IHEs may need to develop definitions of what is considered "integral" to sponsored projects and be able to anticipate the necessity of obtaining prior approval for these costs.

Much of the former prescriptive language for frequency, specific methodologies and other effort reporting requirements have been removed or modified. Periodic certifications of effort are no longer explicitly required and previously described acceptable methods of allocating payroll to sponsored projects have been removed. Instead, there is increased emphasis on internal controls as the desired mechanism for ensuring that effort is appropriately managed.

The UG's emphasis on the application of internal controls is very clear. Eliminating specific reporting requirement methods and timelines certainly provides institutions with greater flexibility. The guidance removes the requirement that institutions develop extensive policies and procedures for effort reporting in order to comply with the guidance previously found in OMB Circular A-21. It is interesting to note that the phrases "suitable means of verification" and firsthand knowledge" are no longer in the regulations. Additionally the Examples of Acceptable Methods for Payroll Distribution have been eliminated as well. However, charges for non-exempt personnel must still be supported by records indicating total hours worked each day. Cost sharing or matching personnel charges must meet the same documentation and reporting standards as direct charges.

While the elimination of specific effort reporting requirements seems to provide more flexibility for entities to design and implement processes that best fit their own environments, the internal control requirements in the UG establish clear standards for acceptability of those controls. Internal control requirements are outlined in §200.303. The new language provides a blueprint for institutions when developing their internal controls processes or evaluating their current processes and policies.

As a result, entities have more flexibility in devising their internal controls, , provided they consistently apply and adhere to those controls to meet the standards and document accordingly in their policies and procedures. Valuable lessons may be learned from the ongoing "Payroll Certifications – A Proposed Alternative to Effort Reporting" initiative that is underway with the Federal Demonstration Partnership (FDP). Several institutions are working with their cognizant and applicable auditors to pilot a project focused process that would replace the traditional effort certification process. This model may hold significant promise for many institutions.

As institutions consider "where to go from here", one might theorize that institutions will generally fall into three categories. Group One might be universities that have transitioned to an online effort system over the past 5 – 10 years, invested the financial, cultural, and personnel resources to make the change, and embraced or at least accepted the electronic process as an improvement over the previous paper process. This group may be less likely to change their internal system to adjust to the flexibility afforded by the UG until there is a clear value proposition and reduced risk due to the uncertain compliance environment. Group Two might be those institutions that have received internal or external audit effort findings, perhaps experienced grumbling from within with regard to their current legacy system -be that paper or electronic – and accepted the reality that they must change or revise their current practices. Group Three might be those institutions that are not at all clear on their next steps, and may not have a complete picture of their own internal processes sufficient to make informed decisions regarding change. For Group Two and Three, the questions are not only whether they decide to be early adopters of change, but what do they need to know about their current systems and practices and how aggressive they want to be in making changes.

On the continuum of options, the minimalist approach may be to ensure current systems meet the new guidance and consider reducing the frequency of certification from monthly or quarterly to semiannually /by semester or annually. There may be a decision to place a higher reliance on the inherent existing controls within their payroll distribution system and the day-to- day interactions between research administrators and the faculty they support. On the other side of the continuum is a complete replacement of their system from the ground up. Somewhere in the middle of this broad spectrum of choices is an essential component: each institution should review current internal controls, documentation levels, and process to ensure minimal compliance.

In both cases, the August 29, 2014 release of the FAQs does provide some guidance. It is clear that there is an expectation that effort management changes will require proactive coordination with your cognizant agency and documentation within your CASB DS-2. In some cases, institutions may want to submit a CASB DS-2 change on 12/27/14 (the first day they are allowed for submission) and initiate conversations. The cognizant agency has 6 months to respond or it is assumed that the change is permissible.

What about the audit community? Certainly, the audit community will be required to assess the internal control structure based upon a much broader set of guidelines. The current audit

approach is based upon years of experience with A-21 and rigid institutional effort reporting systems. It will be interesting to observe how audit processes are adjusted to the new guidance and how auditors will revise procedures and modify staff training to meet the new standards. It is unclear how auditors will determine what constitutes an auditable "system of internal control which provides reasonable assurance". In the short term, the audit approach for this issue could vary among firms and Federal agencies. It will take auditors several years and iterative processes to establish consistent standards and institutions can likely expect an unsettled audit environment until this aspect of the UG is ultimately resolved.

