The New Uniform Guidance

“Single most significant change in research administration in this century” Michelle Bulls, NIH

Panel: Jim Luther, Nate Martinez-Waymans, Cindy Hope, Keith Hurka-Owen, John Michnowicz, Julie Cole
• Agenda
  – Overview of the Uniform Guidance - Background
  – The Top Seven Areas of Significant Change
    • “Must”/“Should”
    • Prior Approval
    • Internal Controls
    • Effort
    • Costing/Charging Costs (Computers, Clerical/Administrative salaries, Research Support Personnel, Travel, Other)
    • Subrecipient Management and Subaward
    • Procurement

"Our research shows that heredity and environment are both very significant, but that neither is as important as government regulation."
• The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) were released on December 26, 2013.

• The Uniform Guidance streamlines and supersedes guidance that was previously contained in eight different OMB Circulars.
  – From the university perspective, the Uniform Guidance will supersed OMB Circulars A-110, A-21, and A-133.

• Federal funding agencies are developing Implementation Plans; minimal deviations are expected but we won’t know until early December.

• Included in the new guidance are definitions, uniform administrative requirements (both pre- and post-award), cost principles, and audit requirements.

**COFAR: Culmination of 3 years of work to Reduce Admin Burden and Fraud, Waste, & Abuse**
Organization


  - Subpart A, 200.xx – Acronyms and Definitions Pulls from A-110, A-21 and A-133
  - Subpart C, 200.2xx – Pre-Award Requirements and Contents of Federal Awards A-110
  - Subpart D, 200.3xx – Post Federal Award Requirements A-110 and A-133
  - Subpart E, 200.4xx – The Cost Principles A-21
  - Subpart F, 200.5xx – Audit Requirements A-133
  - Appendices (there are 11 total appendices) – I Funding Opportunities; II Contract Provisions; III Indirect Costs (F&A) A-110, A-21 and A-133

When Does the UG Go Into Effect?

- The Uniform Guidance administrative requirements and cost principles will apply to new and incremental funding awarded after December 26, 2014.

- Existing Federal awards will continue to be governed by the terms and conditions under which they were awarded. **Note: OMB clarification regarding incremental funding – Federal agencies that consider incremental funding actions as an opportunity to change award terms and conditions may incorporate the Uniform Guidance in increments issued after 12/26/14.**
## Managing Federal Funds under the New Paradigm

- **Funding received before December 26, 2014** will refer to the current A-21, A-110 and Duke University GAPS

- Incremental funding received on or after December 26, 2014 will be managed under the new Uniform Guidance.

- **ORA/ORS** have developed a plan to review the “terms and conditions” of new awards and to post information in the Awards on the Web as to which guidance should be followed

Departments should begin planning now as to how to manage projects that have different rules......
Who will be Subject to the Uniform Guidance?

• The Uniform Guidance is applicable under awards made directly to an entity as well as pass through entities that are;

  – Institutions of Higher Education
  – Nonprofit Research Institutions
  – Other non-federal entities including States, Local and Tribal governments and nonprofit organizations

Note: Per the preamble to the Uniform Guidance, the hospital cost principles may eventually be incorporated in DHHS regulations.

How will the Grant Management Community at Duke be Informed?

• New Uniform Guidance website: https://finance.duke.edu/research/forms-resources/ug/index.php
• Uniform Guidance Communications (UGC) will be issued to clarify emerging issues and new processes
• Uniform Guidance Team (UGT) has been assembled to work through changes
• Town halls scheduled for December, January, February and more as needed
• Duke “You Tube” sessions being developed for on-line distribution of important new information
• RCC Regulatory Environment class has been updated to include both A-21 and A-110 guidance and the new UG language

Important: RCC may require viewing on-line sessions as part of maintaining certification for RCC, RAA, AGM, and RAI
Duke Uniform Guidance Website
- Duke Announcements / Presentations
- Updated Duke Policies
- Task Force/Working Group
- Training
  - Town Halls
  - RCC Required Classes
  - Possible open discussion group (on-line)

What are the Key Changes?
The Federal Regulatory Environment: Constant Change

Some Things Remain the Same....

