



# FEDERAL DEMONSTRATION PARTNERSHIP

Redefining the Government & University Research Partnership

## Uniform Guidance Update: Discussion of Open Items

September 22, 2016

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# *Uniform Guidance: What topics are still open?*

1. Procurement Standards, § 200.317 - § 200.326
2. Research Terms and Conditions (RTCs)
3. Grants Closeout, § 200.343
4. Incorporating the Preamble and FAQs into 2 CFR Part 200
5. Internal Controls, § 200.61 - § 200.62 and § 200.303
6. Utility Cost Adjustment, Appendix III to Part 200
7. Cost Accounting Standards DS-2 Requirement, § 200.419
8. Cost Sharing and F&A Rate Deviations, § 200.306 and § 200.414
9. Compensation-Personal Service, § 200.430

## ***Other Topics***

1. NIH Single IRB
2. Safe Harbor
3. Other issues?



# Procurement Standards

## § 200.317 - § 200.326

### There are five procurement methods in the UG

- Micro-purchases \$1-3,499 – must be reasonable
  - Small-purchases \$3,500 - \$150,000 – must have more than one quotation
  - Sealed Bids > \$150,000
  - Competitive Bids
  - Noncompetitive Bids
- **Why all the concern with Micro-purchase threshold (MPT)?**
    - The MPT was set too low – many have P-card limits higher than the MPT
      - Originally set at \$3,000, but was revised to \$3,500 in 2015 (FAR updated)
    - How will we verify if there was more than one bid for small purchases?
    - Will this become a new audit target?
    - Is the protection of the MPT worth the cost to build a documentation system around the items above the MPT, but less than the current procurement competitive threshold, or the current P-card limit?



# Procurement Standards

## § 200.317 - § 200.326

- Original December 26, 2014 regulation introduced a \$3,000 micro-purchase threshold
  - MPT is now \$3,500 after inflation adjustment
- FDP and COGR leadership have been discussing the MPT with OMB for two + years
- Debbie Rafi, ONR formed the FDP Procurement Working Group
  - Data was gathered in 2015 and presented to OMB
- David Mader (OMB Controller) attended a COGR general session in February 2016
  - COGR members provided comments about the Procurement Standards' MPT
  - COGR was invited to a meeting with OMB in March 2016; four COGR members presented data and insights from their institutions; OMB requested data from a broader group of COGR institutions
  - COGR provided data from 75 Institutes of Higher Education (IHEs) in June 2016
    - Not raising the MPT is estimated to cost IHEs over \$50 million annually!
  - COGR requested an additional year for implementation, July 2018 for 6/30 YE
  - OMB is considering opening a public comment period this fall to change the MPT and providing another 12 month deferral of the procurement rules
  - Stay tuned!



# Procurement Standards

## § 200.317 - § 200.326

### Additional Issues

- Requirement to publicize competitive bids 320(d)(1)
  - Only applies to competitive bids > \$150k
  - Due to small number of large purchases, this may be a more manageable problem
  - COGR suggested an additional FAQ on 8/30/16 (see COGR web site)
- Price rate quotations: required for small purchases. Depending on the threshold, this may still be an issue for some institutions
- Conflict of interest : this was initially identified as an area of concern, but we believe that paragraph 318 specifically refers to purchasing conflicts of interest:

*“Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.”*

- Negotiate a profit: paragraph 323(b) requires that we must negotiate a profit as a separate element of the price when there is no price competition and in all cases where cost analysis is performed.



# *Research Terms and Conditions* *(RTC)*

- Michelle Bulls, NIH and Jean Feldman, NSF spearheaded the drafting and use of the common research terms and conditions with the goal that they would be used across all federal agencies
- To date only NSF, NIH, USDA NIFA, NIST, NOAA, DOE, FAA, EPA and NASA have adopted the common RTCs
- As other agencies don't opt in, the result is less harmonization and greater agency variance, which will increase administrative burden as institutions are forced to comply with an array of different terms and conditions across multiple funding agencies.
- OMB's support for uniformity and common RTCs, either formal or informal, is needed
- FDP has a Working Group that has:
  - assisted the participating research agencies in refining the proposed tools to ensure that they successfully address grantee needs;
  - expedited formal public review; and
  - facilitated adoption of the updated terms by FDP members
- Broad adoption of the common RTCs would put 'uniformity' into the Uniform Guidance!



