



*OMB Uniform Guidance:  
Changes and Strategies for Implementation on Your Campus*

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# Agenda

## Item

## No. Description

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- 1 Introduction and Objectives: Presenters and Session Topics
- 2 Where We Left Off
- 3 Regulatory Clarifications
- 4 Open Issues
- 5 Approach for Actionable Items
- 6 Concluding Discussion
- 7 Contact Information – Including New Attain HQ Address



# Introductions

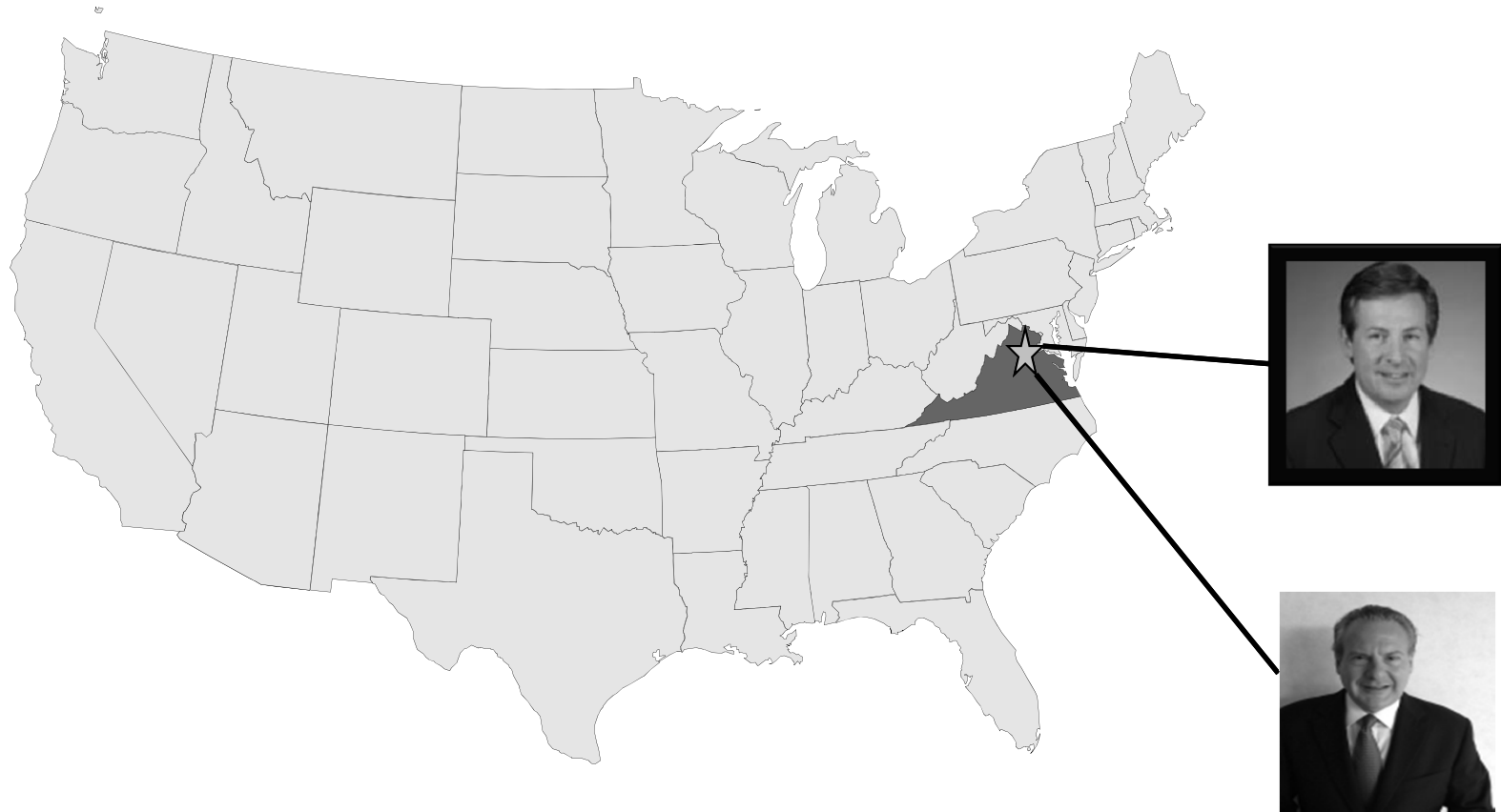
# OMB Uniform Guidance in Action: Resolutions for the New Year!

- The new OMB Uniform Guidance (2 CFR 200) is now effective as of December 26, 2014 for all new awards and additional funding actions made to existing awards.
- Last year ended with a flurry of announcements and clarifications regarding implementation of the Uniform Guidance.
- Now that the proverbial “dust has settled,” this is a good time to see what open issues still exist and which items seem to be settled.