- Definition of *Allowable, Reasonable and Allocable* are reinforced
- *Dual Role of Students* reaffirmed
- Section dedicated to “selected items of cost” essentially the same as the OMB A-21 Section J
§ 200.314 Supplies

Supplies –

Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as for equipment.

The same, but different:
This appeared in the former Circulars but apparently was never really enforced.
Still under discussion

Some Things have Minor “Tweaks”

• The Uniform Guidance updates and addresses several changes in research management
  – Definitions include “software” and “computing devices”
  – Role of research support personnel is addressed
  – Recognition of the unique aspects of personnel costs and effort in higher education
§ 200.308 Principal Investigator/Project Director Disengagement

- For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:
- (1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).
- (2) Change in a key person specified in the application or the Federal award.
- (3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

Important clarification regarding the absence of the PI or PD

And then, some “tweaks” are really major......
Closeout Language

• “(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by, or the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.”

• “(b) Unless the Federal awarding agency of pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligation incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.”

Closeout

A-21

• Financial closeout within 90 days
• No time limit currently

Terms and Conditions (Breaking News)
• 120 Days....
  No promises yet

Uniform Guidance

• Financial closeout reports within 90 days including all final billings
Duke responds: Closeout Project

The Importance of “Must” and “Should” FAQ

• .303-2 (previously Q III-5) *Should* vs. *Must* in general terms....
• The word “should” is used throughout section 200. Does it really mean “must”? 
• No. The word “must” is used throughout part 200 to indicate requirements. The word “should” is used to indicate best practices or recommended approaches that the COFAR wanted non-Federal entities to be aware of, but not necessarily required to comply with.

Duke will likely mirror this approach in revising its GAPs and other guidance
“Prior Approval”

Essentially the same as previously defined in A-110 and A-21

- §200.308 Revision of budget and program plans.
  - Change in scope or PI, subawarding, etc.
  - (c)(4) “The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in...[the] Cost Principles...”

- §200.407 Prior written approval (prior approval).
  - Research Terms and Conditions (RTC) Prior Approval and Other Requirements Matrix – aka FDP Matrix
    - Summary of Agency Specific RTC related prior approval waivers
  - Issue: Agencies implementations are not expected until 12/26/14 or shortly before. Current RTCs are not applicable to the UG.
    - Duke will not know what is waived and what now requires agency approval

**Prior Approval**

§200.407 Prior written approval (prior approval).

- Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or disallowance based on unreasonable or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances as set forth in the following sections of this part:
  - (a) §200.201 Use of grant agreements, cooperative agreements, and contracts, paragraph (b)(5);
  - (b) §200.306 Cost sharing or matching;
  - (c) §200.307 Program income;
  - (d) §200.308 Revision of budget and program plans;
  - (e) §200.332 Fixed amount subawards;
  - (f) §200.413 Direct costs, paragraph (c);
  - (g) §200.430 Compensation—personal services, paragraph (b);
  - (h) §200.431 Compensation—fringe benefits;
  - (i) §200.432 Entertainment costs;
  - (j) §200.439 Equipment and other capital expenditures;
  - (k) §200.440 Exchange rates;
  - (l) §200.441 Fines, penalties, damages and other settlements;
  - (m) §200.442 Fund raising and investment management costs;
  - (n) §200.443 Goods or services for personal use;
  - (o) §200.447 Insurance and indemnification;
  - (p) §200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
  - (q) §200.455 Organization costs;
  - (r) §200.456 Participant support costs;
  - (s) §200.458 Pre-award costs;
  - (t) §200.462 Rearrangement and reconversion costs;
  - (u) §200.467 Selling and marketing costs; and
  - (v) §200.474 Travel costs.
§ 200.303 Internal Controls

Internal Controls Non-Federal entities must -
Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- Comply with Federal statutes, regulations, & terms and conditions
- Evaluate and monitor compliance
- Take prompt action on audit findings
- Safeguard protected personally identifiable information

“Internal controls” are mentioned frequently in the UG.......We believe this emphasis will guide auditors as they audit to the new standards....Departments should review their internal systems for approvals, documentation, SOP’s, etc.