# Closeout, § 200.343

UG 200.343 (g) Complete all closeout actions no later than one year after receipt and acceptance

- 90 days to complete final + 365 = 455 days for closeout
- Note that RTC will change to 120 for some agencies (NIH, NSF, etc.)

## GAO Reports on Persistent Grant Closeout Issues

- 2008, 2012 <http://www.gao.gov/assets/600/592995.pdf>
- 2016 <http://www.gao.gov/products/GAO-16-362>
- Most recent report found \$994M in 8,832 grants >1 year past end date
- Appears that:
  - Majority of the money is on block grants (e.g., Admin for Children and Families), but many individual accounts not closed in a timely basis
  - Fully disbursed expired accounts dropped from 28,000 to 5,906 with HHS accounts still representing 66%
- HHS, in response to the GAO establishes a 270 goal after which a unilateral closeout can be initiated
- In order to close in the PMS system the Quarterly Federal Cash Transaction Report (FCTR) must equal the Final Financial Report (FFR)
  - There are timing issues trying to reconcile the FCTR with the FFR



# Closeout, § 200.343

- How do you know if you have PMS account open that are older than 270 days?
  - Log in to your PMS account, From Inquiry select Adhoc Grantee Inquiry
  - Select the Summary Grant Date option from the dropdown menu
  - Copy and paste screen by screen into an excel spreadsheet (no auto report!)
  - Sort by the DS column and the Rpt Disb column to find old reports not marked “C”
  - Work to resolve all old items!
    - See the FDP May 2106 – Presentations – PMS Project Closeout for more details





# Closeout, § 200.343

- When the FFR and the FCTR align – Notify the Grants Management Specialist (GMS)
- Contact the NIH Office of Financial Management (OFM):
  - If the FFR is approved by OFM and the FCTR have the same numbers
  - Request that OFM send a “Code 059” (and de-obligate any unobligated funds, if applicable) to DPM/PMS
- The GMS needs to communicate with the Financial Management Office to get the account closed in PMS
- Your GMS contact information is on the Award Document
- HHS established a Closeout workgroup to help identify and resolve issues for old unclosed accounts
- HHS Closeout Report expected soon



# *Incorporating the Preamble and FAQs into 2 CFR Part 200*

- UG Final Rule published on December 26, 2013 included a 20+ page preamble that described the framework and overall intent of 2 CFR Part 200
- The preamble was not codified; it includes crucial clarifications and both historical and prospective reference for agencies and grantees
- Agencies continue to develop implementation plans and administer federal funding
  - **Essential to keep in mind the spirit of uniformity, streamlining, and reduced burden.**

## **The preamble repeatedly notes these concepts:**

- ... *“This reform of OMB guidance will reduce administrative burden for non-Federal entities receiving Federal awards while reducing the risk of waste, fraud, and abuse...”*
- ... *“The goal.....streamline our guidance for Federal awards to ease administrative burden...”*
- ... *“The revised rules set standard requirements (emphasis added) for financial management of Federal awards across the entire Federal government.”*
- *“This guidance follows OMB’s commitment to making government more accountable to the American people while eliminating requirements that are unnecessary and reforming those requirements that are overly burdensome.”*



# *Incorporating the Preamble and FAQs into 2 CFR Part 200*

- *“....make compliance less burdensome for recipients and reduce the number of audit findings that result more from unclear guidance than actual noncompliance.”*
- The preamble provides a crucial structure for cohesive policy development among agencies
- Without this important introduction included in the UG, agencies could develop policies outside the scope and intent of the Uniform Guidance
- The FAQs include several important clarifications: 112-1 COI, 318-1 sole source for research
- Clarification provided by an FAQ may be disregarded if an auditor does not agree that the FAQs carry the same weight as the language in the Uniform Guidance
  - NSF audit of summer salaries
- RTC are rumored to incorporate the FAQs
  - Great for those agencies that participate in the RTCs
- OMB 2016 Compliance Supplement incorporates the procurement timing



# *Internal Controls § 200.61 – 62 and § 200.303*

- **§200.61 Internal controls.**
- *Internal controls* means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:
  - (a) Effectiveness and efficiency of operations;
  - (b) Reliability of reporting for internal and external use; and
  - (c) Compliance with applicable laws and regulations.
- **§200.62 Internal control over compliance requirements for Federal awards.**
- *Internal control over compliance requirements for Federal awards* means a process implemented by a non-Federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for Federal awards: (see §200.62 for details)
- **§200.303 Internal controls.**
- Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). (see §200.303 for details)



