CAPLAW Webinar Transcript

Final Uniform Guidance Revisions

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[Allison Ma'luf, CAPLAW]
Hi again, thank you so much for joining us today for our webinar on the final revisions to the Uniform Guidance. We are excited to be here with you to speak about it. I am going to go ahead and jump right in because we have a full agenda for you today. I have with me today, Emily Center-Bregasi and Jonathan Cohen, both of whom are staff attorneys here at CAPLAW. I am Allison Ma'luf, Executive Director and General Counsel.

We will work through all the new revisions that were finalized recently to the Uniform Guidance. Just to give you a little taste as to what is in store, we're going to talk about the definitions and general provisions; we're going to talk about the pre and post administrative requirements, the cost principles and the single audit rules. There were changes to all the sections. After we speak about one of the sections, we will pause and try to answer some of the questions in the chat box. I see somebody has already started, which is wonderful. You do need to submit your questions via the chat box, as that is the way that we will receive those today. So feel free to do so. If we have answered your question with what we've already said, or we're going to answer it in some future slides, we will not address it directly. We will try to address as many of those that aren't addressed already or won't be addressed directly. If we don't get to your question, please feel free to contact CAPLAW and we will do our best to get back in touch with you.

I want to get started by talking about the background with respect to the Uniform Guidance; give a little bit of context of where we've been and how we've gotten to this point. The Uniform Guidance first took effect on December 26, 2013. We've been living with it for a while. The rules require the Office of Management and Budget, which is the office that is charged with reviewing the Uniform Guidance on a periodic basis, to review it about every five years or so. The last round of significant revisions to the Uniform Guidance that were finalized took effect in November 2020. All the federal agencies are required by the language in the Uniform Guidance to adopt the Uniform Guidance and any revisions to it. When they do that adoption, they can adopt exceptions to the Uniform Guidance, but they are encouraged to adopt it as much as possible in its current form. That is because the Uniform Guidance is supposed to be what its title connotes, which is that it is uniform.

There is one federal agency that lagged behind with respect to the November revisions and that is the Department of Health and Human Services. They never formally adopted the 2020 revisions. That caused a lot of angst within our network, because we receive funding from all the different federal agencies and so some of those agencies, all of them, except for HHS, had adopted the 2020 revisions which did have some key changes in them.

The final revisions that we're talking about today are from the proposed revisions that came out in October 2023. CAPLAW, National Community Action Partnership, National Association of Community Service Programs (NASCSP); we all came together and submitted comments to those proposed revisions. As we walk through the final rule today, we

will mention here and there where some of our comments were directly accepted or addressed or responded to by the Office of Management and Budget.

There are four main objectives that the Office of Management and Budget put out there with respect to why they were revising the Uniform Guidance at this time and what were their guiding principles for doing so. And those guiding principles have continued with the final rule. It is to incorporate statutory requirements, so any updates to the statutes and also the current administration's priorities. It is to reduce burden on the federal agencies and the recipients. We all like that when it actually happens, or we feel like it happens. It is to hopefully address some differing interpretations in the language. We made some comments with respect to those that we've seen over the years. They did make some changes; they didn't go quite as far as we would have liked. Throughout the discussion with respect to their response to the final rule, they did indicate that some of their decisions not to make changes at this time, that they will consider reviewing those decisions in future revisions. So it's good that we put information out there every opportunity that we get, with respect to how we would like to see these rules that apply to us. They also did a massive rewrite with respect to trying to put the language in a more accessible form, which they refer to as plain language [updates] and improve the consistency throughout the Uniform Guidance and the connectivity between the concepts that they're discussing.

This new rule will take effect on October 1, 2024. There is the possibility for early adoption of this new rule that can only happen if it is permitted by the federal agency. The federal funding source would have to agree to an early adoption by a recipient or sub recipient, [and] that early adoption can't happen any earlier than June 21. The Office of Management Budget also put out a memorandum directing all the federal agencies to submit to [the] Office of Management and Budget, their own plan for implementing these final rules. The plan has to be submitted by May 15. So this is really great news. While Office of Management and Budget didn't take any further action within the rules to try to push federal agencies to follow those rules with respect to adoption. This memo is a nice compromise [in response] to our comment [and] many others comments with respect to HHS lagging behind on the last adoption of the final rule.

Next slide. Just a few key points I want you [to] keep in mind as we work through the slides today. We are going to reference OMB's interpretation or understanding with respect to different changes that we're discuss[ing] that will be in effect as of October 1. All that information really comes from what is referred to as the preamble to the final rule. That's the introductory language. Office of Management and Budget, as any office or agency that proposes a rule, is required to respond to every comment that comes in the door. They will group those comments together and explain why they made the decision they did whether it was to incorporate the comment or incorporate it with revisions, or just not incorporate it at all. We will reference that preamble throughout our presentation today. They did make a wholesale change with respect to the term non-federal entity. They replaced it with the terms recipient and sub recipient. Those are now new defined terms and they're defined in the way that you would expect them to be defined. A recipient is an entity that receives direct federal funding. A sub recipient is an entity that receives federal funding through a pass-through entity which is a recipient. This change is everywhere except in Subpart F which is the single audit rules and that is because the Single Audit Act, which is the act that is being fleshed out by those single audit rules, requires the use of the non-federal entity term.