Panel Format

- The UG Language
- What to Do Now
- More to Come.......
Effort

- Periodic certifications of effort are no longer explicitly required and previously described acceptable methods of allocating payroll to sponsored projects have been removed. **There is an increased emphasis placed on the non-Federal entity’s system of internal controls which are key.** The concept of IBS is now included.

- § 200.430 (h) (4) (ii)
  - The non-Federal entity establishes a consistent written definition of work covered by institutional base salary (IBS) which is specific enough to determine when work beyond that level has occurred. This may be described in appointment letter or other documentation

Nothing to be done at this time; the Duke UG Group will be examining ways to ensure that Duke has processes in place to define IBS and inform the grant management community.

Direct Costing

- Computers
- Clerical/Administrative Salaries
- Research Support Personnel
- Travel
- Publication Costs
§ 200.20 Computers

Computing devices.
- *Computing devices* means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. See also §§200.94 Supplies and 200.58 Information technology systems.
- §200.58 Information technology systems.
  - *Information technology systems* means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources.
- § 200.453 Materials and Supplies
  - In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

Be sure to include costs for computers and related computer devices in proposal budgets. These costs should be justified in terms of being essential and allocable to the proposed project. Not required by UG, but definitely a best practice.

Computing Devices

- Duke will determine definition of “essential”
  - One institution’s approach
    - necessary to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information.
    - The project does not have reasonable access to other devices or equipment that can achieve the same purpose; devices may not be purchased for reasons of convenience or preference.
    - PIs and departments should maintain documentation that describes how the proposed computing device meets the above requirements.

More to come.....Duke is working with federal agencies and COGR to determine definition of “but not solely dedicated”
Appendix III to Part 200. Clerical and Administrative Staff

The 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:

1. Administrative or clerical services are integral to a project or activity;
2. Individuals involved can be specifically identified with the project or activity;
3. Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
4. The costs are not also recovered as indirect costs.

Clerical and Administrative Staff

• Duke will develop/edit policy - Considerations
  – Duke will define “integral” and provide examples
  – Strongly suggest that you include a budget justification in SPS until we receive guidance for Modular Budgets
• Duke may create flag in pre and post award systems to indicate when “integral” costs were proposed and approved by the sponsor
• Unless otherwise notified, assume that clerical/administrative staff not included in budgets for awards made after 12/26/2014 must have sponsor approval prior to charging these costs!!!!!!
§ 200.430(i) Personnel Directly Associated with the Research

Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

Personnel Directly Associated with the Research

• Considerations
  – Duke will provide further guidance and examples of these types of personnel for reference
  – These individuals should be budgeted and justified in the proposal budget
  – May consider a department by department process for documenting the role of these individuals and being certain that their effort is allocated properly
§ 200.474(d) Travel

Commercial air travel. (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;
(ii) Require travel during unreasonable hours;
(iii) Excessively prolong travel;
(iv) Result in additional costs that would offset the transportation savings; or
(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

More to come....Duke will examine current travel policies and modify/communicate as appropriate

§ 200.474(c)(1) Dependent Care

Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

• (i) The costs are a direct result of the individual's travel for the Federal award;
• (ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and
• (iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also §200.432 Conferences.

More to come....Duke might have to adjust it's internal policies in order to allow these types of costs to be allowable on federal awards
§200.461 Publication Costs

The non-Federal entity 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.

Generally assumed to be within the 90 day closeout window

Publication Costs

• Be sure to include estimates of publication costs, even if the “window” for ultimate publishing may be beyond the 90 day closeout period
• Use previous costs for similar comparisons
Publication Costs

More to come:

• Duke will:
  
  – Determine/communicate maximum amount of time Duke will allow charges to post after the award end date
  
  – Determine how to handle after-end-date publication charges arising from subawards, in cooperation with federal sponsors

§200.438 Entertainment

Entertainment costs

• Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.
§ 200.201 Fixed Price Subawards

Use of grant agreements (including fixed amount awards), Cooperative Agreements and Contracts:

– Incorporates new coverage on fixed amount awards which are allowed if not exceeding the Simplified Acquisition Threshold of $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

Fixed Price Subawards

• Duke does not often use fixed price subawards
• ORA/ORS serve as the “gatekeepers” to ensure that current and new regulations are followed
• Care should be taken in considering these mechanisms

