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**FDP/COGR White Paper on the Uniform Guidance**

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**FDP/COGR Meeting on the Uniform Guidance**  
**NAS Keck Center, Room 101**  
**April 14, 2014**

**Federal Participants**

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Jean Feldman, National Science Foundation  
Debbie Rafi, Office of Naval Research  
Linda Shipp, Office of Naval Research  
Mark Herbst, Department of Defense

**University Participants**

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Joe Gindhart, Washington University in St. Louis  
Jim Luther, Duke University  
Kerry Peluso, Emory University  
Erica Kropp, University of Maryland Center for Environmental Science

**Council on Government Relations**

David Kennedy

**Assumptions**

- University representatives recognize that Federal partners will have some limitations with regard to interpretation and implementation plans as they are still under development and not yet vetted through appropriate leadership.
- Federal representatives are challenged by being asked to turnaround implementation plans to OMB in an incredibly quick time period; we respect the pressure you are under and are hopeful that some ideas raised during this session can provide burden relief for you .
- Federal representatives recognize that Universities are challenged with this implementation due to scope and the long lead time associated with the likely requirement of technology/system changes, policy and business process impact, and change management.
- University and federal representatives are committed to working together in the spirit of FDP to improve the national research enterprise.

## **Implementation: Effective/applicability date (Topic Leaders: Bible & Gindhart)**

**Issue:** Implementation of the Uniform Guidance (UG) will be problematic for Institutions of Higher Education (IHEs) and Federal agencies given the overlapping timing of the issuance of implementing regulations, requests for changes in cost accounting practices with the Cognizant agency including negotiating Cost Accounting Standards (CAS) Disclosure Statement (DS-2) changes, application of the new regulations in proposals for sponsored projects, modifications to systems needed for compliance with the UG and rollout by each university via policy, business process change, and training.

### **Uniform Guidance: § 200.110**

(a) ... Federal agencies must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

### **FAQ II-2**

Once the Uniform Guidance goes into effect for non-Federal entities, it will apply to awards or funding increments after that date. It will not retroactively change the terms and conditions for funds a non-Federal entity has already received.

### **Challenges:**

- The Federal agencies expect to issue their implementing regulations in October/November 2014 timeframe, thus allowing grantee institutions very little time to update/revise their internal policies, procedures, systems and training.
  - This timeframe allows inadequate opportunity to propose costs in compliance with the UG and agencies' implementing regulations.
  - Will institutions be out of compliance if they aren't charging costs congruent with the proposal or with the UG?
  - Will IHEs be out of compliance if they aren't following their currently approved DS-2?
- During the period after 12/26/14, grantees will be managing awards under both A-110/A-21 and the Uniform Guidance, as applicable.
  - Data elements to electronic systems/records will have to be added to identify and track which set of guidance applies.
  - Managing sponsored projects under two sets of regulations and institutional policies will be confusing for all stakeholders including faculty, university administrators and Federal representatives.
- It is unclear how each Federal agency will apply the effective date to new awards/increments (e.g., NOA date, budget period start date, contract execution date...)
- The DHHS transition to subaccounts for non-competing continuation awards are scheduled to be initiated on 10/1/2014. Grantee institutions will experience a very high level of additional administrative burden and system changes to accommodate subaccounts for these on-going projects. The combination of the UG implementation and DHHS subaccount transition is the "perfect storm" for administrative burden for current resources at both the Federal agencies and their grantees.

**Clarification requested:**

- To simplify implementation, can institutions apply the various sections of the Uniform Guidance early and at their discretion?
- Will IHEs be allowed to implement the UG if the costs have not been proposed consistent with the UG? If not, will we be found out of compliance or is there a grace period to implement?

**Alternatives to Consider:**

- Sponsors should work with their grantees to allow flexibility in the timing of implementing various requirements within the UG; special consideration should be made where systems modifications are required.
- Federal agencies should clarify and consistently treat the application of the UG to their awards (e.g., what is the trigger data element).
- Similar to ARRA, Federal agencies should include specific references within the award regarding the applicability of the UG.
- With due respect to DHHS responsibilities, IHEs request a delay in the implementation of subaccounts for noncompeting continuation awards until 10/1/2015 so that both Federal agencies and grantees can dedicate sufficient resources towards implementing the Uniform Guidance.

**Potential Role of FDP:**

Based on the excellent framework for partnership among the FDP membership, FDP could facilitate discussion among COFAR/OMB, Federal sponsors, ONR, DCA and IHEs to understand the challenges and partner to find reasonable and timely solutions.

**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

- The Uniform Guidance is regulation for Federal agencies that will provide implementing regulations.
- There may be a 60 day period for public comment.
- There was discussion about submitting draft cost accounting changes to an institution's DS-2, which may start the six month clock.
- IHEs and Cognizant agencies may want to discuss how to describe the Utilities Cost Allocation (UCA) in the DS-2.
- Federal agencies and IHEs may want to discuss the "standard" changes to the UG, and apply them uniformly across agencies.

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## **Internal Controls (has there been a change to internal control expectations) (Topic Leader: Evon)**

**Issue:** “Internal Controls” is one of the most repeated phrases in the Federal Register notice on December 26, 2013 (103 times). While many of the referenced guides included in 200.303 were also included in the A-133 compliance supplement, has the repeated reference to internal controls changed Federal expectations for internal controls as a result of the new Uniform Guidance?

### **Uniform Guidance: § 200.303 Internal Controls**

(a) Establish and maintain effective internal control... in compliance with “Standards for Internal Control” ... and “Internal Control Integrated Framework”.

### **OMB FAQ Q III-4 dated February 12, 2014:**

... While non-Federal entities must have effective internal control, there is no expectation or requirement that the non-federal entity document or evaluate internal controls prescriptively in accordance with these documents...

### **Challenges:**

- Reference to internal controls went from a single section of the annual compliance supplement in A-133 to one of the most frequently repeated phrases in the Uniform Guidance. While the OMB FAQ seems to allay fears of a new internal control mandate, the frequent and repeated use of the phrase seems contrary with that presumption.

### **Alternatives to consider:**

- Consideration should be made to the implications of the perception when the phrase “internal control” is frequently used. Clarification that these internal control guidelines are not mandated for subawardees may also be helpful.

