

ACUA Governmental Affairs Updates

See below for updates on Governmental Affairs provided by ACUA's Governmental Affairs Committee from 2011 to 2014.

December 2014

Attached below is the COGR Readiness Guide. We have noted this version as the DECEMBER 12, 2014 VERSION. We expect to update this after the Final Version of the Uniform Guidance is released, after we have reviewed Agency implementation plans, and after updated Research Terms and Conditions are available. We expect the UG and Agency plans to be released within the next week and the RTCs later in January.

Also, we are actively engaged with OMB regarding the process and expectations associated with revising and submitting the DS-2. The points below represent COGR's current assessment of the situation and are based on OMB's intent to relieve anxiety associated with updating the DS-2. However, we realize these points may raise new questions and we will work closely with OMB over the next week, and beyond, to provide updated guidance.

Please contact COGR staff if you have questions and we will keep you posted on all developments.

Revising and Submitting the DS-2:

- 1) OMB is releasing an updated, New DS-2 form, which should be available in January. Our understanding is that the New DS-2 form will be very similar to the old version, and we hope to have an opportunity to comment/review before it is released.
- 2) The New DS-2 form, ultimately, is where DS-2 revisions should be made, rather than submitting letters of revision to your cognizant agency for indirect costs. However, if you have specific questions applicable to your institution, it may be appropriate to contact your cognizant agency.
- 3) Most of you have begun revising your existing DS-2s. You should continue doing so. However, there may be a copy and paste exercise you need to complete to transfer text to the New DS-2 form.
- 4) The expectation is the New DS-2 should be a living document that is regularly updated when you make an applicable change in accounting practice. Once the New DS-2 is available, we believe the expectation will be for institutions to complete a first version of the New DS-2 within 30 to 60 days after the release of the New DS-2 form. This first version of the New DS-2 should be kept-on-file at the institution, and as described above, treated as a living document.
- 5) The New DS-2 should be submitted according to the triggers specified in FAQ .110-3 (for

most, this will be at the time of your next F&A rate proposal). This means that many of you will have the New DS-2 sitting on the shelf for a year or more before you submit it to your cognizant agency.

6) While COGR has not presented this idea to OMB, we are contemplating a proposal that the existing DS-2 be retired and represent policies and practices prior to the UG, and that the New DS-2 represent a prospective, post-UG implementation document. We believe this would minimize the burden of the revision process.

7) While COGR remains frustrated that we are the only stakeholder subject to the DS-2 requirement, the win out of this process is that institutions can implement changes that are allowed in the UG immediately without the need for approval by the cognizant agency. The one expectation, again, is that institutions should treat the New DS-2 as a living document that accurately reflects their current accounting practices, even if it has not been submitted.

8) Finally, as the cognizant agencies have been relieved of the burden of receiving stacks and stacks of revised DS-2s, we think they will be in a better position to approve those accounting changes that require an approval. However, for the most part, the DS-2 approval process has been uncertain for the past ten years, and exactly how the approval process will work under the UG may still be a work in progress.

David Kennedy
Director, Cost Policy - COGR
1200 New York Ave. NW, #750
Washington, DC 20005
(202) 289-6655, ext. 112
dkennedy@cogr.edu

[COGR Readiness Guide](#)

October 2014

The opportunity to view the COFAR webinar on the Uniform Guidance presented October 2, 2014, is now available at <https://cfo.gov/cofar/>.

September 2014

The OMB/COFAR released its second iteration of [FAQ's](#) on the Uniform Guidance just before the Labor Day holiday (what's with holidays and release of Federal info??). The FAQ's are available at <https://cfo.gov/cofar/> and for your convenience are attached to this email. There are well over 75 questions and answers contained in this document and I encourage you to read them carefully.

- I call your attention to FAQ 110-6 which provides a one year grace period for non-Federal entities to comply with the procurement standards. This is good news for many, however for that grace period (i.e., first full fiscal year that begins after Dec 26, 2014) be aware you must document whether you are in compliance with the old or new standard, and must meet the documented standard. The A-133 Audit for that grace period year will review based on the documented standard.

COGR also issued Version 2 of the [COGR Guide to the Uniform Guidance](#) (attached here) which contains updates and refined assessments based on the information in the latest COFAR FAQ's. The COGR Guide contains other updates as well –see below correspondence for more info on Version 2 COGR Guide.