There are a lot of revisions to the language; so if you look at the red line, which is available from the current rule to the final rule, redlining the current rule. It shows you the changes that are being made with [the] final rule. You will see a bunch of red and that is because there's a lot of language that's been moved around. A lot of restructuring that's been done. Then there's that plain language attempt to make things more accessible and readable. Office of Management and Budget has, throughout the preamble, explained that just because they've moved things around, or they've used a little bit different language, that isn't changing the intent of the rules. [In other words] there was no massive substantive

change, even though the language might have changed just a bit. I referenced here on this slide, the Chief Financial Officers Council, and that is the office inside the of OMB that is charged with providing guidance and resources around the final rule and all of the uniform guidance. Take a look there for additional resources, including that red line that I just mentioned.

On this next slide [is] all the different sub parts that are in the Uniform Guidance, just to give you an idea that that these changes touched almost everything in the Uniform Guidance. We're not going to talk about the appendices, but we are going to touch on sections that come from all these different sub parts. With that, I'm going to jump into some changes to the definitions and a few changes to the general provisions in the Uniform Guidance. Then I [will] hand it off to my colleagues.

The first definition to note that was clarified is the definition of a budget period. This is a period within which you're authorized to expend your federal dollars and budget periods fall within the holistic period of performance. Anice change here is that they've clarified when they're talking about what you're authorized to do during that budget period, to say that you're authorized to incur financial obligations. It's not just that you're authorized to expend the dollars, which you are, but you're authorized to incur an obligation that would then commit you, require you, to then pay out the federal dollars pursuant to that obligation. This is a nice clarification, a nice nuance, because we do see some confusion with respect to whether an obligation is something that you're authorized to do and that you can expend your funds after the budget period that is connected to that obligation. All right.

They also just made a slight adjustment to cost sharing. They moved matching out of the title. And put it more into the context of the definition. They did this because they felt that matching really is a mechanism by which you can meet the cost sharing requirement. As you'll see on this slide, matching really refers to the level of cost sharing that you might engage in.

Next slide. Here, they just changed the threshold level and they did this in a couple of places so you're going to hear me talk about this several times. They increased it to $10,000. And this threshold is with respect to determining when tangible personal property is considered equipment. There's a two-part test for that – the first part is that the property has a useful life that extends beyond one year, and then the second part of the test is if the value of if the per unit acquisition cost of that property is the lesser of the capitalization threshold that you've set in your financial statements, or $10,000. So that level used to be $5,000. Now there's going to be a property that might have been considered equipment before, that will no longer be considered equipment, because it's not meeting both of those prongs.

Next slide. Here's our financial obligation definition that was referenced in the revision to the budget definition, budget period definition. This is a nice inclusion in the Uniform Guidance now because it clarifies when a financial obligation occurs. You'll see in the quotes on the slide that it occurs when you're placing an order for property and services, when you're entering into a contract, when you're basically entering into a commitment to pay at a future date. You are committed to pay, so it's an obligation. It also recognizes, which is important, that the expenditure of those federal dollars is not going to necessarily happen at the same time that you enter into that obligation.

Next slide. There has always been this definition of what is considered an improper payment, which is typically when you issue payment to someone who's ineligible to receive services, when you've paid for a good or service that you haven't received. There are a couple of definitions with respect to improper payments. What they did here is they really streamlined this definition. They did it because they were trying to align it with Office of Management and Budget guidance, OMB Circular A-123. That is the guidance that talks about the internal controls framework that federal

agencies are charged with helping all of us set up and put in place. What they did is they took out some references to circumstances that could be perceived to be improper payments but are not improper payments. That's what's noted in the sub bullets on this slide. If you had an applicable discount credit, that could sometimes be perceived as an improper payment, and they were clarifying that it's not. Or when you pay interest or fees from an underpayment, that could be considered an improper payment. So those are no longer in there, that lack of clarity is not there anymore. They did though move the reference that established questioned costs as not necessarily being improper payments to the questioned cost section. So that is still out there and helps to clarify that questioned cost are not necessarily improper payments.

Next slide. With respect to indirect costs, they just adjusted the way in which we are referring to indirect costs. We are no longer tied to having to refer to indirect cost as facilities and administration costs, which is a term that is really seen more in the higher education context. They still refer to it [as such] with respect to higher education but we're not required to use it, which is a much better way to think about indirect costs because it gives us a much broader understanding of what indirect costs could be.

Next slide. They revised the definition of modified total direct cost in a positive way. Modified total direct cost is the base to which a de minimis rate is applied or could be used as a base when negotiating a federally negotiated indirect cost rate. Within that definition, they basically increased the amount of sub award that you could include in the modified total direct costs to up to $50,000. They also noted in the preamble that they confirmed our understanding that sub-contracts are excluded, are not considered sub awards.

Next slide. They added a definition of participant, which is helpful because participant support costs are costs that are specifically excluded in that modified total direct cost definition. So now they've been very clear that a participant is someone who is receiving services, not anyone who is delivering those services, or overseeing the deliverance of those services. That's an important distinction to make since those costs are excluded from the modified total direct cost. They also provide some examples of who would be considered a participant.

Next slide. They provided a definition of prior approval that emphasizes that you need to have written approval from the federal agency in advance. One thing they did not do, which we asked him to do, which was to provide some examples of what would be considered prior written approval, such as a budget that had been approved or an application. They did note, though, in the preamble that after the fact approval could potentially be granted into that, that that decision is a discretionary one, that a federal agency would need to make within the context of the federal award and would need to exercise reasonable discretion with respect to that decision.

Next slide. They also increased the threshold for when a computing device is considered a supply. This is basically just, in order for a computing device to be considered a supply, it has to have an acquisition cost, that is the lesser of again, the capitalization threshold set in your financial statements, or now $10,000, as opposed to $5,000.