### **Potential Role of FDP:**

- FDP could facilitate discussion among agency and Institutions of Higher Education to better understand the expectations for effective internal controls.

### **Feedback from the April 14, 2014 FDP/COGR/Federal Partners meeting:**

- There was general agreement that the February 12, 2014 OMB FAQ did clarify that the Federal requirements for internal controls didn’t change. The repeated citation of the phrase “internal control” was attributed to input from the federal audit community.
- 200.303 internal controls says they **should** be in compliance with... not **must** be
- It was noted that one of the major purposes of the A-133 audit is to assess internal controls,
- Due to the nature of audits and auditors, good internal controls are not likely to be certified, reserving to the auditor, the ability, to know good or bad internal controls when they see them

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## **Cost Accounting Standards & DS (Missed opportunity)** **(Topic Leader: Evon)**

**Issue:** The requirement for a disclosure statement (DS-2) was proposed to be eliminated in the advanced notice of proposed guidance (ANPG) however they were not eliminated from the final Uniform Guidance. This seems like a lost opportunity to remove requirements that are of marginal value.

### **Uniform Guidance: § 200.419 Cost accounting standards and disclosure statement**

#### **Challenges:**

- While the threshold triggering this requirement was increased from \$25M to \$50M and a new, and welcome, six month time frame for a Federal decision regarding a proposed change was added, the DS-2 seemed like an excellent opportunity to reduce administrative burdens without a diminishing impact on internal controls or efficient grants management.
- An example of the difficulties caused by the non-elimination of this requirement is the cash basis terminal leave new language found at 200.431(b)(i). As a result of this new language, many institutions will be required to change their DS-2's. Because many institutions establish fringe benefit rates on an annual basis, and it may take six months to receive approval to change or disclosure statement, and the rates which will be in effect for awards made after the Uniform Guidance takes effect (12/26/2014), will be established this summer, it has created a great deal of uncertainty.

#### **Potential Role of FDP:**

- FDP could facilitate discussion among agency and Institutions of Higher Education to better understand the need for and value of this requirement.

#### **Feedback from the April 14, 2014 FDP/COGR/Federal Partners meeting:**

- Most of the discussion focused on the timing issues associated with implementing the UG in areas that will require changes to the DS-2.
  - Examples include: clerical and admin, termination leave (fringe benefits).
- Could/should we propose DS-2 changes in draft form now and then update as agency regulations are finalized (~November)? When would the 6 month approval window begin, at date of DS-2 draft or when finalized?
- Can we develop a standard template for common changes?

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## Procurement (Topic Leaders: Mike Ludwig/Erica Kropp, Susie Sedwick)

**Issue 1:** Uniform Guidance language appears to require some type of competitive analysis of different vendor prices and products for items ordered between \$3,000 - \$150,000. This negatively impacts the ability for researchers to use procurement cards for non-capitalized items over \$3,000. Many institutions have established competitive bid thresholds at \$10,000 or more. The expectations for competition and documentation of orders over \$3,000 that are not competitively bid are not clear.

**Issue 2:** When conducting research experiments, often times the inputs to those experiments must be sourced from the same vendor in order to avoid potential discrepancies in the research results. There is no provision for this type of justification for sole sourcing research materials.

### Uniform Guidance: § 200.320

- (a) Procurement by micro-purchase. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. **Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.**
- (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. **If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.**
- (f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
  - (1) The item is available only from a single source;
  - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
  - (4) After solicitation of a number of sources, competition is determined inadequate.

### Uniform Guidance: § 200.318

- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

### Challenges:

- Effectively limits the use of procurement cards to transactions of less than \$3,000

- Requires documentation of price or rate quotations from multiple vendors for items over \$3,000. Even if this is an evaluation of website pricing done by the faculty member or his/her staff, how to record that evaluation in our systems? Most systems would have to be modified to accommodate this change.
- If Purchasing staff must obtain the price or rate quotations, then turn around time on the orders will be slowed. This will have the unintended consequence of increasing the administrative burden for supply purchases exceeding \$3,000. Central Purchasing staff would be dealing with higher volumes and additional staffing would be required.
- Sponsor approval appears to be the only way to use the sole source method when the research requires consistent sourcing of project inputs. This will delay purchase of essential research inputs.

**Alternatives to Consider:**

- Consideration should be made to allow a grace period for implementation of this requirement.
  - These are new requirements for IHE's and we should have time to evaluate the impact of the changes to research.
  - Implementation will be difficult due to the benefits of continuing under the old rules for projects not subject to the Uniform Guidance.
  - These changes have the potential of negatively impacting research by delaying important small dollar purchases previously not competitively bid. We need some time to gather metrics to assess the impact.

**Potential Role of FDP:**

- The FDP could be used to collect metrics related to the impact of the required changes and help measure whether there is any added value to this new regulation.

**Feedback from April 14, 2014 FDP/COGR/Federal Partners meeting:**

- Gathering data on the impact of these changes to the turnaround time for orders over \$3,000 was determined to be an appropriate next step.
- The lack of a sole source alternative in cases where research inputs must be consistently sourced to avoid variability in research outputs was discussed.
- We discussed the practice of establishing blanket supplier contracts with a vendor for frequently purchased commodities like scientific supplies. All seemed to agree that these types of procurement contracts met the requirements for the competition required in the "small purchase procedures".

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## **Standard Terms and Conditions (Topic Leader: Sedwick)**

**Issue:** The Office of Science and Technology Policy cited in its Federal Register notice dated January 25, 2008 the imperative that “given the increasing complexity of interdisciplinary and interagency research, it has become increasingly important for Federal agencies to manage awards in a similar fashion.” That notice made it possible for all federal awarding agencies to be able to utilize a standard core set of administrative terms and conditions on research and research-related awards that are subject to OMB Circular A–110. The imperative need for Federal-wide Terms and Conditions has not changed with the Uniform Guidance. The hard work was accomplished by the FDP with the demonstration of the FDP Terms and Conditions that evolved into the Federal-wide Terms and Conditions, which now need to be revised to align with the Uniform Guidance available for federal agencies to incorporation by reference.