# OMB Uniform Guidance in Action: Resolutions for the New Year!

- The purpose of this webinar is to make sense of the numerous communications about OMB Uniform Guidance, looking at the authoritative sources as well as dismissing some of the early interpretations that are still out there possibly confusing people.
- Mark Davis and Martin Smith will share some implementation strategies that are working at peer institutions, both large and small institutions.

# Today's Presenters: Mark Davis and Robert Cohen



# Presenters and Session Topic

## *OMB Uniform Guidance in Action: Resolutions for the New Year!*

- 30 years experience serving higher education
- Vice President and National Managing Partner for Higher Education and Academic Medical Centers Practice
- Federal Costing and Grants Management for over 80 universities, hospitals and non-profit organizations.



**Mark C.  
Davis**

- 35 years experience in Financial Compliance and Pre and Post-Award; Administration;
- System installations: Financial ERP, Electronic Research Administration, and Effort Reporting Solutions;
- Clinical Research and Hospital – University Alignment
- Organizational Assessments with Policy & Procedure Review and Edits.



**Robert  
Cohen**



Where we left off...

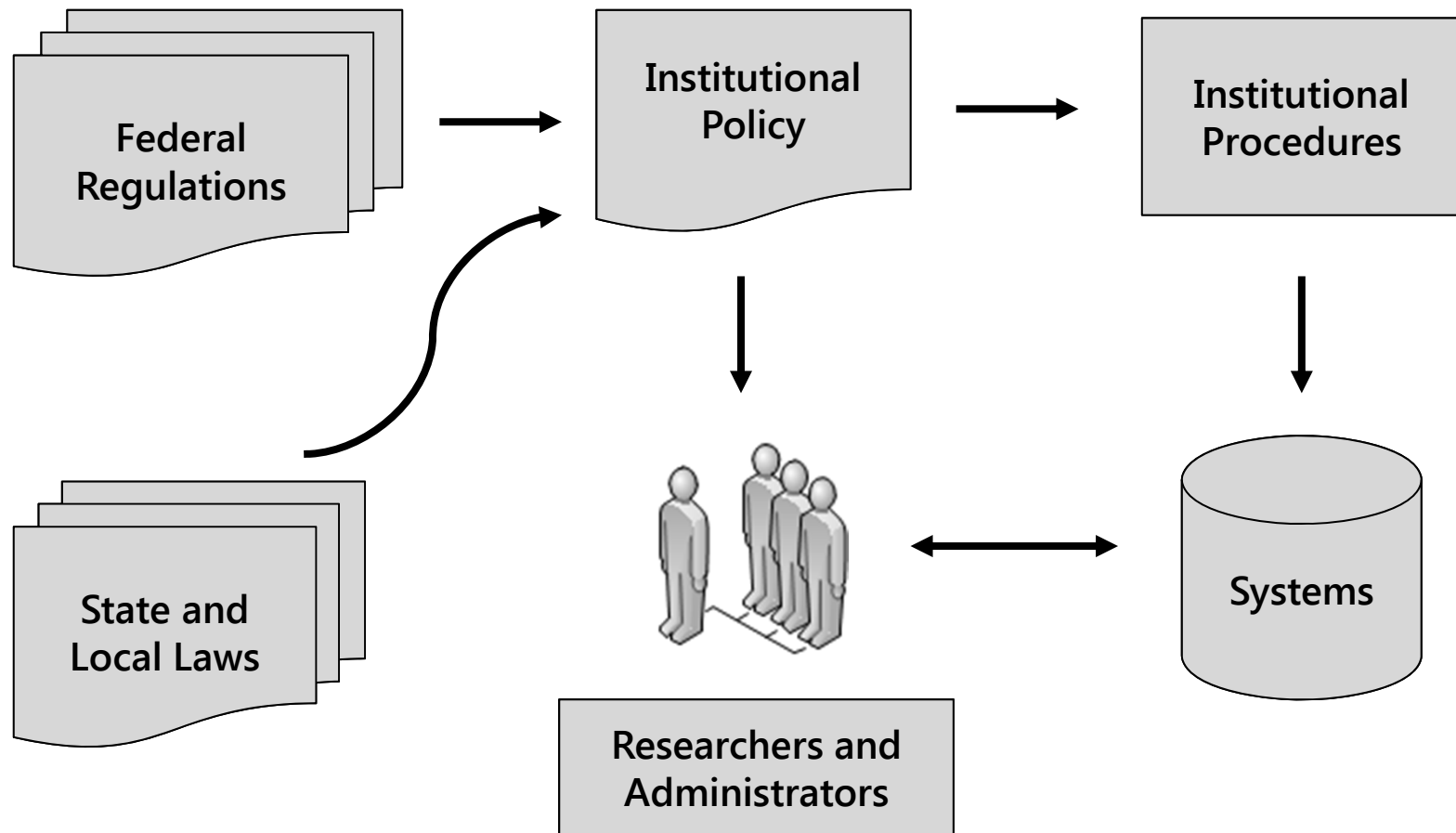


# Recommended Institutional To-Do List

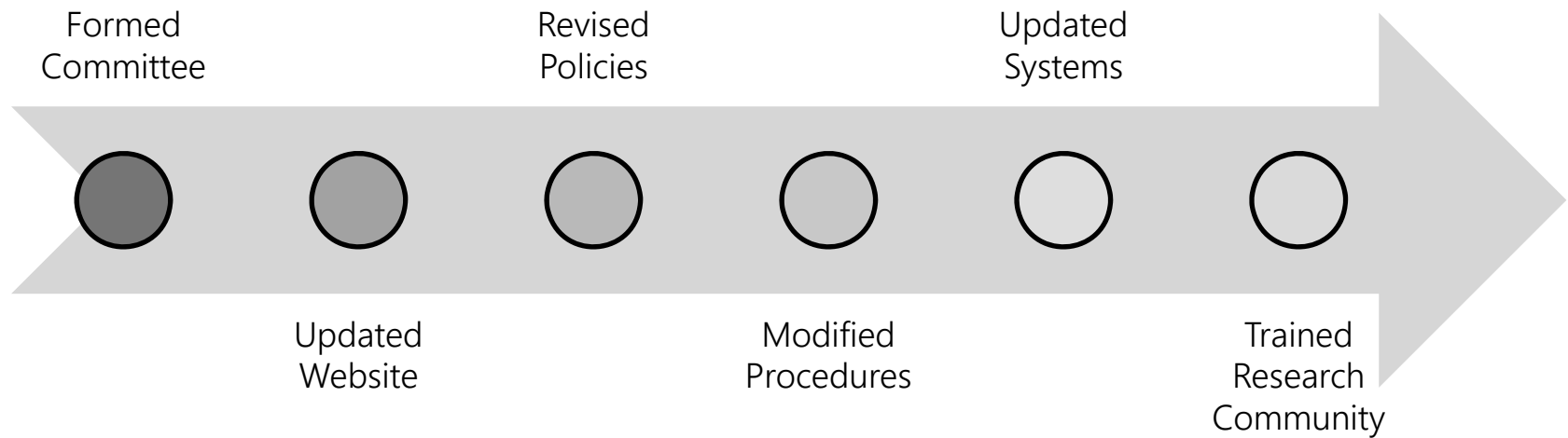
Establish a point of contact	Establish a steering committee / primary work group for decision making	Leverage institutional expertise – research administrators, PI's, departments, finance, HR, legal, IT	Generally understand the Uniform Guidance
Prioritize change areas – people, process, IT, cost	Inventory of policies and procedures	Fit/gap analysis	Systems dependencies and impact