Next slide. Now we're to the general provisions and I'm just going to say a few comments about two specific general provisions. I'm almost hitting my time so I'm going to move a little bit quickly. They removed from the purpose language of the Uniform Guidance reference to federal agencies bearing their fair share of the cost when they are benefiting from that cost. This was language that we would sometimes use at CAPLAW to help make a point with respect to cost allocation plans or indirect cost recovery. That's because it helps to establish this really key principle that federal agencies really do need to bear the burden of those costs if they're going to benefit from them. OMB said that the

removal of that [language] really wasn't intended to change that concept or principle, and they felt that the concept or principle is well covered elsewhere in the Uniform Guidance.

And then lastly, they made a key change to the requirement that recipients/subrecipients and applicants of federal awards have to disclose violations of criminal acts. They are required to do so. The change here is a bit challenging because it broadened the information that you are required to disclose. They broadened it to say credible evidence of violations of criminal acts. What they wanted to do here is make it so that recipient/subrecipients were not having to have deep knowledge about what is a criminal law/[act], such that they would then need to understand whether or not a violation had occurred. Rather, they wanted you to report anything that you thought could have been evidence that a [criminal] law had been violated. They also are requiring you to report that promptly. They're expanding who you're reporting to – the Office of Inspector General, or a pass-through entity if applicable. They did acknowledge that they are broadening this [provision]. As part of that acknowledgement, they have tried to narrow the requirement by saying that the violation has to be in connection with the federal award. This is also language that is in the FAR, which is the Federal Acquisition Rules. I think that was referenced on the prior slide. They've taken that language and put it here now to apply to grants.

All right, I've gone over my time. But I'm going to see if Emily will give me two minutes of her time and see if there were any questions that are worth—not worth—they're all worthy, but that I can maybe quickly answer or address.

[Emily Center-Bregasi, CAPLAW]
There's one on the equipment threshold and the increase to the equipment threshold from $5,000 to $10,000. Does that impact the disposition threshold of $5,000?

[Allison Ma'luf]
It does and Emily's going to talk about that.

[Jonathan Cohen, CAPLAW]
There were also quite a few questions where people in the chat were answering each other. So that's great to see. Love it. Everyone [is] helping out. I think there were a couple of questions that I'll be answering as well related to the de minimis rate.

[Allison]
I see a question about the credible reporting. They're reporting on credible evidence of a violation. And yes, that applies to subrecipients, recipients and applicants. With that, I'm going to turn it over to Emily.

[Emily]
Great, thanks, Allison. Hi everyone, I am now going to turn to talking about the changes to administrative requirements, both pre- and post-federal award. The final rule made some changes to the rules on fixed amount awards. And as many of you know, fixed amount awards are a type of grant where the recipient is provided with a specific amount of funding without regard to actual costs incurred under that federal award. So, it's reducing some of that administrative burden. And instead, accountability then is primarily based on results under that award. In Section 201, subsection (b)(3), this was modified to indicate that these fixed amount awards can generate and use program income. And also relating to this concept of a fixed amount award, Section 333 was modified as well, which raised the threshold for when a federal agency can issue fixed amount awards to $500,000. So, this means that with federal agency approval, a recipient can

then provide sub-awards based on a fixed amount award up to $500,000. I did want to note that initially, the proposed updates to the Uniform Guidance proposed to actually remove this threshold entirely, and to remove prior approval requirements here. But for the final rule, instead of removing it, OMB decided to double the threshold to $500,000. Its reasoning was that prior approval is really a necessary oversight function of federal agencies for subawards, so that's kind of what they gave as their reasoning for instead, increasing this threshold to $500,000.

Changes were also made to the section on notices of funding opportunities, or NOFOs. There were quite a few changes in this section. And these changes reflect the general priorities that Allison spoke about in this update, more generally, to put things in plain language. And in this case, specifically, there was a priority in this section to really make the process of applying for federal awards easier for those that have less experience applying for awards. The updated rule here encourages federal agencies to make the NOFO process more accessible, more comprehensible. And a few of the notable updates to the section are included here on this slide. They include encouraging plain language that's clear and concise, permitting federal agencies to offer pre-application technical assistance. And the section now also includes an executive summary requirement, which basically means that the NOFOs have to include a brief description in plain language, summarizing the goals and objectives of the program, the target audience, the applicants that are eligible, etc. And then I also want to note that there were changes made to the NOFO form and Appendix I to Part 200. All of these changes I'm talking about, and more are reflected there as well.

There was a clarification made to Section 215, as well, which includes subrecipients as well as recipients, which really means and the important piece here is that subrecipients are also subject to the regulations implementing Never Contract With the Enemy. In short, Never Contract With the Enemy is basically an Act that outlines procedures for stopping money from federal contracts and grants from going to people that actively, or organizations that actively, oppose the U.S. I do want to note that OMB mentioned in the in the beginning section that Allison talked about where they're kind of giving their commentary here, they mentioned that this revision was not a policy change. But instead, this was just a clarification. Here was one instance in which they replaced the old term "non-federal entity" with both recipients and subrecipients. So, they didn't intend to make a policy decision here and including subrecipients just changed the terminology.

Initially, the original proposal for these changes had quite a few changes that they were going to make to the section on Telecommunications and Surveillance Equipment. But in the end, actually, this final rule seems to mostly stick by the original existing language that is already in place in the section. So, while there weren't too many significant changes in the section, we just wanted to highlight it for discussion really briefly. In this final rule, OMB emphasized the existing prohibition, which is against purchasing and procuring covered equipment. OMB reiterated that if a recipient is using covered equipment, then the federal award can't be used to pay for that covered equipment. And covered equipment, by the way, means telecommunications equipment that's produced by certain foreign companies. So, for example, certain Chinese companies that have been deemed to be national security threats. OMB confirmed that there's a prohibition that still applies. And it also applies to program income. So, you can't purchase covered equipment with federal dollars or with program income dollars.

