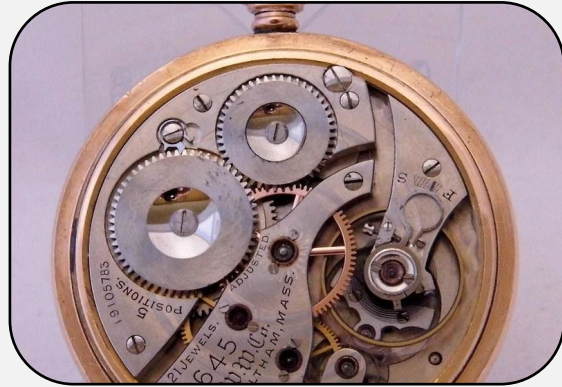


# Alice and the Terms & Conditions Rabbit Hole

## A Terms & Conditions Adventure Story

David Schultz, University of Houston  
Carrie Chesbro, Stanford University

# Agenda



## The White Rabbit

- Our Goals in the Terms & Conditions Story



## Who Are You?

- Sources of Terms & Conditions



## Painting the Roses Red

- Planning, Monitoring, and Prior Approvals



## Taller or Shorter?

- Conflicting Terms & Conditions



## Tweedle Dee & Tweedle Dum

- Cautionary Tales



## Mad Hatter

- Curious Words of Wisdom



# The White Rabbit

GOALS

# The White Rabbit



Compliance Requirements

Map for Award Administration

# The White Rabbit; Types of Federal Awards

## Grant

- Assistance Funding
- 2 CFR 200
- Limited Sponsor Involvement

## Cooperative Agreement

- Assistance Funding
- 2 CFR 200
- Substantial Sponsor Involvement

## Contract

- Procurement Action
- FAR, Other
- Sponsor Involvement Varies

# Cheshire Cat Moment

- Other Transaction Authority
- Special or Emergency Funding
- Non-Federal Sponsors
- ??????





# Who Are You?

SOURCE DOCUMENTATION

# Who Are You? Agreement Review

---

WHAT WAS FUNDED?

