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COGR Summary of Background and Technical Corrections to Final Uniform Guidance

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COGR Summary of Background and Technical Corrections to the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

January 16, 2015

The interim joint final rule implementing the Uniform Guidance is available in the Federal Register (Vol. 79, No. 244, Friday, December 19, 2014): <http://www.gpo.gov/fdsys/pkg/FR-2014-12-19/pdf/2014-28697.pdf>

It is effective for new awards and for selected funding increments, issued on or after December 26, 2014. The 240-page Federal Register Notice is structured with background comments at the beginning followed by a listing of the technical corrections (pages 75878 through 75889). The Uniform Guidance, itself, will be updated to reflect the technical corrections at 2 CFR 200. The bulk and the remainder of the Federal Register Notice is a posting of each Agency's implementation plan.

This COGR document is designed as a summary of key sections on the Background and Technical Corrections to the Uniform Guidance (UG). Note, Audit Requirements are not addressed in this document. In the sections that follow, the **COGR comments are shown in bold/italic and are not indented** and the exact language from the Federal Register Notice is shown as indented and unformatted text. **Certain sections from the Federal Register Notice are highlighted for emphasis.**

1. COGR: The following announces implementation of the Uniform Guidance. Pay special attention to the documentation expectation if your institution elects to delay implementation of the Procurement Standards (also see 12.COGR).

SUMMARY: This joint interim final rule implements for all Federal awardmaking agencies the final guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) published by the Office of Management and Budget (OMB) on December 26, 2013. This rule is necessary in order to incorporate into regulation and thus bring into effect the Uniform Guidance as required by OMB.

DATES: Effective date: This interim final rule is effective on December 26, 2014 ...

Implementation dates: ... For non-Federal entities that are nonprofit organizations or institutions of higher education (IHEs), there is a one-year grace period for implementation of the procurement standards in 2 CFR 200.317 through 200.326. As will be detailed in the 2015 OMB Compliance Supplement, **non-Federal entities choosing to delay implementation for the procurement standards will need to specify in their documented policies and procedures that they continue to comply with OMB circular A-110 for one additional fiscal year which begins after December 26, 2014.**

2. COGR: We will comment in a Response Letter on selected topics. We will provide updates on the status of the Response Letter.

Comment date: To be assured of consideration, comments must be received by OMB electronically through www.regulations.gov **no later than midnight Eastern Standard Time (E.S.T.) on February 17, 2015.**

ADDRESSES: Comments should be submitted to www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: **For general information, please contact Victoria Collin or Gil Tran at the OMB Office of Federal Financial Management, 175 17th St. NW., Washington, DC 20500, or via telephone at (202) 395-3993. You may submit comments via the Federal eRulemaking Portal at**

www.regulations.gov, Docket Number OMB–2014–0006. Follow the instructions for submitting comments.

3. COGR: 2 CFR part 200 will be updated to include the final version of the UG, with technical corrections. Each agency plan will be updated in each agency’s designated section of the CFR.

SUPPLEMENTARY INFORMATION:

Background

This joint interim final rule implements for all Federal awardmaking agencies the final guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by the Office of Management and Budget (OMB) on December 26, 2013 in 2 CFR part 200 (Uniform Guidance—available at 78 FR 78589). The Uniform Guidance followed on a Notice of Proposed Guidance issued February 1, 2013 (available at 78 FR 7282), and an Advanced Notice of Proposed Guidance issued February 28, 2012 (available at 77 FR 11778). The final guidance incorporated feedback received from the public in response to those earlier issuances. Additional supporting resources are available from the Council on Financial Assistance Reform at www.cfo.gov/COFAR ...

With this interim final rule, OMB is amending the uniform guidance to make technical corrections where needed, and Federal awarding agencies are joining together to implement the Uniform Guidance in their respective chapters of title 2 of the CFR. With respect to the issuing, these corrections are included only where it has come to the attention of the COFAR that particular language in the final guidance did not match with the COFAR’s intent and would result in an erroneous implementation of the guidance. These technical corrections will go into effect at the time of the effective date of this interim final rule.

