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This presentation is an update to the original presentation that I made on January 14, 2014, at the AOA Conference in Sacramento, CA., and the presentation at CSU Chico on October 16, 2014.

The original presentation is included, followed by a new section (called Updates) that discusses the Frequently Asked Questions (FAQ’s) and other relevant commentary since the original presentation.

This presentation should be taken as a whole, as some of the items in the original presentation have been superseded.

DISCLAIMER – The Uniform Guidance is still a work in progress and additional changes and interpretations will be forthcoming.

Some of the entities actively involved in completion of the new Guidance are: OMB, COFAR, FDP, COGR, HHS CAS, the ONR and various Federal OIG offices.
The History of the Uniform Guidance follows:

- Proposed changes published on 2/1/2013
- Final Regulation published in the Federal Register on 12/26/2014
- Initial set of FAQ’s sent out by OMB on 4/17/2014
- Second set of FAQ’s sent out by OMB on 8/29/2014
- Teleconference by COFAR on FAQ’s on 10/2/2014
- Implementation date for the Uniform Guidance to include Technical Corrections) is 12/26/2014
- Uniform Guidance published in Federal Register on 12/19/14
- Non-Federal entities don’t need to comply with the Audit Section of the Uniform Guidance until their first Fiscal Year after 12/26/2014
- There is a “grace period” for Non-Federal entities to comply with the new procurement rules under the Uniform Guidance. This will be the first Fiscal Year after 12/26/2014. Hence, for Non-federal entities with a FYE of June 30, the first year they must use the new procurement rules is the Fiscal Year Ending June 30, 2017.
A process to streamline Federal regulations related to administration of awards in order to make them more efficient, transparent and effective has been ongoing for about two years.

OMB published a set of proposed changes on February 1, 2013, in order to consolidate eight Federal Circulars into one document.

A regulation, based on the proposed changes and input from interested parties was published in the Federal Register on December 26, 2013.

The Final Uniform Guidance was published in the Federal Register on December 19, 2014.
The new regulations are presented in three categories:


A. Reforms to Audit Requirements (combining A-133 and A-50).

Note: Hospitals are not included under Section B. - Reforms to Cost Principles. Cost principles for Hospitals are still under Department of Health and Human Services Guidance.
The Circulars being Combined in one Circular are:

1. Circular A-21 – Cost Principles for Educational Institutions
2. Circular A-122 – Cost Principles for Non-Profit Organizations
3. Circular A-87 – Cost Principles for State, Local and Indian Tribal Governments
4. Circular A-110 – Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
5. Circular A-102 – Awards and Cooperative Agreements with State and Local Governments
6. Circular A-133 – Audits of States, Local Governments, and Non-Profit Organizations
7. Circular A-89 – Federal Domestic Assistance Program Information
8. Circular A-50 – Sections Related to Single Audits
The official title of the new regulation is “Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards. This is usually shortened to “Uniform Guidance”.

The new regulation is sometimes referred to as the “Supercircular”

The new regulation may also be referred to a “OMB Circular A-81” (eight circulars in one).
A thorough review of this new regulation would take at least one full day.

Today’s presentation briefly cover the key changes under Section A. – Reforms to Administrative Requirements and Section C. – Reforms to Audit Requirements.

The main focus on today’s presentation will be on Section B. – Reforms to Cost Principles. The principle changes will be discussed along with their implications for institutions of higher education.
Effective date of regulation

- The new regulation is effective on December 26, 2013, for Federal agencies.

- This new regulation is effective on December 26, 2014, for non-Federal agencies (grantees).
The Uniform Guidance was published in the Federal Register on December 19, 2014. It is expected that there will be further changes and clarifications to the Uniform Guidance as problems arise and are addressed by the “stakeholders”.

The “stakeholders” in the new regulations, including Federal agencies, non-Federal entities (grantees), consulting firms, etc. will be following through with OMB to obtain the needed clarifications.
The reforms to Administrative Requirements accomplish the following general objectives:

- Creates a consolidated, uniform set of administrative requirements. Separate requirements for universities, nonprofits and local entities are separately listed where unique requirements occur by entity.
- Requires pre-award consideration of each proposal’s merit and each applicant’s financial risk.
- Requires agencies to provide a 60 day notice of funding opportunity.
- Provides a standard format for announcements of funding opportunities.
- Requires that information collections are subject to Paperwork Reduction Act approval.
The reforms to the audit requirements accomplish the following general objectives:

- Concentrates audit resolution and oversight resources on higher dollar, higher risk awards.