Then OMB added an entirely new section here that expands on whistleblower protections. This section covers whistleblower disclosures that are relating to a federal contract or grant. Under the new section, OMB is saying that employees have to reasonably believe that there's evidence of gross mismanagement, gross waste, abuse of authority, substantial and specific danger of public health or safety, or violation of law. So, an employee has to reasonably believe that there's evidence of one of these things in order to come forward as a whistleblower.

OMB made some clarifications to the existing non-discrimination requirements in this section as well, Section 300, specifically as they relate to gender identity and sexual orientation. That's because the case Bostock v. Clayton County was decided by the Supreme Court back in 2020, So, since the last set of revisions to the Uniform Guidance. In this case, the Supreme Court said that Title VII of the Civil Rights Act protects employees against discrimination because of sexuality, sexual orientation, and gender identity. The Uniform Guidance section isn't necessarily imposing new non-discrimination requirements here, but rather, it's explaining to us that agencies have to implement their programs consistent with existing legal requirements. And, basically, OMB is noting here that this recent Supreme Court case is one of those existing legal requirements that federal agencies and pass-through entities must ensure now that the award is administered in a way that follows the law here.

A few clarifications were made with respect to Program Income as well. In this section, OMB clarifies that program income is allowable for and can be used to pay for certain closeout costs, and also that program income is restricted to be used only within the period of performance. So, if your agency generates program income, you can only use that program income within the period of performance of your federal award and can't continue to use it beyond that period at all. This was an area that we had requested some flexibility on, which essentially OMB declined to provide flexibility in this area, saying you can't use this program income beyond the period of performance.

OMB modified the section on Revision of Budget and Program Plans as well, to indicate that changing a subrecipient only requires prior approval if the federal agency or pass-through entity includes that as a requirement in the terms and conditions of the award. OMB also noted that a federal agency or pass-through entity should not require prior approval for a change of the subrecipient, unless the inclusion was the determining factor in the review or eligibility. This means that OMB has really limited when prior approval of a change to a subrecipient should be required to circumstances when inclusion of that sub recipient was really a determining factor in the merit review for that recipient.

And a few additions were made to the section on Real Property. Standards for conducting appraisals of real property were established here. This section has not been amended to require appraisals, per se, but instead it's establishing standards for when those appraisals are required under the federal award. And so the new standards include, for example, that independent appraisers have to be used in order to conduct appraisals, and that a responsible official has to certify that appraisal as well.

Allison also mentioned this a bit, but I'm going to talk about the increases to threshold values here, in the sense of disposition. I know we had a question about that. The threshold values for equipment and supplies were increased in the final rule from $5,000 up to $10,000. What this means is that now, equipment that's valued at $10,000 or less per unit can be retained or sold or disposed of with no further responsibility to the federal government or the pass-through entity. With respect to supplies, what this means is that when there's an inventory of unused supplies over $10,000 in the aggregate at the end of a period of performance, and those supplies aren't needed for any other federal award, then those unused supplies can either be retained or sold.

In the section on [Competition], OMB did make a modification which removed the prohibition on using geographic preference requirements. So, now recipients and subrecipients can use geographic preference requirements when they're conducting procurement. And you can also use scoring mechanisms in procurement if you want to reward bidders who are committing to specific numbers of U.S. jobs and specific compensation and benefits. OMB is permitting these things, not requiring them, with respect to procurement.

More on procurement, OMB also made a clarification in the procurement section to clarify that micro-purchases may be awarded without soliciting competitive price or rate quotes, if the recipient or subrecipient both (1) considers the price reasonable, and (2) maintains documentation to support its conclusion. There was an emphasis on continuing to maintain some sort of documentation to support that.

In Section 321, there's a list of the types of businesses that recipients and subrecipients are encouraged to consider for procurement contracts. The list includes already businesses such as minority businesses and women's businesses, and now the Final Rule has also added veteran-owned businesses onto that list. Again, this isn't a requirement but rather encouragement to contract with these veteran-owned businesses that's been added in the Final Rule.

Similarly, another modification made to encourage but not require, is that recipients and subrecipients are encouraged to purchase, acquire and use products and services that can be reused, refurbished or recycled, and that are sustainable. So, we see them focusing here on encouraging sustainability in this Final Rule.

OMB modified Section 324 to remove the requirement that recipients and subrecipients negotiate profit as a separate element of the price for each contract where there's no price competition. If there's no price competition, now recipients and subrecipients are not required to negotiate profit as a separate element of that price. I will note that OMB did make clear that recipients and subrecipients aren't prohibited from doing so either, it's just no longer expressly required to do so.

OMB clarified in the Final Rule that Federal agencies don't have a direct legal relationship with subrecipients and contractors of pass-through entities. So, we at CAPLAW had commented here that we were a little bit concerned that this would impact CAAs, for example, as subrecipients in seeking recourse where the pass-through entity wasn't really fulfilling its obligations. But OMB kept this change. And in the Final Rule, in response to our comment, basically said that the most they were willing to do here is say that Federal agencies are still responsible for monitoring pass-through entities in their oversight of subrecipients.

At this point, before I hand it off to Jon to cover the remainder of the slides, I want to take a few minutes to pause for questions, and address any questions that came through the chat. I see that the most recent question is what's considered a micro-purchase. The FAR regulations on this, I believe, set a micro-purchase at anything below $10,000. But your agency can also, in certain circumstances, increase that amount. So, it could be a bit above $10,000, I believe it could be up to $50,000 depending on your agency. This is set in the rules and the standard is $10,000 and below for a micro purchase.

