



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE CONTROLLER

Mr. Anthony P. DeCrappeo
President
Council on Governmental Relations (COGR)
1200 New York Avenue, N.W., Suite 460
Washington, D.C. 20005

Dear Mr. DeCrappeo:

Thank you for your letter dated March 16, 2016, regarding the outstanding issues regarding implementation of 2 CFR 200 following the meeting with COGR memberships on February 25th, 2016. At that meeting, we requested a list of all outstanding issues that we can either provide additional clarification or consider for future revisions of the Uniform Guidance.

Following are the responses and status of each item listed in your letter.

1. Procurement Standards, Section 200.317-200.326

We had a follow-up meeting on March 24, 2016 with representatives from the Association of Independent Research Institutes (AIRI) and COGR regarding the challenges for implementing the procurement standards. A separate letter was sent on April 12, 2016 to COGR and the Association of Independent Research Institutes (AIRI) for additional data requests and next steps. We will continue to work with COGR on this issue over the coming months.

2. Conflict of Interest, Section 200.112

You requested that we amend FAQ.112-1 to eliminate the reference to “selection of a recipient” and add the word “in procurement” to the Conflict of Interest section (“200.112 – Conflict of interest in procurement”). You also recommend a uniform conflict of interest policy for all the Federal agencies.

FAQ.112-1 is consistent with the intent of Section 200.112 of the Uniform Guidance and OMB does not plan to make revisions to the FAQ as requested. The requirement for agencies to establish conflict of interest policies excludes “scientific conflicts of interest”, but includes all other types of conflicts that may arise around how a non-Federal entity expends funds under a Federal award. Specifically, as stated in the FAQ.112-1, this may include selection of subrecipients.

We agree that there is a need for a government-wide conflict of interest policy. This is consistent with the ongoing goal of the Council on Financial Assistance Reform (COFAR) to standardize and streamline Federal financial assistance policies. This will be considered as a future area of work for the COFAR and we look forward to working with COGR on this topic.

3. Utility Cost Adjustment, Appendix III to Part 200

You requested that we update the weighted factor for research space (the relative energy utilization index or REUI) from 2.0 to 4.2 based on a recent private study that was commissioned by COGR.

As described in Appendix III, section B.4.c (2) (ii) B, we intend to periodically update the REUI to be used in the calculation of indirect cost rates at universities. Therefore, we will review the updated information on the REUI you have provided in consultation with engineering experts and make a determination for future REUI. We expect to make this determination this fall. If approved, the new REUI will be posted on the OMB website for application to future indirect cost rates.

4. DS-2 Requirements, Section 200.419

You requested policy clarification regarding the DS-2 approval process to allow the universities to implement practical and administratively sound changes in accounting practices in a timely manner.

We are reviewing your recommended changed languages with COFAR and the two Federal cognizant agencies for indirect cost (i.e., the Department of Health and Human Services Cost Allocation Services and the Department of Defense's Office of Naval Research) to determine any possible revisions in the Uniform Guidance for the DS-2 approval process. We expect to make this determination this fall.

5. Requirements for pass-through entities and the Safe Harbor, Section 200.331

You mentioned that this requirement for subrecipient monitoring by pass-through entities are new requirements that created administrative burden on universities. You proposed a "Safe Harbor" system that would eliminate some of the monitoring requirements if a subrecipient has a current Single Audit report that is posted on the Federal Audit Clearinghouse and that the recipient has not been debarred or suspended from receipt of Federal funds.

The requirements for subrecipient monitoring are not new and existed under both OMB Circulars A-110 and A-133. In light of the questions COGR has raised, we are willing to work with the grantee community to provide clarifications on the current requirements and explore ways to use the Single Audit and its current audit resolution process to adequately and efficiently monitor the performance of the subrecipients. If it is determined that there is a need to revise the Uniform Guidance to provide clarifications, the COFAR expects to make this determination this fall.

