit section of the regulations to the administrative guidance. Important to think controls first, not after the fact.
- Brief discussion of the role internal auditors can play (supportive and consultative) to prepare for external audits/reviews.

Jim Luther (AVP & Compliance Officer, Duke) and Kim Moreland (AVC Research Admin, Wisconsin)

Compensation: [slides on our website](#)

- Effort reporting options: “Manage flexibility, emphasize internal control”
- Current systems range from paper systems to fully electronic systems.
- Next steps:
 - Review documentation and controls
 - Review DS-2 (?)
 - Develop a policy defining “Institutional Base Salary.” Ensure the faculty appointment letters and similar documents are consistent with policy.
 - Consistent definition of full teaching load across the institution and policies on extra service pay and intra-institution consulting. Define these for nine- and twelve-month faculty. (Also clinical faculty; not yet relevant here.)
- COGR’s effort reporting guidance is still useful.
- Opportunities: decrease frequency of reporting; decrease population reporting; consider who has/should have delegated authority to approve; leverage existing controls, reports and systems (e.g. PSL time system).
- Consider waiting for big changes for completion of FDP project in this area.

Cindy Hope and Jim Luther

Indirect Cost issues and the DS-2: [slides on our website](#)

- COGR committee met with representatives of HHS and ONR (Debbie Raffi and Linda Shipp)
- After a rate negotiation, **one request for extension** for a period of one to four years **will be considered**. After that extension, another negotiation must happen before another extension. Advise: Call the grants chief to discuss before requesting 3-4 year extension. Extensions can be requested now; they cannot be granted before 12/26/14.
- **Documentation: schedule of base and schedule of space likely needed from current to end of requested extension.**
- Utility Cost Adjustment (1.3% addition to F&A rate):
 - **ONR will consider 1.3% utility allowance, other UG changes with appropriate support**
 - HHS will not consider these until a base year under UG is audited
 - Both expect to see a separate schedule on utility cost allocation based on space allocation.
 - **A COGR work group is developing a 1.3% utility allowance template (calculation framework).**
 - ONR more positive than HHS about 2014-15 based rates.
- DS-2:
 - May be submitted on or after 12/26/14 for fiscal years beginning on or after 12/26/14.
 - All will need to be redone, adding sections on awards under the uniform guidance.
Areas of change:
 - F.6.b/.413 Direct Costs
 - J.10/.430 Direct Admin Salaries
 - Indirect Pools (utilities)
 - All Bases (utilities)
 - Charging Leave
 - Excluding participant support costs from MTDC
 - **Consider waiting for November meeting and TC from COFAR**

Dan Evon (Director, GCA, Michigan State)

UG Procurement: [slides on the website](#)

- The UG language on procurement came primarily from A-102, the circular for state and local governments. However, 200.317 exempts states from following them.
- **COGR has identified procurement language as the area of most negative impact in the UG.**
- The FAQ delayed implementation for one full year after 12/26/14; for us, this means the fiscal year beginning 7/1/16. Other issues from the FAQ: allows separate federal procurement policies, doing this could create issues with transfers between federal and non-federal projects; strategic sourcing is compliant and needs no additional documentation. **NOTE: IGs have indicated that they do not consider the FAQ to be authoritative.**

- Five UG procurement types:
 - Micropurchases (under \$3,000) – must be reasonable
 - Simplified (at least \$3,000, under \$150,000) – must have documentation of more than one quote
 - Sealed bids (\$150,000 or greater)
 - Competitive bids
 - Non-competitive bids (sole source): scientific reasons are cited in the FAQ, but issue with the authority of the FAQs.
- UG 318.(c)(1) conflicts of interest: the language forbids participation if there is a conflict of interest whether or not there is a management plan. (TC proposed)
- Benefits from the UG: micropurchases require no cost/price analysis, small purchase require 2 quotes instead of 3.
- There will be a COGR-FDP working group on procurement. NMSU participation? This would provide the chance to work with the NSF IG, possibly the HHS IG as well.

Friday morning

David Kennedy opening comments

- Plan for the worst case:
 - Expect agency plans on 12/24/14
 - Hope for a technically corrected UG on 12/24/14
 - There will be comment periods on each agency plan and for any technical corrections
 - DOD has taken a different path and is developing DoD specific terms and conditions
 - There may be a period that there are no standard terms and conditions available from anyone

Sara Bible (AVP Research, Stanford), Mike Ludwig (AVP Research Admin, Chicago), and Pamela Webb (AVP Research Admin, Minnesota)

What Faculty Need to Know: [slides on our website](#)

- Allowable, allocable, and reasonable still apply.
- New regulations and related university policies and procedures for each change in the UG will require faculty communication and staff training.
- Cost sharing
 - Will we allow, not allow, discourage voluntary cost share?
- Direct charging of administrative and clerical salaries
 - Policy/procedures: Minimum threshold? Approvals needed? Justification needed?
 - Define “integral.” Give examples. Are new accounts/system flags needed to separate direct charges for F&A calc?
 - Will there be different thresholds for non-Federal projects?
- Direct charging of computing devices
 - New instructions for computing device purchases?