July 2014

I want to share with you a paper Finances of Research Universities recently released by the Council on Governmental Relations (COGR). I participated along with several other members of COGR's costing policies committee in the 2014 update of the paper which was first published in 2003 and updated in 2008. Attached are the [Executive Summary](#) and the [full length paper](#). COGR will share the Executive Summary with a number of outlets and organizations and encourages circulation around our campuses as appropriate.

COGR met with the COFAR and other stakeholders on Thursday, July 24. The COFAR called for the meeting so that they could update the grantee community on a number of issues related to the Uniform Guidance (UG).

A key part of the meeting was an update on soon-to-be-released FAQs by the COFAR. As stated in the meeting, the FAQs should be released within the next one to two weeks. Below is a recap of the meeting. Per our summary of the FAQs (beginning with item 4 below), this relates our understanding as they were described to us. We expect the published version to match up with the summary below; however, we suggest holding off on any institutional decisions until the official release of the FAQs.

Recap of 7/24 COFAR Meeting:

- 1) COFAR priorities for FY15 will be implementation of the UG and initial analysis of the DATA Act.
- 2) Metrics. COFAR will utilize internal metrics to gauge the success of the UG and will count on the grantee community for other metrics.
- 3) Webcast(s). We expect a COFAR webcast in September to address some of the most significant issues that have been raised by the grantee community.

- 4) Incremental funding. Each agency will determine how they will apply the UG to new increments of funding; this will be done in a manner to be consistent with the terms and conditions of the award.
- 5) F&A rates. Rate proposals beginning with FY14 base years will be premised on the UG.
- 6) DS-2. Revisions should be submitted after 12/26/14. However, the UG can be followed prior to submission and approval of the DS-2. For example, you can propose admin salaries, computing devices, etc. starting immediately.
- 7) Terminal leave, workers comp, and unemployment comp. Rather than an FAQ, our understanding is that the COFAR will follow the COGR recommendation (see COGR letter on cogr.edu, July 1 link) and make a technical correction to the UG. Consequently, the ***indirect cost*** language in the UG will disappear.
- 8) Procurement. This may be the ***hottest topic*** across the entire grantee community. Our understanding is the COFAR will publish an FAQ that grants a one year grace period. While COGR advocated for a research exemption (see COGR letter on cogr.edu, July 1 link), we proposed the grace period as an alternative to give the community time to review additional options for implementing this section of the UG.
- 9) Conflict of Interest. There will be an FAQ that states this section of the UG is applicable to procurement transactions only.
- 10) FAQs, including the treatment of Program Income, Depreciation, and other FAQs suggested by COGR (see cogr.edu, July 1 link) will be addressed in the FAQs. However, these were not covered in the meeting.

We will continue to keep the membership updated on all developments.

David Kennedy
Director, Cost Policy - COGR
1200 New York Ave. NW, #750
Washington, DC 20005
(202) 289-6655, ext. 112
dkennedy@cogr.edu

April 2014

Click [here](#) for information about an eCFR site for the Uniform Guidance.

March 2014

Sharing another piece of information for your understanding the Uniform Guidance arsenal. This 11 page document, prepared by [Huron Consulting Group](#), summarizes the major changes to the regulations and the institutional impact of the final guidance.

[COGR Guide to the OMB Uniform Guidance](#): An Implementation Plan for a Major Research University. This also will appear in the COGR Meeting Report, due out later this week.

Parts of this are based on an article written by Sara Bible, Associate Vice Provost for Research at Stanford University, which was published in the March/April 2014 issue of the NCURA Magazine. Sara is on the COGR Board and a member of the Costing Policies Committee. Other parts of this are based on recent COGR Updates and other COGR insights to the OMB Uniform Guidance.

COGR will provide regular updates to the Membership as we work toward, and beyond, the December 26, 2014 implementation date of the OMB Uniform Guidance.

January 2014

Below is COGR's preliminary assessment of selected items from the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule released on December 26, 2013 (2 CFR Chapter I, Chapter II, Part 200, et al.)

[COGR Preliminary Assessment of Selected Items](#) – OMB Uniform Administrative Requirements, Cost Principles, and Administrative Requirements for Federal Awards

December 2013

Just before the holidays, literally, OMB released its FINAL Guidance on Grant. There was a webcast on Dec 20th formally announcing the publication in the Federal Register on Dec 26, 2013. The webcast provided some insights to the evolution over the past several years and discussed some highlights of the final version. Go here if you would like to view that webcast on YouTube: [OMB Uniform Grant Guidance Webcast 12-20-13](#).

