COUNCIL ON GOVERNMENTAL RELATIONS
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December 18, 2015

TO: COGR Membership

FROM: COGR Staff

SUBJECT: December 2015 Update

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NIH and Grant Closeouts: Update on COGR Engagement

The interrelated topics of the transition to NIH subaccounting (i.e., award-by-award accounting), the new 120-day grant closeout model at NIH, and the functionality of the Payment Management System (PMS) remain important COGR agenda items. The final transition to NIH subaccounting appears to be proceeding smoothly (see NIH Notice Number: NOT-OD-15-105 (May 28, 2015); *Reminder of Timeline for Administrative Changes to NIH Domestic Awards to Transition to Payment Management System Subaccounts*). However, we encourage COGR members to contact COGR staff if/when concerns and/or operational issues arise.

The major challenge now is implementation of the new, 120-day NIH Grant Closeout policy. As described in section 8.6 CLOSEOUT of the 2015 NIH Grants Policy Statement: *Recipients must submit a final FFR, final progress report, and Final Invention Statement and Certification within 120 calendar days of the end of the period of performance (project period). The reports become overdue the day after the 120 calendar day period ends.*

At issue is the complex reconciliation between the Federal Financial Report (FFR, expenditures report, submitted to NIH Commons) and the Federal Cash Transaction Report (FCTR, cash report, submitted to PMS). While the reconciliation between the FFR and the FCTR always has been a challenge, it now is elevated when placed in conjunction with the new HHS/NIH policy to initiate "Unilateral Closeout" actions at 180 days after the project end date. The unilateral closeout policy is described in NIH Notice Number: NOT-OD-15-136 (August 4, 2015); *Impact of Discrepancies Between Final Financial Reports for Grant Closeout.*

COGR believes that initiation of unilateral closeout actions at 180-days after the project end date is an arbitrary policy, which unnecessarily will create frustrations and inefficiencies for Investigators and Research Administrators, alike: Investigators as they become inundated with NIH warning notices related to unilateral closeout actions, and Research Administrators as they manage a difficult and unforgiving FFR/FCTR reconciliation. Rather than the arbitrary 180-day unilateral closeout policy, COGR believes the relevant policy, as published by HHS at 45 CFR 75.381(g), is the following:

> *The HHS awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than 180 calendar days after receipt and acceptance {emphasis added} of all required final reports.*

In effect, for HHS Operating Divisions (including NIH), all closeout actions should be completed within 270 days (i.e., required reports submitted within 90 days, per HHS policy, plus the 180 days after receipt of these reports). COGR recognizes that timely closeouts (270 days) may be non-negotiable with HHS and NIH. Even though the Uniform Guidance allows agencies a much larger window to complete closeout actions (i.e., 450 days), HHS, under pressure from Congress, implemented the tighter timeline of 270 days.

COGR's position is that if 270 days is the relevant policy, unilateral closeout actions should be initiated in a more realistic and rational manner (e.g., at 210 days rather than at 180 days). Due to timing issues (in fact, often related to PMS requirements and capabilities), ***the complex FFR/FCTR reconciliation normally cannot be completed within 180 days after the project end***

date. Consequently, a vast majority of NIH grants would be subject to unfair unilateral closeout actions, which in turn, could lead to inappropriate citations of non-compliance, and in short, significant confusion and angst throughout the NIH research community.

This would be an undesirable outcome for all stakeholders. COGR actively is engaged with NIH on this issue. In addition to questioning the 180-day unilateral closeout policy, COGR also is participating with NIH to find solutions to facilitate the reconciliation between the FFR and the FCTR; this includes a better understanding if the FCTR is a necessary report under the subaccounting model. These are priority issues for COGR and we will keep the Membership updated on all developments.

Uniform Guidance and the Procurement Standards: COGR Letter to Federal Officials

In the Technical Corrections to the Uniform Guidance (2 CFR Part 200) released in the Federal Register on September 10, 2015, the grace period for implementing the Procurement Standards (2 CFR 200.317-326) was extended by one year. For most research institutions, this means the effective date will be July 1, 2017 (i.e., FY2018). The extra year will allow the community to address concerns such as the micropurchase threshold and other issues.