- Guidance for allocation of device costs?
- Documentation/review/approval when devices allocated 100% to a federal award?
- Define “essential.” (see slide for detailed example.)
- NOTE: If the university generally provides faculty desktop computers, direct charges will be generally easier to justify.
- Subrecipient F&A rates
 - Provision: use subrecipient’s negotiated rate; if none, either negotiate or use 10%
 - May need to create system flag to indicate award, subaward is/is not under UG
 - Determine how to handle proposals submitted under the old rules when funds are not available to pay F&A of a subrecipient. Same question for modifications to existing awards, if the agency decides the award is subject to the UG.
 - Consider adding a business process to document when rate negotiation with a sub is appropriate.
 - Consider documentation when a sub agrees to forego or reduce F&A.
- Fixed Price Subawards
 - Require prior approval of the agency. May be up to \$150,000; may be multiple agreements (for different tasks) with the same subrecipient. (unlike standard procurement rules which would prohibit breaking up a purchase to be under a threshold)
 - Process: how to obtain and document agency approvals (Minnesota created language seeking pre-approval in the proposal process)
 - System change?: how to track which awards are fixed price rather than cost reimbursable
 - Question (that may not affect NMSU): Are fixed rate (per patient) clinical trials considered fixed price agreements?
- Subrecipient Progress Reports
 - Subawards must include any additional requirements that the pass-thru entity imposes on the subrecipient for the “prime” to meet its responsibilities to the awarding agency, including identification of required financial and/or performance reports. Pass thru monitoring must include reviewing of subrecipient reports required by the pass-thru entity (“prime”).
 - Decide on and implement system for tracking due dates, documenting receipt and review, storing reports. Who will identify and track down missing reports? If reports are on an “as needed” basis, how will requests be documented?
 - NOTE: This is easy for auditors to test.
- Cost reimbursable Subaward invoices must be paid within 30 days of receipt
 - May want to test system now to see if paid w/i 30 days of receipt.
 - May need to consider when they are received (if sent to PI?). Subaward agreements may need to specify where they must be sent to avoid this issue.
 - Consider how payment system “net 30” date is set.
 - Is guidance/training needed about improper invoices?

- NOTE: This is easy for auditors to test.
- Subrecipient Risk Assessment and Monitoring
 - Risk assessment is mandatory.
 - Monitoring obligations include:
 - Review of technical and financial reports
 - Following up for timely and appropriate actions on subrecipient audit deficiencies
 - Issuing a management decision for audit findings (see 200.521)
 - Verify that recipients received their mandatory single audit if they exceeded the \$750,000 threshold
 - Consider if subrecipient audit findings require us to adjust records
 - Need to determine if procedures need to change for new requirements
 - Need to determine how to do risk assessment on an expanded (because of the threshold increase from \$500K to \$750K) population of subs who don't need audits
 - Establish mechanism for checking audit reports in the Federal Audit Clearinghouse.
- Certification of completion at the end of fixed price awards/subawards
 - New requirement; must be in writing. If the level of activity or effort was not met, the amount must be adjusted.
 - Changes to business processes: new process? Adjustment to existing closeout process?
 - Review policies/procedures about who pays costs not covered by the agency.
 - NOTE: This may not need to be in place immediately, as it is the closeout process.
- Recruiting costs...Visa costs
 - Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable as direct costs. Must be critical and necessary to the project. Must be allowable under applicable cost principles. Must be consistent with entity accounting policies and practices. Meet the definition of direct costs.
 - Visas appropriate for a specific period and purpose: J-1 (no fee to the university for these), H-1B (workers in specialty occupations), TN (Treaty NAFTA), O (alien)
 - Unallowable costs: expediting costs, renewals, dependent visa fees, any institutional charge
- Publication costs
 - To be allowable, must be incurred during the award period.
 - Will faculty be reminded in award terms or before the end date that they have this option?
 - Maximum time allowed for charges (example: 60 days past end date)
 - How will sub charges for after-end-date publications be handled?
- Temporary Dependent care
 - Allowable if travel directly related to award, costs consistent with policy for all travel, only temporary costs for the travel period.
 - Review policy on dependent care costs; is a policy change to reflect UG desirable?
 - Possibly an addition to the fringe benefit rate.

- Consider processes for documentation in order to be paid for these costs.
- Terminal Leave
 - See [COGR letter on this topic](#) (starts on page 5)
 - COFAR is encouraging (but not requiring) charging on an accrual basis
 - Charge as a fringe benefit? Cost? Time to implement?
 - Is there an upper limit for direct charging?
 - Documented allocation process?
- Closeout in 90 days
 - Financial closeout reports must be submitted within 90 days or invoices will not be paid.
 - Might become 120 days in the terms and conditions....TC?
 - Issues:
 - Guidance for final charges? Different for federal v non-federal awards? Different for prime v subawards?
 - How to deal with timing issues between closeout and effort certification?
 - What will be required of subs? Contract language?
 - How to deal with late charges from subs?
- Other topics after the top 15:
 - MTDC: excludes participant support costs. System changes?
 - Required certifications: Who signs? Necessary delegations? System changes to include certifications on final financial reports and payment vouchers. Consider different certification (or none) for non-federal awards.
 - Effective date: How to track which awards are subject to UG?
 - Prior approval requirements list: Review and update procedures
 - COI in procurement: look for this in TC. Processes for identifying and managing these.
 - PI Disengagement: prior approval required for change in scope or objective, change in a key person, or either disengagement of the PI from the project for more than 3 months or a 25% reduction in time devoted by the PI. Consider: review and changes to policy, related faculty handbooks and contracts; work with provost's office; needs communication plan.

David Kennedy final comments

- Be sure to scrub policy, procedures (BPM) for references to A-21, A-110, A-133.
- COGR checklist/tool expected up by December 1.