[Allison]
That's right, and you can increase it up to $50,000, if you meet certain factors that are listed in the Uniform Guidance, and then there's also the option to even go over $50,000, I believe. Over the $50,000 mark does require a level of approval.

There were some other questions that maybe we can try to get to so I'll do the best I can. Someone asks a question about how would we/[they] know if the vendor manufacturer is under the covered equipment stipulation. I think that had to do with the Never Contracting With the Enemy provisions. If you look in the Uniform Guidance, they do actually list the different companies that are subject to that, and reference the federal guidance on that as well.

[Emily]
OMB, I believe, said in their commentary that this would include referencing SAM.gov, for example. That would be a way to check this.

[Allison]
Thank you, Emily. Then does the whistleblower section include recipients and subrecipients of federal grants? It does, it includes both.

With the guidance around sexual orientation, did they distinguish between gender and gender expression? Did they, Emily?

[Emily]
So, I will say essentially, to answer any question about that, it's really about what the Supreme Court decided, which OMB didn't really get into. I will say, more so they're just saying that you need to follow what the law is. But, I do believe that the Supreme Court decision got into gender expression. I know that it dealt with transgender individuals and that was a big part of that Supreme Court decision. They will say that OMB is not necessarily making—and they tried to make it very clear in their commentary—that they are not making, any decisions with respect to non-discrimination in those areas and sort of pointing to that Supreme Court case instead.

[Allison]
Someone asked, we are in the process of updating our financial policies and procedures, can we incorporate the new guidelines into the policy that would be effective immediately? The answer is only if your federal funding sources have permitted you to adopt the changes before they are slated to go into effect. They are slated to go into effect on October 1, 2024. They will not be effective until that date, unless your federal funding source has specifically adopted them and told you that you could follow them prior to that day. If they've done so as of June 21, or thereafter. There will be no early adoption before June 21.

Then maybe we could take one more question. Someone said, then what do we do with program income after the period of performance? Well, do not fear, the Uniform Guidance addresses [this], has a specific provision about what happens to program income after the period of performance. Unless there's any specific rule or requirement within that federal award that you receive that would speak to program income generated after the period of performance, that money is yours and is not subject to government restrictions.

Okay, with that, I'm going to have to pause and give Jon a chance to talk about the remainder of the changes. Go ahead, Jon.

[Jon]
Thank you. Thanks, Allison. And thank you, Emily. I'm going to talk about one more thing in Subpart D, and then get on to the cost principles and the audit requirements as well. So we'll go as quickly as we can. I know, they'll probably be a lot of questions, especially on the cost principle. So first slide you see there is with regard to some clarification that was included in the final rule around close out and essentially saying that recipients must still submit a final financial report, even when they don't necessarily have a final indirect cost rate. I know that there have been quite a few delays around indirect cost rates and finalization of those around the network. And so OMB is clarifying you still have to submit those reports, even if you don't have that final rate. And then when you get that final rate, they also clarified that you'll need to file an additional final report or submit that when that rate has been finalized. So there's just some clarification there from OMB.

Now, we'll get on to the cost principles and talk you through some of these changes. On the next slide, you'll see some key updates that we've just included here as sort of a table of contents or a key of where those changes are. And we'll be touching on these as we go into the slides. But hopefully that's helpful as a reference point. On the next slide, there is some new piece of this regulation on the factors affecting the allowability of costs. And this really relates to administrative closeout costs. And essentially, OMB is now saying that those types of costs may be incurred up until the due date of the final award. They've also added guidance here that those costs have to be liquidated prior to the due date of the final reports. So we have to both incur those and liquidate them prior to that date. And then they should be charged to the final budget period of the award, unless otherwise specified by the federal agency. I think this is good language that they've included here to basically recognize that those administrative closeout costs are necessary to the performance of of the awards to which they relate. And, and so just be aware that OMB has now recognized those closeout can now be charged to the award in the way that they're laid out in the guidance.

Next slide. Allison was talking about, you know, those four main reasons why these changes are, that really guided the changes that they're making here. And one of those was to reduce agency recipient burden. And so with that in mind, they've gone through and, and removed some of the prior written approval requirements in the Uniform Guidance, and they sort of laid that out and talked about what sections those were in 200.407. You can see here, some certain direct costs. These are direct costs really related to administrative and clerical salaries, those no longer require a prior written approval. Some entertainment costs no longer require it. Memberships, you see there participants support costs as well, which Allison talked a bit about. Selling and marketing costs and taxes. They also with respect to real property and equipment costs removed prior written approval that might be required for certain uses and dispositions of those. However, keep in mind that there is in the cost principles mention of prior written approval to purchase equipment and other capital expenditures, which still requires prior written approval. So I just wanted to draw that distinction there as well. Now that prior written approval has been taken away, that doesn't mean that your agencies can go out there and do whatever they want. They still have to follow the cost principles and make sure that they're benefiting the awards and things like that during the time period of the the budget period. But just know that some of those things that may have held up processes before, through prior approval, are now taken away in these areas.

So quite a few important changes were made with regard to indirect costs. And I know there's been several questions already about this and a lot of interest in it. First one I'll mention here is something that was added by OMB, that essentially recipients and subrecipients may now notify OMB of any disputes with federal agencies regarding the application of a federally negotiated indirect cost rate. And so great to know that agencies are recipients and subrecipients can now do that. We actually asked in our comments for OMB to maybe lay out what would then happen, and was there a process or procedure that would then happen by OMB after that type of notification, to see what they would essentially do, once they receive it. They declined in their preamble to really provide additional guidance or additional information on what that would look like, and did note there that OMB would not serve as an arbiter between recipients and subrecipients, and the federal agency. And so there was that guidance, so know that you can notify them. And then what happens next is a little bit uncertain now, but there it is.

