

Uniform Guidance

FDP/COGR/Federal Partners meeting

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Federal Demonstration Partnership Meeting May 12, 2014

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Introduction

- Small group meeting with FDP, COGR and Federal agency representatives
- Openly discuss UG implementation challenges
- Develop Whitepapers on selected topics
- Discuss potential role of FDP during and after implementation date
- Report back to FDP membership

Participants

- Joe Gindhart
- Sara Bible
- Dan Evon
- David Kennedy
- Erica Kropp
- Mike Ludwig
- Jim Luther
- Kim Moreland
- Kerry Peluso
- Susie Sedwick
- Pamela Webb
- Michelle Bulls
- Jean Feldman
- Mark Herbst
- Debbie Rafi
- Linda Shipp

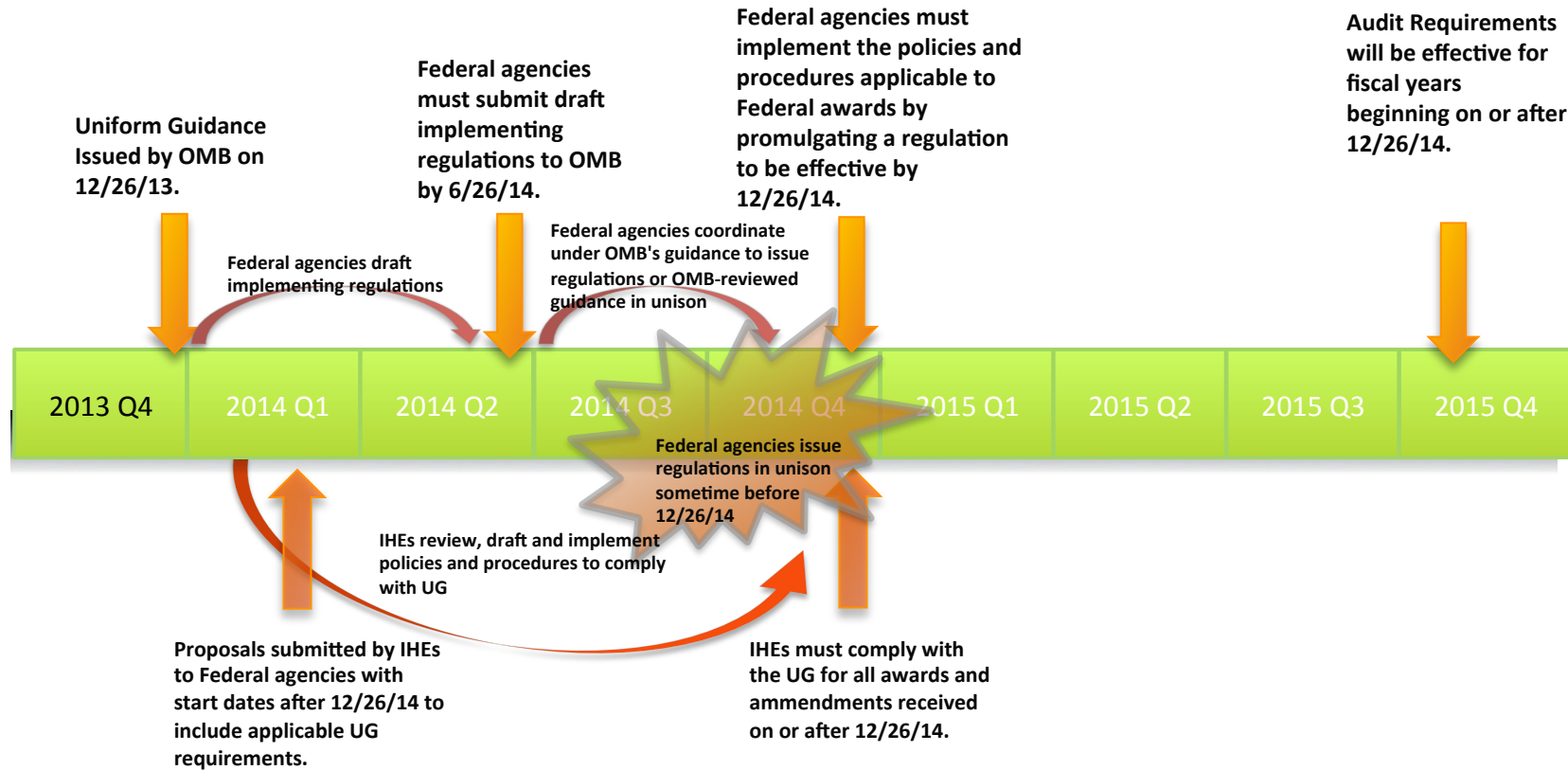
Implementation (200.110)