---

DATES OF PERFORMANCE

---

AMOUNT FUNDED

---

CARRYFORWARD

---

PRE-AWARD SPENDING

---

REPORTING

---

BILLING

---

METHOD FOR REQUESTING CHANGES

---

ALLOWABLE COSTS

---

CLOSEOUT REQUIREMENTS



Who Are You?  
Extended  
Review

---

Funding Opportunity

---

Legislative Rules

---

Proposal Documents

---

Award Document

---

Agency Guidelines

---

Uniform Guidance



Who Are You?  
Complete  
Review

---

Incorporated T&Cs

---

Historic Documentation

---

Correspondence

---

Required Reports

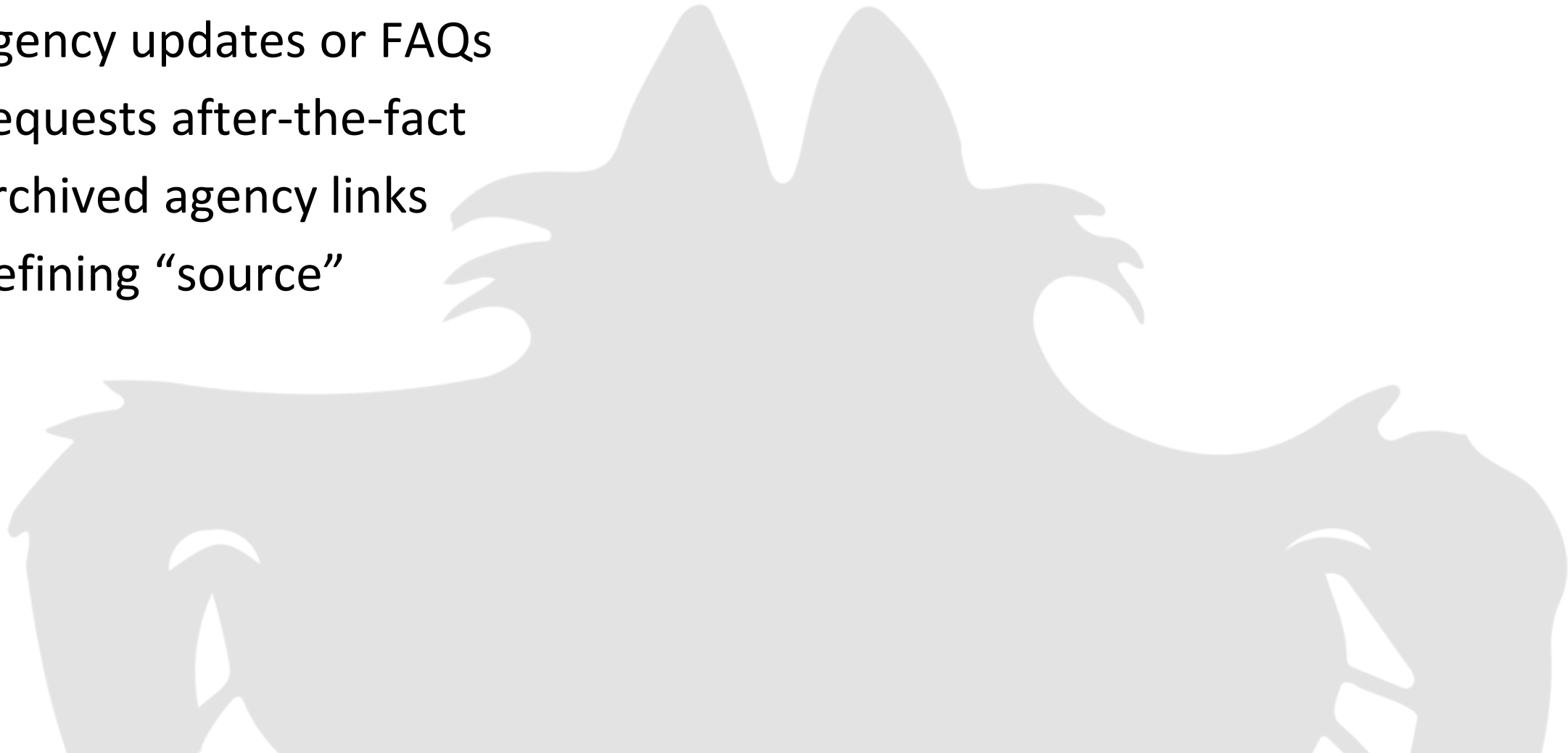
---

System of Record

---

# Cheshire Cat Moment

- Agency updates or FAQs
- Requests after-the-fact
- Archived agency links
- Defining “source”





# Painting the Roses Red

PLANNING, MONITORING, & PRIOR APPROVALS



# Painting the Roses Red

# Planning & Monitoring

Know the  
Award

Routine  
Financial  
Reviews

Budget  
Projections

Technical  
Check-Ins

Strong  
Central/Dept  
Communication

Apprise PI of  
Prior Approval  
Requirements



Painting the  
Roses Red

Prior  
Approvals

Scope of  
Work

Budget  
Changes

Personnel  
Changes

Effort  
Changes

Performance  
Period

Participant  
Support

Equipment  
Purchases

Foreign  
Travel

Subawards

# NIH Award Notice Excerpt

This award is based on the **application** submitted to, and as approved by, NIH on the above-titled project and is subject to the terms and conditions incorporated either directly or by reference in the following:

- a. The grant program **legislation** and program regulation cited in this Notice of Award.
- b. Conditions on activities and expenditure of funds in other statutory requirements, such as those included in appropriations acts.
- c. **45 CFR Part 75.**
- d. National Policy Requirements and all other requirements described in the **NIH Grants Policy Statement**, including addenda in effect as of the beginning date of the budget period.
- e. **Federal Award Performance Goals**. As required by the periodic report in the RPPR or in the final progress report when applicable.
- f. This award notice, **INCLUDING THE TERMS AND CONDITIONS CITED BELOW.**

(See NIH Home Page at <http://grants.nih.gov/grants/policy/awardconditions.htm> for certain references cited above.)