Get recommendations	Update policies and procedures where needed	Develop a training program and educate	Measure improvement

# Calibrating Policies with your Processes

*How Regulations Influence Policies, Procedures, Systems and Behavior*



# How far along is your institution?





# Regulatory Clarifications

# Effective Dates

The early thoughts...



"12/26/2014 is the effective date for new awards, but how about no-cost extensions, non-competing continuations, new task orders or mods??? What about our indirect cost rate proposal and the DS-2? Do we need two effort systems for A-21 and Uniform Guidance? Have all the agencies responded with how they're going to implement this??? How many days until I retire???"

# Effective Dates

## COGR Implementation and Readiness Guide for the OMB Uniform Guidance 12/16/2014

- 200.110(a) and (b) specify that Federal agencies must implement the policies and procedures applicable to Federal awards by promulgating regulations to be **effective by December 26, 2014**. Subpart F-Audit Requirements will apply to **audits of fiscal year beginning on or after December 26, 2014**.
- COFAR FAQs .110-7 and .110-12 specify that **funding increments on existing awards, issued post 12/26/14**, may be subject to the UG at the agency's discretion and if the incremental funding is subject to the UG, it will be issued with modified terms and conditions.

# Effective Dates

COGR Implementation and Readiness Guide for the OMB Uniform Guidance  
12/16/2014

- COFAR FAQ .110-2 states that **F&A rate proposals based on FY14** can be developed using provisions in the UG.
- COFAR FAQs .110-3 and .110-5 provide guidance to IHE's for submitting **revised DS-2s**.