- Effective/applicability date
 - Uniform implementation date of December 26, 2014 for all Subparts, except Subpart F, which will be effective the first fiscal year beginning after December 26, 2014
 - Applicable for new awards and for incremental funding awarded on or after December 26, 2014

Issues with Implementation

- Federal agencies issue draft Implementing Regulations to OMB by June 26, 2014
 - OMB reviews
 - 60 day public comment – may apply
 - Agencies review comments and may make changes
- Requests for “cost accounting “changes” due six months prior to intended use
 - Negotiate “accounting changes” with DCA or ONR
- Revise policies, procedures and training
- Plan and implement system modifications, change in Chart of Accounts (new object codes, flags, etc.)

Uniform Guidance: Implementation



Implementation: Questions and Discussion

- Do Institutions of Higher Education (IHEs) need to wait to propose new costs in sponsored project proposals until cost accounting changes have been approved by Cognizant Agency?
- Out of compliance if IHEs charge costs under the UG if they were proposed under A-21?
- Out of compliance if IHEs charge costs as they were proposed (under A-21)...when the UG is in effect?
- **Discussion:**
 - May be able to submit *draft* DS-2 changes early – may need iterations
 - Standard changes – discuss uniform approach and language – Direct Costs, Computers, Utility Cost Adjustment, etc. ?

Internal Controls (200.303)

- “Internal Controls” is one of most repeated phrases in the UG (103 times).
- The OMB FAQ of 2/12/14 clarified that we must have effective internal controls, but we don’t need to prescriptively follow COSO or Green Book Standards.
- The repeated citation of “internal control” was attributed to input from the federal audit community.
- Creates a perception of an environment of increased scrutiny which can dampen the enthusiasm for accepting increased risks from streamlining.


Procurement (200.320 & 318)



Long
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item

- A new **micro-purchase** method for items that don't exceed \$3,000 if the price is considered reasonable
 - Awarded without soliciting competitive quotations – P-Cards
- A new **small purchase** procedure for items between \$3,001 and \$150,000 - requires price or rate quotes
 - Likely to impact P-Cards with limits > \$3k
 - Some will consider creating a separate federal group within Purchasing
 - Due to the significant increase in volume, turn around on orders will be slowed.
- Procurement by noncompetitive method – sole source:
 - If available from only one source
 - Need for public exigency or emergency that will not permit a delay from competitive solicitation
 - Needs sponsor approval
 - Does not recognize the importance to some experiments of maintaining the same source, to avoid discrepancies in results, i.e. control reasons.

Procurement (200.320 & 318)




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- Must maintain records sufficient to detail the history of procurement.
 - Method of procurement, selection of contract type, contractor selection, basis for contract type (P-Card transactions?)

Recommendations:

- (1) Seek a delay in implementation of this requirement
- (2) Gather data on the impact of these changes to turnaround time for orders > \$3k
- (3) Consider the impact of limiting sole source alternatives when performing research.
- (4) Consider how the practice of blanket supplier contracts can be used for small purchases (up to \$150k)

Standard Terms and Conditions (200.210)



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- Need to issue a replacement “Federal-wide Terms and Conditions” to replace the version that will become obsolete
 - Massive task to re-write to be consistent with the UG
 - Needs to be accomplished on an accelerated time frame so it can be incorporated by reference as a part of each agency’s implementation plans & in awards issued under the UG
 - FDP should seek endorsement from OSTP for the revised version

Recommendation: Immediately create an FDP working group with representatives from federal agencies and institutions to accomplish a re-draft.

