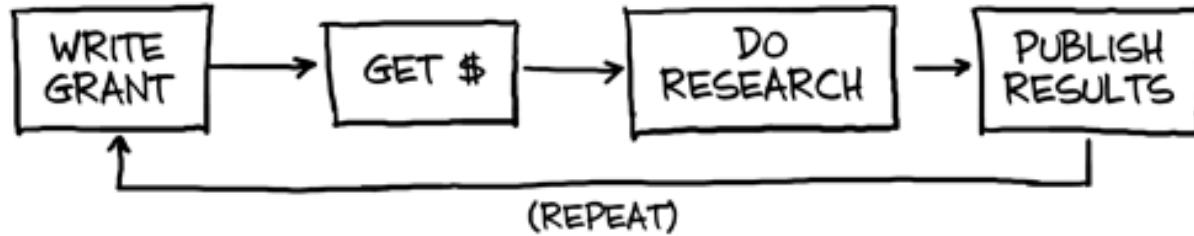


Uniform Guidance – How does this affect my Grant?

Jason Galloway, Associate Controller HSC Contract and Grant Accounting

THE GRANT CYCLE

HOW IT'S SUPPOSED TO WORK:



HOW IT REALLY WORKS:



New Guidance

- Replaces OMB Circulars:
 - A-21, Principles for Determining Costs Applicable to Grants, Contracts and Other Agreements with Educational Institutions
 - A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
 - A-133 Audits of States, Local Governments, and Non-Profit Organizations
- 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- **Effective December 26, 2014**

Why Uniform Guidance?

- Goals and Objectives
 - To reform and streamline guidance for all Federal Awards
 - To ease administrative burden
 - To strengthen oversight
 - To reduce fraud, waste and abuse
 - To eliminate duplicative and conflicting guidance
 - To provide for consistent and transparent treatment of costs

Uniform Guidance

- Electronic Code of Federal Regulation
- Code of Federal Regulations – Title 2, Subtitle A, Chapter II, Part 200
 - Supersedes and streamlines requirements from eight different grant circulars into one set of regulations
 - Made up of six subparts A through F

Uniform Guidance

- Made up of six subparts:
 - Subpart A – Acronyms and Definitions
 - Subpart B – General Provisions
 - Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards
 - Subpart D – Post Federal Award Requirements
 - Subpart E – Cost Principles
 - Subpart F – Audit Requirements

A-21 vs. 2 CFR 200 – Which do I follow?

- New awards and supplements should be using the new guidance now
- Review your award terms and conditions! (HHS)
 - If your award was dated after December 26, 2014 it will most likely be under the new guidance
 - Old regulations = 45 CFR Part 74 or Part 92
 - New regulations = 45 CFR Part 75

Uniform Guidance Changes

- Definitions
 - “Should” vs “Must”
 - Must = **REQUIRED**
 - Should = Best practices or recommended approach

Subrecipient Monitoring - §200.331

- This section provides detailed monitoring procedures such as reviewing financial and programmatic reports, performing on-site reviews, and engaging external auditor to perform agreed-upon-procedures for Subrecipient monitoring.
- Risk Assessment and documentation of subrecipient
- Reviewing financial and programmatic reports as required by UNM. It is the responsibility of the PI to ensure the programmatic requirements are met prior to approving invoices.
- Subrecipient invoice payments **must** be made within 30 days.

Can I Charge that to my Grant?

Answer:

It Depends!!

OMB Circular A-21 & 2 CFR 200 Subpart E – The Cost Principles

- Define criteria for charging costs
- Define direct costs and indirect costs
- Discuss selected items of costs
- Determine calculation of indirect cost rate

COST ACCOUNTING STANDARDS BOARD (CASB)

- 501 Consistency in Reporting Costs
- 502 Consistency in Allocating Costs
- 505 Accounting for Unallowable Costs
- 506 Consistency in Cost Accounting Period

A-21 Appendix A & 2 CFR 200.419

Factors Affecting Charging of Costs or “The Golden Rules”

- **Must be reasonable**
- Prudent person test – what would a reasonable person do in a similar situation?
- Necessary to the project
- Adhere to all applicable laws and regulations
- Adheres to terms and conditions of sponsor and award
- Consistent with policies and practices applied uniformly to Federal and University funds