Also, OMB/COFAR is offering an all-day training webinar on Monday January 27, 2014 that will cover changes to Administrative Requirements, Cost Principles and Audit requirements. You may sign up on the [COFAR Mailing List](#) to receive more information on this event and a link to this comprehensive, full-day training webinar.

The guidance and supplementary materials are available at the following links to the OMB website:

- [Improving Outcomes by Reducing Red Tape for Financial Assistance](#)
- [PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS](#)
- [Uniform Grant Guidance Crosswalks and Side-by-Sides](#)

I am participating on the COGR Committee currently working our way through the guidance to assess the changes and impacts to the Higher Education community and to see which comments on the proposed guidance made it into the final guidance. I will share details as they become available, and welcome any observations from ACUA members.

For now you should be aware of the effective dates, as described in the guidance Sec 200.110:

- a) The standards set forth in this Part which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final.

Federal agencies must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by **December 26, 2014** unless different provisions are required by statute or approved by OMB.

- b) The standards set forth in Subpart F—Audit Requirements of this Part and any other standards which apply directly to Federal agencies will be effective December 26, 2013 and will apply to audits of fiscal years beginning on or after December 26, 2014.

May 2013

Subject: [V1 DRAFT - COGR Response to the Proposed OMB Guidance](#)

Enclosed is the VERSION 1 - DRAFT of the COGR Response to the Proposed OMB Guidance. Seven workgroups that includes over 20 individuals from the COGR Costing and RCA Committees, plus at-large volunteers, have developed the responses. We will recognize everyone in the upcoming COGR Spring Update due out soon.

Omitted from the DRAFT are two appendices COGR will be developing that includes proposed rewrites to the sections on Subrecipient Monitoring and Payroll Compensation/Effort Reporting. Also omitted are recommendations to OMB regarding Subchapter H, Appendix I – Definitions. We will share these either through a supplemental mailing to the COGR List or in the VERSION 2 - DRAFT due in mid-May.

The Cover Letter and twelve “Primary Opportunities” (see first 5 pages) may provide some insight as to what COGR sees as the most important issues. This could change over the next month. Members from the COGR Costing and RCA Committees will be meeting in Washington DC on May 1 and 2 to further scrutinize and update the COGR response. The attached VERSION 1 - DRAFT includes yellow highlights and other internal notes. These can be

disregarded. Other formatting and font selection edits will be addressed as we work toward the final response.

We appreciate all of your feedback to-date, and we continue to ask for your feedback and any observations or recommendations that you can share.

David Kennedy
Director, Cost Policy - COGR
1200 New York Ave. NW, #750
Washington, DC 20005
(202) 289-6655, ext. 112
dkennedy@cogr.edu

January 2013

Subject: HHS announces first HIPAA breach settlement involving less than 500 patients

The Hospice of North Idaho (HONI) has agreed to pay the U.S. Department of Health and Human Services' (HHS) \$50,000 to settle potential violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Security Rule. This is the first settlement involving a breach of unprotected electronic protected health information (ePHI) affecting fewer than 500 individuals.

The investigation conducted by the HHS Office for Civil Rights (OCR) followed a breach report submitted by HONI as required by the Health Information Technology for Economic and Clinical Health (HITECH) Act reporting the theft of a laptop computer containing the electronic protected health information (ePHI) of 441 patients. Over the course of the investigation, OCR discovered that HONI had not conducted a risk analysis to safeguard ePHI. Further, HONI did not have in place policies or procedures to address mobile device security as required by the HIPAA Security Rule. Since the June 2010 theft, HONI has taken extensive additional steps to improve their HIPAA Privacy and Security compliance program.

A new educational initiative, *Mobile Devices: Know the RISKS. Take the STEPS. PROTECT and SECURE Health Information*, has been launched by OCR and the HHS Office of the National Coordinator for Health Information Technology (ONC) that offers health care providers and organizations practical tips on ways to protect their patients' protected health information when using mobile devices such as laptops, tablets, and smart phones. For more information, tips, and steps on protecting and securing health information when using a mobile device visit www.HealthIT.gov/mobiledevices.

The Press Release can be found on the HHS News page:

<http://www.hhs.gov/news/press/2013pres/01/20130102a.html> and Resolution Agreement can be found on the OCR website at <http://www.hhs.gov/ocr/privacy/hipaa/enforcement/examples/honi-agreement.html>.

Colleagues,

The much anticipated proposed guidance on grant reform (i.e., “A-81”) which aims to consolidate cost principles across various constituent groups was published on the federal website today. You can go here if you just can’t wait and want to read it for yourself: http://www.whitehouse.gov/omb/grants_docs#proposed

I will keep you apprised of COGR efforts on this as we proceed and invite any interested colleagues to work on drafting formal ACUA response.