# NIH Grants Policy Excerpt

## Prior Approval Section Header

### 8.1.2 Prior Approval Requirements

This section describes the activities and/or expenditures that require NIH **prior approval**. NIH **prior approval** requirements are summarized in Exhibit 7, which is provided for guidance only. For the **prior approval** requirements specified in the exhibit, approval is required whether or not the change has a budgetary impact. The circumstances under which **prior approval** is required also are summarized in the exhibit.

Recipients also should consult Subpart IIB for **prior approval** requirements that apply to specific mechanisms, types of grants, and types of recipients.

Any question about the need for **prior approval** for an activity or cost under a specific NIH award should be directed to the GMO.

Exhibit 7. Summary of Actions Requiring NIH Prior Approval

NIH prior approval is required for	Under the following circumstances
Additional no-cost extension, extension greater than 12 months, or late notification of initial no-cost extension (8.1.2.1)	All instances.



# Painting the Roses Red

## Research Terms & Conditions Tool

### Research Terms and Conditions Appendix A Prior Approval Matrix November 12, 2020

	Reference	RTC Overlay	NSF	DOE	NIH	USDA NIFA	DOC	NASA	DHS-GFAD	DHS-FEMA
<b>Prior Written Approval (prior approval)*</b>	200.407									
<b>Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts</b>	200.407(a)									
Changes in principal investigator (PI), project leader, project partner, or scope of effort.	200.201(b)(5)	Required	Required	Required	Required	Required	Required	Required	Required	Required
<b>Cost sharing or matching</b>	200.407(b)									
Use of unrecovered indirect costs, including indirect costs on cost sharing or matching.	200.306(c)	Waived	Waived	Waived	Waived	Waived <sup>15</sup>	Waived	Waived	Required	Waived
Use of current fair market value to determine the value of non-Federal entity contributions of services and donations of property for the purposes of cost sharing or matching.	200.306(d)(2)	Waived	Waived	Waived	Waived	Waived	Waived	Waived	Waived	Waived
Costs of the fair market value of equipment or other capital assets and fair rental charges for land when the Federal award supports activities that require use of equipment, buildings or land.	200.306(h)(2)	Required	Required	Required	Required	Required	Required	Required	Required	Required
<b>Program Income</b>	200.407(c)									
Use of program income during the period of performance (additive method).	200.307(e)(2)	Waived	Waived	Waived	Waived <sup>5</sup>	Waived	Waived	Waived <sup>20</sup>	Waived	Waived
<b>Revision of budget and program plans</b>	200.407(d)									
Change in the scope or the objective of the project or program.	200.308(c)(1)	Required	Required	Required	Required	Required	Required	Required	Required	Required
Change in a key person specified in the application or Federal award.	200.308(c)(2)	Required	Required <sup>14</sup>	Required	Required	Required	Required	Required	Required	Required
Disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project by the approved Project Director (PD) or PI.	200.308(c)(3)	Required	Required <sup>14</sup>	Required	Required <sup>6</sup>	Required	Required	Required <sup>21</sup>	Required	Required
Inclusion, unless waived, of costs that require prior approval in accordance with Subpart E -- Cost Principles.	200.308(c)(4)	Required	Waived <sup>1</sup>	Required	Waived <sup>7</sup>	Required	Required	Required	Required	Required
Transfer of funds budgeted for participant support costs to other categories of expense.	200.308(c)(5)	Required	Required <sup>2</sup>	Required	Waived <sup>8</sup>	Required	Required	Required	Required	Required
Subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in 200.333. This provision does not apply to the acquisition of supplies, material, equipment or general support services.	200.308(c)(6)	Required	Required	Required	Waived <sup>9</sup>	Waived <sup>16</sup>	Required	Required	Required	Required
Changes in the approved cost-sharing or matching provided by the non-Federal entity.	200.308(c)(7)	Required	Required	Required	Required	Waived <sup>17</sup>	Required	Required	Required	Required
Need for additional Federal funds to complete the project.	200.308(c)(8)	Required	Required	Required	Required	Required	Required	Required	Required	Required
Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award.	200.308(e)(1)	Waived	Waived	Waived	Waived	Waived	Waived	Waived	Required	Waived
Incur project costs more than 90 calendar days pre-award.	200.308(e)(1)	Required	Required	Required	Required	Required	Required	Required	Required	Required
Incur a cost exceeding a period of performance by more than 2 months.	200.308(e)(2)	Required	Waived	Waived	Waived	Waived	Waived	Waived	Required	Required