COGR has completed a Draft Letter, to be shared with Federal officials, with recommendations and solutions, which we believe need addressed well before the implementation date. We plan to share this letter with Federal officials in January. The focus of the letter is COGR's Proposal to Ensure Successful Implementation of the Procurement Standards. Specifically, the Proposal includes: 1) a process where a grantee can request exemption from 2 CFR 200.317-326, 2) common-since improvements to 2 CFR 200.317-326, and 3) a request to increase the micro-purchase threshold to $10,000 (with an application process to request a higher threshold). We will post the letter to www.cogr.edu in January.

Uniform Guidance and F&A: COGR Letter to OMB to Update the UCA Methodology

The COGR leadership, on behalf of the COGR Membership and the research community, submitted a letter to OMB, dated November 13, 2015, requesting that the methodology for calculating the Utility Cost Adjustment (UCA) be updated based on more current and accurate data. Per 2 CFR Appendix III, section B.4.c:

> *c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section.*

And continuing at 2 CFR Appendix III, section B.4.c(2)(ii):

> *(ii) "Effective square footage" allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.*
>
> > *A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).*

> *B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory "Labs for the 21st Century" benchmarking tool … and the US Department of Energy "Buildings Energy Databook" … were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology {emphasis added}. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB Web site.*

In summary, COGR's position is that the "adjustment ratio" of 2.0, which is the weighting factor for research laboratory square footage, is flawed. With the help of Attain Consulting and using more current data and better methodological assumptions, ***COGR recalculated the adjustment ratio to be 4.2.*** Using this more accurate and fair adjustment ratio, most institutions will be able to support a 1.3% UCA.

In addition to sharing the COGR letter with OMB, the Cognizant Agencies for Indirect Costs were copied on the November 13th letter. However, OMB and the COFAR will take the lead in reviewing COGR's request.

The timing for review is uncertain, though OMB and the COFAR have committed to reviewing the request in early 2016. Institutions that are submitting an F&A rate proposal based on FY2015 data and that are required to use the current methodology (i.e., the 2.0 adjustment ratio) to support the 1.3% UCA should contact COGR regularly to get updates on the status of the OMB/COFAR review process. Per OMB, if the adjustment ratio is updated to reflect a more accurate research weighting factor after an institution's F&A rate proposal has been submitted, OMB appears to be open to allowing use of the new factor to recalculate the impact on the 1.3% UCA, prior to finalizing the F&A rate between the institution and the Cognizant Agency.

Contact David Kennedy at dkennedy@cogr.edu for updates and we will keep the entire Membership posted on all developments.

Year-One Report Card for the Uniform Guidance

As we approach the completion of Year 1 of the implementation of the Uniform Guidance, some of the questions the research community should be asking include: Where has administrative burden been reduced? Where has administrative burden increased? Has the PI-climate improved? (i.e., family-friendly, productivity and efficiency, goodwill and common sense improvements, etc.). Can we quantify cost impact? FTE impact?

In January 2016, COGR will begin analyzing metrics related to the implementation of the Uniform Guidance. We believe OMB and the COFAR will be doing the same. As appropriate, COGR will formalize an analysis that can be shared with various stakeholders and officials in the research community. ***We encourage you to share your institutional perspectives and experiences with COGR staff, which we can include in our analysis.*** Send comments to David Kennedy at dkennedy@cogr.edu or Jackie Bendall at jbendall@cogr.edu.

