

# Uniform Guidance Panel Discussion

October 22, 2020

**Moderator:**

**Jackie Bendall, Director,  
Contracts and Grants  
Administration, COGR**

# Thank you to the COGR Uniform Guidance Working Group

**Sarah Axelrod**, *Assistant Vice President of Sponsored Programs, Harvard University*

**Stephanie Endy**, *Associate Vice President for Research, Brown University*

**Jeremy Forsberg**, *Assistant Vice President, University of Texas at Arlington*

**Joseph Gindhart**, *Associate Vice Chancellor for Finance & Sponsored Projects, Washington University, St. Louis*

**Jerry Mauck**, *Executive Director – Research Administration, University of Denver*

**Twila Reighley**, *Assistant Vice President for Research and Innovation, Michigan State University*

**Pamela Webb**, *Associate Vice President for Research, University of Minnesota*

**Jackie Bendall**, *Director of Contracts & Grants Administration, COGR (Workgroup Lead)*

**Wendy Streitz**, *President, COGR*

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## Panelists:

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**David Kennedy**, Director for Costing and Financial Compliance, COGR (Q&A)

**Robert Hardy**, Director for Research Security & Intellectual Property Management, COGR (Q&A)

**Sarah Axelrod**, Assistant Vice President of Sponsored Programs, Harvard University (Q&A)

# **Uniform Guidance Changes (2 CFR) General Provisions and Communication**

**Stephanie Endy, AVPR  
Brown University**

**Twila Reighley, AVPR  
Michigan State University**



# General Reminders

- Numbering of sections
- Must vs. Should
- Assistance Listings vs. CFDA
- Obligation vs. Financial Obligation or Responsibility

# Issues/Things to Consider

- Effective Dates
  - Immediate - two provisions effective August 13, 2020
  - November 12, 2020 for remainder
- SAM Registration (2 CFR Part 25)
  - Unique Entity Identifier (UEI)
  - Notification of subs
- Internal Controls
- Exceptions
- Other Issuances
- Statutory and National Policy Requirements

# Developing a Communication Plan for Uniform Guidance Changes (2 CFR)

Thinking through *Who, What, and Where* (column headers):

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• 2 CFR Changes to communicate<ul style="list-style-type: none"><li>• guidance to agencies; agencies are directed to implement</li></ul></li><li>• Section reference</li><li>• Notes:<ul style="list-style-type: none"><li>• Need more info</li><li>• Web or other action needed</li></ul></li></ul> | <ul style="list-style-type: none"><li>• <u>Who most needs to know (MSU)?</u><ul style="list-style-type: none"><li>• Sponsored Programs Administration, Office of Sponsored Programs, Contract and Grant Administration (SPA/OSP/CGA)</li><li>• Vice President for Research &amp; Innovation (VPR&amp;I)</li><li>• VP, Finance</li><li>• Procurement</li><li>• Campus*</li><li>• Other</li></ul></li></ul> |
|--|---|

See the detailed 2 CFR changes draft communication plan:  
<https://spa.msu.edu/PL/SiteFiles/GetFile.aspx?id=790>

# Communication Plan Outline for Uniform Guidance Changes (2 CFR)

2 CFR Changes to communicate (guidance to agencies; agencies are to implement)	Section	Need more info	Web/action needed	Who most needs to know?					
				SPA/OSP/CGA	VPR&I	VP, Finance	Procurement	Campus*	Other
Never Contract with the Enemy	Part 183 & Subpart C, 200.215	X		X	X	X	X	X	
What status of OMB FAQs		X		X					
Some exceptions to registering in SAM, safety, security and dollar amount	25.110		For subs	X				X	
Prohibition on Huawei, et al	Subpart C & E, 200.216 & 200.471		Effective for agencies 8-13-20	X	X	X	X	X	ITS, DEC, & OGC
<i>Additional rows removed for readability...</i>									

See the detailed 2 CFR changes draft communication plan:

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# Examples of Row Headers (1<sup>st</sup> Column of Matrix)

## 2 CFR Changes to communicate (guidance to agencies; agencies are to implement)

<ul style="list-style-type: none"> <li>Never Contract with the Enemy</li> </ul>	<ul style="list-style-type: none"> <li>Cognizant agency - clarified that if &gt;25% of Federal expenditures are directly from the Federal gov't (not subawards), then cognizant agency determined based on direct funding only (Fiscal Year 2019)</li> </ul>
<ul style="list-style-type: none"> <li>What status of OMB FAQs</li> </ul>	<ul style="list-style-type: none"> <li>More definition around terms related to timing for spending (budget period, period of performance, renewal award - minor changes)</li> </ul>
<ul style="list-style-type: none"> <li>Some exceptions to registering in SAM, safety, security and dollar amount</li> </ul>	<ul style="list-style-type: none"> <li>Clarified simplified acquisition threshold definition</li> </ul>
<ul style="list-style-type: none"> <li>Prohibition on Huawei, et al</li> </ul>	<ul style="list-style-type: none"> <li>Applicability, agency can approve variance for international entities and specific programs</li> </ul>
<ul style="list-style-type: none"> <li>Numbering and references changed</li> </ul>	<ul style="list-style-type: none"> <li>Clarification for agencies on "must", "should", and "may" (and "must" is the predominate term)</li> </ul>
<ul style="list-style-type: none"> <li>Capital Assets includes lease purchases too</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory changes must be through approved notice process and FAQs, administrative requirements, etc. not as helpful or hurtful</li> </ul>
<ul style="list-style-type: none"> <li>Improper payment - good news, questioned cost not move to improper if and until confirmed</li> </ul>	<ul style="list-style-type: none"> <li>Performance, goals, objectives, and measures to be increasingly emphasized (brings in Circular 11 too)</li> </ul>
<ul style="list-style-type: none"> <li>More standards brought in for Internal Controls (OMB A-123)</li> </ul>	<p><b><i>Formatted for readability; see link for additional rows</i></b></p>