- A non-Federal entity that expends $750,000 or more during their fiscal year in Federal awards must have a single audit performed.

- Establishes a threshold for questioned costs of $25,000.

- Strengthens the guidance on audit follow-up for Federal awarding agencies.
The reforms to the Cost Principles consolidate the cost principles into one document, with limited variation by type of entity. This will eliminate duplicative language and will facilitate ease of use where entities have involvement with more than one type of entity (university, nonprofit and state and local).

The major reforms are detailed in the following slides.
Part 200.414 – Indirect Costs

• New grantees are allowed to use an indirect cost rate of 10.0 percent of MTDC (Modified Total Direct Costs) indefinitely.

• Allows extensions of negotiated indirect cost rates up to four years with cognizant agency approval.
Part 200.419 – Cost Accounting Standards and Disclosure Statement

• An Institution of Higher Education that receives aggregate Federal awards totaling $50 million or more subject to the cost principles in its most recently completed fiscal year must comply with the Cost Accounting Board Cost Accounting Standards (CAS 9905.501, 9905.502, 9905.505 and 9905.506).

• An Institution of Higher Education that receives aggregate Federal awards totaling $50 million or more subject to the cost principles during its most recent fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2) to their cognizant agency. A new format for the DS-2 will be published in early 2015.
Part 200.419 - Cost Accounting Standards and Disclosure Statement continued:

- The Institution of Higher Education is responsible for maintaining an accurate DS-2.

- Any planned amendments to the DS-2 should be submitted to the cognizant agency six months in advance of the planned implementation date of the changes. The changes may only be implemented if the institution has not been notified by the cognizant agency within the six months period that a longer period than the six months will be needed for review of the proposed change or that there are concerns about the proposed changes.

• The previous regulations specified three methodologies for supporting time and effort. These examples have been dropped under the new regulation.

• In place of the three specified methodologies, institutions are directed to ensure that appropriate internal controls exist to ensure that charges to Federal awards for salaries and wages be based on records that accurately reflect the work performed.
Part 200 – Appendix III B.6. – Departmental Administration Expenses

• Criteria for charging administrative and clerical salaries directly was modified.

• The previous criteria which specified that direct charging of administrative and clerical salaries only for “Major Projects” that require an extensive amount of administrative or clerical support has been dropped.

• The only remaining criteria is that “special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs.”
Part 200 Appendix III.B.6. – Departmental Administration Expenses - Continued

• Section 200.413 – Direct Costs provides that salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:
  - Administrative or clerical services are integral to a project or activity.
  - Individuals involved can be specifically identified with the project or activity.
  - Such costs are explicitly included in the budget or have prior written approval of the Federal awarding agency.
  - The costs are not recovered as indirect costs.
Part 200.436 - Depreciation

- Use Allowance is eliminated as an antiquated concept. Hence, use allowance on fully depreciated items is not allowed.

- Previous requirements for institution to use indirect cost reimbursements from depreciation to acquire or improve research facilities is eliminated.

- Previous requirement for institution to document process for assuring reasonableness of costs of large research facilities is eliminated.

- Depreciation on any asset acquired solely for the performance of a non-Federal award is unallowable. Is depreciation on assets from a non-Federal award allowable upon termination of the non-Federal award, if the asset is used to benefit Federal awards?
Part 200.436 – Depreciation – Continued

• Depreciation on asset costs that are donated by institutions as cost sharing or matching contributions are unallowable, regardless of whether there is a prohibition on depreciation recovery in the law or agreement, and regardless of whether the matching requirement is statutory or administrative.
Part 200.449 – Interest

• The previous requirement for the institution to conduct a lease-purchase analysis before acquiring a major capital item is eliminated. However, the institutions claim for interest costs is limited to the “least costly alternative”.

• For institutional fiscal years beginning after January 1, 2016, interest on the purchase of intangible assets, including patents and computer software is allowable.
Part 200.449 – Interest - continued

- Institutions are no longer required to notify their cognizant agency with regard to substantial relocations of Federal sponsored programs out of debt financed facilities.
Part 200 Appendix III.4 – Operations and Maintenance Expenses

- OMB Circular A-21 allowed a fixed Utility Cost Adjustment (UCA) of 1.3 percent of MTDC to be added to the F&A rate calculation for Organized Research for 66 institutions specified in Exhibit B of A-21.