NSF Higher Education R&D (HERD) Survey for FY2014 is Available

The InfoBrief for the FY2014 NSF HERD Survey includes a summary of the results from the annual NSF survey. Some interesting notes from the InfoBrief include:

- *In current dollars, federally funded R&D at universities declined 3.9% to $37.9 billion in FY 2014 {emphasis added}. Excluding funding spent in FYs 2013 and 2014 from the one-time American Recovery and Reinvestment Act of 2009 (ARRA), federally funded R&D dropped 1.6% in FY 2014 (table 2).*

- *Since FY 2011, federally funded expenditures have dropped from 62.5% to 56.5% of total R&D expenditures {emphasis added}, which also represents a record low in the history of this data series.*

- *The universities' own funds used for R&D (institution funds) rose 5.3% to $15.8 billion in FY 2014 and have been the fastest-growing source for the past 5 years {emphasis added}. Institution funds now constitute 23.5% of total R&D, rising from 22.4% last year and from 19.5% in FY 2010.*

- *Institution funds comprise direct funding for R&D ($9.6 billion in FY 2014), cost sharing on externally sponsored projects ($1.4 billion), and indirect costs on external projects that are not reimbursed by the sponsor ($4.8 billion) {emphasis added}.*

Despite some signs that the budget situation for science and research agencies could improve, the results of the FY2014 HERD Survey still reinforces the point made in the Executive Summary of the June 2014 COGR paper, *Finances of Research Universities*. The Full Version of the June 2014 COGR paper provides additional analysis on research funding trends and the corresponding financial implications to research universities.

> *The future of the federal government contribution to the research enterprise is highly uncertain in light of deep discretionary spending cuts. According to the National Science Foundation 2012 Higher Education Research and Development (HERD) survey, for the first time since the 1950s, the federal government contribution to the research enterprise dipped below 60%. As the percentage of total research expenditures funded by federal sources trends downward, research universities bear the additional expense {emphasis added}. The university contribution exceeds $13 billion, according to the 2012 HERD survey, and continues to grow.*

Finally note, the underlying Data Tables that support the FY2014 HERD Survey provide institutional specific results. Table 18 from the Data Tables page is the table that shows, by institution, total R&D expenditures by federal, state, institutional, business, nonprofit, and all other funding sources. We encourage you to read the NSF InfoBrief. As COGR regularly focuses on the topic of research funding trends and the corresponding financial implications to research universities, the annual NSF HERD Survey is a helpful tool that quantifies our concerns.

Affordable Care Act (ACA) Compliance and Graduate Research Assistants

We included a detailed update in the October 2015 COGR Meeting Report, dated November 6, 2015. This represents the most current update on this topic. We will keep the Membership posted on any new developments.

2016 DRAFT of Single Audit Compliance Supplement is Available for Comment

A DRAFT version of the 2016 Single Audit Compliance Supplement (CS) is available for comment. Single audits applicable to FY2016 will represent the first time that our institutions will be required to comply with 2 CFR Part 200, Subpart F – Audit Requirements.

The Single Audit CS is a unique document that does not move through the normal Federal Register / Public Comment process. Instead, it is developed and vetted between OMB and representatives from the audit community (e.g., AIPCA, Public Accounting firms, Audit-centric Associations, etc.). However, OMB historically provides COGR with a copy of the DRAFT version, and the opportunity to provide comments. ***We have been provided a copy of the DRAFT version of the 2016 CS and would appreciate your help reviewing it.*** If interested, please contact David Kennedy at dkennedy@cogr.edu.

Human Subjects Research

Federal Policy for the Protection of Human Subjects Notice of Proposed Rulemaking

COGR has submitted comments on the Federal Policy for the Protection of Human Subjects (Common Rule) Notice of Proposed Rulemaking (NPRM). COGR's comments and a two-page summary of the comments are available on our website.

COGR indicated support for the elimination of continuing review for minimal risk studies that qualify for expedited review, although without additional notification requirements; identification of the types of research that are excluded from the regulations with an indication that the list is not all-inclusive; adding a new provision that would explicitly give Common Rule departments and agencies the authority and obligation to enforce compliance directly against unaffiliated Institutional Review Boards (IRBs) that are not operated by an assured institution; the elimination of the requirement that the IRB review grant applications for congruency with IRB applications; and updating and expanding the Secretary's list of research eligible for expedited review -- COGR suggested that any research deemed to be no more than minimal risk by a reviewer be considered eligible for expedited review. COGR supported the expansion of exempt research, but suggested that if additional requirements are necessary (e.g., notice or safeguards), the activity should be added to the Secretary's list of minimal-risk research qualified for expedited review. We believe these revisions would reduce administrative work for investigators and institutions without reducing human subjects protections.

