Uniform Guidance: Key Points of the UNC Implementation - Getting to the Real Impacts of 2 CFR Part 200

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How can I tell if an award is subject to the provisions of the Uniform Guidance?

SECTION III – TERMS AND CONDITIONS – 1R21NS093617-01

This award is based on the application submitted to, and as approved by, NIH on the above-titled project and is subject to the terms and conditions incorporated either directly or by reference in the following:

a. The grant program legislation and program regulation cited in this Notice of Award.

b. Conditions on activities and expenditure of funds in other statutory requirements, such as those included in appropriations acts.

c. 45 CFR Part 75.

d. National Policy Requirements and all other requirements described in the NIH Grants Policy Statement, including addenda in effect as of the beginning date of the budget period.

e. Federal Award Performance Goals: As required by the periodic report in the RPPR or in the final progress report when applicable.

f. This award notice, INCLUDING THE TERMS AND CONDITIONS CITED BELOW.

(See NIH Home Page at http://grants.nih.gov/grants/policy/awardconditions.htm for certain
What is 45 CFR Part 75?

- On February 5, 2015, NIH published interim general conditions of NIH grant awards aligned with HHS’ regulation implementing OMB’s Uniform Guidance at 45 CFR Part 75.
  - The conditions are effective for Notices of Award (NoA) issued on or after December 26, 2014, that obligate new or supplemental funds.
  - NoAs issued on or after December 26, 2014 that do not involve obligation of new or supplemental funds remain subject to 45 CFR Part 74 (OMB Circular A-110) as applicable, until such time that new funds are obligated.
New rules on F&A recovery are now in effect

- F&A rates are negotiated by DCA, DFAS in the Office of Acquisition Management and Policy, NIH, or other agency with cognizance for F&A/indirect cost rate (Office of Naval Research) negotiation.

- Competitive proposals that include subaward(s)
  - If the Federal program has a published statutory F&A cap, that rate must be used by UNC-CH and all proposed subrecipients
  - For all other programs if the subrecipient has a negotiated F&A rate, it must be used
  - In absence of a Federally negotiated rate, a 10% “de minimis” rate **must** be used. Lower rates should not be negotiated with subrecipients
Revised Selected Items of Cost

• Administrative or clerical staff must be **integral to a project** in order to be direct charged to a federal award and must be budgeted and justified or have prior written sponsor approval. 2 CFR 200.413

• Under the Uniform Guidance, a project no longer needs to be identified as “major” to include administrative salary, but in general such expenses should be treated as indirect (F&A) costs unless the following conditions apply:

  • To be integral to the project, the administrative activity should be:

    – essential or vital to the project (program projects or training grants, for example) **and** described accordingly in the justification;
    – budgeted in a manner that reflects the essential nature to the project
    – performed by individuals specifically identified with the project or activity
    – costs that are not also recovered as indirect costs
Revised Selected Items of Cost

Direct Charges for Computing Devices  2 CFR 200.453

- The Uniform Guidance specifically allows the direct charging of computing devices that cost less than $5,000, provided that they are essential and allocable to the project.

- They do not have to be solely dedicated to the performance of a federal award, and should be listed under “Materials and Supplies.”

- The cost of computing devices that meet the above requirements may be charged 100% to an award or may be allocated to several awards.

- The devices should be itemized in the proposal budget (or in the case of NIH Modular Grant applications, itemized in the detailed budget provided to your OSR or SPO pre-award specialist).

- The project must not have reasonable access to other devices or equipment that can achieve the same purpose, devices can’t be purchased for reasons of convenience or preference.
Participant Support Costs 2 CFR 200.75, 200.456, Appendix III, 2(c)

- Participant support costs were traditionally allowed only by certain federal agencies or funding announcements. Under the Uniform Guidance, these costs are allowed with prior written approval of the funding agency, provided they are programmatically justified.

- Examples of these costs include stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects.

- The budget justification should describe the purpose for the costs and the way in which they will directly benefit the proposed project’s scope of work.

- These costs must be excluded when calculating the Modified Total Direct Costs (MTDC) to determine the overall project’s F&A costs.
Revised Selected Items of Cost

**Short-term Travel Visas for Recruitment are Allowable as Direct Costs**

2 CFR 200.463 Recruiting Costs (d)

- Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award and therefore can be directly charged.