# Effective Dates and Disclosure Statements (DS-2s)

Clarified in OMB FAQs as of November 2014 (200.110-3 and 200.110-5)

- “IHEs subject to the requirements of section 200.419 should begin after December 26, 2014 to revise their DS-2 statements for fiscal years beginning on or after December 26, 2014.
- IHE's **with** CAS covered-contracts meeting the dollar threshold (currently \$25 million in aggregate) in 48 CFR 9903.202-1(f) should submit their revised DS-2 as soon as possible after 12/26/2014, but in any event no later than prior to the award of a CAS-covered contract or subcontract.
  - In addition, IHE's making voluntary changes in cost accounting practices other than those required in the Uniform Guidance or submitting indirect cost rate proposals that are currently due should submit their DS-2 (or revised pages of the DS-2 for changes that are not extensive) **6 months before the effective date of proposed changes.**



# Effective Dates and Disclosure Statements (DS-2s)

Clarified in OMB FAQs as of November 2014 (200.110-3)

- IHEs ***that do not meet*** the CAS covered contract threshold or are not submitting indirect cost rate proposals and that are only revising their DS-2 to meet the requirements of the Uniform Guidance do not need to submit their revised DS-2 unless requested to do so by their cognizant agency for indirect costs.
  - If not requested by the cognizant agency for indirect costs to submit by an earlier date, the DS-2 must be submitted with the **next submission of the IHE's indirect cost rate proposals.** The cognizant agency for indirect costs will determine if a review and approval is necessary for the submitted DS-2.

# Effective Dates and Disclosure Statements (DS-2s)

Clarified in OMB FAQs as of November 2014 (200.110-5)

- All awards made on or after 12/26/2014 will be made according to the new uniform guidance, and applications for Federal awards that would be granted after that date should reflect the new guidance.
- ...DS-2 statements that need to be revised to reflect new policies **should be revised as soon as possible after 12/26/2014.**
- Non-Federal entities will **not be penalized for discrepancies** between their approved DS-2 and actual charging practices in accordance with the new uniform guidance, provided that an updated DS-2 (consistent with actual charging practices) has been revised and submitted in accordance with FAQ .110-3.

# Effective Dates – Procurement and Audit

COGR Implementation and Readiness Guide for the OMB Uniform Guidance  
12/16/2014

- COFAR FAQ .110-6 creates a **grace period** for the implementation of the **Procurement Standards**.
  - For FY16, institutions have the option to use Circular A-110 or the UG.
  - Beginning with FY17, institutions must comply with the UG.
- COGR's Recommendation on Audit Standards:
  - "Work closely with your A-133/Single Audit team to understand the approach to the FY2015 single audit. **Technically, Subpart F will be effective for the institution's first FY beginning on or after 12/26/14** (e.g., fiscal year beginning on July 1, 2015, or FY2016). However, the 2015 Compliance Supplement (normally released in March) will include guidance to auditors on how to review and audit new awards to which the UG is applicable.

# Vendor vs. Contractor

The early thoughts...



"Subrecipients are now treated as vendors, which means the new procurement rules for contractors apply to all subs... We will need to bid out scientific work when subs are more than \$150,000..."

# Vendor vs. Contractor

Clarified in OMB FAQs as of November 2014 (200.23-2)

- For purposes of the Uniform Guidance, when a non-Federal entity provides funds from a Federal award to a non-Federal entity, the non-Federal entity receiving these funds **may be either be a subrecipient or a contractor.**
- The **term contractor** is used for purposes of **consistency and clarity** to replace areas in the previous guidance that referred to vendors, though substantively in the previous guidance, these two terms have always had the same meaning

# When is a Subrecipient a Subrecipient and a Contractor a Contractor (formerly Vendor)?

Clarified in OMB FAQs as of November 2014 (200.23-2)

## Subrecipient:

- If a pass-through entity makes an award that it calls a “contract”, but which meets the criteria under section 200.330 to be a subaward to a subrecipient, the non-Federal entity must comply with the provisions of the Uniform Guidance relevant to subawards, regardless of the name used by the pass-through entity to refer to the award agreement.

## Contractor (i.e. Vendor):

- Likewise, any Federal awards that meet the criteria under section 200.330 for the non-Federal entity to be considered a contractor, whether the non-federal entity providing the funds calls it a “vendor agreement” or a “subcontract,” the non-Federal entity must comply with the provisions of the Uniform Guidance relevant to a contractor.