Closeout (200.343)

- Must submit, no later than 90 calendar days, all *financial, performance, and other reports...*
- Anticipated agency implementation will limit cash draws at day 91 unless an extension is approved
- Challenges:
 - Staffing levels for peak-load (likely December 29: September 30 + 90 days)
 - Subrecipient timing: 60 days + PI review + actual payment
 - Impact on internal control structure – will there be time for final PI approval
 - Could tight adherence to the 90 days result in shortened performance periods to allow for completion of the required reports (subrecipients?)
 - Does a large number of extension requests or revised FFRs reflect on an institutions internal controls?
 - What is a reasonable number of days for closeout: 90, 120, 180?

Subawards and Subrecipient Monitoring (200.330, 200.331, and 200.332)

- Each agency can “supply and require recipients to comply with” new guidance to document classification decisions (contractors versus subawards)
- New prior approval requirement to enter into fixed price subawards, and dollar limit of \$150K each
 - Concern that this may delay or add burden for fixed rate subawards for clinical trials (“per patient”) and foreign entities
- Pass-through entities must honor existing F&A rate agreements of their subrecipients if they have them
- If subrecipient has no approved rate , must offer 10% MTDC rate (no rate agreement required) or negotiate a rate

Subawards and Subrecipient Monitoring

(200.330, 200.331, and 200.332)

- New data elements required to be included in subawards (including total amount of prime award and prime's F&A rate)
- Transition issues
- Risk assessment instructions are more prescriptive
- Subrecipient monitoring requirements are more clear ("required" list and "optional" list)
- No relief immediately on audit reviews
- Higher audit threshold (\$750K instead of \$500K) means more subrecipients will be without A-133 audits (more work for pass-through entities)

Subawards and Subrecipient Monitoring (200.330, 200.331, and 200.332)

Recommendations:

- (1) Federal agencies should specify clearly in their implementation plans that pass-through entities are expected to honor F&A rates of their subrecipients
- (2) Agencies could waive keeping extra documentation of vendor vs. subaward determinations and grant a global prior approval to enter into fixed price subawards in their implementation plans
- (3) FDP could devise a risk-assessment tool and a model subrecipient monitoring program that could be endorsed by agencies and adopted by IHEs.




Conflict of Interest (200.112)



- Each Federal agency to create COI policy
- UG states requirement to report “all potential conflicts”
 - Current agency reporting requirements focus on Significant Financial Interests or conflicts that are being managed
- Was not included in the proposed guidance
- Expensive and time consuming to modify systems
- Will take time to modify policies and procedures, train faculty and staff
- May be confusing to faculty who have funding from multiple funding agencies
- **Question:** Does disclosure of significant financial interest meet the criteria for disclosing potential conflicts?

Conflict of Interest



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Recommendations:

- Review and reporting should be at the time of award; not at the time of proposal
- Federal agencies could consider establishing common definitions of key terms and agree on basic reporting requirements

Potential role of FDP:

Facilitate discussions among agencies and IHEs to establish core consistencies

Compensation – Personal Services (200.430)



Long
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item

- Emphasis on documenting salary charges to Federal awards; strong system of internal controls; no reference to certification = more latitude for IHEs

Recommendations: The Federal agencies could/should affirm that the FDP's Project Certification pilots are sufficient under the UG 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.

- Wait to evaluate outcome of audits of FDP pilots?
- IHEs may be hesitant to make changes without some sense of what will be acceptable.