**Uniform Guidance:** § 200.210 A Federal award must include the following information: ..... (b) General Terms and Conditions (1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable: (i) Administrative requirements implemented by the Federal awarding agency as specified in this Part. (ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program specific. See § 200.300 Statutory and national policy requirements. (2) The Federal award must include wording to incorporate, by reference, the applicable set of general terms and conditions. The reference must be to the Web site at which the Federal awarding agency maintains the general terms and conditions. (3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it. (4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

### **Challenges:**

The main challenge is the daunting chore of revising the document to be consistent with the Uniform Guidance including a new crosswalk to reference the pertinent subsections of 2 CFR 200 in lieu of OMB Circular A-110. This needs to be done on an accelerated time frame to ensure the Federal agencies are able to reference the revised FTC in their implementation plans. Given the timetable for implementation of the agency plans and the agency resources needed to develop their plans, this revision of the FTC may be extremely challenging.

### **Alternatives to Consider:**

It is recommended that the FDP established a working group with representatives from federal agencies and institutions to accomplish a re-draft of the Federal-wide Terms and Conditions.

### **Potential Role of FDP:**

The FDP is the perfect home for this project since the Federal-wide Terms and Conditions were demonstrated as the FDP Terms and Conditions. The FDP should seek endorsement from OSTP for the revised T&Cs.

**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

NSF and NIH have already started the process of reviewing the Federal-wide Terms and Conditions and will engage with the FDP for institutional input.

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## **CLOSEOUT** **(Topic Leaders: Luther / Peluso)**

### **Issue:**

The UG requires closeout at 90 days. Prior to the release of the UG, NIH conveyed in several notices in September 2013, the upcoming enforcement of FFR submission and LOC draw limitations. With the advent of SubAcct reporting for NIH, NSF, etc., institutions are seeing more and more enforcement. Universities certainly understand the importance of timely closeout, especially in light of the GAO report, but are challenged by the aggressiveness of the 90 day requirement and potential inconsistencies across agencies.

The ultimate objective for all parties is supporting a FFR process/timeline to enable timely FFR submission that is accurate & compliant, does not require revisions and does not jeopardize institutional funds due to hurried reporting.

### **Uniform Guidance: § 200.343 Closeout**

(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by or the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(g) The Federal awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports.

### **Challenges:**

Meeting the objectives above for timely submission can readily occur the majority of the time but challenges arise for the following situations

1. Resource workload management: Universities are staffed to manage steady-state / “normal operational load” and not to peak-load; “Peak” issues can occur
  - Between pre and post; pre-award proposal deadlines can conflict with post-award responsibilities
  - At common project end dates when numerous FFRs may be due, this creates competing priorities in both departments and central offices
2. Subrecipient monitoring responsibilities
  - Invoices due at day 60 (per FDP template) could easily require more than an additional 30 days to address administrative/financial subrecipient monitoring issues and certainly programmatic issues that can only be resolved by the PIs
3. Subagreement Management
  - International invoice management (coordination, receipt, reconciliation) often requires more than 90 days and language/communication barriers can often complicate and require additional time
  - Some invoicing is complex and is tied to milestones or other data points and may take longer than 60 days to prepare invoice
  - If there is not adequate time the unintentional outcomes could include:
    - In order to meet invoice deadline, universities may need to shorten period of performance and reduce the scope of work

- Universities may have to select research partners more based on administrative ability for timely billing than quality of science
- 4. Ledger management for closing and payroll posting
  - Timing of ledger closing processes (e.g. payroll and month-end) will mean that IT adjustments will need to be made either in closeout process or in expanding functionality of reporting; if universities do not do this, timing of these processes could mean that transactions are “posted” to ledger and available for draw on day 92 which could lead to questioning of their Allowability
- 5. Impact on Internal Control Structure
  - Many institutions have processes that require PI’s sign off on transactions such as rebudgets, approval of clerical/admin charges, some accounting docs, Closeout checklist, FFR, etc. Trying to have all this done in 90 days while they are focusing on research and other responsibilities can be challenging.
- 6. Complex Grants
  - Complex grants often have multiple internal and external subawards that the prime recipient will need to manage/coordinate and oversee in day 60 – 90. Internal management of the parent-child relationship takes time for coordination.

It should also be noted that to mitigate the items above, institutions will have to invest additional IT and personnel resources Incremental institutional costs during transition and ongoing to support 90 day enforcement. For example, universities will likely have to consider applying technology to

- Change their current LOC process from several times/month to daily; this has implications for both IT resourcing as well as staffing in the central office
- Create workflow systems to route closeout docs, review FFRs, etc. With a tight timeframe of 90 days, universities will be hard-pressed to have adequate time to route via a paper process. Instead they may need to create electronic tools/processes to route documents/transactions that will often need to be sent to faculty.

**Alternatives to Consider:**

Work with agencies to either extend closeout to 180 days or develop a consistent way for institutions to request deviations in a non-punitive/non-burdensome manner that is clear to external and internal auditors and doesn’t result in audit findings. “Extending Closeout” includes both financial reporting and drawdown of cash.

Ensure that agencies are harmonized in their application of deadlines for reporting and cash-draw process.

Work with FDP Sub Award group to determine if the standard terms needed to be adjusted to support any change.

Consider the timing of implementation of this requirement to allow institutions adequate time to make necessary technology, policy, business process, and resource changes as it will likely be significant.

**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

- Federal partners acknowledged that a 90 day financial closeout can be challenging, particularly if there are multiple subawards (especially if international).
- The quality of research could be adversely impacted if institutions elect to shorten periods of performance in order to meet reporting deadlines.
- Data would be helpful to further define this issue, particularly around revised FFR’s.
- The focus of this document was primarily on financial reporting, but all of the federal partners emphasized the important of programmatic reporting (e.g. invention, patent, progress report).
- Discussion should continue between institutions and federal partners at upcoming FDP meeting

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## **Subawards and Subrecipient Monitoring** **Topic Leaders: Webb**

**Issues:** The updated subaward and subrecipient monitoring sections (.330 - .332) add administrative burden by imposing new classification documentation requirements, mandatory prior approvals for fixed price subawards, and price limits on fixed amount subawards. In addition, these sections offer improvements in F&A management (including the new 10% MTDC de minimus F&A rate for subrecipients without federally negotiated rates) but the effectiveness of these new requirements is offset by the absence of an enforcement or appeal mechanism in an area that is already commonly abused. Finally, there are a number of transition issues for ongoing awards with subawards and for awards slated to be issued soon after 12/26/14 that require attention. On a longer term basis (not fully addressed here), there continue to be concerns about unnecessary duplication of effort related to audit reviews and management decisions.