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# Performance Goals, Budget Period, & Termination

**Stephanie Endy, AVPR**  
**Brown University**

**Jeremy Forsberg, AVPR**  
**University of Texas at Arlington**



# Program Design and Performance Goals

- FOA
- Award
- Monitoring
- Closeout

# Budget Period and Pre-award Cost Authority

- 200.1 – New “Budget Period” definition identifies intervals of start and end dates for authority to spend funds.
- 200.308(e)(1) – Federal Agency flexibility to allow pre-award costs up to 90 calendar days before the Federal Award is made.
- 200.458 – Pre-award costs added “... costs must be charged to the initial budget period of the award...”

## Unintended Consequences and Clarification Needed

# 200.430 - Termination

- (2) Federal award may be terminated by the federal agency or pass-through entity **“to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities”** (replaced “for cause”).
- New addition (b): Federal agency should clearly specify termination provisions to each award.

Performing entities have recourse for failure to comply with regulations or termination for cause. It is unclear how federal agencies may specify program goals in an award or the potential unilateral decision of a shift in agency priorities that may lead to termination.

# Subrecipient Monitoring

**Pamela Webb, AVPR**  
**University of Minnesota**



# Subaward Safe Harbor is here!

- *“Prime awardees or pass-through entities (PTEs) may rely on the risk determination from a subrecipient’s Single Audit if a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding.”*
- *“PTEs may rely on the subrecipients cognizant audit agency or cognizant oversight agency to perform the audit follow-up and make management decisions related to cross-cutting findings ...”*

PTE will now ONLY be required to make management decisions and to perform follow-up on audit findings that “pertain only to” or are “specifically related to” the individual subaward.



# Better flexibility around subrecipient F&A rates

Must use:

- Federally-negotiated rate if one exists (same as before)

If a federally-negotiated rate doesn't exist, then can use:

\*A negotiated F&A rate between the PTE and subrecipient, which can be based on a prior negotiated rate with a different PTE. (If using this, the PTE is not required to collect information to justify the rate, but may elect to do so)

\*De minimus indirect cost rate (now also available for subrecipients with expired federal F&A rates)

\* Cost allocation method in accordance with 200.405(d)



# Other changes

- FFATA reporting requirement is reinforced; threshold changed from \$25,000 to \$30,000
- 90 days for subaward closeout (to go along with the 120 days for prime)
- New termination provisions at 200.340 could affect subawards
- Requirement to include a subaward end date as well as start date
- New clauses – new flowdowns: 200.215, 200.216, 200.330, and 200.332
- COGR recommends revising local policies and procedures for:
  - Subaward clauses have been renumbered
  - “CFDA # and name” are now renamed “Assistance listing # and name”
  - FFATA threshold change

# Procurement, Closeout, & Costing Issues

**Joe Gindhart**

**Associate Vice Chancellor for Finance and Sponsored  
Projects**

**Washington University in St. Louis**

**Jerry Mauck**

**Executive Director for Research Administration  
University of Denver**



# UG Procurement - Positives

- Competition requirements met using strategic sourcing
- Establish micropurchase threshold >\$10K (up to \$50k) without prior approval
- Price quotations obtained from adequate number of vendors *as determined by the appropriate non-federal agency*
- Entity can establish their own simplified acquisition threshold dollar amount based on internal controls (cannot exceed \$250K)

# UG Procurement - Negatives

- Prohibition of telecommunications equipment (Huawei / NDAA 889)
- Failed to add requested clarification that procurement requirements do not apply to indirect cost areas
- Did not recognize the need for sole source procurement due to scientific need
- Procurement under Federal awards *should* provide preference to items produced in the US – *to the greatest extent practicable*
- Did not modify Contract and Price section to recognize that profit may not be negotiated as a separate element in some instances

# Closeout – 200.344 and .345

- Increasing from 90 to 120 days
- This is a positive change, but this suggest that agencies will be strict in enforcing
- Agencies still only have one year to close out an award
- Subs must submit closeouts within 90 days
- Institutions should determine how to monitor technical reporting to ensure compliance
- Reminder to contact granting agency when PI's have left the institution or may no longer be able to submit report
- In .345, states that close out date does not affect the agency's ability to "make financial adjustments to previously closed awards"
- Leaves an open-ended time frame; probably not a problem but COGR is requesting further clarification

# Disclosure Statement – 200.419

- DS-2s required to be submitted with rate proposals
- Allow submission of amendments to disclosures at any time by notifying cognizant F&A Agency, acceptance is immediate
- Still no new form

# Depreciation – 200.436

- For F&A purposes, states that acquisition costs must exclude “any portion of the costs of buildings and equipment contributed by or for the non-Federal entity that are already claimed as matching or where law or agreement prohibits recovery”
- Requires clarification, hope to get an FAQ to ensure this doesn't mean to include all institutional contributions

# Responsibilities of Agencies – 200.513

- A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit
- The change clarifies how cognizance is assigned: the Federal awarding agency that provides the predominant amount of direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit
- When the direct funding represents less than 25 percent of the total expenditures, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit
- COGR has not identified any concerns



# Appendix IV, Section C-Negotiation and Approval of Indirect Cost Rates

- States that pass-through entities are responsible for negotiations of F&A rates for subawardees that do not receive any direct Federal funding
- This is an unwelcome change and burden, especially to schools without dedicated internal costing expertise and/or capacity to take on this responsibility