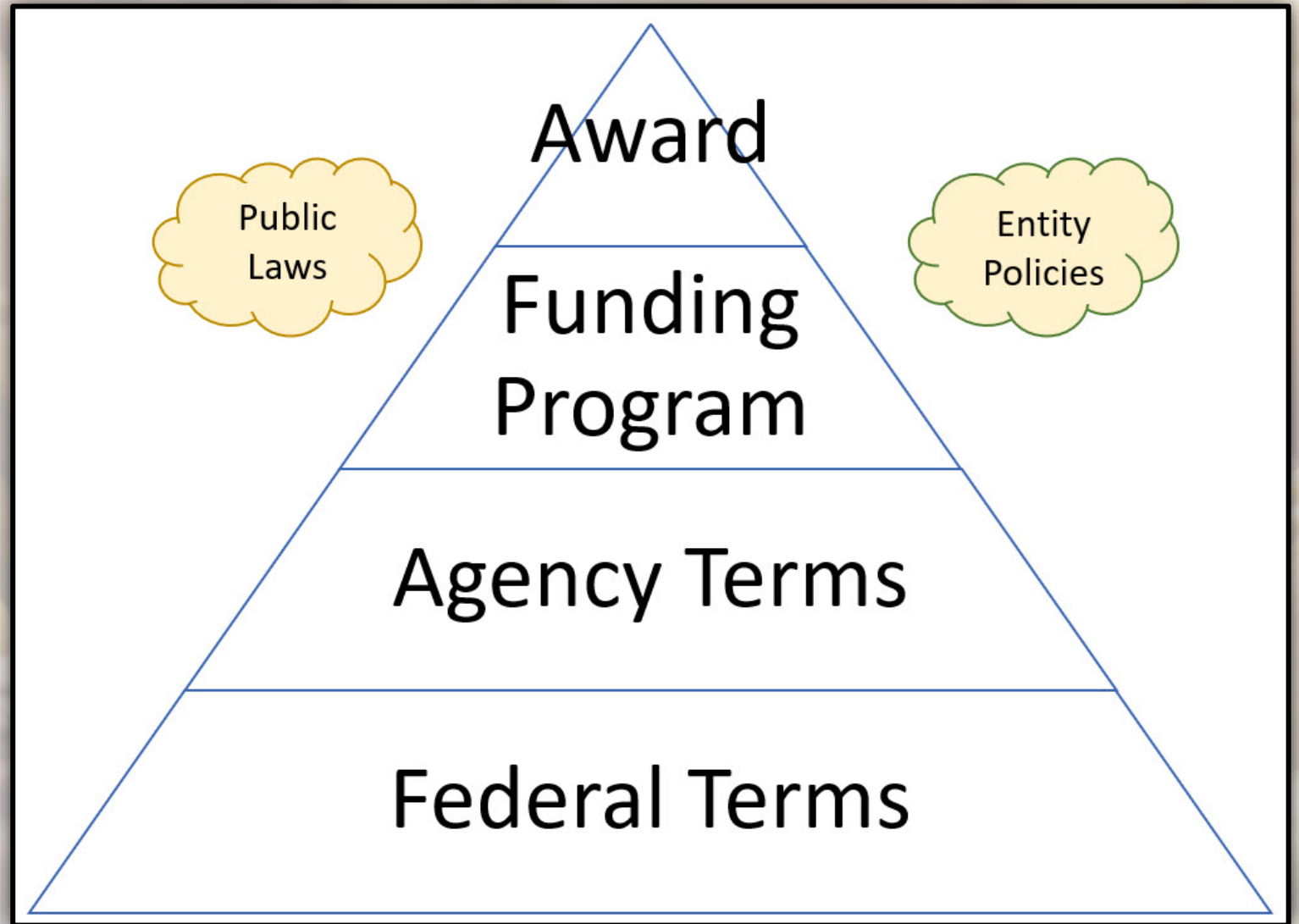
# Cheshire Cat Moment

- Award-Specific Budget Limitations
- Special Funding Programs
- Pass-Thru Entity Terms
- ??????

# Taller or Shorter?

CONFLICTING TERMS

Taller or  
Shorter?



# Taller or Shorter?

## Conflicting Terms Considerations

- Is the most restrictive term within the award-specific terms?
- If the most restrictive term is at a higher level, is there specific authority within the notice of award?
- Is the conflicting term at the institutional level? Is there a process to receive an exception from the institution if the cost meets all sponsor costing requirements?
- Does your institution have a method to request approval from leadership? And a way to document the process and decision?
- Is it appropriate to contact the sponsor for guidance or approval? Is there a preferred contact method required by the sponsor or by your institutional procedures?
- If unable to proceed, is the scope of work impacted? How? Next Steps?

# Taller or Shorter?

## Conflicting Terms Considerations

- Do we have the systems and/or processes to meet the non-standard requirements?
- How have we approached similar circumstances or awards in the past?
- Do we have audit history to pull from?
- Who is the ultimate authority at the institution on how to interpret conflicting terms and at what point would an award no longer be considered?