- *A-21 C.3 & 2 CFR 200.403, 200.404*

Newspaper Test

- **“Contemplating any business act, an employee should ask himself whether he would be willing to see it immediately described by an informed and critical reporter on the front page of his local paper, there to be read by his spouse, children and friends.”**

-Warren E. Buffett

Factors Affecting Charging of Costs

- **Must be allowable**
- **Costs must conform to any limitations or exclusions set forth in the cost principles or in the sponsored agreement as to types or amounts of cost. See A-21 C.2(d) & 2 CFR 200.403**
- **The award's terms and conditions**
- **General Provisions for Selected Items of Cost**
 - **A-21 Sec. J.1 – J.54 & 2 CFR 200.420 – 200.475**

Factors Affecting Charging of Costs

- **Must be allocable**

Goods or services involved are chargeable or assignable in accordance with relative benefits received or other equitable relationship

- **Cost is incurred solely to advance the work, or**
 - **Cost benefits both sponsored agreement & other work in proportions that can be approximated by reasonable methods, or**
 - **Cost is necessary to the overall operation of institution & is deemed to be assignable in part to sponsored projects, and**
 - **No shifting of costs from one fund to another to cover cost overruns, avoid restrictions on agreement or for reasons of convenience**
- ***A-21 C.4 & 2 CFR 200.405***

Factors Affecting Charging of Costs

- Must be consistently treated
 - Consistency in proposing, charging and reporting costs
 - Consistently charged in similar circumstances as a direct cost or an indirect cost
- *A-21 C.2(c), D.1, Appendix A & 2 CFR 200.403, 200.412, 200.413(a)*

Consistent Treatment

- **§200.403 (d) states: "A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost."**

Cost Share

- **§200.403 (f) states: "Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b)."**

What does “Allowable” mean??

- **“The fact that a cost requested in a budget is awarded, as requested, does not ensure a determination of allowability. The organization is responsible for presenting costs consistently and must not include costs associated with their F&A rate as direct costs.”**

- NIH Grants Policy Statement

Can this be charged to the Grant?

- **If a cost cannot meet the criteria of reasonableness, allowability, allocability, and consistency, it is unallowable.**
- **Remember, if it is not allowable on a sponsored fund, then it is not allowable on a cost share account.**

Direct Cost Definition 2 CFR 200.413

- **Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also §200.405 Allocable costs.**

Examples of Direct Costs

- **Salaries of researchers/project directors**
 - (including benefit costs)
- **Laboratory/project supplies**
- **Travel**
- **Technicians**
- **Animal housing/care**

Special Circumstances-Old

- **Extensive data accumulation, analysis, entry**
- **Large amounts of travel/meeting arrangements**
- **Large, complex programs**
- **Remote field projects that cannot access normal departmental services**
- **Major projects, e.g. General Clinical Research Centers, center grants, program project grants...**
- **Training grants**
- **Sponsored projects not supported, in whole or in part, by federal funds**

Special Circumstances-New

If special circumstances exist, an F&A cost may be budgeted as a direct cost provided that the cost is:

- **Allowable**
- **Identified specifically with a proposed project and will advance the proposed work**
- **Cost can be attributed to the proposed project with relative ease and a high degree of accuracy**

A Special Note About Clerical Support

- **A-21, Exhibit C**
 - Examples of "major projects" where direct charging admin or clerical staff salaries may be appropriate.

- **2 CFR 200.413**
 - Staff should normally be treated as indirect (F&A) costs. Direct charging may be appropriate if: **(1) Integral to the project; (2) Specifically identified with project; and (3) Explicitly included in budget or with agency's prior written approval**

A Special Note About Computing Devices

- **2 CFR 200.453(c)**
 - Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are **essential** and **allocable**, but not solely dedicated, to the performance of a Federal award.

Document!

Document!

Document!

Document!