4. COGR: Note the following updates described under the Background section of the Federal Register Notice are applicable to CCR, EPLS, DUNS, and FAPIIS. Corresponding technical corrections are made to the applicable sections of the UG.

Among these technical corrections, please note in particular, parts 25, 170, and 180 are amended to reflect that the Central Contractor Registration (CCR) and Excluded Parties List System (EPLS) no longer exist as stand-alone systems; their functionalities are now available in the System of Award Management (SAM).

2 CFR parts 25, 180 and, 200 are revised to remove references to the Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) and replace them with the term ‘unique entity identifier’. This change is consistent with Administration priorities to technically refine existing regulations. The specific standard for this unique entity identifier will be in accordance with the requirements of SAM. This revision does not indicate a change in current policy.

References to the Federal Awardee Performance and Integrity Information System (FAPIIS) remain in 2 CFR part 200 reflecting that final guidance for Federal grants and cooperative agreements will be published following the issuance of this interim final rule.

5. COGR: Note the statement applicable to sealed bids (also see 25.COGR). Also, “should” has been changed to “must” in selected sections of the UG. We have identified several of those situations in this document.

2 CFR 200.110 Effective/applicability date is revised to allow a grace period of one fiscal year for non-Federal entities to implement changes to their procurement policies and procedures in accordance with sections 200.317 through 200.336 Procurement Standards.

Finally, 2 CFR 200.320 Methods of Procurement paragraph (c), the requirement for sealed bids to be advertised and opened “publicly” is limited as was originally intended to state, local and tribal entities. Other requirements in the section remain as originally published.

In addition, throughout the guidance, the COFAR changed the word “should” to “must” to reflect longstanding policies that have been requirements in practice, but which may have been misinterpreted as optional with the usage of the word “should”. Other technical corrections are made to eliminate conflicting or unclear language and grammatical inconsistencies or citation errors throughout.

6. COGR: The Background section of the UG includes “special accommodations” language specific to NSF, Education, and HHS (which includes NIH). In addition, COGR has begun reviewing each agency plan as published in the remainder of the Federal Register Notice. Our initial review is that the published agency deviations are minimal and that more substantive deviations will be captured through the soon-to-be-released Research Terms and Conditions. We will keep the membership updated, accordingly.

With respect to the implementing regulations that Federal awarding agencies are issuing, any agencies that have received OMB approval for an exception to the Uniform Guidance have included the resulting language in their regulations. OMB has only approved exceptions to the Uniform Guidance where they are consistent with existing policy. Further, agencies are providing additional language beyond that included in 2 CFR part 200, consistent with their existing policy, to provide more detail with respect to how they intend to implement the policy, where appropriate. Agencies are not making new policy with this interim final rule; all regulatory language included here should be consistent with either the policies in the Uniform Guidance or the agencies’ existing policies and practices. Three agencies have requested special accommodation with respect to the format of their implementing language. The National Science Foundation, the Department of Education, and the Department of Health and Human Services have included agency-specific preamble language as follows: ...

7. COGR: There are selected sections from the December 26, 2013 publication of the UG that appeared for the first time in that publication, and consequently, did not allow for an opportunity to provide public comment. We are reviewing how to address these situations in the COGR response during the current 60-day public comment period.

Administrative Procedure Act (5 U.S.C. 553)
Waiver of Proposed Rulemaking
In General

Under the Administrative Procedure Act (APA), some of the agencies joining in this issuance are generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, as noted earlier in the joint preamble, OMB offered the public two opportunities to comment on the Uniform Guidance, first through an advanced notice of proposed guidance and, second, through a notice of proposed guidance. OMB considered over 300 comments submitted in response to each of these notices. OMB has directed agencies to adopt the uniform guidance in part 200 without change, except to the extent that an agency can demonstrate that any conflicting agency requirements are required by statute or regulations, or consistent with longstanding practice and approved by OMB. Finally, OMB made clear that the requirements in 2 CFR part 200, including the audit requirements in subpart F, will apply, starting on December 26, 2014, giving recipients of all types of financial assistance advance notice of when the regulations would become effective. Therefore, under 5 U.S.C. 553(b)(B), there is good cause for waiving proposed rulemaking as unnecessary.

