

Update for August 2020 – Key Changes to the Uniform Guidance, 2 CFR 200

Effective date:

- With one exception, the changes to the UG go into effect on November 12.
- The effective date of the new portions of the UG that implement Section 889 (i.e., the “Huawei Ban” discussed below) are effective as of the issuance date of the Final Guidance, which was August 13, 2020.
- None of the revisions are applicable to awards issued prior to August 13, 2020, including funding under the CARES Act.

General budget issues and cost principles:

- When allowable, pre-award costs are generally to be charged only to the first budget period of an award (§ 200.458).
- When allowable, publication costs related to research are generally to be charged only to the final budget period of an award (§ 200.461).
- Several sections clarify and conform the UG to the common practice of distinguishing between “budget period” and “project period.” (See sections 200.1, 200.77, 200.211, 200.309, 200.403). These changes basically state that the government only commits funds for the current budget period; the project period funding is anticipated but not guaranteed.
- The FFATA threshold is increased from \$25,000 to \$30,000. (See 2 CFR 170.220.)

Subawards:

- While continuing to state that pass-through entities (PTEs) must recognize federally approved negotiated indirect cost rate agreements (NICRAs), 2 C.F.R. § 200.332 (formerly § 200.331) is amended to clarify that in the absence of a NICRA, PTEs are to either negotiate a rate, adopt a rate negotiated by the subrecipient previously with the passthrough entity or another passthrough entity, apply the de minimis rate, or accept a direct allocation methodology employed by the subrecipient. See also section 405(d).
 - The negotiated rate between the PTE and the sub could be based on a prior negotiated rate between a different PTE and the same sub; in that case, the PTE is not required to collect information justifying this rate.
 - Any sub that does not have a current or provisional federally negotiated rate may use the de minimis rate and may use it indefinitely until the sub gets a federally negotiated rate. Previously, only subs that had never received a federally negotiated rate could use the de minimis rate. No documentation is required to justify using the de minimis rate.
- The revised guidance further clarifies that PTEs are only responsible for addressing findings in Single Audit Act audit reports related to their particular subawards.
- Section 329 is now the “Monitoring and reporting program performance” section (it previously was 328). The new section adds the following: “The final performance report submitted by the non-Federal entity and/or pass-through entity must be due no later than 120 calendar days after the period of performance end date. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the period of performance end date, all final performance reports as required by the terms and conditions of the Federal award.”
- Consistent with the budget period vs. project period issue noted above, subaward agreements must now provide budget period start and end dates. (See section 200.332(a)(1)(vi)).

Procurement:

- Section 200.320 was redrafted to clarify that micro-purchases require no competitive process. The revisions also adopt the increased micro-purchase threshold of \$10,000 and a simplified acquisition threshold of up to \$250,000.
- The revisions also authorize grantees with clean audits (or certain other qualifications) to annually elect micro-purchase thresholds of up to \$50,000, or higher with approval of a grantee's cognizant agency for indirect costs.
- A new § 200.322 was added to suggest that grantees "should" provide for domestic sourcing preferences (i.e. buy American) "to the greatest extent practicable."

The Huawei Ban

- The "Huawei Ban," enacted at a new § 200.216, prohibits award recipients from using federal award funds to procure or obtain any "equipment, services, or systems that uses covered telecommunications equipment or services as a substantial . . . component of any system." Covered telecommunications equipment or services include such items provided by Huawei Technology Company, ZTE Corporation, or any of their many subsidiaries or affiliates. When it is to be used for certain public security purposes, such equipment also includes products provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company, and their subsidiaries and affiliates.
 - Section 200.471 makes purchases of covered technology unallowable.

Other changes:

- OMB has amended language throughout the UG to emphasize federal agencies' increasing focus on performance. (See sections 202, 208, 211a, 301.)
- Federal agencies now have more leeway to terminate an award. See Revised § 200.340 (formerly § 200.339), awarding agencies can terminate an award "to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities." There is no longer a restriction that the award can only be terminated "for cause." The termination language has also, however, been modified to strongly encourage agencies to clearly articulate termination rights and procedures "in applicable agency regulations or in the award [document]."
- CFDA numbers are now called "Assistance Listings."

Special note on the Department of Health and Human Services:

- The Department of Health and Human Services (HHS), which includes NIH, implemented the UG in a separate part of the CFR, specifically 45 CFR 75. This likely means that HHS will have to separately implement the latest UG changes because the changes at 2 CFR 200 are not automatically implemented at 45 CFR 75. SPO will provide updates as they become available.