So, OMB also clarified in section 414, that pass-through entities must accept all federally negotiated indirect cost rates for subrecipients. That was the understanding prior to the changes, however, now they've just more explicitly stated it in this section. So good to know, and good to be able to point to for any agencies that might have passed-through entities that are not honoring those federally negotiated indirect cost rates. And come here and say here's where OMB says you must do that now.

I think this is one of the one of the most talked about highlights of the changes to the Uniform Guidance this time around. Basically, OMB has upped the de minimis indirect cost rate. And so they are now saying that subrecipients can now basically elect a de minimis rate of up to 15% of modified total direct costs. And that's now available to all non-federal entities that don't have a current rate. This is where one of those differences between the HHS version of the new Uniform Guidance that they never updated in 2020, and this current version comes in, because in the HHS version, basically it says that any non-federal entity that has ever had a federal negotiated indirect cost rate cannot elect to use the de minimis rate. You see how that might differ from the language that's in there now. And that's in this current version, any non-federal entity that does not have a current rate can elect to use the de minimis rate. And so that's one of those changes that hopefully gets addressed if and when HHS adopts these changes as well.

A couple things to point out here. Again, this is 15% of modified total direct costs. And Alison mentioned where the changes to MTDC have come in. And there's a little bit different definition there. Recipients and subrecipients also basically decide the percentage. You notice the language "up to" in the preamble that we mentioned, there was a bit of discussion about, quote, unquote, "up to" and what that meant. And basically, OMB, clarified in the preamble that it was up to the recipients and subrecipients to determine if they wanted to elect to take a percentage up to 15% or lower than 15%. It was not up to a federal agency or pass-through entity whether or not an agency would take a lower percentage than 15%. The one caveat to that if there is a statute or regulation that puts a cap essentially on administrative costs, then of course that would basically trump what's in the Uniform Guidance. And, you know, the agency would only be allowed to recover whatever that particular cap or administrative cap is, in that situation. Without getting too much into it, the agency would still, if it elects de minimis, would still charge 15% across its awards, it would just have to make up the difference between 15% and that administrative cap with unrestricted funding. So similar with other years with this iteration of the de minimis rate, there's still no documentation required, and it can be used indefinitely. So that's still in there as well.

So we're going to hopefully quickly run through some of the specific items of costs that are included in the changes that were included there and go quickly through these. OMB clarified that program outreach, that's included in advertising and public relations costs that are allowable, they just basically provide an example and it includes recruiting project participants. So you know, that could have an impact on CAAs out there who might be engaged in that work. They now just have extra support for those costs being allowable. In the compensation fringe benefits section, though, is an addition here to the guidance. So when agencies are using a cash basis of accounting, payments for unused leave when an employee retires, or terminates employment are allowable in the year of payment, and must be allocated as a general administrative expense to all activities. That bolded underlined sentence there is what's been added. And so just know, if these are costs that your agency incurs, you basically have to treat them as a general administrative expense, and allocate them to all activities. And then for the federal awards, at least, you can recover those if you do that.

Conferences—as well—has clarification provided in that section. Language is removed, essentially, that specified a particular type of gathering that's considered a conference. So meetings, retreats, seminars had been there prior, but that's been taken out, probably to give a little bit more flexibility and broaden what that could mean. There's also been a broadening of allowable conference costs as well in this new version of the guidance. It's no longer only cost paid by the recipient or subrecipient as a quote unquote, "sponsor or host". It includes things like attendee fees. So the costs of having people attend for your organization are now included. And that added cost associated with providing not just identifying available dependent care resources for participants. So some changes made there.

Entertainment costs, there's been some clarification OMB included prizes or challenges as allowable entertainment costs. Now, this has previously been actually in Subpart B, [which] had talked about prizes in in the prior version of Uniform Guidance. But now they've included it in this in the specific items of cost, which I think makes sense. But still keep in mind too, your prizes still have to have a specific and direct programmatic purpose to be included, and to be covered by the federal award.

There were some additions made to the organization's costs section as well. I have two of them here on the next two slides on this one. OMB has basically specified that it is unallowable to use federal funding for activities undertaken to basically persuade employees of a recipient or sub recipient or any other entity to exercise or not exercise, any type of organizing collective bargaining activities. And so you know, [they're] really talking about unionization activities there. You can't use federal funds to really persuade employees about that. This is something that for those of you with Head Start programs, you might be aware of similar language. This is similar to language that is in the Head Start Act. And so hopefully many of you are already aware of this prohibition, but OMB included in the Uniform Guidance here this time around. With organization costs, as well, they've added a new subsection related to data and evaluation and costs related to data and evaluation now being specifically specified as allowable. And so you can see their data costs. They've included a number of them as examples, but have also pointed out this is not an exhaustive list of what could be a data cost, but you see things there. Cost studies associated with gathering, storing, analyzing data, to help improve the programs are specifically allowable. And then evaluation costs there as well. Again, they did something similar, they included some examples. But these aren't, this isn't an exhaustive list in the Uniform Guidance now, things like evidence reviews, evaluation planning, those types of things to help evaluate your programs are specified as allowable under the organization costs section.

Allison mentioned the change in the definition of participant support costs in the items of cost was updated. There's now some new pieces here. You may remember when I talked about prior written approval, there's no longer any prior written approval requirements for participant support costs. However, your organizations will have to document those costs, in written policies and procedures on how you're going to do that. We had commented to OMB about possibly providing a little bit of guidance about what those policies and procedures could look like because that could, you know—in our thinking—could be a pretty laborious effort on the part of organizations to meet this requirement. They yeclined to do so. But just know this requirement is now there. And you won't have to do prior approval, but you do need to come up with some kind of policies and procedures for documenting these types of costs.