8. COGR: Technical corrections begin on page 75878 of the Federal Register Notice. We have not addressed every item, and instead have focused on those that we believe are most substantive. Generally, we have not addressed grammatical corrections, nor have we addressed corrections made to cross-references and related areas. Also note, we have not addressed Audit Requirements in this document. We will provide additional summaries, as needed.

Executive Office of the President, Office of Management and Budget

Under the authority of the Chief Financial Officer Act of 1990 (31 U.S.C. 503), the Office of Management and Budget amends 2 CFR parts 1, 25, 170, 180, and 200 by making the following correcting amendments:

TITLE 2 – GRANTS AND AGREEMENTS ...

9. COGR: The definition of MTDC has been modified to clearly state that the MTDC exclusion is applicable only to the first \$25,000 of a subaward, and consequently, is not applicable to subcontracts/vendor agreements (also see 44. COGR).

§ 200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

10. COGR: The exceptions to program income were not defined in the December 26, 2013 publication of the UG, but are in the final version of the UG. While exceptions are not addressed in the definition below, they are addressed in § 200.307(g). We summarize later in this document (also see 18.COGR).

§ 200.80 Program Income

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307 paragraph (f) ...

11. COGR: Fixed-price contracts and subcontracts awarded under the FAR, whenever cost analysis is performed or the contract requires the determination or negotiation of costs, are addressed in the “Applicability” table of the UG. The first two categories “Are NOT applicable” to fixed-price contracts and subcontracts awarded under the FAR and the third category (cost principles) “Are applicable”.

§ 200.101 Applicability

§ 200.111 English Language, § 200.112 Conflict of Interest, § 200.113 Mandatory Disclosures	Are NOT applicable
Subparts C-D, except for Subrecipient Monitoring and Management	Are NOT applicable
Subpart E – Cost Principles	Are applicable

12. COGR: Pay special attention to the documentation expectation if your institution elects to delay implementation of the Procurement Standards (also see 1.COGR).

§ 200.110 Effective/applicability dates

(a) The standards set forth in this part ... For the procurement standards in §§ 200.317–200.326, non-Federal entities may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in § 200.104) for one additional fiscal year after this part goes into effect. If a non-Federal entity chooses to use the previous procurement standards for an additional fiscal year before adopting the procurement standards in this part, the non-Federal entity must document this decision in their internal procurement policies.

13. COGR: The conditions for using a Fixed Amount Award have been updated for better clarity.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or passthrough entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to: ...

14. COGR: A new section has been added on Suspension and Debarment.

§ 200.212 Suspension and debarment.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

15. COGR: This section now deletes the term “governmentwide” from the phrase “governmentwide standard information collections”, which was used in the December 26, 2013 publication of the UG. However, this does not eliminate the expectation for agencies to use only “OMB approved” standard information collections.

§ 200.301 Performance measurement.

The Federal awarding agency must require the recipient to use OMB approved standard information collections when providing financial and performance information ... Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices ...

16. COGR: More detailed information for remittance instructions in regard to interest earned amounts above \$500 per year has been added.

§ 200.305 Payment.

(9) ... Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information ...

17. COGR: Two notable updates have been made to this section on Cost Sharing. First, per (a), the treatment of cost sharing in the organized research base has been moved to Appendix III (also see 43.COGR). Second, (k) is a new section that adds the reference to the January 5, 2001 OMB Memorandum on VUCS.

§ 200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected ...

(k) For IHEs, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

18. COGR: Three notable updates have been made to this section on Program Income. First, (d) states that proceeds from sales of supplies are excluded from program income. Second, (e)(2) adds clarity that the "Addition" method applies to IHEs and non-profit research institutions, unless explicit terms and conditions are stated to the contrary. Third, (g) is a new section that clarifies exclusions to program income that are consistent with the Bayh-Dole Act (also see 10.COGR).