FYI pasted below is the communication issued this morning to the grants community from Victoria Collin of OMB:

To members of the grants community,

Thank you to all of you for many valuable contributions that all of you have provided to our grant reform initiative over the past two years. We anticipate that the proposal for public comment will be published tomorrow by 9:00AM EST. We have been impressed throughout this process by the expertise and passion in the grants community for improving our government wide guidance for grants, and we look forward to our continued work together as this initiative goes forward.

The proposal will be open for a 90-day public comment period. Comments can be submitted at www.regulations.gov under docket number OMB-2013-0001.

Also, please note that further information on the work of the Council on Financial Assistance Reform will be available starting tomorrow at www.cfo.gov/cofar. We will also be hosting an informational webinar on the proposed guidance with members of the grant community on Friday February 8th at 11:00AM EST. A link to the webinar will be available on the cfo.gov website; no advance registration is required. A recorded version will also be available for later viewing.

Many thanks again to all of you for your contributions to this effort. We look forward to receiving your feedback and refining the proposal further in the months to come.

Best,
Victoria
Victoria W. Collin

Colleagues,

I share the following posted to the COGR website recently and describes the strategy for developing the COGR response from which institutions, if they choose to respond, may use directly or to assist in developing their own response. I am leading the workgroup addressing

Subchapter G – Audit Requirements referenced in item #3 below. As indicated in item #4 your input is welcome and desired.

COGR will provide the COGR membership with regular updates on both logistical issues and the content of the COGR Response to the Proposed OMB Uniform Guidance. It will be important that the COGR Response be complemented with your institutional responses. COGR will share with the membership suggestions and drafts that your institution can use to help formulate your response to OMB.

Below are some initial considerations:

- 1) Possible 30 day extension. We have contacted OMB to request a 30 day extension. We expect to know more in the next week. If an extension is granted, this should move the deadline for comments from May 2nd to June 1st.
- 2) Talking Points Analysis. We are working with our Association partners to develop a high-level Talking Points document. While this will not be overly detailed, we will target a comprehensive overview that addresses the most significant issues. We hope to have this available next week.
- 3) COGR Response, Draft Version. Assuming OMB grants an extension to June 1st, we are targeting to make available a Draft Version of the COGR Response approximately April 19th. While the exact format of the COGR Response is not finalized, we expect to comment on a section by section basis that includes proposed revised language and justifications as to why the language should be updated. We have seven COGR workgroups (led by members from the Costing and RCA Committees) that are addressing various sections of the Proposed OMB Uniform Guidance. Your institution will be able to use the Draft Version to formulate and/or fine-tune your institutional responses.
- 4) Your Input. We need it. Please forward comments and questions to dkennedy@cogr.edu and I will coordinate your comments with the seven workgroups.

Regular updates and active communication with the broad COGR membership are key to submitting the most effective and compelling COGR Response to OMB. We look forward to working with your institutions on this effort over the next several months and will keep you posted on all developments.

David Kennedy

September 2012

COGR has learned that (OMB) delayed the release of the Proposed New Circular and now expects it will be released anytime between mid-October and soon after Election Day. No reason was given for the delay.

Background: OMB published an Advanced Notice of Proposed Guidance last February with a comment period that closed at the end of April. OMB reported out at the June COGR meeting that there was quite a large response during the comment period and over the summer they would be analyzing the feedback and then proposing new rules with an expected release date sometime this month (Sept 2012). OMB intimated that the proposed rules would be issued in a new circular consolidating cost principles for all constituent groups that receive federal grants and cooperative agreements (i.e. A-21, A-87, A-102, A-122, A-110, etc).

March 2012

Two items to keep you up to date regarding the previously published Advanced Notice of Proposed Guidance ([ANPG](#)) on Federal Grant Reform.

- 1) COGR reports that the Office of Management and Budget has agreed to a 30-day extension of the comment period on its recent advance notice of proposed guidance on changes to the A-21 and other circulars governing cost principles for federal grants. OMB is expected to publish a notice in the Federal Register soon granting the extension making the new deadline April 30th.
- 2) To help you respond, COGR completed the document entitled *Template for COGR Member Responses to "Questions for Comment"*. That document attached to this email and also available at www.cogr.edu (see Home Page, Latest News, March 19, 2012).