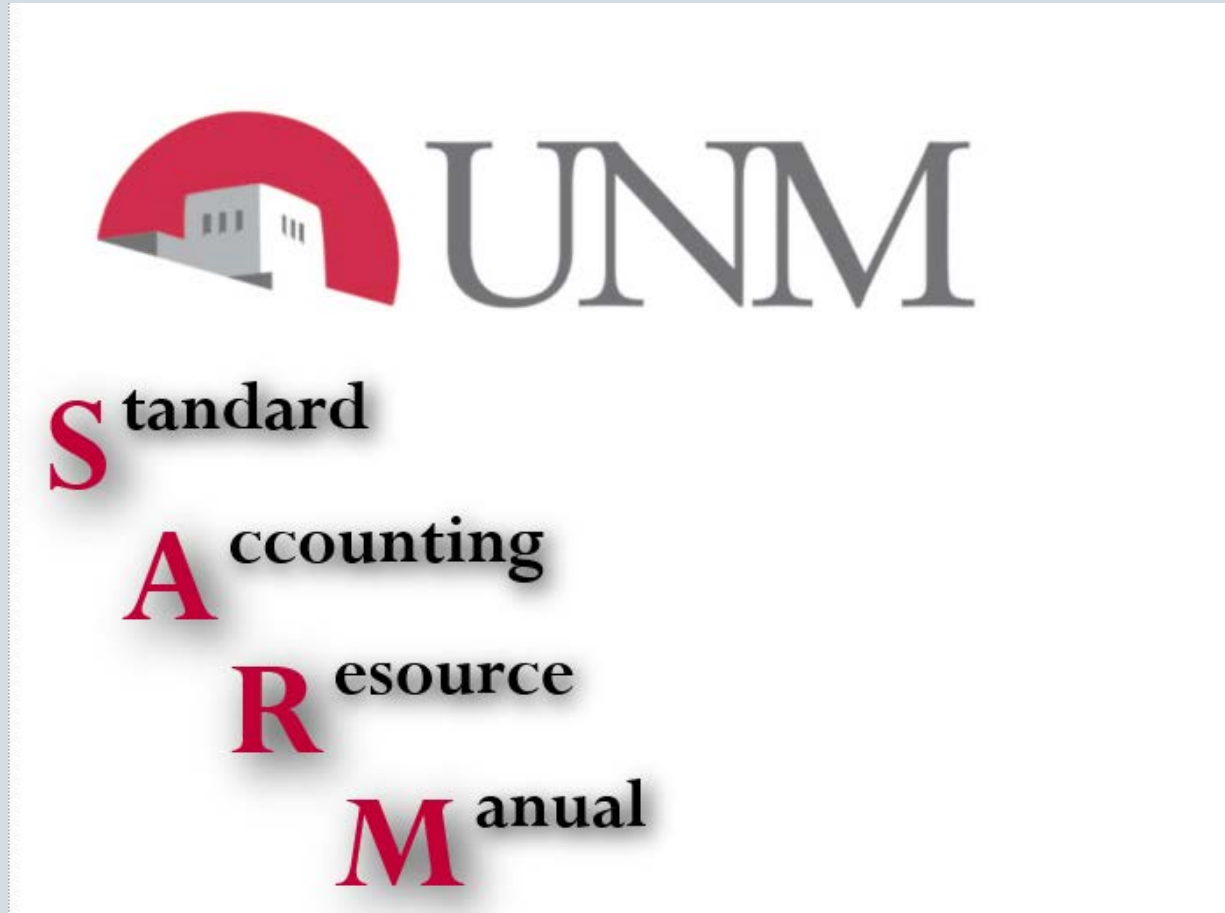
Why the need for documentation?

- **Auditors will expect documentation on all transactions. Especially those considered under “exceptional” circumstances or for major projects.**
- **Receipts with enough detail to support the charge**
- **Written explanation of how the expense benefited the project(s)**
- **If you leave the university or department is there sufficient detail that the documentation can speak for itself?**

Where do you go for answers?

- **2 CFR 200 Subpart E of the Uniform Guidance**
- **OMB Circular A-21**
- **Agency Rules/Guidelines**
- **Program Specific Guidelines**
- **Award Document**
- **Special Conditions**
- **Institutional Policy**
- **Consult with your Fiscal Monitor and C&G Accounting**

Helpful Hint – See University’s Standard Accounting Resource Manual (SARM)



<http://sarm.unm.edu/>

Allowable or Unallowable You Decide...



Case Study 1

- Your PI has a U-54 grant that requires a great deal of support in arranging travel for the project leaders from several universities, and internal research projects to attend semi-annual progress meetings. The PI also is coordinating the preparation and submission of several publications and the planning of four separate seminars related to the grant. Do you think he can charge for administrative/clerical services on the grant?