# Subrecipient Defined

Clarified in OMB FAQs as of November 2014 (200.23-2)

- **Subrecipients.** A subaward is for the purpose of **carrying out a portion of a Federal award** and creates a Federal assistance relationship with the subrecipient.
- Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
  - 1) Determines who is **eligible** to receive what Federal assistance;
  - 2) Has its **performance measured** in relation to whether objectives of a Federal program were met;
  - 3) Has responsibility for **programmatic decision making**;
  - 4) Is responsible for adherence to applicable Federal **program requirements** specified in the Federal award; and
  - 5) In accordance with its agreement, uses the Federal funds to **carry out a program** for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

# Contractor Defined

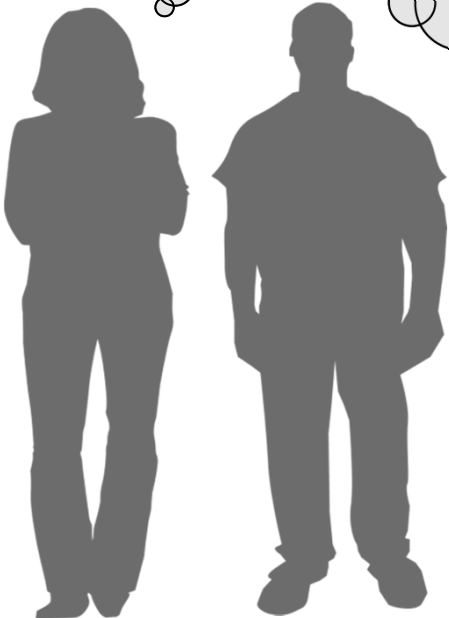
Clarified in OMB FAQs as of November 2014 (200.23-2)

- **Contractors.** A contract is for the purpose of **obtaining goods and services** for the non-Federal entity's own use and creates a procurement relationship with the contractor.
- Characteristics indicative of a **procurement relationship** between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:
  - 1) Provides the goods and services within **normal business operations**;
  - 2) Provides similar goods or services to **many different purchasers**;
  - 3) Normally operates in a **competitive** environment;
  - 4) Provides goods or services that are **ancillary to the operation** of the Federal program; and
  - 5) Is **not subject to compliance requirements** of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.



# Fixed Amount Awards and Subawards

The early thoughts...



"When would you use a fixed amount subaward???"

"Uniform Guidance Costing Principles says 'may not earn or keep any profit resulting from Federal financial assistance...! This must mean we cannot keep any unspent funds from fixed price awards."

# Fixed Amount Awards and Subawards

Clarified in OMB FAQs as of November 2014 (200.201-1)

- Section 200.201(b)(1) states that fixed amount awards and subawards can be used when there is a “specific” project scope and “adequate cost, historical or unit price data is available” to assure that the recipient or subrecipient will “realize no increment above actual cost.” What standards will an agency use (or should pass-through entities use) when deciding when a project scope is “specific” and what constitutes “adequate” cost, historical, or unit price data?
- The wording in this section was not intended to create a new, higher standard for budgeting. Fixed amount (fixed price) awards are appropriate when the work that is to be performed can be priced with a reasonable degree of certainty. Samples of appropriate mechanisms to establish an appropriate price include the non-Federal entity’s **past experience** with similar types of work for which outcomes and their **costs can be reliably predicted**, or the non-Federal entity can easily ability to obtain price estimates (e.g., bids, quotes, catalog pricing) for significant cost elements.

# Fixed Amount Awards and Subawards

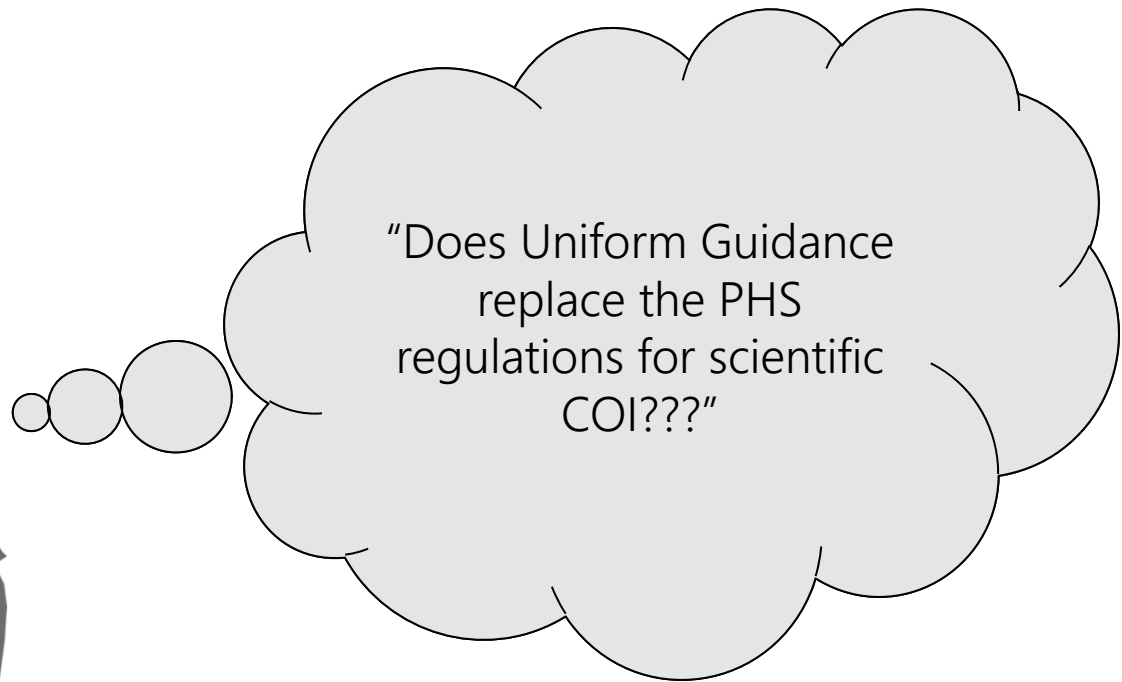
Clarified in OMB FAQs as of November 2014 (200.201-2)