Summary

The UG succeeds in addressing much of the debate over Effort and Effort Reporting. The recognition of the unique nature of IHEs is a major step forward. The acceptance of directly charging project support personnel is welcome, although these changes will require institutions to review and perhaps strengthen their own internal definitions and processes to ensure they meet the new guidance. Perhaps the most compelling change is the shift from prescriptive requirements to institutional decision-making in regard to internal controls. Here the UG offers both promise and concern. The stated expectation for internal controls very clearly places the burden on institutions to have well documented policies and procedures to ensure their effort reporting practices satisfy Federal requirements. The end result may be that good practices and systems will simply remain in place. However, those institutions that do not currently have good controls, policies and/or procedures will likely need to immediately address these needs. The UG's less prescriptive approach to documenting salary charges should enable grantees to modify existing practices so that administrative burden is reduced. It is however, incumbent on grantee institutions to ensure that sufficient internal controls are maintained, and it is likely that all IHE's will need to consider how compliant their current effort reporting processes are in light of the new UG language.

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Focus: Subawards

By Pamela Webb

The Uniform Guidance contains a myriad of changes relative to subawards, and many of the changes are embedded or referenced in sections that go beyond the main subaward sections of the Uniform Guidance (200.330, 200.331, and 200.332). This compendium highlights some of the most significant changes and applicable sections pertinent to this topic.

Subrecipient F&A Rates (200.331, 200.414). A major change in the Uniform Guidance (UG) is related to payment of subrecipient's F&A rates. Except if the awarding federal program is subject to a reduced F&A rate (e.g., statutory or regulatory F&A reduction or exception granted by the federal agency head per 200.414), a pass-through entity is now obligated to pay a subrecipient's federally negotiated F&A rate, or, if the subrecipient has never had a federally negotiated rate, to either give them a de minimus F&A rate of 10% MTDC or to negotiate an F&A rate with the subrecipient.

A subrecipient can voluntarily opt to forego F&A, but a pass-through entity cannot force or entice a subrecipient to give up the 10% MTDC to which they are entitled (see OMB FAQ .331-6). To avoid downstream disagreements, pass-through entities may wish to take steps to document that their subrecipients, choosing to forego their de minimus 10% F&A do so voluntarily.

A challenging issue will be what to do about already-submitted proposals priced under the current rules but awarded under the UG. Will the pass-through entity be obligated to use their own direct costs to pay the subrecipient's F&A, or will the subrecipient's approved proposal budget be considered proof that the subrecipient already voluntarily agreed to a lower rate? Watch for additional clarification from OMB or in agency implementation plans about the best way to handle this potentially contentious situation. An odd new wrinkle is OMB FAQ .331-2, which indicates that a federal award could impose a limit of the number of layers (tiers) beyond which the requirement to pay indirect costs is no longer applicable.

Fixed Amount / Fixed Price Subawards (200.45, 200.201, 200.332). The UG uses a new term of "fixed amount" award that includes fixed-price or fixed-rate awards and subawards. Four major changes include:

- ✓ a total cost limit per fixed-amount subaward of $150,000 (the simplified acquisition threshold)
- ✓ the need to obtain prior written agency approval to enter into fixed amount subawards
- ✓ a restriction that a fixed amount subaward may not be used if it involves mandatory cost-sharing (salary "over the cap" is not considered cost-sharing)
- ✓ a requirement to certify to the pass-through entity at the end of the federal award that the project or activity was completed or the level of effort was expended

This last requirement also indicates that the price must be adjusted if the work was not completed or the effort was not expended. In the absence of other instructions from an agency, the certification process should occur as a part of the closeout process. The OMB FAQs (.201-3) and Section 200.308 specify when a cost adjustment may be needed and the mechanisms for its calculation. Interestingly, the OMB FAQ .332-1 specifies that more than one fixed amount subaward with the same subrecipient is allowable if needed to complete the work contemplated under the Federal award, provided that each subaward has its own distinct statement of work, price, and deliverables.