§ 200.307 Program Income

(d) *Property*. Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of Subpart D—Post Federal Award Requirements of this part, Property Standards §§ 200.311 Real property, 200.313 Equipment, and 200.314 Supplies, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) Use of program income ... (2) *Addition*. With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in paragraph (e) of this section) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.

g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity has no obligation to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements" is applicable.

19. COGR: Two notable updates have been made to this section applicable to the prior approval requirements for revisions to budget and program plans. First, per (c)(6), fixed amount subawards are added as a clarification. Second, (8) is a new section.

§ 200.308 Revision of budget and program plans.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as

described in § 200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(8) The need arises for additional Federal funds to complete the project.

20. COGR: The additional language added to this section (highlighted below) supports the allowable charging of publication and printing costs.

§ 200.309 Period of performance.

A non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance (except as described in § 200.461 Publication and printing costs) and any costs incurred before the Federal awarding agency or passthrough entity made the Federal award that were authorized by the Federal awarding agency or pass-through entity.

21. COGR: The description of exempt federally-owned property has been clarified.

§ 200.312 Federally-owned and exempt property.

(c) Exempt federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award.

The Federal awarding agency may exercise this option when statutory authority exists. 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.

22. COGR: One of the conditions for title vesting in the non-Federal entity, as described in (a)(1), has been clarified to specify “during the period of performance.”

§ 200.313 Equipment.

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

23. COGR: A cross-reference to the new section 200.212 (see 14.COGR) has been added.

§ 200.318 General procurement standards.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.212 Suspension and debarment.

24. COGR: The word “and” is replaced with “or” to better state expectations.

§ 200.319 Competition.

a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements ...

25. COGR: Two notable updates have been made to this section. First, per (a), the reference to the \$2,000 threshold for micro-purchases applicable to construction projects under the Davis-Bacon Act has been eliminated. Second, per (c)(2)(i) and (iii), language applicable to “publically advertised” and “opened publically” sealed bids has been revised and suggests these requirements are not be applicable to IHEs and Nonprofits (also see 5.COGR).

§ 200.320 Methods of procurement to be followed.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§ 200.67 Micro-purchase) ...

(c)(2)(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised; ...

(c)(2)(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly; ...

26. COGR: The word “by” is replaced with “during” and could be important to this specialized procurement requirement.

§ 200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act ... The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000 ...

27. COGR: Two updates have been made to this section. First, per (f), “pre- and postdoctoral staff” are specifically referenced. Second, per (g), “explicitly” replaces “expressly”.

§ 200.400 Policy guide.

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and postdoctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307 Program income.

28. COGR: The word “should” has been replaced with “must”.

§ 200.405 Allocable costs.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit.

29. COGR: The word “should” has been replaced with “must”.

§ 200.405 Applicable credits.

(b) In some instances, the amounts received from the Federal government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) **must** be recognized in determining the rates or amounts to be charged to the Federal award.

30. COGR: Items where the non-Federal may seek prior written approval in advance of the incurrence of special or unusual costs has been updated (new items are highlighted).

§ 200.407 Prior written approval (prior approval).

(a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);

(b) § 200.306 Cost sharing or matching;

(c) § 200.307 Program income;

(d) § 200.308 Revision of budget and program plans;

(e) § 200.311 Real property;

(f) § 200.313 Equipment;

(g) § 200.332 Fixed amount subawards;

(h) § 200.413 Direct costs, paragraph (c);

(i) § 200.430 Compensation—personal services, paragraph (h);

(j) § 200.431 Compensation—fringe benefits;

(k) § 200.438 Entertainment costs;

(l) § 200.439 Equipment and other capital expenditures;

(m) § 200.440 Exchange rates;

(n) § 200.441 Fines, penalties, damages and other settlements;

(o) § 200.442 Fund raising and investment management costs;

(p) § 200.445 Goods or services for personal use;

(q) § 200.447 Insurance and indemnification;

(r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(s) § 200.455 Organization costs;

(t) § 200.456 Participant support costs;

(u) § 200.458 Pre-award costs;

(v) § 200.462 Rearrangement and reconversion costs;

(w) § 200.467 Selling and marketing costs;

(x) § 200.470 Taxes (including Value Added Tax); and

(y) § 200.474 Travel costs.