- They must be critical and necessary (directly benefit) to the project and be allowable by the agency. Typically, these visas allow employees and students to engage in field research or attend meetings in foreign locations, or allow foreign visitors to visit the University in support of the project.

- Agencies have differing positions in terms of direct charging long-term visa costs. See award terms and conditions or contact your OSR Program Administrator.
Revised Selected Items of Cost

Publication and Printing: 2 CFR 200.461 page charges for professional journal publications are allowable when:

• The publications report work supported by the federal government; and
• The charges are levied impartially on all items published by the journal, whether or not under a federal award.

• The University may charge the federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the federal award. **However, these costs must be recorded within the 90 day closeout period.**
Prior Approvals

**PI Disengagement**

- Under the Uniform Guidance 2 CFR 200.308 prior sponsor approval must be obtained from the federal agency if a PI will be “disengaged” from the project for more than three months, or if there is a 25 percent reduction in the time the PI devotes to the project. Note: PIs should work through OSR to formally obtain this approval from the sponsor.

- “Disengagement” is defined as the PI no longer assuming primary responsibility for (a) the performance of the activities for which the award is granted and/or (b) compliance with the terms and conditions of the award, including but not limited to monitoring project expenditures; oversight of subrecipient performance and use of federal flow through funds; and preparation of any technical, progress or narrative reports required by the award.

- Note: Physical absence from the university campus is not automatically considered disengagement as long as the PI is able to carry out his or her PI responsibilities from a remote location.
Prior Approvals

Budget Modifications

• **Participant Support:** The transfer of funds budgeted for participant support costs to other categories of expense will require prior approval from the federal sponsor. This requirement previously only applied to NSF funds, but now applies to all federal sponsors. 2 CFR 200.308 (c) (5)

• **Compensation for Fluctuations in Exchange Rates:** Cost increases for fluctuations in exchange rates are now allowable costs subject to the availability of sponsor funding and prior approval by the federal awarding agency. 2 CFR 200.440

• Note: The need for additional federal funding must be determined before the expiration date of the federal award. Subsequent adjustments for currency increases may be allowable if the university provides the federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient federal funds are available.
Allowable Expenses for Foreign Activities

- **Exchange Rates**: Cost increases due to fluctuations in exchange rates are allowable subject to the availability of funding and prior approval. The institution must review local currency gains to determine the need for additional funding before the expiration date of the award. 2 CFR 200.440

- **Value Added Tax (VAT)** is an allowable expense if it is charged for the purchase of goods or services and the non-Federal entity is legally required to pay in country. Any refunds or applicable credits resulting from the payment of VAT taxes must be credited to the awarding agency 2 CFR 200.470
What if all of the work can’t be done on our campus?

- Subrecipient versus Contractor (previously Vendor)
  - Pass through entities **must** make a case by case determination whether each agreement will constitute a subrecipient or a contractor role.
  - Federal agencies may supply and require specific support for determinations (see the *FDP Checklist to Determine Subrecipient or Contractor Classification as posted on Thefdp.org site*)
Subrecipient relationships require a risk assessment

- 200.331 (b) Evaluate each subrecipient’s risk of non-compliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring which may include consideration of such factors as:
  - Experience with the same or similar awards
  - Results of previous audits
  - Whether subrecipient has new personnel or new or substantially changed systems
  - Extent and result of federal awarding agency monitoring of the subrecipient
  - Pass-through are entities required to use Federal Audit Clearinghouse to verify audit reports (200.512)
What happens if we determine there is risk?

- Depending on the risk assessment, we may:
  - Provide subrecipients with training and technical assistance
  - Perform on-site reviews
  - Impose specific subaward conditions to mitigate risk
  - Require additional monitoring activities such as more frequent financial or performance reports or require supporting documentation with invoices
  - Arrange for agreed-upon-procedure engagements (requires prior approval, 2 CFR 200.425)
  - Consider taking enforcement action against noncompliant subrecipients
What can we do to assess risk?