6. For-Profit and Foreign Entities as Subrecipients, General Clarification

COGR is requesting clarification regarding expectations for arriving at a negotiated F&A rate with for-profit entities when a 10% demerit rate is not acceptable. Further, COGR is requesting clarification regarding monitoring expectations when an institution enters a subrecipient relationship with a for-profit or foreign entity. For both of these requests, OMB and the COFAR

are interested in learning more about the specific questions and areas in need of clarification and are willing to work with you to reach resolution regarding these requests.

7. Research Terms and Conditions (RTCs) and Grant Closeout, Section 200.343

You recommended that OMB advocate for all Federal agencies to adopt common research terms and conditions that are being developed by an inter-agency working group. This group includes representatives from 10 Federal agencies with major research funding.

We concur with your recommendation for harmonization and uniformity among Federal agencies for the implementation of the Uniform Guidance and will work with all Federal agencies to stress consistency in adopting the research terms and conditions once they are approved by the National Science and Technology Council Committee on Science, unless restricted by program-specific requirements.

Regarding the proposal to extend the current requirement for non-Federal entities to provide closeout materials within 90 days to 120 days, this is not something under consideration at this time. As you are aware, there is increased attention regarding the need to closeout awards in a timely matter and delaying the receipt of closeout materials may result in further delays.

8. Incorporating the Preamble and FAQs into 2 CFR 200

You recommended that we incorporate the Preamble and the Frequently Asked Questions (FAQs) in the body of the Uniform Guidance in order to make them authoritative under audits.

Both the Preamble and FAQs are integral part of policy guidance for the implementation of the Uniform Guidance. Both serves separate purposes in providing context for the Uniform Guidance. The Preamble section exists in all rules, including the Uniform Guidance, and serves to provide the background, the objectives and the goals for the rules. It often includes a “Comment and Response” section that discusses the inputs from the communities, the responses from the Federal agency and the resulting final policy. The FAQs, on the other hand, serve as further clarification to the rules and often offer specific examples on the treatment of certain rules. The Preamble and FAQS use an informal style of language for their purposes and do not fit the more formal style of the Uniform Guidance rules. However, for audit purposes, we have included a section in part 3 of the Compliance Supplement to point out the relevance of the FAQs related to the implementation and interpretation of the Uniform Guidance, 2 CFR part 200 citing that “These FAQs are meant to provide additional context, background, and clarification to the policies described in 2 CFR Part 200 and should be considered in the single audit work plan and reviews.”

9. Cost Sharing and F&A Rate Deviations, Sections 200.306 and 200.414

You mentioned occasions where Federal agencies have not consistently applied the rules regarding cost sharing and F&A rates application in accordance with the Uniform Guidance. You want to provide examples to us as these occasions occur.

We appreciate any information or cases you encounter where the Uniform Guidance has not been consistently applied by a Federal agency. We will work with you and the Federal agencies for a uniform application of the Guidance.

10. Establish an OMB Ombudsman

You advocated the establishment of an Ombudsman position to serve the grantee community for an efficient and effective implementation and application of the Uniform Guidance.

We appreciate your recommendation; however, OMB is not in a position to serve as an official Ombudsman for disputes between recipients and Federal agencies. In instances where a grantee is concerned that an agency is not in compliance with the Uniform Guidance, they may notify OMB who will work through any implementation concerns directly with the Federal agency.

Thank you again for your letter and your continued involvement in the development and implementation of the Uniform Guidance. The OFFM grants team looks forward to meeting with COGR on May 17, 2016 to discuss the above response further, specifically regarding the areas we need additional background on and are willing to look into further. In the meantime, please contact Karen Lee (202-395-8083), Gilbert Tran (202-395-3052) or Rhea Hubbard (202-395-2743) if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Mader", with a long horizontal flourish extending to the right.

Dave Mader
Controller

Presidential Documents

Title 3—
The President

Executive Order 13132 of August 4, 1999
Federalism

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act, it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "State and local officials" means elected officials of State and local governments or their representative national organizations.

Sec. 2. Fundamental Federalism Principles. In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

(b) The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) The Framers recognized that the States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.