COGR opposed proposed revisions that would lead to a significant increase in burden, delay, ambiguity, and cost, and a loss of valuable research without increasing protections for human subjects. These include expanding the definition of a "human subject" to include biospecimens; the proposed requirements for consent for all biospecimens regardless of identifiability and restrictions on the use of consent waivers; mandatory use of Health Insurance Portability and Accountability Act or alternative, but yet-to-be determined, data security provisions; mandatory

reliance on a single IRB for multi-site studies; and the inclusion of non-regulated, unfunded trials under the regulations for organizations which receive federal grants.

In our comment letter, COGR expressed concern that elements of the NPRM are undeveloped (e.g., the decision tool; consent template; and Secretary's safeguards) and suggested that they be removed from the proposed rule and developed independently in collaboration with the research community. COGR also expressed concern about the lack of balance among the ethical principles articulated in the Belmont Report, with an emphasis on the principle of respect for persons (autonomy), and seemingly little regard for beneficence and justice. The letter also suggests a significant imbalance with respect to the benefits and costs of proposed provisions.

The comment period has been extended by 30 days. Comments are now due by 11:59 PM ET on January 6, 2016 and can be submitted here. We strongly encourage institutions to submit their own comments. Please contact Lisa Nichols at lnichols@cogr.edu if you have any questions.

Secretary's Advisory Committee on Human Research Protections (SACHRP) Comments

SACHRP held a two-day meeting December 3-4. Archived webcasts of day 1 and day 2 are available. SACHRP has expressed concerns about the complexity of the NPRM and recommended that it be re-written and that a simplified version be released for public comment. SACHRP has devoted considerable discussion to the topic of biospecimens, suggesting that biospecimens and identified data should not be treated differently and recommending the use of notification of research practices with an opportunity to opt-out of future research and limitations and sanctions on unauthorized re-identification rather than use of broad consent. SACHRP does not support mandatory single IRB review for many of the same reasons noted by COGR, but supports encouraging their use. The SACHRP comment letter has not yet been posted online.

FDA/OHRP Joint Guidance on IRB Minutes

The FDA and OHRP have issued draft guidance titled, "Minutes of Institutional Review Board (IRB) Meetings: Guidance for Institutions and IRBs" which is available on the FDA and OHRP websites. The joint draft guidance is intended to assist institutions and IRBs with preparing and maintaining minutes of IRB meetings. It describes requirements for minutes and provides recommendations for meeting them. The comment period was recently extended. Comments are due by February 3, 2016. COGR does not plan to submit comments.

Audit

OIG Semiannual Reports to Congress

The HHS Fall 2015 Semiannual Report to Congress highlights the report *NIH Postaward Grant Administration and Oversight Could be Improved*, which suggested weaknesses in NIH's review of progress reports and was detailed in the October COGR Update, and a report titled *HHS Oversight of Grantees Could Be Improved Through Better Information-Sharing*. In the latter report, the OIG expresses concerns about "whether awarding agencies' grant officials have all available information to assess and mitigate risks relating to poor performance and misuse of grant funds." Recommendations included analyzing whether to implement the use of integrated databases that contain adverse information on grantees' past performance; establishing a

department-wide source of adverse information from audits of grantees; and, facilitating department-wide information sharing about grantees that have past performance issues. In a recent meeting with HHS OIG staff, COGR staff asked about the extent to which the recommendations are anticipated to be addressed by the Federal Awardee Performance and Integrity Information System (FAPIIS), which includes government-wide data and information on the integrity and performance of entities awarded federal contracts and will include data on grants and cooperative agreements beginning in 2016. OIG staff indicated that they will assess the extent to which FAPIIS addresses the individual recommendations.

The NSF OIG Fall 2015 Semiannual Report to Congress includes a summary of the Federal Demonstration Partnership Payroll Certification Pilots and awardee audits and topics specific to NSF management. Like the individual reports, the Semiannual notes that full payroll allocations for each employee remain recorded and available, but that PIs view and certify only the salaries charged to their awards. The OIG suggests that making full allocations (charges to other PIs grants) available to PIs certifying charges to their own awards would be useful in assuring that payroll charges to all federal awards are accurate.