# Internal Controls § 200.303 COSO Environment

## Control Environment

1. Demonstrates commitment to integrity and ethical values
2. Exercises oversight responsibility
3. Establishes structure, authority and responsibility
4. Demonstrates commitment to competence
5. Enforces accountability

## Risk Assessment

6. Specifies suitable objectives
7. Identifies and analyzes risk
8. Assesses fraud risk
9. Identifies and analyzes significant change

## Control Activities

10. Selects and develops control activities
11. Selects and develops general controls over technology
12. Deploys through policies and procedures

## Information & Communication

13. Uses relevant information
14. Communicates internally
15. Communicates externally

## Monitoring Activities

16. Conducts ongoing and/or separate evaluations
17. Evaluates and communicates deficiencies



# *COSO Internal Controls Program Examples*

34 Sponsored Research and Financial Reporting processes. Some process are both Sponsored Research and Financial Reporting.

- Benefit Plans
- Core Journal Entry
- Faculty Staff Housing
- Feeder Journal Entry
- Financial Reporting
- Fund Accounting
- Gift Receipts
- General Ledger
- iJournal
- Investment Accounting/SMC
- Labor Distribution
- Payroll
- Labor Charging
- Misc. Accounts Receivables
- Procurement-to-Payment
- Treasury
- Tuition - Revenue & Receivables
- Subrecipient Monitoring
- Property Management
- Award Setup and Maintenance
- Federal Financial Reporting and Award Closeout
- Cost Transfers
- Burdening
- PI Certification
- Sponsored Receivables
- Capital Accounting
- Expenditure Allocation PTAs (accounts)
- Service Centers
- Personally Identifiable Information
- Indirect Cost Pools
- Financial Aid
- Sponsored Research Entity Level Controls
- Sponsored Research IT Controls
- Attestations & Reconciliations



# *Utility Cost Adjustment, Appendix III to Part 200*

- COGR provided an assessment of the Utility Cost Adjustment (UCA) in its November 13, 2015 letter to OMB
  - COGR demonstrated the Relative Energy Use Index (REUI) weighting factor for research laboratory space should be increased from 2.0 to 4.2
    - OMB and the COFAR included language in 2 CFR Appendix III, section B. 4.c(2)(ii)B that allows for the periodic adjustment of the REUI
      - The time is now!
  - Example of where OMB and the COFAR could make a Technical Correction or issue an FAQ
  - Institutions who already have the benefit of the “Utility Cost Allowance” may opt for a rate extension rather than using the new “Utility Cost Adjustment” methodology... unless the REUI is increased
  - For those that currently receive the A-21 1.3 point UCA (65 institutions listed in Exhibit B of A-21) how is the 2.0 weighting factor impacting your rate?



# *Cost Accounting Standards DS-2 Requirement, § 200.419*

- Proposed Uniform Guidance (February 1, 2013), OMB and the COFAR took the position that the DS-2 should be eliminated.
- OMB and the COFAR reinstated the DS-2 requirement in the Final Uniform Guidance, with the rationale being: *“Some commenters responded favorably that this would reduce a source of administrative burden, but others were concerned, stating that this disclosure statement was a critical tool to mitigating waste, fraud, and abuse and opposed its elimination.*
- COGR survey showed that for 87% of the total Federal audits conducted over the past five years (1,048 of 1,204 Federal audits surveyed), a DS-2 was not requested by the auditors
- DS-2 not a critical compliance document
  - Repeat of documentation of accounting policies and practices that already exist in the official policies and practices of the institution
- Inappropriate to single out IHEs to be subject to the DS-2 requirement
  - All other grantees, including State, Local, and Tribal governments, and Nonprofits are excluded from this requirement





# *Cost Accounting Standards DS-2 Requirement, § 200.419*

- Implementing a cost accounting change requires an IHE to file an amendment six months in advance of a change
  - Timing of the process of review and approval by the cognizant agency is uncertain
  - Can the IHE move forward with the change or not? How long must one wait?
- At least one cognizant agency for indirect costs has indicated they do not have the resources to approve changes in a timely manner
- What is the recourse for an IHE if the cognizant agency notifies them that more time is needed to review their request?
  - No limit on how long an IHE must wait for their DS-2 to be reviewed
- An IHE may be prohibited from making practical and administratively sound changes in accounting practice for an extended period of time because of delays in the review and approval process
- **Current status**
  - Still waiting on a new format that reflects the Uniform Guidance
  - If a voluntary cost accounting change is in compliance with the UG, a DS2 amendment should not be required