- Section 200.201(b)(2) states that a fixed amount award (or subaward) cannot be used in programs that require a mandatory cost-share or match. Do salary costs that exceed a Federal awarding agency's salary cap constitute "mandatory cost-sharing" for the purpose of determining whether a fixed amount award or subaward can be used?
- **No**, salary costs above a Federal awarding agency's cap are not a mandatory cost-share or match but, instead, **are the result of limitations on the amount of salary costs that may be charged to the Federal award**, and are paid at the discretion of the non-Federal entity. Since these salary costs above a Federal awarding agency's cap are not a mandatory cost-share or match, a fixed amount award or subaward can be used.

*Takeaway: Salary above a cap is not cost-sharing,  
rather statutory limit*

# Conflict of Interest

The early thoughts...



# Conflict of Interest

Clarified in OMB FAQs as of November 2014 (200.112-1)

- “No, ...the conflict of interest policy in 2 CFR 200.112 refers to conflicts that might arise around how a non-Federal entity expends funds under a Federal award. These types of decisions include, for example, selection of a subrecipient or procurements as described in section 200.318.

## **§200.112 Conflict of interest.**

- The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

# Conflict of Interest

Clarified in OMB FAQs as of November 2014 (200.112-1)

## §200.318 General Procurement Standards

- (c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
- No employee, officer, or agent may participate in the **selection, award, or administration of a contract** supported by a Federal award if he or she has a real or apparent conflict of interest.
- Such a conflict of interest would arise when... has a **financial or other interest** in or a tangible personal benefit from a firm considered for a contract
- ...may **set standards** for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- The standards of conduct must provide for **disciplinary actions...**

# “Should vs. Must”

## The early thoughts...

“‘Should’ is like a New Year’s Resolution— you should do it, you want to do it, but you just don’t get around to doing it... ‘Must’ is like a real rule that you should follow, but don’t have to...”



“We may want to validate that.”



Who hired this guy???

# “Should vs. Must” Regarding Internal Controls

Clarified in OMB FAQs as of November 2014 (200.303-2)

- The word “should” is used throughout section 200. Does it really mean “must?”
- No. The word “must” is used throughout part 200 to indicate requirements. The word “should” is used to indicate best practices or recommended approaches that the COFAR wanted non-Federal entities to be aware of, but not necessarily required to comply with.

Must = Requirement

Should = Best Practice to be Aware of



# “Should vs. Must” in General

Clarified in OMB FAQs as of November 2014 (200.303-1)

- According to auditing standards, “should” really means “must unless there is a well-documented reason why not”. Is this the case in the Uniform Guidance? Does the “should” in section 200.303 referencing guidance provided by GAO and COSO really mean “must”?
- See should vs must answer in .303-2 below for the meaning of “should” in the Uniform Guidance. **COFAR will review the guidance** and consider whether technical corrections are needed related to the use of “should”.

To be continued...

# Program Income—Fees and Royalties

Actual Citation from Uniform Guidance Definition (200.80)

## **§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). (See §200.77 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, **license fees and royalties on patents and copyrights**, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them...