31. COGR: Section (g) has been updated to clarify that subsequent 4-year rate extensions are allowed if the conditions in this section are met.

§ 200.414 Indirect (F&A) costs.

(g) Any non-Federal entity that has a **current federally negotiated indirect cost rate** may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. **Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.**

32. COGR: Two updates have been made to this section. First, per (g), the word “should” has been replaced with “must”, as applicable to Nonprofit Organizations. Second, per (h)(1)(ii), the cross-reference previously stating (h)(9) has been replaced with (i).

§ 200.430 Compensation - personal services.

(g) Nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination **must** be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director’s and executive committee member’s fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h)(1)(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in **paragraph (i)** of this section ...

33. COGR: The expectation to allocate leave and other selected fringe benefits costs as an indirect cost has been eliminated.

§ 200.430 Compensation - fringe benefits.

(b)(3)(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment **are allowable in the year of payment.**

(h)(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., postretirement health benefits), **are allowable in the year of payment** provided that the non-Federal entity follows a consistent costing policy.

34. COGR: The typographical error that may have been interpreted as disallowing depreciation on assets when matching or cost sharing of federal funds have been used in the construction has been corrected.

§ 200.430 Depreciation.

(c)(3) Any portion of the cost of buildings and equipment contributed **by or for the non-Federal entity where law or agreement prohibits recovery;** and

35. COGR: A new section, (b)(7), has been added to reaffirm that capital expenditures are unallowable as indirect costs (note, of course, corresponding depreciation remains allowable).

§ 200.439 Equipment and capital expenditures.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436 Depreciation.

36. COGR: Section (a) has been updated to clarify prior approval requirements for cost increases associated with exchange rate fluctuations.

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. **Prior approval of exchange rate fluctuations is required only when the change results in the need**

for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

37. COGR: The word “should” has been replaced with “must”.

§ 200.448 Intellectual property.

(b)(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed **must** not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

38. COGR: The word “should” has been replaced with “must”.

§ 200.453 Materials and supplies costs, including costs of computing devices.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms **must** be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

39. COGR: The words “routine and security to protect” are replaced with the highlighted language below.

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for **protection and security of** facilities, personnel, and work products are allowable ...

40. COGR: The words “as a direct cost” are eliminated to more generically refer to costs funded “in whole or part to a Federal award.”

§ 200.463 Recruitment.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded **in whole or in part to a Federal award**, and the newly hired employee resigns for reasons within the employee’s control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal government.

41. COGR: The words “allowed either as a direct or indirect cost” are replaced with the highlighted language below.

§ 200.464 Relocation costs of employees.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been **charged to a Federal award** and the employee resigns for reasons within the employee’s control within 12 months after hire, the non-Federal entity must refund or credit the Federal government for its share of the cost ...

42. COGR: Section (d) below previously was shown as (c)(3) in the December 26, 2013 publication of the Uniform. Consequently, the original (d) has been changed to (e) and the original (e) to (f).

§ 200.474 Travel costs.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11 ...

(e) Commercial air travel ...

(f) Air travel by other than commercial carrier ...

43. COGR: The treatment of cost sharing in the research base was moved from § 200.306 (also see 17.COGR) to Appendix III. Specifically, it is now included as part of the definition of Instruction under section A.1.a.(3).

1. Major functions of an institution ...

a. Instruction means teaching and training activities of an institution ... Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) Sponsored instruction and training means ...

(2) Departmental research means ...

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. **Salary costs above statutory limits are not considered cost sharing.**

44. COGR: The distribution basis under section C.2 defines MTDC to include only the first \$25,000 of a subaward, which is consistent with the definition of MTDC in section § 200.68 (also see 9.COGR).

2. The distribution basis.

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and **up to the first \$25,000 of each subaward** (regardless of the period covered by the subaward). MTDC is defined in § 200.68 Modified Total Direct Cost (MTDC).