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COUNCIL ON GOVERNMENTAL RELATIONS

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August 26, 2016

Mr. Gilbert Tran
Office of Federal Financial Management
White House Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Subject: Proposed FAQs for the Uniform Guidance

Dear Mr. Tran:

On behalf of the members of the Council on Governmental Relations (COGR), and at your request, we are submitting proposed FAQs for the Uniform Guidance. We understand FAQs are designed to represent clarifying statements for sections of the Uniform Guidance that require additional clarification. At times, there is a fine-line between a clarification and a policy statement, and we have attempted to be respectful of this distinction.

In the course of your review, if you believe any of our proposed FAQs are more skewed toward a policy statement, we would be happy to provide more input to our justification for submitting those FAQs. Further, if you conclude any of the proposed FAQs constitute a policy statement, we hope you will consider those items as potential technical corrections to the Uniform Guidance.

The following Proposed FAQs are organized in the order each appears in the Uniform Guidance:

1) Safe Harbor for Pass-through Entities and their Subrecipients (2 CFR 200.331)

Q: 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) from receipt of Federal funding, can the pass-through entity rely on the subrecipient's cognizant or oversight agency for audit to follow-up and issue management decisions?

A: Yes. The current guidance is intended to provide a Safe Harbor for pass-through entities and their subrecipients subject to a Single Audit. No additional subrecipient audit review by the pass-through entity is expected when the conditions outlined above exist. However such reliance does not

eliminate the obligation of the pass-through entity to issue subawards that conform to agency and award-specific requirements and to manage risk through life-of-the-subaward monitoring activities, such as monitoring of programmatic performance and invoices.

2) Use of the 10% De Minimis Rate and Flow-down of F&A Rate (2 CFR 200.331 & 2 CFR 200.414)

Q: If a for-profit subrecipient does not have a negotiated rate, can the pass-through entity reimburse the for-profit subrecipient for indirect costs based on the 10 percent de minimis rate? If the for-profit subrecipient objects to using the 10 percent de minimis rate, what other options does the pass-through entity have for reimbursing indirect costs?

A: Yes, the 10 percent de minimis rate can be used for for-profit entities. In lieu of using the 10 percent de minimis rate, a for-profit subrecipient may certify the accuracy of its F&A rate in its proposal to the pass-through entity, and the pass-through entity may include that rate in its proposal to the federal agency. Upon award by the federal agency, the subrecipient's proposed F&A rate shall be allowable and the pass-through entity, without further negotiation or review, may utilize this rate in the subaward issued to the for-profit subrecipient.

Q: Section 200.414(f) states that any non-Federal entity that has never received a negotiated indirect cost rate ... may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. What if an entity previously had a negotiated rate (e.g., 5 years prior), but that rate has lapsed and is no longer applicable? Can the 10% de minimis be used?

(NOTE: THIS PROPOSED FAQ IS DESIGNED TO REPLACE .414-9)

A: Yes. Since the previously negotiated rate is no longer applicable, the least administratively burdensome solution is to apply the 10 percent de minimis rate. In situations where a negotiated rate is not available, whether or not the non-federal entity has ever had a rate, using the 10 percent de minimis rate is a conservative and practical solution, which meets the goals of the Uniform Guidance to reduce administrative burden.

Q: Under what circumstances are State Governments obligated to provide funding that is consistent with their subrecipient's negotiated F&A rate agreement?

A: States receive funding through a variety of federal programs. State agencies must notify their subrecipient if any of the funding they are providing is federal, and if federal funding is provided, if their program is exempt from Subpart D of the Uniform Guidance, as defined in 200.101(d). If an exemption does not exist, the State must provide the subrecipient with its negotiated F&A rate as defined in 200.331(a)(4).

3) Public Advertisement of Competitive Bids (2 CFR 200.320)

Q: A technical correction was made to 200.320(c)(2)(i) in September 2015. The correction specifies that if sealed bids are used, the invitation for bids must be publicly advertised for local and tribal governments. Hence, other non-federal entities are not subject to the public advertisement requirement. In order for

Procurement departments across all non-federal entities to operate in the most efficient and productive manner possible, the same requirement should be applicable to procurements by competitive proposal. Should the same public advertisement requirement per 200.320(c)(2)(i) be applicable to 200.320(d)(i)?

