



## Focus:

# Property and Procurement Standards

By Erin Fay and Carla Helm

With the current focus on effective stewardship of public monies, the federal government's effort to streamline guidance on administrative requirements, cost principles and audit requirements for federal awards in the form of the new Uniform Guidance will result in some improvements that benefit academic research. However, the new property and procurement requirements in the Guidance may place unintentional, additional burdens on researchers and administrators. It will be important to work collaboratively with COFAR to clarify these areas of concern and to bring the Property and Procurement professionals on your campus into the conversation promptly.

A guiding principle of the new Uniform Guidance is the focus on performance in addition to accountability. In support of this principle, the Property and Procurement Standards sections of the Guidance recommend, or in some cases, require the use of recognized best practices. The new Guidance has been derived largely from OMB Circular A-110 or Circular A-102. The discussion below focuses on those areas of the Guidance which are *requirements*. Requirements are indicated in the Guidance by the use of the term "must", whereas the term "should" is used when the guidance is recommended, but not required.

Although the Guidance is based on established best practices, and much of it is carried forward from the former Circular A-110, some concerns exist. The rules in Circular A-110 were less prescriptive, therefore the new rules may require additional effort on the part of the entity if existing processes don't match the new requirements, and some may require system changes in addition to procedural changes.

Several highlights of the new Guidance, either new or changed from the previous rules in A-110, are discussed below:

### Property Standards

#### *Real Property (200.311)*

This section explicitly states that title will vest upon acquisition in the non-Federal entity ((a) Title) and

that property only be used for its original purpose unless permission is provided ((b) Use). Language was also added allowing net proceeds from disposition to be used as an offset to the cost of the replacement property ((c)(1)), if the original property is acquired with the same award as the replacement property.

#### *Federally-Owned and Exempt Property (200.312)*

This section had one significant wording change (c) and now states that "Absent statutory authority and specific terms and conditions of the Federal award, title to exempt federally-owned property acquired under the Federal award remains with the Federal government." Previously, A-110 stated that "Should a Federal awarding agency not establish conditions title to the exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government."

#### *Equipment (200.313)*

This section, arguably, had the most change of the Property Standards. The following new or subtle changes in terminology between the old A-110, section .34 and the new Uniform Guidance have caught the attention of the university community, Council on Governmental Relations (COGR) and Federal Demonstration Partnership (FDP). We hope for additional clarification regarding these items via a COFAR clarification or FAQ:

The term "conditional title" has been added to section (a) Title. It now states "Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorized the Federal agency to vest title in the non-Federal entity without further obligation to the Federal government, and the Federal agency elects to do so, the title must be a conditional title." It is unclear at this point if this is a new term that has new meaning or if it is a term that has always been effective, just not explicitly used in A-110.

Section (d) Management requirements added that property records include the Federal Award Identification Number (FAIN). Uniform Guidance now states "Property records must...include... the source of funding for the property (including the Federal Award Identification Number - FAIN)". This wording change has the potential to require institutions make changes to their inventory systems to capture this data.

Section (d) also had had a minor wording change that also in unclear to its meaning. "Property records must include...percentage of Federal participation in the project costs for the Federal award under which the property was acquired" is slightly different from the previous A-110 language that simply stated "Information from which one can calculate the percentage of Federal participation in the cost of the equipment..." If percentage is required to be housed in property records, institutions may have to make changes to their inventory systems to calculate and capture that percentage systematically.

Section (d) (1) now states that property records must include "use and condition of the property." The "use" component is new and may require institutions to make systems changes to comply, depending on how "use" is defined.

Additional changes to this section include the addition of the term "vest upon acquisition" and three specific conditions:

1. Use the equipment for the authorized purposes of the project until funding ceases, or until no longer needed for purposes of the project.
2. Not encumber the property without approval of the awarding agency or pass-through entity.
3. Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

Section (b) also had the addition of "A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section."

Section (e) (1) provides clarification by stating "equipment with a FMV \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation" and (e) (4) adds clarifying language stating "In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions."

## Procurement Standards

The Uniform Guidance contains a number of changes to the procurement standards, which are outlined below:

### *General Procurement Standards (200.318)*

Section 200.318 (b) requires that the entity have adequate oversight of contracts to ensure that contractors comply with contract requirements. It is not required that the entity have a contract management *system*, however they must have processes and procedures to adequately manage and maintain oversight of contracts. This change is less prescriptive than the past A-110 rule which required a system for contract management.

A written code of conduct is required to address organizational conflicts of interest in procurement activities in Section 200.318 (c) (2) if an entity has a parent, affiliate, or subsidiary organization. The new guidance strengthens the language to require a code of conduct for organizational conflicts as well as individual conflicts.