Updated Risk Assessment Guidelines (200.331). Section 331 makes it clear that a pass-through entity is obligated to evaluate a subrecipient's risk of non-compliance with federal statutes, regulations, and conditions of the subaward for the express purpose of defining appropriate monitoring activities. Although there is an obligation to evaluate risk, the pass-through entity may decide how it wishes to go about that risk assessment. The UG suggests certain factors be included in the assessment:

- ✓ the subrecipient's prior experience with the same or similar subawards
- ✓ the results of previous audits (including whether or not the subrecipient receives a Single Audit)
- ✓ whether the subrecipient has new personnel or new or substantially changed systems
- ✓ the extent and results of federal awarding-agency monitoring

Note that the increase in the threshold for an entity to need a Single Audit (from $500,000 of federal funds expended to a new threshold of $750,000) will likely increase the risk assessment/monitoring burden on pass-through entities, since fewer entities will have a Single Audit available for review. FDP is working on a risk assessment template that is expected to be available for general use within the next few months. At the present time, management decisions issued by federal agencies are not available to pass-through entities; OMB has recognized that this is an area that still needs to be addressed in order to adequately streamline subrecipient risk assessment and monitoring. Risk-assessment works in close connection with the subrecipient monitoring obligations outlined below.

Updated Subrecipient Monitoring Guidelines (200.331). Section 331(d) specifies both mandatory and as-needed subrecipient monitoring obligations. This section is helpful in that it is clearer about subrecipient monitoring expectations, but also serves to emphasize the importance that the federal government is placing on subrecipient monitoring.

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)

Optional (dependent upon risk) monitoring tools include providing subrecipients with training and technical assistance on program-related matters; performing on-site reviews, and arranging for agreed-upon procedures for engagements (see 200.425.).

See the companion article by Mary Lee Brown on UG audit provisions to learn more about the changes in timing for audit review and its impact on subrecipient monitoring.

Mandatory New Data Elements Required in the Subaward (200.331). This section spells out data elements that pass-through entities are obligated to include in their subawards. In addition to perennial favorites like the CFDA number and title (okay, we weren't always good about including CFDA title, but the requirement was there all along!), we now have new requirements, such as:

- ✓ the subrecipient's DUNS number
- ✓ the subrecipient's name on the subaward will be required to match their registered DUNS name
- ✓ the Federal Award ID Number (FAIN)
- ✓ the total amount and award date of the parent Federal award
- ✓ the federal award project description (read: title) for FFATA reporting purposes
- ✓ the name of the federal awarding agency
- ✓ an indication of whether the award is R&D (the federal agency will specify this in our parent award)

The Federal Demonstration Partnership (FDP) is updating its subaward templates to include these new data elements, and those templates will be available for general use on the FDP web site thefdp.org by the time the UG goes into effect.

Contractor versus Subrecipient Determinations (200.92, 200.93, 200.23, 200.331). Although the characteristics of a vendor and a subrecipient have remained essentially the same, the terminology has changed and the roles/responsibilities clarified. The UG adds clarity by specifying that the pass-through entity holds the responsibility for deciding whether any given arrangement constitutes a subaward (carrying out a portion of the federal award, creating a federal assistance relationship) or a contractor agreement (obtaining goods and services for the pass-through entity's own use, creating a procurement relationship).

The term "contractor" has replaced the term "vendor" and the terms "contract" and "subaward" are defined clearly as the legal instruments received by contractors and subrecipients, respectively.

Federal agencies have the option to "*supply and require recipients to comply with additional guidance to support these determinations.*" It is not yet known whether agencies will choose to require this new documentation (Note: NSF has, thankfully, chosen not to add this requirement.)

Subaward Financial and Progress Reports (200.331, 200.328). Section 331 specifies that pass-through entities must specify any required financial or programmatic reports needed in their subawards, and that pass-through entities are responsible for reviewing such reports. Section 328 documents frequency and content of such reports. While many of us already have mechanisms to review financial reports (e.g., invoices that are annotated to denote review and approval prior to payment), we will want to ask ourselves whether we have adequate processes in place to document programmatic report receipt, review, and long-term storage for access by auditors evaluating our subrecipient monitoring.

Prompt Payments and Withholding of Payment on Subawards (200.305). When issuing payments on cost-reimbursement subawards, pass-through entities are expected to issue payment on allowable costs within 30 calendar days after receipt of the billing, unless the pass-through entity "*reasonably believes the payment to be improper.*" This clear timing expectation as well as the new emphasis on timely closeout of awards may prompt some of us to review our processes to ensure timely approval of invoices and closeout documents, and potentially improve documentation on the rationale for temporary withholding of payments.

Payment may not be withheld from subrecipients unless the problems cited are reasons included in 200.305 (including non-conformance with the project objectives or terms of the subaward), or in conformance with 200.207, or 200.338. Guidance for mechanisms to address performance issues and enforcement of subaward terms are also included in these sections.

