RESEARCH FOUNDATION CUNY

2020 Revisions to the Federal Uniform Guidance

On August 13th, 2020, the Office of Management and Budget (OMB) published the final version of the Uniform Guidance. The Uniform Guidance, which was initially issued in 2013 and became effective on December 26, 2014, is required to be reviewed every 5 years in accordance with the Code of Federal Regulations (CFR) 2 CFR 200.109. The Uniform Guidance revisions are effective as follows:

Effective August 13th, 2020:

Prohibition on certain telecommunications and video surveillance services or equipment
2 CFR 200.216

This section provides for a broad prohibition against purchasing any "equipment, services, or systems that uses covered telecommunications equipment or services as a substantial . . . component of any system." Covered telecommunications equipment or services include such items provided by Huawei Technology Company, ZTE Corporation, or any of their subsidiaries or affiliates. When it is to be used for certain public security purposes, such equipment also includes products provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any of their subsidiaries or affiliates.

Also, **Section 200.471 Termination Costs** provides a new definition for telecommunications and video surveillance costs and describes the circumstances in which they are unallowable (e.g. - equipment or services related in 200.216).

Termination
2 CFR 200.340

The grounds available for termination of an award have been expanded to include authorization for awarding agencies to terminate an award "to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities" (replaces "for cause"). The termination language has also been modified to strongly encourage agencies to clearly articulate termination rights and procedures. Furthermore, the recipient is not afforded additional costs related to an orderly wind-down of the project. However, 200.343(a) provides that costs resulting from financial obligations incurred before the effective date of suspension or termination, are allowable.

Effective November 12, 2020:

Applicability
200.101(b)(1)

OMB clarifies that "…when the word "**must**" is used it indicates a requirement. Whereas, use of the word "**should**" or "**may**" indicates a best practice or recommended approach rather than a requirement and permits discretion."

Exceptions (*to OMB requirements*)
200.102

In limited circumstances, this provision grants agencies the flexibility to make exceptions to Uniform Guidance requirements. In OMB's revisions to this section, it "strongly encourages Federal awarding agencies to add or remove requirements by applying a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance." This revision recognizes that the Uniform Guidance is not a one-size-fits-all approach, and under certain conditions deviations may be reasonable.

Effect on other issuances
200.105

Agencies may impose legally binding requirements on recipients only through the notice and public comment process through an approved agency process, including as authorized by this part, other statutes, or regulations, or incorporated into the terms of a Federal award.
This is a helpful addition as agencies must use the formal rulemaking process, rather than FAQs or agency guidance to implement policy changes.

Budget Period, Pre-award Costs, Allowability to Spend, etc.

Various textual changes have been made to clarify the concept of funded budget periods and emphasize the fact that future budget periods are not guaranteed even if referenced as potential future award periods in a notice of award. These clarifications point to less flexibility in terms of spending between budget periods. Agency implementation will be important.

Factors Effecting Allowability of Costs
Section 200.403(h)

This new section has been added to clarify that costs must be incurred during the approved budget period and the Federal awarding agency may waive prior written approval to carry forward unobligated balances to subsequent budget periods.

Pre-award Costs
Section 200.458

A new sentence has been added to the end of this section that states that pre-award costs "must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency." However, **Section 200.308(e)** gives Federal Agencies flexibility to allow pre-award costs up to 90 calendar days before the Federal Award is made. Awards made under the latter are more flexible with regards to pre-award costs. Implementation of these changes will need to be monitored.

Publication Costs
200.461

OMB clarifies the point that publication costs may be charged during closeout (after the end of the formal period of performance). It does not appear to prevent publication costs from being charged to other budget periods.

De Minimis Rate
2 CFR 200.414(f)

This section expands the use of the de minimis rate of 10 percent of modified total direct costs. Prior to this revision, the only non-federal entities that could use the de minimis rate were ones that had never received a negotiated indirect cost rate agreement (NICRA). This created a problem for some entities whose NICRAs had expired and were prohibited from using the de minimis rate. Under the revisions, those entities with expired rates may now use the de minimis rate. This change provides added flexibility to those organizations who may have previously had a NICRA but did not want to incur the expense of establishing a new NICRA.

Requirements for Passthrough entities (including IDC)
2 CFR 200.332

OMB directs pass-through entities to use a subrecipient's NICRA but, if none exists, the parties are to either negotiate a rate, use the de minimis rate, or the subrecipient may use the cost allocation method to account for indirect costs. However, it should be noted that the prime recipient will be responsible for review of the latter and many institutions do not have the resources necessary to perform a compliant review.

Prime awardees must include the following new elements in each subaward: budget period start and end dates, the dollar amount made available under each Federal award, and the Assistance listings number (CFDA) at the time of disbursement.

Publication of NICRAs
2 CFR 200.414(h)

New paragraph (h) to section 200.414 calls for publication on an OMB-designated website of each recipient's negotiated indirect cost rate, base (MTDC vs. Salary & Wage), and rate type (Predetermined vs. Provisional). Tribal governments are excluded from the coverage of this provision. Currently, we await further details from OMB regarding the publishing of F&A rates.

Closeout

2 CFR 200.344

OMB revised the time period for prime recipients to submit closeout reports and liquidate all financial obligations from 90 days to 120 days. To avoid the risk that recipients may not closeout awards, OMB directs agencies to report failures to submit final closeout reports as a "failure to comply with the terms and conditions of the award."

Subrecipients must submit their closeout reports no later than 90 calendar days (or earlier as determined by the subaward terms and conditions) after the end date period of performance to provide all performance, financial, and other reports required under the award's terms and conditions. Institutions will need to be diligent in enforcing this deadline to meet the Federal agency's 120-day requirement.

If the recipient fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed with the Federal award's closeout with the information available.

Post closeout adjustments and continuing responsibilities are addressed in **Section 200.345(a)(3)** which states that the closeout date of 1 year for the Federal awarding agency does not affect the agency's ability to "make Financial adjustments to a previously closed award such as resolving indirect cost payment and making final payments."

Note: PIs must have all reports completed and ensure all subrecipient reports and invoices are submitted 30 calendar days prior to the above stated deadlines to ensure that the Research Foundation can submit final reports in a timely manner.