### **Uniform Guidance: Excerpts from Multiple Sections**

**200.330 Subrecipient and contractor determinations.** ... The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

**200.332 Fixed amount subawards.** With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided ....

**300.331 Requirements for pass-through entities.** .. (4) an approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this Part) or a de minimis indirect cost rate ...

### **Challenges:**

Section .330 allows a new documentation requirement that might vary from agency to agency to document both contractor transactions and subaward transactions (collectively, a very large volume) so that the recipient can document how it determined its classification of that transaction. The requirement allows each agency to decide its own form for that documentation, provided it doesn't conflict with the guidance in .330. This will (1) require recipients to keep track of all of the various agency forms or requirements; (2) require investigators and staff to create new documentation (adding administrative burden, and document storage for all of these transactions; and (3) creates the possibility that an agency's form might infer an interpretation of the core classification guidelines different than the recipient's. It is unclear what benefit will be derived from this documentation, and how the stored data will be used (e.g., for audit, etc.)

Section .332 requires prior written agency approval to enter into subawards on a fixed price basis. This can be expected to delay issuance of subawards and increase administrative burden for both agencies and recipients while such approvals are sought. Furthermore, it is unclear on what basis such decisions would be made by agencies. Secondly, this section limits the amount of fixed price subawards to the Simplified Acquisition Threshold. This amount is currently limited to \$150,000. This will result in business changes for Universities who are not used to any specific threshold, and it is unclear what

business process is expected by federal agencies when subawards begin under the Simplified Acquisition Threshold but later go on to exceed it.

We strongly support the new wording mandating use of federally recognized indirect cost rates when such exist, or providing de minimus or alternative rates when they do not. However, we note that there is no enforcement mechanism available to subrecipients if the pass-through entity or the federal agency fails to abide by the new federal regulations, and we do not believe the audit process will likely address this potential point of failure.

Transition Issues – while we support the concept that new awards issued on or after 12/26/14 and new increments of funds issued after that date will use the new requirements, we note that this is impractical for subawards. Subawards have already been priced and issued on existing awards that in the middle of their lifecycle, and even forthcoming new awards will be based on proposals that were submitted using the old requirements (e.g, on F&A, computer and administrative costs, etc.).

Longer term - There have long been debates about what an adequate subrecipient risk assessment and monitoring program looks like. The new guidance is more explicit about such requirements, and opportunity exists to help define the core principles and guiding elements that would make up a program that recipients, agencies, and auditors would find acceptable.

A major issue of interest to Universities is the unnecessary and unproductive duplication of audit reviews and a pass-through entity's inability to rely on auditor and federal agency management decisions for entities already subject to the A-133 process. We understand that OMB intends to address this area in the future, but note it here as a significant administrative burden that is a high priority for future streamlining.

**Recommendations:**

It would be helpful if Research Terms and Conditions could be written that would waive the contractor versus subaward documentation requirement for all awards subject to those terms and conditions. Failing an outright waiver, it would be valuable if a single, common documentation standard or form for all FDP agencies could be mutually developed and imposed.

We recommend that the Research Terms and Conditions grant a global prior approval for pass-through entities to enter into fixed price subawards universally, or at minimum when that subaward was contemplated in the recipient's original proposal. The recipient would still hold responsibility for verifying that the subaward meets the other tests in Section .332 (e.g, that a fixed amount award is appropriate.)

Relative to the proper use of F&A rates, it would be helpful if agency implementations explicitly indicate that pass-through entities must use federally negotiated rates in their subawards when such rates exist, and that pass-through entities are expressly prohibited from allowing federally negotiated F&A rates to be a factor in decision-making about subaward issuance or funding. Furthermore, agencies should take steps to ensure that pass-through entities do not force proposed subrecipients to accept a less-than-de-minimus rate via a contrived rate negotiation process.

We recommend that as it relates to subawards, that all existing awards be allowed to continue through the end of their current competitive segment using the old requirements. For new awards, we

recommend that cost adjustments be made through a JIT process to adjust F&A on proposed subawards, without negatively impacting the recommended direct cost level of the prime recipient. We recommend limiting such cost adjustments to subaward F&A – other costs adjustments (e.g., for admin and clerical support, acquisition of computers, etc.) should remain either as originally proposed or as agreed to between the pass-through entity and the subrecipient.

**Potential Role of FDP:**

For the contractor versus subaward documentation requirement, the FDP could (1) create a demonstration that evaluated the classification accuracy of projects that had to comply with a written classification obligation versus those who simply rely on the written federal classification requirements in .330. Alternatively, if a form were to be imposed, the FDP could participate in crafting or reviewing a documentation standard or form that would be used on a standard basis across FDP agencies.

If global prior approval to enter into a fixed price subaward cannot be granted, we recommend that the FDP assist with crafting a single, common checklist or other tool that all Federal agencies would use to help them make the determination that a fixed price subaward is appropriate, and that federal agencies include that checklist or tool in their proposal requirements to allow agencies to grant such prior written approvals as part of the original award.

The FDP could also work with federal agencies (and the audit community) to define and pilot a set of standards or a sample subrecipient risk assessment and subrecipient monitoring program that would meet the requirements of 2 CFR 200.331.

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**Conflict of Interest**  
**Topic Leaders: Kropp and Moreland**

**Issue:** The Uniform Guidance creates a new obligation for Federal agencies and universities. All Federal agencies are directed to create conflict of interest policies and to require recipients to disclose any *potential* conflicts of interest to the Federal awarding agency or pass-through entity. This is a new requirement that was not part of the proposed OMB Guidance, so it was never subject to comment.