Retaining "Profit" earned on Fixed Price Subawards (and Awards) (200.201, 200.400). OMB FAQ .400-1 makes it clear that excess revenue over expense (an unexpended balance) on a fixed amount award or subaward will not be considered profit as long as the price for the original fixed price transaction was properly established. This clarification is important since recipients may not "*earn or keep any profit resulting from Federal financial assistance, unless expressly authorized by the terms and conditions of the Federal award.*" "Properly established" in this context means that the cost of the subaward was determined in accordance with the cost principles in the UG (Section E) and/or using past experience with similar types of work for which outcomes and their costs can be reliably predicted. (See OMB FAQ .201-1)

Watch for 2015 Compliance Supplement, Section M. Since the Compliance Supplement provides instructions to auditors on how they should review and test our internal controls, the next supplement should be telling in terms of how auditors expect to test the updated risk assessment and subrecipient monitoring expectations listed in the UG. The next Compliance Supplement is currently expected to be released in April 2015. Previous circulars are available at: http://www.whitehouse.gov/omb/circulars_default

Discerning When a Subaward is and is not Subject to the UG: OMB FAQ .110-12 makes it clear that the terms of the parent award determine whether a subaward is subject to the UG. Thus, if a new or modified subaward is issued under an existing award still subject to the current rules, then that subaward is also governed by the current rules. Conversely, if the parent award is subject to the UG, any subaward actions issued under that award will be subject to the UG. The incremental funding actions will be trickier – if an agency determines that an existing award will become subject to the UG at the time of its next incremental funding or award action, then presumably subawards will become subject to the UG at the time of their next subaward actions too. Close attention to agency guidance and implementation plans will be needed to guide us.

Pass-through Entities Expected to Retrieve Subrecipient Audits from the Federal Audit Clearinghouse (FAC) (200.512). Section (b), Data Collection tells us that *"All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC."* As pass-through entities, we will no longer have an option to collect audits or audit verifications directly from our subrecipients subject to the Single Audit, but instead are expected to access the FAC https://harvester.census.gov/fac/dissem/accessoptions.html to review that information. Complete audit reports are not yet available in the FAC but are expected to be added in the next 12-18 months. Until then, one presumes that it is still acceptable to ask subrecipients for their audit reports or summaries if their current (more limited) FAC data doesn't provide sufficient information.

Conflict of Interest (200.112). OMB FAQ .112-1 reminds us that the conflict of interest provisions in the UG refer to conflicts that might arise around how a non-federal entity expends funds under a federal award. This includes selection of subrecipients, so universities will want to verify that they have a process in place for screening and management of potential conflicts-of-interest arising between their organization/PI and their subrecipients.

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Focus:
Audit Requirements

By Mary Lee Brown

The Uniform Guidance (UG) reforms pertaining to audit requirements merge and align Circulars A-133 (Single Audit) and Circular A-50 (Audit Follow Up). The relevant portions within the UG are Subpart F sections 200.500 – 200.521; Appendix X-Data Collection Form (Form SF-SAC); and Appendix XI –Compliance Supplement.

If you have been following this series of articles since the March/April issue, by now you are all too aware that the objective of the reform is to reduce both administrative burden and risk of waste, fraud, and abuse. Consistent with that objective the Audit Requirements contain several changes that ostensibly allow federal agency oversight and resolution resources to focus on higher-dollar, higher-risk awards and improper-payments thereby mitigating overall risk of waste, fraud, and abuse across the government. According to COFAR, the audit requirements guidance also serve to improve transparency and accountability by making the single audit reports available to the public online, and encourages federal agencies to take a more collaborative approach to audit resolution in order to better resolve underlying weaknesses in internal control. The following is a discussion of the more-significant changes in the sections comprising Subpart F.

Audit Threshold (200.501) The dollar threshold that triggers the requirement for a Single Audit is increased from $500,000 to $750,000 in federal award spending in a fiscal year. The increased threshold eliminates the audit requirement for approximately 5,000 entities and targets federal oversight resources where most federal dollars are at risk by maintaining audit coverage for over 99% of the dollars and 87% of the entities that are currently subject to the Single Audit. It should be noted, however, that the elimination of the 5,000 entities previously subject to the Single Audit will increase the sub-recipient risk assessment and monitoring burden on pass-through entities that can no longer rely on the Single Audit report in the monitoring process.