Maintenance of adequate records detailing the history of the procurement is required in Section 200.318 (i) adding several new and arguably unclear requirements including the rationale for the method of procurement and the basis for contract price. There is no dollar threshold expressed in this section. Formerly, A-110 simply required record keeping for purchases over \$25,000 and it is unclear whether this same threshold applies. The record keeping requirements in section 200.318 (i) could add significant administrative burden, particularly if the threshold is lower than \$25,000.

### *Competition (200.319)*

A new requirement that may impact an institution's processes is the prohibition of using state or local geographic preferences, which is currently a requirement for many state institutions of higher education which are subject to state procurement rules.

### *Methods of Procurement (200.320)*

The \$3,000 micro purchase limit is lower than many organizations' existing limit for Procurement Card and other small purchase processes. In addition to the process and system changes, this requirement could pose change management challenges for faculty and staff who may be accustomed to higher dollar thresholds based on state or institutional limits. It will be important to engage early with campus stakeholders on this change, and to track the additional burden this requirement may place on organizations.

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for competition in procurement actions under Federal awards for purchases exceeding \$3000 could result in significant delays for purchasing materials and supplies particularly using procurement cards. COGR is seeking clarifications regarding these requirements.

- **§200.330 - .332 Subrecipient monitoring and management** These sections contain some of the most onerous revisions to the Federal requirements including the documentation that performance reports from subrecipients were received and were related to invoices, decision was made to categorize transaction mechanisms as subawards versus vendor agreements, Facilities and Administrative Costs rate agreements must be honored and subrecipients without a Federally negotiated rate are afforded a 10% rate calculated on Modified Total Direct Costs (MTDC).
- **§200.332 Fixed amount subawards** In an effort to reduce administrative burden, fixed amount awards are encouraged but limited to cumulative funding not to exceed the Single Acquisition Threshold (currently \$150,000) and cannot be used if cost sharing is applicable. **§200.201 Use of grant agreements and 200.400 Policy guide** prohibit the realization of an increment above actual costs. It is unclear whether this applies solely to "profit" motives or to reasonable residual balances.
- **§200.343 Closeout** Federal agencies are required to close out awards within one year of receipt and acceptance of all required final reports.
- **§200.413 Direct Costs** This section has some very favorable revisions including criteria for charging administrative and clerical salaries as direct costs (services must be integral to the project, specifically justified by the non-Federal recipient, and approved in writing by the sponsor or identified in the awarded budget, and for costs not included in the F&A rate calculation).
- **§200.414 Indirect (F&A) costs** All Federal awarding agencies must accept negotiated rates.
- **§200.415 Required certifications** The Uniform Guidance requires a certification by an authorized official of all financial reports. Certifications that are found to be false or fraudulent may result in criminal, civil and administrative penalties. It is unclear how these certifications will be effected but PIs can assume that authorized officials making these certifications will require assurances by principal investigators.
- **20§0.430 Compensation - personal services** While neither any specific examples nor the terms "effort reporting" or "certification" are mentioned in this section of the Uniform

Guidance, after-the-fact validation that the labor distribution is accurate, allowable and properly allocated is still required. Personnel charges that are not confirmed through the use of time cards must still be based on a percentage distribution of total Institutional Base Salary i.e. "effort". This section provides clarification and flexibility for when protocol related costs are allowable as direct costs.

- **§200.432 Conferences** Dependent care during conferences associated with dissemination of research results are allowable as a direct cost but must be treated consistently across all funding sources.
- **§200.440 Exchange rates** Prior agency approval is required for cost increases resulting from fluctuations in exchange rates.
- **§200.453 Materials and supplies costs including costs of computing devices** Computing devices as defined in **§200.20** are allowable as direct costs provided essential and allocable but not solely dedicated to the performance of the project.
- **§200.461 Publication and printing costs** Publication costs for work supported by the Federal government are allowable after the award end date but prior to closeout (See **§200.343 Closeout**).
- **§200.456 Participant support costs** These costs are allowable with prior approval but as defined in **§200.75**, are limited to exclusion from MTDC to conference and training grants.

The Council on Governmental Relations (COGR) has taken on the monumental task of reviewing the Uniform Guidance and has issued its *COGR Guide to the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. Periodic updates will be made as COGR's ongoing dialogue with OMB and the Federal agencies, and OMB's additions to its Frequently Asked Questions (FAQs) render clarity. The Federal Demonstration Partnership is also actively seeking opportunities to partner with the Federal agencies to gather data or pursue pilot demonstrations that might provide substantive evidence of the impact on administrative burden for researchers. Readers are encouraged to seek guidance from both COGR and FDP through their public websites. ■



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