Alternate mechanism to “standard” budget-driven proposals....more burden on PI to demonstrate performance and results
§ 200.331 Subaward Risk Assessment and Monitoring Obligations

Risk Assessment: Mandatory to do this, but mechanisms used are at discretion of the pass-through entity (suggested alternatives included in this section)

Mandatory monitoring obligations include:
• the pass-through entity’s review of subrecipient technical and financial reports;
• following up and ensuring that the subrecipient takes timely and appropriate action on deficiencies detected through audits/on-site reviews, and other means;
• issuing a management decision for audit findings as required in Section 200.521;
• verifying that a subrecipient received its mandatory Single Audit if the entity exceeded the $750,000 threshold (increased from $500,000) for federal funds expended in the previous fiscal year;
• considering whether monitoring findings require the pass-through entity’s records to be adjusted;
• determining whether enforcement action is needed against noncompliant subrecipients (See 200.338).

Expect to see much more on the new requirements, including increased reliance on departments to help in monitoring

Risk Assessment and Subrecipient Monitoring Obligations

• New risk assessment and subrecipient monitoring procedures by OSP, ORA/S and RCC being implemented:
  – Risk assessment on expanded population of subrecipients who don’t need an audit (because of threshold change from $500K to $750K in expended federal funds)
  – Review of audits may precipitate more strenuous language and requirements on subs – pass monitoring burden to departments
  – Duke will likely not deny PI’s request to collaborate with risky sub, but may certainly impose additional reviews and reporting
§ 200.331 Subrecipient F&A Rates

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this Part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (b) of this Part.

200.414 Any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (d)(1)(B) may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely.
Subrecipient F&A rates:
Implementation

• More to Come:
  – Considering adding an attribute in SAP denoting whether the award/subaward is or is not under the UG
  – Duke will determine how we administratively handle proposals submitted under the old rules and awarded under the UG to address the possibility of not having sufficient funds to pay the F&A of a subrecipient
  – Considering documenting that a subrecipient who agrees to forego F&A does so on a voluntary basis

Subrecipient Progress Reports

• 200.331 Subaward must include any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports.
• 200.331 Pass-through entity monitoring must include (1) reviewing financial and programmatic reports required by the pass-through entity

Departments may have to become more active in review of sub’s programmatic reports and approval of the same
Subrecipient Progress Reports

More to Come:

Duke will:

- Make a decision on using manual or electronic system for identifying:
  - when subaward progress reports are due
  - documenting when they are received and reviewed (PI, departmental or central?)
  - How we will store and retrieve data
- Decide who will identify and track down missing reports
- Determine timing: extra reports for high risk entities and how to manage these

§ 200.305 Pay Subaward invoices on C/R subs within 30 Days of Receipt

When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
Payment of Subaward Invoices

More to come:

Duke responds:
- Data being developed to test if invoices are being paid within 30 days of receipt
- Departments will need to be quickly responsive to turnaround

Easy for auditors to test

Procurement “Claw” (Section 200.320)

- 1. Micro Purchases
  - Up to $50K
  - Rate quotations
  - No cost or price analysis
  - Equal distribution

- 2. Small Purchases
  - $1K
  - No quotations

- 3. Sealed Bids
  - $515K
  - Construction projects
  - Price is a major factor

- 4. Competitive Proposals
  - $535K
  - Fixed price or cost reimbursement
  - RFP with evaluation methods

- 5. Sole Source
  - Unique
  - Public emergency
  - Authorized by agency (e.g. PII)
  - No competition
What Can You Expect

• Change
  – Many policies, procedures and training classes will be impacted
  – More consistency across agencies
  – Less burden
• Continued Communication
  – Some changes can/need to be included in proposals **now**
  – Some items could have a longer lead time
• However...
  – Some items may be refined via the “harmonization” process and by agencies
  – “Interpretation” and clarification will occur via federal agencies, OIGs, and professional organizations
• Some confusion is likely...from feds...2 sets of rules...
• Website
  – Communication, Updates, & FAQ's
  – Checklist and Issues Summary
Questions?