- The new regulation eliminates the fixed UCA, but allows all long-form institutions to include up to 1.3 percent of MTDC to be added to the F&A rate for Organized Research to reflect the larger than average amount of utilities consumed by laboratories. Two options are provided to replace the UCA: (1) Institutions could meter space at a detailed level to measure energy utilization by function, or (2) Institutions could use a standard Relative Energy Utilization Index” (REUI) to weight research square footage in the allocation of utility costs.
Part 200 Appendix III.4 – Operations and Maintenance Expenses – Continued

- Effective Square Footage in computed by multiplying the actual square footage by the relative energy utilization index (REUI) posted on the OMB website at the time of rate determination. The REUI index is the ratio of laboratory energy use to the corresponding index for overall average college or university space. The current REUI is 2.0, but the ratio will be measured every one to five years, and may be changed by OMB.

- This entire methodology has raised a lot of questions, such as what laboratory space is being measured? For instance, does the laboratory space include dry labs as well as wet labs? Are instructional labs and research offices included? Are animal facilities included?
Other Changes to Cost Principles

- The new regulation allows direct charging non-capitalized computing devices that are essential and allocable, but not solely dedicated to the performance of a Federal awards. This may include laptops, smartphones, etc. Capitalized computer equipment - called “information technology equipment” – is still classified as general purpose equipment and would normally be unallowable as a direct cost.

- The new regulation requires that Federal agencies use negotiated F&A rates for all awards, unless limited by law or regulation, or where a limitation is approved by the agency head based on documented justification. The agency head must notify OMB of any limitations approved by the agency head.

- Retain all documentation related to the audit for the period prescribed by regulation.
Other Changes to Cost Principles

• The new regulations discourage voluntary committed cost sharing. Voluntary committed cost sharing is not expected under Federal research proposals and is not to be used as a factor in the reviews of applications or proposals.

• Faculty compensation rules have been expanded to provide criteria for allowing extra pay for full-time faculty beyond normal full-time base salary.

• Pension rules have been clarified to allow pension costs funded more than six months after the end of a fiscal year to be claimed in the year funded.
Other Changes to Cost Principles

- The new regulation specifies that actual claims for worker’s compensation, unemployment compensation, and similar employee benefits would be allowable if the institution follows a consistent costing policy and the costs are allocated as indirect costs. (See updates).

- The new regulation has been expanded to include post-retirement health benefits in the employee compensation section.
A new DS-2 Form is being developed by OMB and should be released in the near future. All DS-2 submissions should use the new form. The revised form will be published in 48 CFR by the CAS Board. (May be available by end of February 2015).

For institutions that will revise the DS-2 only to comply with the Uniform Guidance, but that do not have a CAS covered contract - (threshold is $25 million dollars) the following applies:

- The DS-2 should be revised as soon as possible after release of the new DS-2 form, and should be KEPT ON FILE at the institution.

- The DS-2 should be submitted with the submission of the institution’s next F&A proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. The cognizant agency will determine whether review and approval is necessary for the submitted DS-2.
For institutions that will revise the DS-2 only to comply with the Uniform Guidance, and which will have a CAS covered contract (Threshold of $25 million) the following applies:

- The DS-2 should be revised and submitted as soon as possible, but not later than the award of a CAS-covered contract or subcontract.

For institutions that need to revise the DS-2 for cost accounting changes implemented prior to December 26, 2014, the following applies:

- The DS-2 should be revised and submitted as soon as possible
For institutions which are revising their DS-2 for voluntary cost accounting changes (not required by the Uniform Guidance) that are to be implemented on or after December 26, 2014 the following applies:

• The DS-2 should be revised and submitted six months before the effective date of the proposed changes.

• If a DS-2 is submitted for voluntary cost accounting changes and for changes required to comply with the Uniform Guidance, the submitted DS-2 should cover both types of changes.

If an institution falls under more than one of the situations requiring submission of a revised DS-2, the revised DS-2 should be submitted at the earliest required date.
The Uniform Guidance permits extensions of rates for up to four years, with Federal Agency approval. (HHS CAS for the CSU’s)

The following need to be included in the request for rate extension:

- The audited financial statements and A-133 reports for the last base year and for all subsequent years for which these reports have been issued.