The report highlights $1.8 million of questioned costs following audit of $670 million in funds at four institutions, including over $1.4 million in costs for senior personnel salary in excess of two-months. The report notes that institutions disagreed with the costs and suggests that "conflicting guidance has hampered the ability of institutions to properly implement the 2-month rule. As a result, as evidenced by OIG audits, institutions interpret the rule differently and there is an increased likelihood of overcharges and unallowable costs on NSF awards." The report indicates that NSF is working to resolve the findings. In a section on audit resolution, the report notes that five audits with a total of $6 million in questioned costs, of which $5.4 million pertained to excess salary, were resolved. "NSF did not sustain any of the excess salary costs, but did sustain $419,523 of the other questioned costs." The report also notes that NSF did not sustain any of the $2,134,379 in questioned costs on the Ice Cube Project at the University of Wisconsin-Madison. It describes a $2.7 million settlement with a university regarding allegations that it violated requirements to exercise oversight and control over federal award funds.

On the topic of Responsible Conduct of Research (RCR), the OIG notes that in contrast to RCR requirements adopted by NIH, those implemented by NSF do not have specific course requirements or provide guidance for courses, but does indicate that the agency works with the National Academies to develop ethics materials applicable to all scientific fields that NSF supports. Also mentioned is the OIG's review of institutions' RCR plans. The OIG indicates that they have "observed a broad disparity among grantee responses to the RCR requirement, which range from high-quality mentoring programs, to programs that simply refer students to web-based training, to schools that are unaware of the RCR requirement." The report suggests that NSF should "exert its influence with institutions regarding this important issue."

Regarding Single Audit, the report indicates that the 98 audit reports referred to NSF's Cost Analysis and Audit Resolution (CAAR) Branch resulted in 74 findings at 37 NSF awardees and that twenty-four were repeated from prior years, "including 18 findings which had been repeated for three or more consecutive years." Findings included: "untimely and/or incorrect reporting of time and effort; untimely or inaccurate submission of financial reports; failure to ensure that property purchased with federal funds was adequately tracked and safeguarded; failure to ensure that the procurement process included verification that vendors had not been suspended or debarred; and inadequate monitoring of subrecipients."

NSF OIG Audit of External Awardee with Two-month Findings

In a report dated September 30, the NSF OIG questioned $337,377 of costs claimed on 54 NSF awards over a period of three years, including $124,279 in senior personnel charges that exceed the NSF two-month salary limit. The university agreed with $51,839 in questioned costs but did not agree with $285,538 of questioned costs including senior personnel costs. On this issue the auditors acknowledged that the university "received conflicting guidance regarding this policy from various NSF sources" and that "NSF's audit resolution office has taken a different position regarding the senior salary issue" but stated that they continue to believe that "the Award and Administration Guide in effect at the time of the awards is the authoritative guidance on this issue, and therefore we continue to believe these are questioned costs under that guidance."

National Science Board (NSB) Audit and Oversight (A&O) November Meeting

The NSF OIG Fall 2015 Semiannual Report to Congress was discussed at the November A&O meeting. NSB members noted that only 11% of questioned costs were sustained in 2006 and asked if data were available for subsequent years. Allison Lerner, NSF IG, indicated that there are tables in the back of the semi-annual reports and that 11% would likely be consistent across years. Allison noted that the decision not to sustain costs should not be taken as an indication that it was wrong to question the costs. Auditors audit against the criteria and report what they find, but management may consider other factors and have legitimate reasons not to sustain. It was suggested that it may be helpful to submit a summary of audits resolutions to the NSB annually.

An NSB member asked if Allison was aware of the findings and recommendations in the National Academies report *Optimizing the Nation's Investment in Academic Research* (see regulatory reform below) with respect to Inspectors General and whether Allison might provide the Board with feedback. She indicated that she would.