Case Study 2

- A PI invited his co-investigator on his Grant, (an expert in the field you are working in and is from another university), to give a talk to your university staff/faculty about the unique discovery they have made on their project. After the seminar the PI and several other faculty members have dinner with the speaker at a local restaurant before their flight home. What, if any, expenses incurred can be charged to the Grant?

UNACCEPTABLE PRACTICES

- **Purchasing items to exhaust unobligated balances.**
- **Rotating charges among projects.**
- **Assigning charges on the basis of the remaining balance to resolve availability of funding issues or to avoid loss of carry-forward balances.**

UNACCEPTABLE PRACTICES

- **Assigning charges to an award before the cost is incurred.**
- **Charging an expense exclusively to a single award when the expense clearly has supported other activities.**
- **Applying a unit "tax" to projects to distribute clerical and administrative expenses.**
- **Transferring an overdraft from one sponsored project to another, without express sponsor approval.**

False Claims Act

- **Under the U.S. False Claims Act, persons working with federal funds are prohibited from “knowingly presenting, or causing to be presented, to an officer or employee of the U.S. Government or a member of the Armed Forces of the U.S. a false or fraudulent claim for payment or approval.” (VII.J.)**

What's the worst that can happen?



Non-Compliance can lead to:

- **Disallowed Costs**
- **Reduction in Funding**
- **Award Termination**
- **Additional Compliance Requirements/Oversight**
- **Sanctions**
- **Suspension**
- **Debarment**
- **Criminal Penalties**

Non-Compliance can lead to:

03/17/05	University of Vermont – Poehlman	NIH	HHS Office of Research Integrity	<p>One of the most expansive cases of Scientific Fraud and first PI to service jail time for fabricating data. Dr. Poehlman submitted grant applications to federal agencies that included false and fabricated research data in order to support the scientific basis for and his expertise in conducting the proposed research. Poehlman plead guilty to lying on a federal grant application and admitted to fabricating more than a decade's worth of scientific data. Poehlman's admission of guilt came after more than five years during which he denied the charges against him, lied under oath and tried to discredit his accusers. One of the most expansive cases of scientific fraud in U.S. history. Poehlman was sentenced to one year and one day in prison. <u>First scientist to spent time in prison for fabricating data.</u></p> <p><i>The New York Times Magazine</i> <i>October 22, 2006</i></p>
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Non-Compliance can lead to:

08/28/13

**Emory
University**

Medicaid
and
Medicare

US Attorney,
FBI Press
Release

Emory University to Pay \$1.5 Million to Settle False Claims Act Investigation

Allegation: University Overbilled Medicare and Medicaid for Patients Enrolled in Clinical Trial Research at Emory's Winship Cancer Institute

The United States and the state of Georgia alleged that Emory University billed Medicare and Medicaid for services the clinical trial sponsor agreed to pay (and, in some cases, actually did pay, thereby resulting in Emory's being paid twice for the same service).

In 2009 a former Clinical Research Manager at Emory filed a qui Tam action. The former employee also received compensation for wrongful termination. According to the Settlement Agreement, the claims began on or between January 1, 2001 through December 31, 2010. The settlement was not an admission of liability by Emory.

United States of America and State of Georgia ex rel. Elizabeth Elliott v. Emory University, et al., Civ. No. 1:09-cv-3569-AT

Non-Compliance can lead to:

07/30/13

**Northwestern
University**

NIH

HHS OIG,
FBI, NIH,
U.S.
Attorney's
Office

**Northwestern University to Pay Nearly \$3 Million
Settlement related to False Claims. Bennett**

Allegations: Federal grants billed for family trips, meals, hotels and consulting fees benefitting Dr. Bennett, his friends and family.

References

- 2 CFR 200 Subpart E
 - www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf
- OMB Circular A-21
 - www.whitehouse.gov/omb/circulars_a021_2004
- False Claims Act
 - www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_Primer.pdf
- New York Times Magazine – October 22, 2006 - An Unwelcome Discovery
- Summary of University Audits, Settlements & Investigations Related to Federal Programs
 - www.costaccounting.org/audits
- Published audit findings NSF External Reports
 - www.nsf.gov/oig/auditpubs.jsp#external
- NIH Office of Audit Service
 - oig.hhs.gov/reports-and-publications/oas/nih.asp
- NCURA 16th Annual Meeting for FRAs
 - Can I Charge this item to a Grant? – Glenda A. Bullock

Questions?