Relation to other audit requirements (200.503) In instances where a federal agency conducts audits, in addition to the Single Audit, this section contains explicit language requiring federal agencies or pass-through entities to review the Federal Audit Clearinghouse (FAC) for existing audits and to rely on and use those to the extent possible prior to commencing an additional audit. Any additional audits must be planned and performed in such a way as to build upon work performed by other auditors and not be duplicative of other audits of federal awards. Importantly, this language does not limit the authority of federal agencies or Inspector General to conduct additional audits.

Auditees:

Financial Statements (200.510) The Schedule of Expenditures of Federal Awards (SEFA) now requires auditees to include the total amount provided to subrecipients from each federal program. Under the A-133 guidance this was a "to the extent practical" requirement.

Report Submission (200.512) This includes language making it explicit that the FAC is the repository of record and authoritative source for Single Audit reporting packages and anyone interested in the reporting package including all federal fgencies, pass-through entities and any others, must obtain it via the FAC. With this distinction, subrecipients are relieved of the burdens of having to submit Single Audit reporting packages to each pass-through entity, and pass-through entities are relieved of the three-year retention requirement for subrecipient reports. However, an unintended consequence of this change is the impact on the timing requirements associated with management decisions, discussed later in this article.

A new requirement states that auditees and auditors must make sure that the reporting package does not include any protected personally-identifiable-information. Additionally, among the many certifications included in the statement signed by the senior level representative of the auditee, as part of the data collection form (SF-FAC), are two new items: a certification that the package does not include any protected personally-identifiable-information; and the FAC is authorized to make the reporting package and the form publicly available on a Web site. Whereas previously electronic submissions of reporting packages were not precluded, the UG now requires electronic submission to the FAC and the FAC must make the reporting packages available to the public, and is responsible for follow-up with auditees that have not submitted the required reporting packages.

Federal Agencies:

Responsibilities (200.513) In this section, responsibilities of the Cognizant Audit Agency, Oversight Agency for Audit and the Federal Awarding Agency are articulated. Pass-through entities' responsibilities previously included in the A-133 are now covered in the Subpart D-Post Federal Award Requirements section 200.331. A new Single Audit Liaison is to be named by each federal agency to serve as the point of contact for the single audit process, and accountable for promoting interagency coordination relating to audit resolution and utility of the FAC. The UG dropped language from the A-133 which allowed the Cognizant Audit agency to consider and grant requests for extensions to the Single Audit report submission due date.

Audit Findings (200.516) The threshold for known questioned-costs was raised from $10,000 to $25,000 resulting in some burden relief by eliminating reportable audit findings that fall below the new threshold.

Major Program determination (200.518) The major program determination has changed by increasing the minimum threshold for a Type A program to $750,000 to be consistent with the Single Audit threshold.

Management Decisions (200.521) There is no real change in the responsibilities among the Cognizant Agency for Audit, the federal awarding agency, and the pass-through entity; each is responsible for issuing management decisions on audit findings that relate to federal awards it makes or in the case of the cognizant coordinating a decision among multiple federal agencies.

However, a new burden occurs for pass-through entities in meeting the time requirements (*Section .521(d)*) for issuing the management decision "*within six months of acceptance of the audit report by the FAC*". Meeting the six-month deadline becomes a challenge as there is no longer a trigger to notify the pass-through entity when a subrecipient Single Audit reporting package has been posted. Previously, the receipt of a subrecipient reporting package by the pass-through would trigger the review and determination of whether a management decision was called for, and simultaneously trigger the timing requirements for issuing a management decision. Consequently, a pass-through entity will need to implement a potentially labor-intensive manual task of regularly checking the FAC for the Single Audit reports of all its subrecipients.

Appendix XI - Compliance Supplement COFAR has indicated that it is engaging in public outreach prior to making structural changes to the Supplement format. The FY2015 Compliance Supplement will be the first to have instructions and guidance that take into account the changes effected by the UG. That supplement is currently being drafted and is anticipated to be released sometime around April 2015. There is speculation regarding whether some number of the current 14 compliance requirements will be eliminated.

In summary, the changes incorporated in UG Audit Requirements result in a reduced pool of audited entities and focus audit oversight and attention on highest areas of risk for waste, fraud, and abuse of federal program (i.e. taxpayer) dollars. ■

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