**Uniform Guidance: §200.112 Conflict of interest**

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

**Challenges:**

The short paragraph on conflict of interest in the Guidance raises several concerns for the university community:

- It is unclear if there will be consistency among Federal agencies regarding policies and requirements.
- There is the potential for multiple policies across agencies that would be highly difficult, confusing, and expensive to manage.
- The Guidance uses the phrase, “disclose any potential conflicts.” The concept of potential conflicts would be nearly impossible to administer. Currently, Federal agencies (NIH and NSF) focus on significant financial interests, not potential conflicts.
- If current agency regulations call for disclosure of significant financial interests, does that meet the criteria for disclosing potential conflicts?
- The current university investment in managing PHS financial conflict of interest policies is staggeringly high, and the prospect of adding additional requirements based on funding source could be a substantial new administrative burden and confusing to faculty and others who are doing their best to comply with the regulation and implementation from each agency.

**Alternatives to Consider:**

- It would be helpful if Federal agencies could establish some common definitions of key terms and agree on basic reporting requirements.
- Application of the UG should be at the time of award and not at the time of the proposal.

**Potential Role of FDP:**

FDP could facilitate discussions among agencies and universities to help establish core consistencies for elements of conflict of interest policies that could be adopted by all Federal agencies.



**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

- Federal acknowledgement that this item was not in the regulations issued for comment.
- Discussion regarding disclosing “potential” conflicts as a new requirement for all agencies would be nearly impossible to implement in a number of ways.
- Federal participants think that item being addressed was the absence of COI policies at a number of federal agencies and that the intention was not create a change.
- FDP will need to look to individual agency implementation. It was thought that as a practical matter the agencies would not want to implement anything new.

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## **Compensation & Effort Reporting** **(Topic Leaders: Gindhart/ Moreland/Luther)**

**Issue:** Section (i) changes the emphasis of documenting salary charges to Federal awards from the three examples in A-21 (which have been eliminated in the Uniform Guidance) to a system that is premised on sufficient internal controls. This section introduces the concept of “institutional base salary,” and it retains two crucial concepts (e.g., “reasonable approximations” and “inextricably intermingled”), but it also eliminates any reference to a formal “certification” process. It appears that that the institution’s official payroll system could be the basis for confirming payroll charges, thus a traditional effort reporting system is perhaps no longer required.

### **Uniform Guidance: § 200.430**

(i) Standards for Documentation of Personnel Expenses

(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

### **Challenges:**

The less prescriptive approach to documenting salary charges in the UG will enable grantees to modify existing practices so that administrative burden is reduced. Grantee institutions agree that sufficient internal controls must be maintained, but common elements in our current effort reporting processes will be reconsidered, such as:

- Review frequency – annual or semi-annual review of salary charges is sufficient
- Who can review – the individual or a designee is sufficient
- What is reviewed – only Federal grants will be reviewed individually. All other salaries can be grouped together into one figure, or not displayed.
- Review of actual salary amounts or percentages of total salary may be utilized

The audit community will be required to assess the internal control structure based upon a much broader set of guidelines. Their current audit approach is based upon years of experience with A-21 section J.10 and rigid institutional effort reporting systems, thus they will be required to revise procedures and modify staff training. It’s unclear how the auditors will determine what constitutes an auditable “system of internal control which provides reasonable assurance”. In the short term, the consistency of their audit approach for this area could vary substantially among firms and Federal agencies. In the longer term, we expect that it will take the auditors several years and iterative processes to get comfortable with the audit approach to this area.

### **Alternatives to Consider:**

The Federal agencies should affirm that the FDP’s Project Certification pilots are sufficient under the UG 200.431 and other IHEs may implement similar processes and internal control structures.

Firms and Federal agencies should work in conjunction with the IHE community to develop consistent and auditable internal control practices.

**Potential Role of FDP:**

Based on the excellent framework for partnership among the FDP membership, FDP could facilitate discussion among Federal agencies, CPA firms and IHEs to understand the challenges and partner to find reasonable and timely solutions. Demonstrations of various methods could be developed to evaluate various solutions.

**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

Faculty at some FDP institutions are anxious to leverage the additional flexibility in this section, whereas the internal control expectations have not been reduced. Changes to your current effort reporting process should be documented in your DS-2. The Federal representatives had very little comments on this area.

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## **Compensation – Fringe Benefits (Terminal Leave Payout)** **(Topic Leaders: Bible / Luther)**

**Issue:** Current language is not clear and appears to require that cash-basis institutions must change their termination payout process and can only recover via the “Administrative” pool (which is capped and most institutions are well over the 26%). Guidance for Accrual-based institutions is not clear as well as impact on negotiated fringe benefit rates that include annual leave.

### **Uniform Guidance: § 200.431**

(b) Leave. The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave ... are allowable if all of the following criteria are met:

- (1) They are provided under established written leave policies;
- (2) The costs are equitably allocated to all related activities, including Federal awards; and,
- (3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

**(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.**

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

### **Challenges:**

- Long lead time for evaluation of current systems capability, and systems development or modifications; policy and procedure development; campus readiness
- Cost accounting change must be requested six months prior to implementation; cognizant agency for indirect costs needs time to review and approve change in accounting practice.
- Leave rate, or addition to fringe benefit rate, would need to be proposed to cognizant agency and negotiated prior to use.
  - Little or no time would be remaining to include in proposals for sponsored projects; during transition, institutions would lose at least one year’s value of this change.
- Different application of this change to sponsored projects awarded prior to and after December 26, 2014 will be difficult and confusing to faculty and staff, and to sponsors.

### **Alternatives to Consider:**

- Consideration should be made to allow a grace period for implementation of this requirement.
  - Need clarification for each basis of accounting; requiring that it can only be recovered via the “Administrative” component is unfair.
  - This change was not included in the proposed guidance.
- A change from cash to an accrual method for employee leave benefits is likely to be a multi-year effort and require significant changes to base university systems. Such a change seems in

conflict with the General Provisions found at 200.400(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices on the non-Federal entity. Consideration should be made to allow a component to be added to the composite fringe benefit rate for those institutions that operate under the cash-based system.

**Potential Role of FDP:**

Based on the excellent framework for partnership among the FDP membership, FDP could facilitate discussion among COFAR/OMB, Federal sponsors, ONR and DCA and Institutions of Higher Education (IHEs) to understand the challenges and partner to find reasonable and timely solutions. Demonstrations of various methods could be developed to evaluate various solutions.