Compensation – Fringe Benefits

Terminal Leave (200.431)



- For IHEs using **cash basis of accounting** “Payments for unused leave when an employee retires or terminates employment are allowable as indirect costs in the year of payment.”
- Long lead time for systems development or modifications; policy and procedure development; campus readiness
- Cost accounting change must be requested six months prior to implementation; cognizant agency needs time to review & approve.
- Separate leave rate, or addition to fringe benefit rate, would need to be proposed to cognizant agency and negotiated prior to use.
- **Discussion:** Issues should be discussed with COFAR & OMB

Performance Measurement (200.331)

- Federal agencies must require recipients to use OMB-approved government-wide standard information collections when providing financial and performance information
- Concerns exist about:
 - “When applicable” recipients must also provide cost information to demonstrate cost effective practices
 - Each agency could require a different report (adding burden)
- Existing *Research Performance Progress Report* (RPPR) could be viewed as the go-to model

Performance Measurement (200.331)

Recommendation: Federal agencies should specify in their implementation plans that the RPPR is their chosen vehicle to measure performance. Should this tool not be viable for some agencies, FDP could facilitate dialogue among COFAR/OMB/Federal agencies/ DCA/ONR/ and Universities to reach a reasonable and timely solution.

Direct Costs (200.413)



- How will “integral” be defined/judged?
- CAS DS-2 section 2.1.0 – need to update & obtain approval
 - Can IHEs propose now or wait until DS-2 change is approved?
- Given the requirement for “explicitly included in the budget”, how will these be handled for NIH modular budgets?
- Can IHEs implement early?
- **Discussion:** Need to justify “unlike circumstances” – charge as direct cost, cost sharing or include in Instruction and Departmental Research base (not as indirect cost)
- NIH Modular awards, appropriate to budget under expanded authorities or within the budget justification of the proposal?

Required Prior Approvals

- Updated list of required prior approvals
 - Unrecovered F&A to meet cost-sharing requirements
 - Fixed price subawards
 - Salaries of admin or clerical services (if not already listed in an approved budget)
 - Option to obtain prior written approval of the cognizant agency for indirect costs OR the federal awarding agency for incurrence of special or unusual costs
 - Cost increases for fluctuations in exchange rates (even if within total amount of the award)
 - Participant support costs

Recommendation: Wherever possible, provide (1) global prior approvals in Federal-wide Terms and Conditions or in agency implementation plans; and (2) clarify that inclusion of a cost in a proposal that is subsequently approved for funding = prior approval

Small Institution Perspective

- Subject to same UG regulations and compliance issues
 - Need to conduct risk management exercises
 - Must implement with less staff and financial resources
- FDP is an excellent resource for information, risk assessments, etc.
 - Possible resource: Web-based searchable database containing tables of 2 CFR 200 compliance areas including agency implementation

Fixed Amount Awards (and Subawards)


- Definitional issues (fixed amount = fixed price?, “adequate cost, historical or unit price data”,)
- Question about whether unexpended balances on fixed amount awards constitute “profit” (not allowed to be earned or retained)
- Cost must adjusted if awards can’t be completed or are completed at a lower-than-anticipated level of effort
- New reporting requirement imposed to certify at the end that the work has been completed

Fixed Amount Awards / Subawards (200.201 and 200.332)

Recommendations:

- (1) Agency implementations could waive certification requirements; specify that residual balances are not profit, and how cost should be adjusted if the project can't be completed or can't be completed at the original level of effort
- (2) FDP agencies and IHEs could work to define key terms (e.g., “specific project scope” and “adequate cost, historical or unit price data”)

Equipment (200.313)



Long
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- New term “conditional title” introduced
 - Not a new concept, but designed to clarify, among other things, federal equipment should move with the PI if they transfer between universities
 - Clarification that conditional title is calculated using project costs including mandatory cost sharing
- New data elements specified:
 - FAIN (Federal Award Identification Number)
 - Federal participation in total project costs
 - Use

Recommendations:

- Award terms or research terms should specify if title is exempt or conditional,
- Clarification that the new data elements will be collected on a prospective basis