So termination and standard closeout costs, the new section, or new pieces added to this. Administrative costs associated with closeout activities are allowable, and this includes indirect costs in the examples of allowable administrative closure costs. OMB noted these can be incurred until the due date of the final report. So similar to what I was mentioning before about these types of costs and closeout, and good that they're now recognizing these types of costs.

We have a couple of minutes, I'll run quickly through the changes to the single audit section and then take any questions that are out there. Just similar setup here, a couple examples here of key updates. They have updated and included a new single audit threshold. So now expenditures of federal funds that would trigger a single audit starts at $1 million. And so that threshold has been increased. And when you're looking at the timeframe, there you're thinking about the timeframe within which federal funds must be expended is the non-federal entities fiscal year. And then some interesting and helpful clarification provided in the Report Submission section with regard to audits, saying that a cognizant agency for audit or the oversight agency for audit may extend the due date for single audit submissions of a non-federal entity. And what this did really was bring this in line with the Single Audit Act. And so we've received

questions before about, you know, we're at the end of our nine months, can we get an extension? How do we do that? And, you know, prior to that without this guidance, a little bit uncertain. But now with this, agencies can essentially request and submit to their cognizant agency for audit or request to extend that deadline, and then could possibly do it. And they'll base that decision on whether the nine-month timeframe that's in place poses an undue burden to an entity. So know that that is in there now as well.

Happy to take any questions. I know we have a couple of minutes.

[Allison]
We're happy to stay on a little longer to try to answer some more of these questions. There are quite a few questions that are asking about election of the de minimis rate. Just to be clear, there is no prohibition, around electing the de minimis rate and then switching back to another form of cost recovery. If you have been recovering your costs through direct cost allocation plans, and you want to try the de minimis rate, you can do that. And if you decide to, I believe, if you decide to no longer use the de minimis rate, and you want to switch back to another form of cost recovery, you can. Jon, I don't know if you've got any other thoughts on that.

[Jonathan]
No, I think that that was basically what I would say about that. I think, yeah, you definitely can go back once you do it. I think, with regard to electing the de minimis if you have a current federally negotiated indirect cost rate or current negotiated or cost rate. How do you go about doing that? I think, you know, the process for that could be either talk to your federal agency about whether or not you can switch, switch to that immediately or you just wait for that negotiated indirect cost rate to basically expire, and then you elected de minimis after that.

[Allison]
It's quite likely—if you are in your negotiated rate, you're using it now—you're likely going to have to wait for it to expire, because that will be complicating with respect to assessing the recovery of cost with the different funding sources that you're using, but it's always worth having a conversation with your cognizant agency to see what are those possibilities. That's all the information we have on that to date.

Someone, or a couple of people, have been asking about HHS's adoption of the Uniform Guidance, a reminder of when it can be adopted early. The Uniform Guidance was published in the Federal Register on April 22. OMB explained that there could be no early adoption of the Uniform Guidance until 60 days after that publication date and so that date is June 21, 2022. Then, also for early adoption, the federal agency has to permit you to early adopt. With respect to HHS's adoption, we have not heard of anything, but by May 15, all federal agencies are required to submit to the Office of Management and Budget, their plan for adopting and implementing the Uniform Guidance. So we should know, by that time, what all of the plans are with respect to adoption. It is likely that HHS will do as they have done previously, which is to fully adopt the Uniform Guidance in a different codification. The Uniform Guidance is codified at 2 CFR Part 200. HHS is the only federal agency that has recodified it at 45 CFR Part 75. It's likely that they will do that, again. When they do that, they will adopt it as it is, in its current form. The current version, the final version of the Uniform Guidance that we are working with now does include those 2020 revisions in it. Those 2020 revisions will now be adopted by HHS, once they adopt the final version. Now, when a federal agency adopts Uniform Guidance, they are permitted at that time to adopt it with exceptions. There could be some slight differences, as there is now, between the HHS version and OMB version.

Some of you have been asking a lot about the administrative cost caps. Those are driven by your federal funding source legislation. Those laws and acts that establish the program and allow it to be funded by Congress. Any kind of funding source law or regulation will override the Uniform Guidance. Federal agencies, when they are creating their rules, or when Congress is putting acts in place, they do reference the Uniform Guidance, they're trying not to do too much additional than what the Uniform Guidance currently provides. But sometimes that happens. With admin caps, the way we've always understood it is the way Jon explained it—is if you elect a rate, you do have to apply it consistently whether that's a negotiated rate or a de minimis rate. That means that, if there is an admin cap, you can only recover using that rate up to that admin cap. So anything over that admin cap would have to be funded out of an unrestricted source, but you still have to apply that right across all your programs consistently.

Someone asked if there are differences in cost principles, which one do we follow? Let us hope that all the federal agencies adopt [the] Uniform Guidance as is. If there are differences, they will be specific to the funding source most likely, and you will need to look to that funding source. There have always been exceptions and differences, HHS has [its] codification and the[re] is 2 CFR Part 200. Any exception that a federal agency makes with respect to its application of the Uniform Guidance, we just try to navigate all those differences as best we can. Luckily, they're usually not too significant. And with respect to how you handle that as an agency, the best practice orlikely, the easiest way to handle it, I should say, is to always go with the most restrictive of the different rules. But there might be ways to navigate it so that you can take advantage of some flexibility that's there.

[Jon]
I'll just add, there's a question about any update on when the final rule will be published in the Federal Register, just want to clarify, what we've been talking about is the final rule that has been published already. And just you know, it's that effective date Allison was just talking about is the one that that's going to be either that October date, or prior federal agencies choose to adopt a date prior to that.