(NOTE: WE BELIEVE THIS MAY HAVE BEEN OVERLOOKED IN THE 2015 TECHNICAL CORRECTIONS AND ARE PROPOSING THIS AS AN FAQ IN THE INTERIM)

A: Yes, the public advertisement requirement for procurements by competitive proposal was meant to be consistent with the public advertisement requirement for procurements by sealed bids. This will be addressed in the form of a technical correction to 200.320(d)(i).

4) DS-2 Approval Process (2 CFR 200.419)

Q: What cost accounting practice changes are required to be filed as DS-2 amendments to the cognizant agency?

A: As specified in FAQ .110-3, IHEs making voluntary changes in cost accounting practices other than those required in the Uniform Guidance should submit their DS-2 (or revised pages) 6 months before the effective date of the proposed change. However, if the cost accounting change is in compliance with policies and practices allowed in the Uniform Guidance, the IHE can proceed with the cost accounting change without approval from the Federal cognizant agency for indirect cost and a DS-2 amendment does not need to be filed. A DS-2 amendment should be formally presented to the cognizant agency for indirect cost and may be subject to the approval requirements in 200.419(d)(2) only if the cost accounting change is not clearly defined as allowable in the Uniform Guidance. Regardless of whether a DS-2 amendment is required, the IHE and its Federal cognizant agency for indirect cost should work in a collaborative manner to ensure that compliance with the Uniform Guidance is maximized and that the goals of the Uniform Guidance to reduce administrative burden are achieved.

5) Foreign Subrecipients and Single Audit Expectations (2 CFR 200.501)

Q: Are pass-through entities expected to obtain Single Audits from foreign subrecipients?

A: No. Due to national standards, technology capabilities, and other applicable circumstances in a foreign country, a foreign entity's record keeping may be inconsistent with generally accepted audit expectations of non-federal entities. IHEs and research institutions, in particular, are encouraged by the Federal government to partner with foreign entities, and current U.S. policy is to enhance these partnerships. Therefore, until a technical correction is made to the Uniform Guidance, pass-through entities should implement the following practice for foreign subrecipients (note, this incorporates exact language from 200.501(h) and 200.501(d)):

Pass-through entities are not expected to obtain Single Audits from foreign subrecipients. The pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by foreign subrecipients. Records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

6) Late Issuance of Management Decision Letters by a Federal Agency (2 CFR 200.521)

Q: Section 200.521(d) states: “The Federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.” If the Federal agency responsible for issuing the management decision has not communicated in writing within the required six-month period, should the entity’s corrective plan be considered adequate?

Yes. If the management decision has not been communicated in writing within the required six-month period, then the corrective action plan is found to be adequate and any findings are deemed to be resolved. These situations are time sensitive both in cases where the entity is being considered for an award from a federal agency and where the entity is being considered as a subrecipient. As appropriate, and when the management decision is ready to be issued, the entity and the federal agency should work in a collaborative manner to resolve any discrepancies.

7) Process to Implement Changes to the Utility Cost Adjustment (Appendix III)

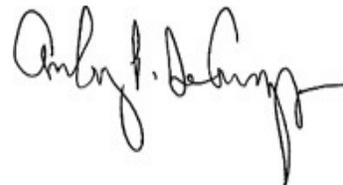
Q: Appendix III, B.4.c(2)(ii)(B) states that OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years). What is the process for IHEs to initiate necessary changes in the EUI, and subsequently, the Utility Cost Adjustment (UCA)?

A: The IHE community should submit proposed adjustments to OMB, and if applicable, to the cognizant agency for indirect costs, to document the basis for the adjustment. OMB, and if applicable, the cognizant agency for indirect costs, will work with the IHE community to implement the fair and equitable adjustments.

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We appreciate your ongoing willingness to engage with the grantee community on these important topics. Please contact me or David Kennedy at (202) 289-6655, ext. 4, if you have questions. We look forward to working with you to address the issues raised in this letter.

Sincerely,



Anthony P. DeCrappeo
President, COGR

Cc: Karen Lee, Branch Chief, Office of Federal Financial Management
Rhea Hubbard, Office of Federal Financial Management