



# The Future is Now – For Uniform Federal Award Guidance (Title 2 CFR 200)

By Gilbert Tran

The future is now for uniform Federal award guidance. Once there were eight, now there is one—Title 2 CFR 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

After three years of drafting, vetting, proposing and discussing between the Office of Management and Budget (OMB), Federal awarding agencies, and non-Federal stakeholders, the Uniform Guidance for Federal financial assistance is now effective for all awards made on and after December 26, 2014. The audit requirements are effective for fiscal year starting in 2015. OMB published the UGG on December 26, 2013, but provided Federal awarding agencies and recipients a year to implement the guidance. On December 19, 2014, 28 Federal awarding agencies formally adopted the UGG in their respective chapters of Title 2 of the Code of Federal Regulations, giving the Guidance the full force and effect of regulations applicable to their awards.

## **The Beginning**

Annually, the Federal Government provides non-Federal entities more than \$550 billion in Federal awards. Prior to the publication of the UGG, OMB provided guidance to Federal awarding agencies on administrative, cost principles, and auditing requirements in eight different OMB Circulars (A-21, A-50, A-87, A-89, A-102, A-110, A-122 and A-133). Because the Circulars were written at different times by different people, the Circulars used different terms and wording to mean the same thing, which resulted in confusion. Depending on the type of non-Federal entity, a recipient was subject to a specific set of rules. For example, a state or local government followed A-102 for administrative requirements and A-87 for cost principles. On the other hand, an institution of higher education followed A-110 for administrative requirements and A-21 for cost principles. As such,

a Federal award to a state followed a different set of rules than the same award to an institution of higher education. By contrast, all non-Federal entities followed A-133 for audit requirements because the Single Audit Act Amendments of 1996 had made the audit process uniform.

In response to Executive Order 13520 and the February 28, 2011 Presidential Memorandum from President Obama regarding administrative flexibility, Federal and inter-governmental workgroups reviewed the OMB Circulars and recommended ways to streamline and reduce administrative burden for recipients, to increase transparency and oversight, and to reduce the inconsistencies between the Circulars. The final guidance, available at Title 2 of CFR 200, started with the initial recommendations from these workgroups. Using their recommendations, the Council of Financial Assistance Reform (COFAR) developed a series of reform ideas, which OMB issued in a February 2012 Federal Register notice as an Advance Notice of Proposed Guidance. Using the feedback from that notice, the COFAR drafted proposed guidance, which OMB issued in a February 2013 Federal Register Notice. After reviewing all the comments and responses to that notice, the COFAR recommended changes that OMB considered in issuing the Final UGG in December 2013 (78 FR 78589). Twenty-eight Federal awarding agencies adopted the Final Guidance as a joint interim final rule in December 2014. The joint interim final rule includes formal adoption of the UGG requirements applicable to new Federal awards and incremental funding made on or after December 26, 2014, and for all single audits for fiscal years beginning on or after December 26, 2014.

## **The Present and the Highlights**

The UGG effectively streamlines and supersedes all eight of the prior OMB Circulars and co-locates the Federal award



requirements into one location in Title 2 CFR 200. Previously, the administrative, cost principles, and audit requirements were contained in different documents, they are now in one place and organized in 6 Subparts—A through F.

- Subpart A, 200.XX—Acronyms & Definitions
- Subpart B, 200.1XX—General Provisions
- Subpart C, 200.2XX—Pre-Federal Award Requirements and Contents of Federal Awards
- Subpart D, 200.3XX—Post Federal Award Requirements
- Subpart E, 200.4XX—Cost Principles
- Subpart F, 200.5XX—Audit Requirements

The UGG starts with a common set of 99 defined terms that are described and used consistently throughout all subparts. Under the previous OMB Circulars, terms and definitions often differed between the Circulars. Further, the format and structure within the subparts remain similar to their previous corresponding OMB Circular. For example, Subpart E—Cost Principles includes sections on “Basic Considerations,” “Direct and Indirect Costs,” and “General Provisions on Selected Items of Costs,” which existed in the prior Circulars. Finally, within each Subpart, changes were made (some small, some big) that streamline the requirements while also providing greater oversight and transparency. In summary, you may make the observation that the Uniform Guidance is “Same, Same... But Different” (a popular saying in Asia) as compared with the former OMB Circulars.

Although there are many progressive changes throughout the Subparts of the Guidance, following are highlight of some of the changes. .