**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

Given the long lead time required to implement this change, there was general consensus that the issue should be discussed with COFAR and OMB.

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## Performance Measurement (Topic Leader: Sedwick)

### Uniform Guidance: § 200.301

The Federal awarding agency must require the recipient to use OMB-approved government wide standard information collections when providing financial and performance information ... the Federal awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned government wide standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices ...

### Preliminary interpretation:

- Existing Research Performance Progress Report (RPPR) will remain the acceptable report to measure project performance.
- Definition of "Performance goal" (see §200.76) provides support by identifying discretionary research awards as an example where submission of a technical performance report (i.e., the RPPR) is acceptable to meeting the requirements for performance measurement. Also see §200.328, Monitoring and reporting program performance.

### Challenges:

- The Federal awarding agencies may provide guidance on this requirement in their implementation guidelines. These guidelines are likely to be released in fall 2014.
  - If a report other than the current RPPR is required, it will allow award recipients particularly Institutions of Higher Education (IHEs) little time to comply with the new requirement.
  - If each Federal awarding agency requires different reports, it will create an additional burden to grantees. The FDP and NSB studies on faculty burdens cite performance reporting as a significant administrative drain on research time so it is important to streamline the implementation of these requirements.

### Alternatives to Consider:

- Confirmation to be provided that the RPPR is an, or the, acceptable report to measure project performance.

### Potential Role of FDP:

- Based on the excellent framework for partnership among the FDP membership, FDP could facilitate discussion among COFAR/OMB, Federal sponsors, ONR and DCA and IHEs to understand the challenges and partner to find reasonable and timely solutions.

### Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:

Based on the feedback from the Federal participants, it is anticipated that the Federal agency implementation plans should provide the clarity and/or confirmation that the RPPR is the acceptable report to measure project performance. COGR will review Agency implementation plans and comment, as appropriate.

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## Direct Costs – Expectations, Admin Salaries Topic Leaders: Peluso and Ludwig

**Issue:** The Uniform Guidance references expanded opportunities to direct charge administrative salaries.

### **Uniform Guidance: § 200.413**

(d) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate where 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; and
- (4) the costs are not also recovered as indirect costs.

### **Preliminary interpretation:**

- The salaries of administrative staff required for the project or related activities can be charged directly to the grant if all of the above requirements are met including that the costs are explicitly included in the budget or have prior written approval.

### **Challenges:**

- How will “integral” be defined/judged?
- It is anticipated that it could be appropriate to allocate an administrative salary amongst awards.
  - Are there guidelines for what would be considered appropriate for this? (% by award, number of awards, etc.)
- The Federal awarding agencies will provide guidance within their implementation guidelines. These guidelines are likely to be released in fall 2014.
  - How should awardees prepare budgets on new and continuation proposals? Should budgets be prepared including costs that institution feels fit the requirements of 200.413?
- Given the requirement for “explicitly included in the budget”, how will these be handled for NIH modular budgets?

### **Alternatives to Consider:**

- It would be helpful if the agencies could include prior approvals in the award terms and conditions.

### **Clarification Requested:**

- Confirmation that we no longer need to justify unlike circumstances.
- Clarification regarding how proposal budgets should be submitted pending release of agency implementing guidelines (new and continuations).
- Clarification regarding how this will be handled for NIH Modular Budgets.

### **Potential Role of FDP:**

- The FDP could work with agencies to provide some high level guidance about how institutions should implement these changes to avoid implementations that significantly differ from actual intentions of the Uniform Guidance.



**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

- There was a discussion regarding whether inclusion of a cost in the proposal budget of an issued award meets the requirement for prior sponsor approval.
  - While the response regarding above affirmed that this would meet the requirements for prior approval, there was further discussion regarding the need for consistency in treatment of costs. (For example, there needs to be consistency in how similar types of administrative salary costs are handled within an institution.)
- It is expected that we will still need to justify “unlike circumstances”.
- For NIH Modular awards, they are looking at whether this would be appropriate to budget under expanded authorities or within the budget justification of the proposal.
- There may be a 60 day period for public comment.
- One idea that discussed (to address the consistency issue noted in “Feedback” above) was the concept of treating certain types of administrative support (that meet the requirements outlined in the Uniform Guidance) in one of two ways: as a direct charge or as cost sharing (but not included them in the administrative pool for F&A purposes). This idea requires further discussion.

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## **Prior Approval**

### **Topic Leaders: Moreland and Peluso**

**Issue:** The Uniform Guidance contains numerous sections where a university or other non-Federal entity is directed to seek prior written approval of the federal awarding agency before undertaking certain tasks. While the concept of prior approval is not new, it does appear to have reached a new plateau in its utilization as a tool for grants management.

#### **Uniform Guidance: Excerpts from Multiple Sections**

**200.306 Cost sharing or matching.** ... c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

**200.332 Fixed amount subawards.** With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided ....

**200.413 Direct costs.** (c) 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.

**200.407 Prior written approval (Prior Approval).** ... 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. Prior written approval should include the timeframe or scope of the agreement.

**200.440 Exchange rates.** ... Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding, and prior approval by the Federal awarding agency.

**200.456 Participant support costs.** Participant support costs as defined in §200.75 Participant support costs are allowable with the prior approval of the Federal awarding agency.

#### **Challenges:**

The six excerpts above represent a larger group of topics where prior approval of the awarding agency is required. They are likely the topics that would stimulate frequent questions directed to the awarding agency. Perhaps the most interesting is the language in 200.407, where we may choose to seek prior approval if we are uncertain about the allowability of an expenditure. Would that help universities in defending a particular cost in the course of an audit? This repeated instruction to seek approval raises a few challenges for the community:

- Are Federal agencies and grants management offices prepared to deal with additional requests for approvals?
- Should we anticipate delays in responses from the grants office, or will we be advised to rely on our own institutional policies?
- Will our failure to seek prior approval in optional cases suggest a weakness in our institutional internal controls?

**Alternatives to Consider:**

It would be helpful if Federal agencies could address some of these prior approvals in their implementing materials. For example, we would hope that the exchange rate fluctuations material could be addressed by making a change to state that no prior approval is required if the total costs of the project are not increased. If others mentioned above cannot be eliminated, it would be useful to have guidance on consistent standards to address in seeking approval.