- Is a decision based on other factors that may or may not change the institutions position or risk tolerance?
- Who is financially responsible for taking our chances and how is that documented?

# Cheshire Cat Moment

- Change in leadership
- Updated desk procedures
- Policy changes
- State law?



An illustration of two identical, large, pink-skinned characters with red hair, wearing red suits and blue bowties. They are both pointing upwards with their right index fingers. The background is dark with some yellow and red shapes. The entire scene is framed by a white double-line border.

# Tweedle Dee & Tweedle Dum

CAUTIONARY TALES & RESOURCES

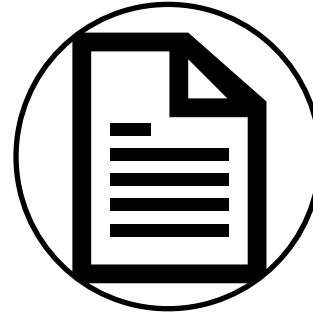


# Tweedle Dee & Tweedle Dum



## Industry Standards

- Web Resources
- Policy & Regulation Updates
- Consultant Review



## Audit Reports

- Current Trends
- Compliance Planning



## Experts & Colleagues

- NCURA
- FDP
- Network



10 / 6

# Mad Hatter

CURIOUS WORDS OF WISDOM

# Mad Hatter's Tea Recommendations



Consider flow-downs to subrecipients, and impact of negotiated terms on subs



Are standard requirements covered in standard procedures? Will special handling be required?



Follow the rabbit down the rabbit hole when reviewing award notices, plan for success.



Roses should be red from the start, not after-the-fact. Be aware of prior approvals and monitor for them.



Utilize available tools and resources; reach out to others for support and guidance as needed.