• At the proposal stage - Use Visual Compliance (or SAM.gov) to determine:
  
  • Is the subrecipient institution presently debarred or suspended?
  • In the subrecipient Institution’s PI presently debarred or suspended?
  • Does the subrecipient indicate or show as “delinquent federal debt”?

  ❖ **If yes** to any of the above, consider alternatives
What can we do to assess risk?

- Additional questions to consider at the proposal stage –
  - If the sponsor requires a conflict of interest policy, does the subrecipient have a compliant policy?
  - Does the subrecipient have an acceptable accounting system?
  - Does the subrecipient have an acceptable procurement system?
  - If required, has the subrecipient completed an audit under A-133 or Uniform Guidance for the most recent fiscal year?
  - Were the results of the most recent audit satisfactory? (you can find the most recent audit by checking the Federal Audit Clearinghouse)

  ▶ If no to any of the above, consider alternatives
What can we do to assess risk?

• More to consider at the proposal stage –
  • Does the project include work covered by ITAR or EAR?
  • Is there a potential or identified conflict of interest?
  • Is there cost-share required or included?
  • Is the subrecipient a foreign institution?

  ❖ If **yes** to any of the above, consider alternatives
One more change to remember regarding subrecipients

• There are new restrictions on fixed amount subawards -
  • Prior written agency approval is required to enter into a fixed price subaward as opposed to a cost reimbursement

• The total value of a fixed price subaward may not exceed the Simplified Acquisition Threshold ($150,000)
  • Payments are based on meeting specific requirements of the Federal Award
  • Accountability is based on performance and results
  • Award amount is negotiated using cost principles as a guide
  • No governmental review of the actual costs incurred
  • Significant changes (i.e., principal investigator, project partner or scope) must receive prior awarding agency written approval
Cost Sharing

• Voluntary cost sharing is not expected in federal research proposals and cannot be used as a factor during the merit review. In order for cost sharing to be considered by the funding agency it must be specified in a notice of funding opportunity. Per 2 CFR 200.29, 200.99 and 200.306

• No cost sharing should be budgeted unless it is specifically required by an agency's funding solicitation. If cost sharing is required in the solicitation, it should be included in the proposal budget and must meet other federal requirements for cost-sharing eligibility.
How do I know if a cost is allowable to include as a cost share?

- Allowable cost sharing includes costs such as salaries and equipment, costs that actually benefit the project. These are costs that are eligible to be charged to the project, but are charged to the university as an illustration of commitment to the project by the university.

- *Costs that are not allowable to be charged to the sponsor are not allowable as cost sharing*. As with costs directly charged to the sponsor, allowable cost sharing must be reasonable, allocable, and consistent with the terms of the award.
Criteria for allowablity as a cost share,

• Cost sharing is eligible when all of the following criteria are met:
  • The cost is verifiable from university records
  • Not included as contribution for any other federally assisted program
  • Necessary and reasonable for proper and efficient accomplishment of the project or program objectives
  • Allowable as a direct cost under applicable cost principles
  • Not paid by another federal award (except as authorized by statute)
  • Provided for in the approved budget when required by the federal awarding agency
  • Conforms to other provisions in OMB Uniform Guidance or Circular A-110 as applicable
Close Out – 2 CFR 200.16 and 200.343

• Under the Uniform Guidance we are required to submit a final FFR, final progress report, and Final Invention Statement and Certification and any other reports that are required by the terms and conditions of award within 90 calendar days of the end of grant support.

• The reports become overdue the day after the 90 day period ends.

• All obligations must be liquidated and any balances must be promptly refunded to prevent being cited as delinquent on a federal debt.
Audits

• We are subject to the audit requirements of 2 CFR 200, Subpart F—Audit Requirements. The NIH specifics are implemented by HHS at 45 CFR Subpart F and in the NIHGPS.

  – In general, Subpart F requires a State government, local government, or non-profit organization (including institutions of higher education) that expend $750,000 or more per year under Federal grants, cooperative agreements, and/or procurement contracts to have an annual audit by a public accountant or a Federal, State, or local governmental audit organization.

  ❖ Note: We will be audited for Uniform Guidance compliance in our current A-133 audit.