

Uniform Guidance Revision Synopsis

On August 13, 2020, the Office of Management and Budget (OMB) issued its Final Guidance on amendments to the OMB Guidance for Grants and Agreements (Uniform Guidance). The revisions incorporate current goals and initiatives of the current administration, statutory requirements, and clarifications of existing requirements. For the most part, these revisions grant agencies flexibility in designing and monitoring programs and encourage the use of data collection and reliance on data to identify best practices. **The effective date of the Uniform Guidance revision: November 12, 2020.**

Key Changes of Note for Faculty

Evaluation Costs are now allowed as a direct cost

Pre-Award Costs are, when authorized, generally to be charged only to the first budget period of an award (§ 200.458);

Publication Costs related to research, when authorized, are generally to be charged only to the final budget period of an award (§ 200.461); and

Award Reporting for Closeout: The period available to direct recipients to submit final reports during closeout has been extended to 120 days, while the period for sub-recipients to do so remains, absent special circumstances, 90 days (§ 200.344(a)).

Termination Standards: The bases available for termination of an award have been expanded to include authorization for awarding agencies to terminate an award “to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities.” The termination language has also been modified to strongly encourage agencies to clearly articulate termination rights and procedures “in applicable agency regulations or in the award [document].” See Revised § 200.340 (formerly § 200.339).

Budget Period Concept: Various textual changes have been made to (i) clarify the concept of funded “budget periods,” and (ii) emphasize the fact that future budget periods are not guaranteed even if referenced as potential future award periods in a notice of award.

Section 889 of the 2019 NDAA (the “Huawei Ban”): Though considerably scaled back from the January 2020 proposed rule, a new § 200.216 provides for a broad prohibition against purchasing any “equipment, services, or systems that uses [sic] 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. Additional information on this new requirement will be forthcoming through an alert dedicated to this matter.

Refocusing Emphasis to Performance and Results: Language has been amended throughout the guidance to emphasize agency focus on substantive program accomplishment and consideration of data relating to programmatic effectiveness. While these changes do not appear likely to alter performance risk, it is possible that emphasized data in funding opportunity announcements and required reports may shift slightly as a result.

The shifting emphasis to performance and results is not inherently bad. Be aware that the compliance burdens associated with this changing emphasis will increase, as will the risk of losing the project funding if you do not achieve the intended outcomes OR the awarding agency concludes results are unsatisfactory despite best efforts.