- A schedule showing the the Organized Research base for the last base year and all subsequent years for which this data is available.

- Projections of the Organized Research base for the next four years.

- Any expected changes in research space for the next four years.

- Any data that shows why the rate should be extended at the current rate.

- NOTE: The data submission may be different for Short-Form institutions.
Formal time and effort reporting has been eliminated. No longer required to use Plan Confirmation, After the Fact Activity Reports or Multiple Confirmation Records.

Institutions need to ensure that appropriate internal controls exist to ensure that charges to Federal awards for salaries and wages are based on records that accurately reflect the work performed. There must be a good audit trail through the documentation supporting the charges for salaries and wages.

May need to be “certified” by a person with knowledge of the personnel and the project.

Federal Demonstration Partnership is working on simplified procedures for time and effort reporting. (Working with COGR).

An institution may continue to use their current procedures if they meet the new criteria for appropriate internal controls.

It may be possible for the CSU’s to use different documentation for the University and the Foundation. Ask HHS CAS about this.
Subrecipients must use an indirect cost rate.

If the subrecipient already has a negotiated indirect cost rate with the Federal Government, then they must use that rate.

If the subrecipient does not have an indirect cost rate it may (1) negotiate a rate or (2) use the 10 percent of MTDC de minimus rate (or the 8.0 percent rate if the prime award is an instructional award).

MTDC is TDC excluding:

- Equipment
- Capital expenditures
- Charges for patient care
- Rental costs
- Tuition remission
- Scholarships and fellowships
- Participant Support Costs
- The portion of each subaward above $25,000
Voluntary Committed Cost Sharing is discouraged.

If Voluntary Committed Cost Sharing is proposed, it will not be considered in evaluating what entity receives a competitive award.

If an institution has Voluntary Uncommitted Cost Sharing, the costs related to this are not included in the MTDC base.

Voluntary Committed Cost Sharing and Mandatory Cost Sharing must be included in the MTDC base.

The treatment of cost sharing in the organized research base has been moved to Appendix III.

Also, a new section has been added which references the OMB Memorandum on Voluntary Committed Cost Sharing, dated January 5, 2001.
New thresholds for level of support needed for procurement.

“Micro Purchases” – Purchase in aggregate less than $3,000. May be awarded without soliciting competitive quotations.

“Small Purchases” – Purchases from $3,000 to $150,000. Price or rate quotations must be obtained from an adequate number of qualified sources. No cost analysis required.

Purchases over $150,000 – Cost analysis and sealed bids are required (see updates). What needs to be included in the cost analysis is not specified in detail.

Strategic sourcing is encouraged.

All purchases must meet five criteria:

• There must be a documented policy on purchasing
• The purchase must be necessary for the project
• There must be a full and open purchasing process
• There can be no conflict of interest.
• All transactions must be documented.
There are four justifications for sole source procurements.

- Item is only available from a single source
- Emergency circumstances dictate expediency
- Sponsor or prime expressly authorizes sole sourcing.
- After solicitation of a number of sources, competition is determined to be inadequate.
With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided the subawards meet the requirements for fixed amount awards in Section 200.201 – Use of grant agreements (including fixed amount rewards), cooperative agreements and contracts.

Note that this criteria only applies to fixed subawards, not cost reimbursement subawards. The Simplified Acquisition Threshold is $150,000. Since written approval needs to be obtained from the Federal agency to get approval to do this, a prime recipient should confirm with the Federal agency as to any other procurement criteria that would apply.
2 CFR 200.320 Methods of Procurement paragraph (c), the requirement for sealed bids to be advertised and opened “publically” is limited (as was the original intention) to state, local and tribal entities. Therefore, institutions of higher education are exempt from this requirement.
We believe that the revised language will allow institutions to continue charging termination leave to the last project or other activities the employee worked on when they left. This is a significant change from the original guidance, which required that such costs be charged to indirect costs.

These costs may be included in the fringe benefit costs included in the fringe benefit rate, where a fringe benefit rate is used for both budgeting and charging and has been negotiated with the Federal government.

If the institution doesn’t have a composite fringe benefit rate, a special rate for Termination Leave can be negotiated with the Federal Government.
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