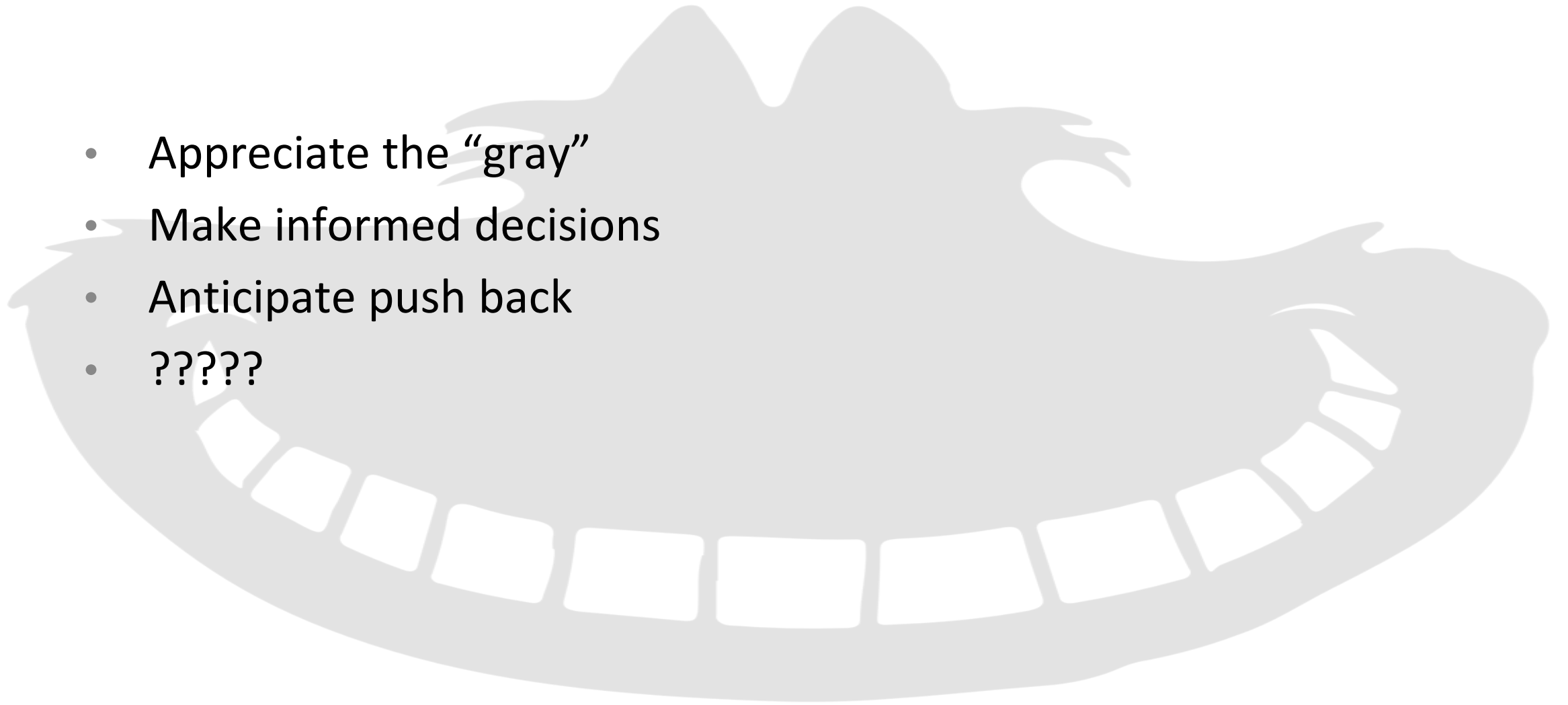


# Mad Hatter's Tea - The Recipe Will Change

- Nothing is absolute, so anticipate changes
- Institutional risk is a reflection of prior audit history
- Policy positions evolve over time and may not be fully mature
- The federal government will always find creative ways to shift responsibilities to institutions of higher education (IHEs)
- Review your internal tools and documentation often
- Ensure that your policies are not conflicting or absolute
- Interpretation is learned over time and requires good mentoring

# Cheshire Cat Moment

- Appreciate the “gray”
- Make informed decisions
- Anticipate push back
- ??????





Questions?

**STAY WITH US!**

**AFTER THE SHOW**

---

Will begin 5 minutes after the  
conclusion of the webinar