Regarding COGR response:

In addition to the answers you develop in these Questions for Comment, you are welcome to endorse the COGR Response. COGR expects to send a draft of their Response to the COGR ListServe by Friday, April 20th. They will provide comments on the proposed changes that could be beneficial member institutions, as well as providing strong responses to those items of concern. Many of the themes and topics addressed in the Template also will be incorporated into the COGR Response.

February 2012

Hot off the Press....the anticipated "next steps" in A-21 reform are here! At the COGR meeting we heard from OMB Controller Danny Werfel about the first of 3 planned federal notices.

Slated for publication in the Federal Register on Monday is an Advance Notice of Proposed Guidance seeking comment on Reform of Federal Policies Relating to Grants and Cooperative Agreements; cost principles and administrative requirements (including Single Audit Act)

You can see the advance copy of that notice which was posted last night on the OMB web site at <http://www.whitehouse.gov/sites/default/files/omb/financial/fr-notice-grant-reform-2012.pdf>.

Comments in response will assist OMB in its development in the coming months of a further Federal Register notice, to be published for comment later this year, (expected sometime late April/early May), which would propose specific revisions to existing requirements. These reform ideas could result in proposed revisions to the following OMB circulars: A-21, A87, A-110, A-122, A-89, A-102, A-133 and A-50 and the Cost Principles for Hospitals. We heard that OMB may later proposed a consolidation of these 8 circulars into 1 (likely to be named A-81).

The reform ideas are outlined in 3 categories:

- Section A: Audit Requirements (A-133, A-50)
- Section B: Cost Principles (A-21, A-87, A-122, and Cost Principles for Hospitals)
- Section C: Administrative Requirements (A-102, A-110, A-89)

The costing policies committee along with others at COGR will be drafting a comment letter responding to the questions posed in the notice. All institutions are encouraged to draft and submit comments as well. There will be a 30-day comment period from the date published in the Federal Register.

OMB is soliciting input and feedback on a set of ideas the agency has developed for revisions to various OMB circulars, including A-21 & A-110. OMB will use the comments it receives to develop a set of specific proposals that it will publish for additional public comment later in the spring, and hopes to publish a final rule by mid-summer.

The notice includes a number of reforms related to audit, cost principles and F&A rates, and administrative requirements, some of which align with the recommendations COGR submitted last summer to the interagency task force on circular A-21, and others that do not. Examples of some of the proposed reforms OMB is considering, relevant to research universities, are: 1) a more risk-based approach to auditing, which aims to create a tiered auditing process based on the amount of federal award dollars received by an entity; 2) exploring alternatives to time and effort reporting, which would likely revolve around existing payroll certification pilot projects; 3) expanding the Utility Cost Adjustment for F&A rates to more institutions; 4) allowing directly allocable project management support to be charged as a direct cost; and 5) establishing either a mandated or optional discounted flat F&A cost rate for use on federally funded research instead of the university's negotiated rate.

There are some positive reforms proposed by OMB in this Notice. However, they are overshadowed by two far greater concerns. First, the potential imposition of a discounted flat F&A rate, and second, that OMB did not propose a reform recommended by COGR to require compliance by agencies with OMB rules on the payment of negotiated rates on all federal awards.

Over the next two weeks, COGR and other Associations (i.e. AAU & APLU) will be developing its response to the notice and will provide guidance to research institutions on effective ways to respond.

See below for initial outline of COGR approach for responding to the Advance Notice.

You may want to share this with others at your College/University, particularly if your institution is planning on responding to the notice.

December 2011

- [Announcement of HIPPA Privacy and Security Audit Program by HHS Office of Civil Rights](#)
- For those institutions with HIPAA covered entities, NIST has a free toolkit designed to help covered entities and business associates augment their understanding and implementation of the HIPAA Security Rule. It is available at <http://scap.nist.gov/hipaa/>
- The NSF OIG audit workplan for FY2012 is available. Go to: <http://www.nsf.gov/oig/FY12auditworkplan.pdf>

Note for institutions with NSF ARRA awards – NSF OIG received \$2 million of ARRA funds specifically to audit awardees’ use and management of ARRA funds.

[Review 2 excerpts](#) describing areas of focus which should be of interest to College and University community

November 2011

- [Areas of Review” being covered by the A-21 Task Force and the next steps as reported in late October by the tri-chairs of the Task Force](#)
- [COGR Recommendation to Eliminate Effort Reporting and Revise Language in A-21 J.10](#)
- [Summary of the COGR response to the A-21 Task Force Request for Information](#)