**Potential Role of FDP:**

There are some likely topics for demonstrations in the set of prior approvals described above. Some of the FDP's early and lasting successes were in mediating and eliminating stringent prior approval requirements. The prior approval requirement for direct costs of administrative and clerical costs practically leaps off the page into an FDP demonstration template.

**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

Our Federal partners agreed that prior approvals are featured prominently in the Guidance. They were generally interested in addressing prior approvals through the agency implementation plans whenever possible. In some cases, such as cost sharing of unrecovered F&A, they noted that inclusion of the item in the proposal budget and subsequent approval in an award would constitute approval of allowability of the item.

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## **Travel Costs (Documentation of Necessary)** **(Topic Leaders: Evon)**

**Issue:** Additional words were added to the travel section that might lead some to believe there is a new documentation requirement that is not well understood.

### **Uniform Guidance: § 200.474 Travel costs**

(b) ... In addition, if these costs are charged directly to the Federal award documentation must justify that: (1) Participation of the individual is necessary to the Federal award;

### **Challenges:**

- It is not clear if this new language was intended to be a new travel documentation standard
- It is not clear what types of documentation would best satisfy the “necessary” standard
  - For example, does being paid from the project automatically equate to travel by that person as “necessary”?
  - What type of documentation would be necessary to demonstrate “necessary” for the travel costs of a graduate student who contributed significant effort to the project, but is no longer, or was never, paid from a project?
- Given that dissemination of basic research is a beneficial outcome from federally supported grants and contracts, and travel to scientific meetings and conferences is an effective method to achieve those objectives, there is confusion about how this new language is best applied to institutions of higher education.

### **Alternatives to consider:**

- Consideration should be made to providing examples of documentation that will satisfy this new requirement, or if the “benefit to the project” standard continues also meet the new “necessary” requirement.

### **Potential Role of FDP:**

- FDP could facilitate discussion among agency and Institutions of Higher Education to help determine what types of documentation, and how much administrative effort is required, to generate the documentation to satisfy this new requirement.

### **Feedback from the April 14, 2014 FDP/COGR/Federal Partners meeting:**

- It was originally thought the new language came from one of the non-A-21 circulars, but that could not be confirmed. Subsequent review of A-21 and A-87 finds “necessary” is used as part of the sections for direct cost, reasonable and allocable, but not specifically with travel.
- There was no knowledge of an intended change by the addition of this new language in the travel section.
- The direct cost principles of reasonable, allowable and allocable apply, i.e. necessary is not elevated to the status of the big three.

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## **Exchange Rate (Prior Approval)** **(Topic Leaders: Evon)**

**Issue:** Current language requires agency prior approval for cost increases due to currency conversions, even when the increased costs result in no change to total project costs.

### **Uniform Guidance: § 200.440**

(a) Cost increases for fluctuations in exchange rates are allowable cost subject to the availability of funding, **and prior approval by the Federal awarding agency.**

### **Alternatives to consider:**

- Lead time necessary for agency approval given the remote location of some projects.
- Might lead to less information being provided about exchange rate assumptions at time of proposal to minimize the need for agency approvals when the project begins.
- Might lead to inflated assumptions of anticipated exchange rates to reduce the possibility of increased costs due to exchange conversions.
- This is likely not the most efficient use of agency and grantee efforts, i.e. when does this become significant?

### **Recommendations:**

- Consideration should be made to limit the necessity of prior agency approval to those projects in which a material increase in costs results in the need for additional Federal funding.

### **Potential Role of FDP:**

- FDP could facilitate discussion among agency and Institutions of Higher Education to help determine how many prior approvals would be necessary if left unchanged and to help determine where the materiality threshold should be set.

### **Feedback from the April 14, 2014 FDP/COGR/Federal Partners meeting:**

- It was not clear why a currency exchange increase that doesn't increase the federal share, or significantly impact the approved budget should require agency approval.
- This item should be added to the list of UG items requiring agency prior approval to confirm their necessity.

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### **Smaller Institution Perspective (Topic Leader: Kropp)**

The Uniform Guidance brings with it an escalation of compliance costs as there are few changes that bring regulatory relief and an expansion of rules and compliance areas that require additional resources.

The “small” institution may be a focused research institution that receives less than \$20million in federally supported projects or a predominately undergraduate institution that receives far less than that. Small does not mean that these institutions are not subject to the same myriad compliance issues as larger institutions. Within this group there are institutions that may be federal contractors, have one or more high profile programs, have substantial overseas involvement, or are attempting to grow into a new mission. Most of these institutions have a very small staff that need to generalists and may have little depth and/or expertise in any number of compliance areas that require knowledge at a detailed level.

All need to conduct risk management exercises for institutional compliance as matters and issues arise day to day but with limited human and financial resources the notion of keeping up with all these changes as well as assessing the changes necessary to business processes and those costs, can be down right daunting.

The FDP is the one organization that can have a positive impact by working together developing resources that can assist in risk assessments and even just in time compliance where appropriate. One such possible resource would be the development of a web based searchable database that contained tables of 2 CFR 200 compliance areas including agency implementations.

#### **Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

It was decided that this item would be brought and presented to the FDP ERI Lunch Forum in May.

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## **Fixed Amount Awards**

### **Topic Leader: Webb**

**Issues:** Recipients receive fixed amount (fixed price) awards from federal agencies and fixed amount subawards from pass-through entities. For each, it is unclear what standard is expected to be used to determine a “specific” project scope and “adequate cost, historical, or unit price data” sufficient to assure that the recipient or subrecipient will not “realize an increment above actual cost.” In addition, when fixed amount awards are unable to be completed or are completed at a lower-than-anticipated level of effort, cost must be adjusted; it is unclear what basis is expected to be used to make an equitable cost adjustment. The UG also imposes a new reporting obligation on recipients and subrecipients to certify at the end of a project that the work has been completed or the anticipated level of effort was expended. Finally, it is unclear the degree of monitoring/flexibility that is permitted when a recipient or subrecipient realizes a unexpended balance at the end of a completed fixed amount award or subaward. [The need to obtain prior written approval to enter into a fixed amount subaward is covered in the Subaward and Subrecipient Monitoring section.]