# Program Income—Fees and Royalties

Clarified in OMB FAQs as of November 2014 (200.307-1)

- According to the **Bayh-Dole Act** (35 USC 202(c)(7)), for nonprofit organizations (e.g., IHEs, Nonprofit research institutions, other research performers), a portion of the license fees and royalties on patents are required to be returned to the inventor and the balance is to be used for education and research. Therefore, should the income from license fees and royalties be excluded from the definition of program income?
- Yes, income from license fees and royalties on research funded by a Federal award **should be excluded** from the definition of program income. U.S. law or statute takes precedent over the Uniform Guidance.

# Use of Procurement Cards

- **Misconception**—“you can’t use procurement cards because of the new Uniform Guidance Procurement Rules and dollar thresholds surrounding purchases”
- **OMB Clarification (200.320-5)**—the Uniform Guidance provides requirements for the internal control framework that surround any purchase, but does not provide any guidance around whether the non-Federal entity uses cash, charge cards, checks, or any other payment medium for the transaction.

# Indirect Cost Rates for Subrecipients

- **Misconception**—“If a sub charges all costs, direct and indirect as direct costs, they can’t do that anymore under Uniform Guidance.”
- **OMB Clarification (200.331-5)**—“No, non-Federal entities that are able to allocate and charge 100% of their costs directly **may continue to do so**. Claiming reimbursement for indirect costs is never mandatory; a non-Federal entity may conclude that the amount it would recover thereby would be immaterial and not worth the effort needed to obtain it. ”

# Voluntary Uncommitted Cost Sharing

- **Misconception**—“Voluntary uncommitted cost sharing was only allowed in a memo to A-21 and goes away in Uniform Guidance.”
- **OMB Clarification (200.331-5)**—“Yes (**is still applicable**), the OMB Clarification on uncommitted cost sharing.”
- Available here online:
  - <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/m01-06.pdf>

# Authorization for Changes to Time and Effort Systems

Clarified in OMB FAQs as of November 2014 (200.430-1)

- “Changes to the process through which payroll charges are documented are allowable and can be implemented when the non-Federal entity complies with the guidance in this section, including standards defined in paragraph .430(i) Standards for Documentation of Personnel Expenses. For non-Federal entities that **disclose their current process in a DS-2**, any change **will require a corresponding change in the DS-2**.
- In most cases, this simply means that the non-Federal entity would revise its current DS-2 and provide a high level summary of the processes that meet paragraph (i). The DS-2 should be comprehensive enough to **document the non-Federal entity's accounting practices without further information**. Non-Federal entities can develop solutions that meet the requirements in paragraph (i) and reduce the burden related to their current process whether they be incremental or more significant, including complete elimination of current systems.”



# Open Issues



# Documenting Prior Approval

## .413-1 – What counts as prior approval?

**Q:** I have a Federal award that qualifies as a major project or activity and I'm directly charging administrative costs to it. When I receive incremental funding on my project next spring, I understand I am going to now need prior written approval from the Federal awarding agency to continue charging those costs to the new incremental funds. If I list my intention to continue charging those costs in my next continuation progress report and the Federal awarding agency issues my award without making any mention of my request, does that count as prior written approval?

**A:** It depends. Non-Federal entities should refer to the terms and conditions of their Federal award or address their questions to the Federal awarding agency awarding official (or pass-through entity if appropriate) to clarify when pre-approval has been granted.

*Subject to Interpretation*

# Documentation for F&A Rate Extension

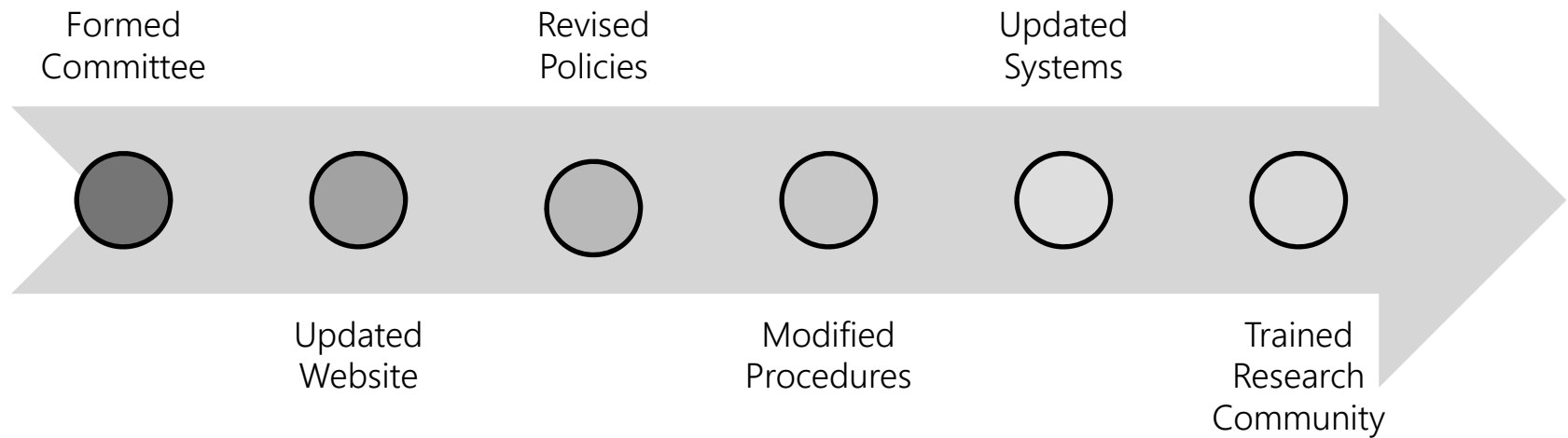
## .414-3 – Documentation Required For Extension