1. Subpart C—section 205, *Federal awarding agency review of merit of proposals*. These are new requirements for agencies to review risk of applicants. Federal agencies must have a framework for evaluating risks and should consider financial stability, performance history and audit reports of applicants prior to awarding the grant. These requirements place more emphasis on the pre-screening process of applicants.
2. Subpart D—section 303, *Internal Controls*. Previously, internal controls were only discussed in the audit requirement section of A-133. Now The Government Accountability Office’s *Standards for Internal Control in the Federal Government* (or Green Book) and the Committee of Sponsoring Organizations of the Treadway Commission’s *Internal Control Integrated Framework (COSO)* are referenced as best practices for internal controls in this section.
3. Subpart D—sections 317-326, *Procurement Standards*. The procurement standards reflected in the UGG previously applied to State, local and tribal governments under the Common Rule, and are now applicable to colleges, universities and nonprofit organizations. These standards are more prescriptive in the terms and conditions to promote competition and consistency for purchase with Federal funds. OMB is allowing a grace period of a full fiscal year (effective for fiscal year 2016) to allow effective implementation of these standards.
4. Subpart D—section 314, *Supplies*. A revision to this section now allows the expensing of computing devices with costs under \$5,000. This revision should reduce the administrative and accounting burden that are associated with the purchase of computing devices (under \$5,000, of course).
5. Subpart D—sections 330-332, *Subrecipient Monitoring and Management*. Many recipients receive Federal funds indirectly from a pass-through entity (PTE). As the Federal government has no direct contact with these subrecipients, we look to the PTEs for assurance on the proper use of federal funds. This new section lays out the monitoring responsibilities and requirements for the PTEs toward the subrecipients. One of the responsibilities is to provide subrecipients with an indirect cost rate for the conduct of a federally funded project, if the subrecipient does not have a federally-recognized indirect cost rate.
6. Subpart E—section 413, *Direct Costs*. The revision allows the charging of administrative or clerical services as direct costs to Federal projects as long as they satisfy certain conditions. Normally (and previously), these type of costs are treated as indirect costs. This particular revision allows scientists funded under Federal research grants to focus on sciences instead of administrative tasks.
7. Subpart E—section 414, *Indirect (F&A) Costs*. There are three major revisions in this section. First is the OMB assertion for Federal awarding agencies to honor the recipient’s federally negotiated and approved indirect cost rate. A high bar is set for a federal awarding agency to use rates lower than the negotiated and approved rates. Second is the use of a 10 percent de minimis indirect cost rate for new recipients or recipients without prior negotiated rates. Note that pass-through entities must follow the indirect cost rate guidance for their respective subrecipients as well. Third is the availability for the recipient to extend a current rate for a four-year period. Note that the guidance for preparing and negotiating indirect cost rates and cost allocation plans are relocated to

an Appendix Section of the Guidance (Appendices III through VIII).

8. Subpart E—section 430, *Compensation-personal services*. This section is completely overhauled from previous OMB Cost Circulars regarding the documentation requirements of salaries and wages. Instead of specific examples of acceptable system-of-effort certification in the old OMB Circular A-21 for institutions of higher education, this section lays out the general requirements for internal controls for salaries and wages charged. The guidance provides a lot of flexibility for recipients to design their own system of checks and balances for charging salaries and wages to Federal awards, but also requires that only appropriate amounts are charged. This area is probably the most critical area for recipients to communicate with Federal awarding agencies and auditors to ascertain that proper internal controls are in place to allow proper charging and reporting of salary and wage charges.
9. Subpart F—section 501, *Audit Requirements*. The audit threshold is increased from \$500,000 in Federal awards expended in the non-Federal entity's fiscal year to \$750,000. This change allows Federal agencies to focus audit follow-up resources on higher-risk entities. Further this provides administrative burden relief for the roughly 5,000 non-Federal entities expending more than \$500,000 but less than \$750,000 in Federal awards while maintaining audit coverage over more than 99 percent of the funds that are currently covered.
10. Subpart F—section 518, *Major program determination*. "Same, Same... but Different." This saying applies so fittingly to this section. All four steps of the risk-based approach for selecting major programs to test remain but are changed to focus on the areas of highest risk while providing audit burden relief by reducing the number of major programs tested. In step one, the Type A program threshold is changed from \$300,000 to \$750,000, making it the same as the audit threshold. This reduces the number of major programs required to be audited at smaller size entities. In Step 2, the two-year look-back is still required for a Type A program, however the look-back focuses on high-risk audit findings rather than all audit findings. In Step 3, the risk assessment of Type B programs is simplified and the number of Type B programs that must be risk assessed is reduced. In step 4, the

percentage-of-coverage rule for low-risk auditees is reduced from 25 percent to 20 percent and for non low-risk auditees from 50 percent to 40 percent.

### **The Future**

"Taken as a whole, the historic reform will transform the landscape for financial assistance for generations to come." (David Mader, Controller of the Office of Management and Budget on December 19, 2014). There is no doubt that the implementation of this historic grant guidance will have some rough patches and plenty of questions from all non-Federal and Federal stakeholders. To ease with the implementation, the cross-agency COFAR has set up a website (<https://cfo.gov/cofar>) that houses related and valuable information related to the Uniform Guidance including a crosswalk from the UGG to the old OMB Circulars, a set of Frequently Asked Questions (94 of them so far) and informational webcasts on the UGG. More information related to the implementation of the UGG will be posted on this site as they become available. For the near and distant future, OMB and COFAR will continue to engage the larger recipient communities for direct inputs to facilitate implementation, evaluate the effectiveness of the UGG, and identify more ways to move the reform forward.

### **Author's Bio: Gilbert Tran**

Gilbert Tran is a senior policy analyst with the Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Financial Management. His main responsibilities are to develop and analyze policies and standards for OMB circulars on cost principles and audit requirements for federal programs, specifically Circular A-21, "Cost Principles for Educational Institutions," Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," Circular A-122, "Cost Principles for Non-Profit Organizations," and A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Gilbert serves as the point of contact for all Federal agencies on the implementation and interpretation of these OMB Circulars.

Gilbert was the OMB member of the Council on Federal Assistance Reform (COFAR) responsible for the review and development of grant requirement policies published as the "Uniform Guidance" on December 26, 2013 and codified by 28 Federal agencies on December 19, 2014. The Uniform Guidance combines all the OMB grant circulars and grant requirements in one single document and location in title 2 CFR Part 200.

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