### **Uniform Guidance: Excerpts from Multiple Sections**

#### **200.45 Fixed Amount Awards**

Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and the Federal awarding agency or pass-through entity.

#### **200.101 Applicability**

(a) ... General applicability to Federal agencies ... These requirements are applicable to all costs related to Federal awards. ...

(b) (1) Pass-through entities must comply with the requirements described in Subpart D – Post Federal Award Requirements of this Part; Section 200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards, but not any requirement in this Part directed toward Federal awarding agencies unless the requirements of this Part or the terms and conditions of the Federal award indicate otherwise.

In chart, Subpart E, Cost Principles, are not applicable to fixed amount awards.

#### **200.201 Use of grant agreements (including fixed amount awards)**

(b) Federal awarding agencies, or pass-through entities as permitted in 200.332 may use fixed amount awards to which the following conditions apply:

(1) Payments are based on meeting specific requirements of the Federal awards. Accountability is based on performance and results. The Federal award or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award with assurance that the non-Federal entity will realize no increment above actual cost.

(2) A fixed amount award cannot be used in programs which require mandatory cost-sharing or match.

(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the award must be adjusted.

**200.332 Fixed amount subawards.** With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided ....

**Challenges:**

It is unclear what standard should be used to determine a “specific” project scope and “adequate cost, historical, or unit price data” sufficient to assure that the recipient or subrecipient will not “realize an increment above actual cost.” Universities typically use fixed amount awards for small domestic entities, for foreign entities, and for clinical trials. Agencies appear to use fixed amount awards to match internal agency requirements for efficient fund disbursement, particularly on low-risk or relatively short-term projects. For Universities, fixed amount awards to small domestic and foreign entities are most likely to have payments based on milestone achievement, while clinical trials are usually based upon performance of pre-priced procedures or meeting protocol milestones (enrollment targets, data completion and correction, etc.) Some projects – particularly clinical trials – use a hybrid model, with some costs covered on a cost-reimbursement basis (e.g., start-up costs) and other costs paid on a fixed amount basis. It is unclear how these hybrid models should be approached in the future.

Fixed amount (fixed price) awards are rarely perfectly priced and frequently have deficits or unexpended balances, despite original pricing using the cost principles. Some universities place a threshold over which unexpended balances are reviewed (e.g., balances that exceed 25% of the awarded amount), others do not. It is unclear what level of unexpended balance is acceptable before there would be a conclusion that the project was not properly priced.

When fixed amount awards are unable to be completed or are completed at a lower-than-anticipated level of effort, cost must be adjusted. The regulations are unclear what basis is expected to be used to make an equitable cost adjustment; is the expectation that the project will revert to cost-reimbursement? The definition of “lower-than-anticipated” level of effort that would trigger a cost adjustment is also unclear.

The UG also imposes a new reporting obligation on recipients and pass-through entities to certify at the end of a project that the work has been completed or the anticipated level of effort was expended. This imposes a new administrative burden.

**Recommendations (including Role of FDP):**

Agency implementations should expressly indicate that if recipient or subrecipient has priced their project in accordance with the cost principles, residual balances will not be subject to further review.

We recommend that agency implementations dictate common guidance about the expectations for adjusting cost on fixed amount awards that are not completed and/or the level of effort is not expended. A reasonable common guidance might be that such project revert to cost-reimbursement.

Agency implementations should expressly indicate that an institution’s need to cover salary costs that exceed an agency’s salary cap does not constitute “mandatory cost-sharing” for the purpose of determining whether a fixed amount award or subaward can be used.



It would be helpful if federal agencies and the FDP could partner to use the same understandings about when a fixed amount award or a fixed amount subaward is and is not warranted, defining principles for determining what constitutes a “specific” project scope and what constitutes “adequate cost, historical or unit price data”. Using a common understanding would reduce audit risk for pass-through entities.

We recommend that the Research Terms and Conditions waive the requirement to provide individual project certifications to federal agencies or pass-through entities that the work on a fixed amount award has been completed and/or the anticipated level of effort was expended.

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## Equipment (Topic Leader: Gindhart)

**Issue:** This section has reference the term “conditional title” and added several data elements which had not been utilized within Circulars A-102 and A-110.

### **Uniform Guidance: § 200.313**

(a) Title. Subject to the obligations ... title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity ... the *title must be a conditional title* ...

[ALSO IN THIS SECTION]

(d) Management requirements ...

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

### **Challenges:**

- “Conditional title” has always been effective, though not explicitly named in A-110.
- Required data elements for property records have been expanded to include: 1) FAIN, 2) percentage of Federal participation in the project costs for the Federal award under which the property was acquired, and 3) use of each equipment item.
  - Grantees will incur additional costs to modify property systems to capture those data elements.
  - How do we know if the percentage of federal participation relates to a single award, or to multiple awards - especially over time as equipment is modified or component parts replaced by other awards?

### **Recommendations:**

- Federal agencies should clearly state in their implementation guidelines whether the item can be considered “Exempt Property” under the Federal Grant and Cooperative Agreement Act 31 U.S.C 6306, therefore “conditional title” is not applicable.
- Award terms and conditions should clearly indicate if title is exempt or conditional.
- Federal agencies should clarify and consistently treat the term “...percentage of Federal participation in the project costs for the Federal award under which the property was acquired...” and “use of each equipment item”.
- Federal agencies should clarify that three new data elements should only be collected on a prospective basis for items acquired under grants subject to the UG.
- Federal agencies should clarify whether any or all of the new data elements will have to be included in their annual/final property reports.

**Potential Role of FDP:**

- Based on the excellent framework for partnership among the FDP membership, FDP could facilitate discussion among COFAR/OMB, Federal sponsors, ONR and DCA and IHEs to understand the challenges and partner to find reasonable and timely solutions. Demonstrations of various methods could be developed to evaluate various solutions.

**Feedback from April 14, 2014 FDP/COGR/Federal Partners Meeting:**

The Federal representatives indicated that the "...percentage of Federal participation in the project costs for the Federal award under which the property was acquired..." relates to the mandatory cost sharing percentage for the project.

Example:

If the project has mandatory grantee cost sharing requirement of 20%, then the federal participation percentage for each equipment item acquired for the project would be 80%.

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