- The intent of allowing for indirect cost rate extensions is to minimize the administrative burden for the non-Federal entity. As such, documentation requirements to support a four-year indirect cost rate extension should be kept to a minimum. A non-Federal entity can apply for a one-time extension (up to four years) on its most current negotiated rate. Subsequent one-time extensions (up to four years) are available if a renegotiation is completed between each extension request. Once there is a new negotiated indirect cost rate in effect, a non-Federal entity could request a one-time extension on that rate.



# Approach for Actionable Items

# How far along is your institution?



# Our Approach

## Policies

Gap/Fit Analysis

Validate to Procedures

Revise Policies

Review with Client

## Procedures

Operational Assessment

Documented Policies

Desk Procedures

Gap/Fit to UG

## Technology

Identify Systems Impacted

Update Existing Fields

Create new UG Flags

Revise & Test Reports and Queries

## Training

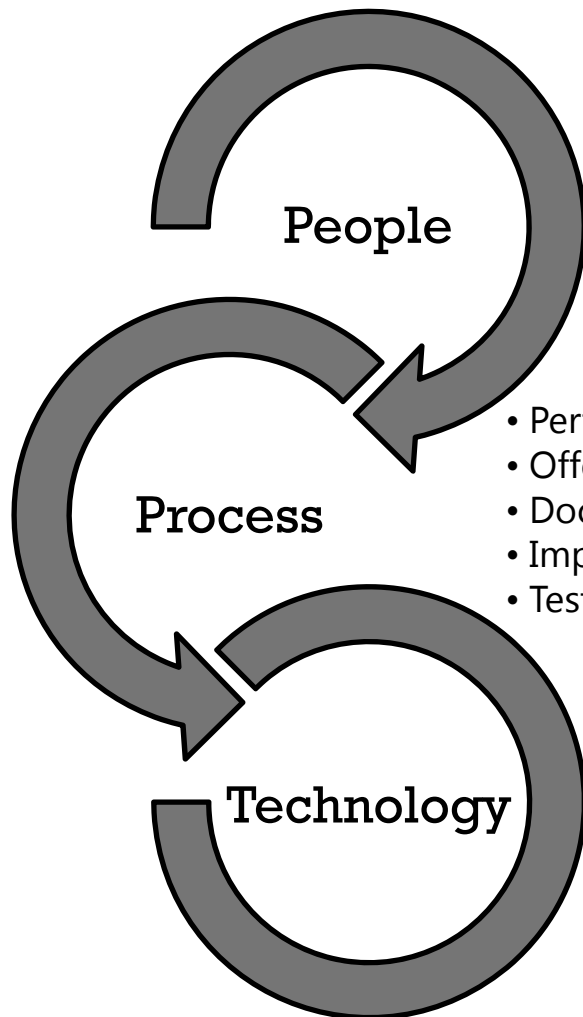
Formal Communication Plan

Training Materials

Mediums – Town Hall, 1:1, and Webinars

Measure Effectiveness

# The Attain Way



- Federal Costing
- Grants Management
- Medical Centers to PUIs
- Information Technology Professionals

- Perform Gap / Fit Analysis
- Offer Solutions
- Document Business Rules
- Implement
- Test for Effectiveness

- PeopleSoft
- Oracle
- SAP
- Banner
- Quali
- Interfaces



# Next Month's Webinar

Friday, February 6<sup>th</sup> at 1:00 PM Eastern /  
10:00 AM Pacific

**Proposal Development and Review to  
Conform to OMB Uniform Guidance (2  
CFR 200): Best Practices for Audit-Proof  
Proposal Budgets and Other Pre-Award  
Implementation Tips**

Hosted by Evan M. Roberts,  
Senior Consultant  
Higher Education and Academic Medical  
Centers, Attain, LLC



# Contact Information—New Headquarters Address



**Operating at the intersection of  
experience and innovation.**

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