# Cost Sharing and F&A Rate Deviations, § 200.306 and § 200.414

## §200.306 Cost sharing or matching

- *Environmental Protection Agency* - “Although cost- sharing/matching is not required as a condition of eligibility under this competition, under Section V of this announcement EPA will evaluate proposals based on a leveraging criterion.
- *Corporation for National and Community Service* - “There is no cost share or matching requirement, but providing a match makes the application more competitive.”
- *Nuclear Regulatory Commission* - “Cost sharing is not required ... However, institutions are encouraged to leverage NRC funding to enhance the educational benefits of the NRC grant. Applications demonstrating such leveraging to further the goals of this announcement will receive additional consideration in the peer review process. “

## §200.414 Indirect (F&A) costs

- *NIH* - Grants to Foreign Organizations and International Organizations – capped at 8% MTDC. NIH has historically used 8% and is reluctant to change.
- *USDA Forest Service* - “Use of Fed funds in excess of 10% to support overhead will reduce priority level of the project.
- What to do when you see this type of announcement
  - Contact sponsor “policy person” (example: Michelle Bulls, NIH or Jean Feldman, NSF) when program announcements are not following the Uniform Guidance



# Compensation – Personal Services § 200.230

- Uniform Guidance offers greater flexibility in accounting for salaries and wages charged to Federal awards
  - Effort reporting and certification are allowable but not required
  - Emphasizes strong Internal Controls with or without an effort reporting system
  - Stresses written institutional policies and procedures
- Define Institutional base salary (IBS) based on Uniform Guidance
  - Is it consistent across campus? Medical School vs. other schools/colleges?
- Consider Extra Service Pay, Incidental Activities, Intra IHE Consulting, Standards of Documentation, etc.
- Does your institution want to make a change or wait?
  - What method will reduce burden for faculty and administrators?
  - Cost considerations of changing or modifying systems
  - Change entire process/system or make minor changes on the fringes of current process/system?
  - Change frequency, Other ideas?
  - Consideration of audit results for FDP pilot institutions – Project Certification



# NIH Single IRB on Multi-Site Research

- NIH Guide Notices [NOT-OD-16-094](#) & [NOT-OD-16-109](#), and FAQ
- Applies to the domestic sites of NIH –funded multi-site studies where each site will conduct the same protocol involving non-exempt human subjects research
- Applicants must include plan for use of sIRB in applications/proposals
- NIH will include sIRB term and condition in the NOA/Contract
- Applies to all competing grant applications with receipt date on/after May 25, 2017
- Ongoing, non-competing awards are not expected to comply



# Single IRB - Primary and Secondary Activities

- **Primary activities** refer to the activities associated with conducting the ethical review of the proposed research protocol that will be carried out at all of the participating sites and the review of the template informed consent document describing the study.
- **Secondary activities** refer to the activities associated with the review of *site-specific* considerations for all of the participating sites, including investigator qualifications, institutional capabilities, state/local regulatory requirements, and community ethos. Following initial approval, there are *additional activities associated with fulfilling IRB oversight* responsibilities, including the reviewing reportable events from all participating sites, e.g., unanticipated problems, protocol deviations, and, as necessary, reporting them to the OHRP and the funding Institute or Center as appropriate; receiving and reviewing any complaints that arise with regard to the conduct of the study; notifying all participating sites of serious or continuing non-compliance and all other determinations; and communicating with participating sites on matters related to sIRB determinations



# Single IRB - Primary/Secondary Activities, cont.

- Primary activities should be charged as indirect costs (included in F&A rate agreement)
- Secondary activities may be charged as direct costs, with appropriate budget justification
- NIH maintains that 12 charging scenarios are possible, see Notice
  - **Independent IRB:** Primary & secondary may be charged as direct
  - **IRB at Institution:** Costing dependent on whether Institution is subawardee
- Expecting NIH to issue additional guidance



# *Other Topics*

- Safe Harbor for Pass-through entities
  - Provide a federal Safe Harbor if a pass-through entity confirms that a proposed subrecipient has a current Single Audit report submitted in the Federal Audit Clearinghouse and has not otherwise been excluded (e.g., debarred or suspended)
- Cloud Computing
  - How do you provide the correct incentives

**Questions?**