[Allison]
Right. It was published in the Federal Register on April 22. Sixty days after that, June 21, is the date that marks when a federal agency could early adopt. The rule will go into effect, the effective date of that rule, if it currently exists, it will go into effect, when you have to comply with it, when an agency has to start applying it to its awards, is October 1. My guess is based on the application of prior year revisions that have been adopted by Office of Management and Budget, and then federal agencies, that they will start applying it [after] the new program year starts. So, if it's a new budget year, it'll probably be adopted as of that budget year. That's usually how they have allowed it to be adopted by the recipients and subrecipients of that award. Let me see, are there other questions that would be good for us to try to tackle?

[Jon]
[There] was a question about prizes. We've talked about prizes in the context of entertainment costs. Do prizes include door prizes for program participants, attending agency sponsored events? I think the key thing to think about with regard to the allowability of prizes is if they have a specific direct programmatic purpose. And so you need to be able to tie what you're providing those prizes for to a direct programmatic purpose that's included in the federal award. Just keep that in mind when you're thinking about what you're using prizes for. I'll just maybe leave it there.

[Allison]
Were there any other questions? Just going back.

[Emily]
I noticed that a few people asked about, going back to the de minimis topic, if de minimis is adopted, can an agency then return thereafter to direct costing method at a later date?

[Allison]
Yes, and I just addressed that a little bit earlier. As far as we know, you can switch back to direct cost allocation plan, after using the de minimis rate, if you so choose. We don't know of any prohibition against moving in between the different cost recovery options. You would need to talk to your federal cognizant agency of indirect costs if you've got a federally negotiated rate with respect to that rate ending. Then, once that rate ends, if you no longer have a current rate, your options are the de minimis rate or direct cost allocation, and then you can decide which way to go. If you decide [to] no longer use the de minimis rate, it's our understanding that you could choose not to, and then switch over to a direct cost allocation plan. That's our understanding at this time.

I'm just looking to see if there's any other anything else. Somebody had asked about Head Start, whether or not Head Start equipment could be disposed of pursuant to that $10,000 threshold. Head Start would use HHS's codification of the Uniform Guidance. As long as HHS codifies it in the form that it is in now, then that $10,000 threshold should apply. I'm not aware of any specific thresholds in/around equipment in [the] Head Start [Program] Performance Standards, that would override what the Uniform Guidance has. So in that sense, the answer is a tentative yes. If all those activities happen with respect to adoption and the Head Start [Program] Performance Standards not changing [the Uniform Guidance] with regards to their not addressing equipment.

[Emily]
I think you all might have addressed this already, but it seems like there might still be a little bit of confusion around the de minimis rate. Is it still 10%? Is it now, you know, 10% but up to 15%? I didn't know if you wanted to address that once more.

[Allison]
Oh, go ahead, Jon.

[Jon]
I was just going say so the the new de minimis rate will be 15%. Once these become effective, subrecipients or recipients can basically choose if they want to have a de minimis rate lower than 15%. So they can go up to 15%. If that works better for their CAA. The pass-through entity, the federal agency cannot force them to take a de minimis rate lower than 15%, however. That decision is up to the subrecipient whether or not they want to do that. So that will be where that. 10% is what we've had prior to these changes, and so that's where that change is - it's going to be 15%.

[Allison Ma'luf]
I think that that is, oh, they're still coming in. I think that's mostly someone's asking about equipment disposition with Head Start, [do] they recommend it was best practice to always request prior approval, regardless of the—I don't know what, NBV is, sorry, that acronym?—Funding sources could have different rules with respect to their own dollars [that are] used to purchase items. I'm not aware of any prior approval request with respect to equipment that falls below that $10,000 threshold level. It's possible that if there are more dollars spent, you would need to get approval, or there is approval required in the Uniform Guidance if it's higher, but you just need to make sure that you comply with your funding source rules.

Someone asked: did I hear right that that a sub recipient agreement funded entirely with funds awarded to the recipient prior to October 1 would use terms prior to the recent changes? That is correct until October 1, the current iteration of the Uniform Guidance is what controls - unless the federal funding source allows for early adoption of these final rules. The earliest that a federal funding source could allow for early adoption is June 21. That [is] 60 days after the final rule was published in the Federal Register, which is April 22, 2024.

Someone asked how you would know if, as a subrecipient, if there has been early adoption? My understanding is the federal agencies in those implementation memos on May 15, will likely indicate what their plans are with respect to implementation. The hope is that in those implementation plans that are going to be out by next Wednesday—fingers crossed—that they will say in there, whether or not they're going to early adopt, and/or allow their recipients to early adopt/sub recipients to early adopt. Fingers crossed, they should also map out what the implementation will be of the Uniform Guidance after October 1, 2024, which is when it officially goes into effect.

We are now 15 minutes past our allotted time. So, to be respectful of everyone's time, I think we will press pause. We are so happy that you inputted all these comments and questions into the webinar chat, because they really help us understand where we need to be as clear as possible and where we need to likely put out some additional information and try to help address and clarify any information that we are putting out there.

With that, I'm going to let you know that this webinar has been recorded. We will have a transcript and the slides available, likely, next week. There will be a feedback survey, please respond to it. Please give us your feedback. You will hear more from us and see more from us around this topic so don't think that this is the last webinar we're going to do. There's going to be more and, as always, you can contact us directly with your questions and we will do our best to assist you. With that I'm going to, on behalf of Jon and Emily, say thank you for joining us today and we look forward to navigating this new rule with you as we move into our summer and to the fall. Thanks everybody. Bye.

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