Regulatory Reform

NSB Working Group on Administrative Burdens

The National Science Board Ad Hoc Working Group on Administrative Burdens met in November. The group noted changes NSF has made to reduce administrative burden, including automated compliance checking of proposals and a pilot of just-in-time budget submission.

Larry Faulkner, Chair of the National Academies Committee on Federal Research Regulations and Reporting Requirements spoke about Part 1 of the committee's report, *Optimizing the Nation's Investment in Academic Research*. COGR provided a summary of the report in the October 2015 Update. Larry talked about the charge to create a framework, a forum for discussion on regulatory matters, and described the proposed Research Policy Board and OSTP officer to serve as a liaison. An NSB member suggested that this was a large part of role of the Science Advisor at OSTP and asked if the Associate Director for Science should be a co-chair of the RPB. Larry suggested that the proposed Associate Director would have primary responsibility for the health of the federal-university research partnership, that this would be their primary focus, and that the committee believes it is of great enough importance to merit this. He also suggested that the committee was deliberately vague and believes that the details will take

shape through a political process that will include agencies, universities and other interested parties. In terms of next steps, the committee will continue to brief members of Congress and the administration and other interested parties, but suggested that it is the research community that has to make this happen. An NSB member agreed that nobody is in charge of overseeing the health of the enterprise and suggested that the NSTC has made minimal progress over 30 years.

There was discussion about the recommendation to only publish final audit outcomes, that the HHS OIG does this and it would seem that there is a lot of value in this, and discussion on the best contribution that the IGs can make to the research enterprise. Larry suggested that the quantity of recovered funds in the research space is not very high and the national need is for a more effective and efficient process of regulation. He suggested the balance of effort would be better shifted toward effective practices, noting that auditors have to be objective and maintain their own space but can discuss how to make processes more efficient. An NSB member asked whose responsibility it was to rebalance these efforts. He suggested that the IGs could, but that at the policy level only Congress has this ability. The committee is moving forward with Part II of the report which will focus on human subjects research, export controls and other areas and should be completed after the first quarter of 2016.

Vanderbilt Study on the Cost of Regulatory Compliance

Vanderbilt University has published a study on the cost of regulatory compliance at 13 U.S. colleges and universities. Vanderbilt reports that the study, conducted by the Boston Consulting Group, found that regulatory compliance represents 3 to 11 percent of institutions' nonhospital operating expenses. The institutions included public, private, nonprofit, for-profit, four-year and two-year colleges. Research-related compliance ranged from 11 to 25 percent of all research expenditures and were partly driven by the type of research being conducted and the size of the research program. Extrapolating from these findings the report suggests an overall annual compliance estimate of $27 billion, with $10 billion estimated to be research-related.

DATA Act Implementation

A recent webinar and call with OMB and Treasury in early December focused on the progress made in the implementation of the DATA Act and the Section 5 Pilot which is focused on reducing the time and cost associated with federal reporting requirements. Test models to be piloted may include consolidating the SEFA and SF-SAC forms which have similar information and are closely timed; use of a standardized notice of award; and consolidating federal financial reports. OMB is recruiting universities for pre-tests and a meeting is expected to be held in January. The pilot will begin in the spring. If your institution is interested in participating, please contact Lisa Nichols at lnichols@cogr.edu. With respect to ideas that universities have submitted to the National Dialogue, OMB indicated that newly identified issues are being taken to the COFAR, while others are being taken into consideration, but may not be

Newly Revised NSF Proposal Award Policies and Procedures Guide

The NSF Policy Office has posted the revised Proposal and Award Policies and Procedures Guide (PAPPG) effective January 15, 2016 to include significant and clarification changes. Significant changes include but are not limited to:

- removing the ability to use **other than 5 p.m. submitter's local time in solicitations** for proposal deadlines,
- delegating responsibilities of the Authorized Organizational Representative (AOR) to provide proposal certifications concurrently with proposal submissions, signed and submitted proposal file updates and revised budgets, and withdrawal functions on behalf of the organization
- the addition of a new proposal certification and new section regarding Dual Use Research of Concern,
- New Collaborators & Other Affiliations Information formerly provided as part of the Biographical Sketch,
- Acceptance of third-party solutions to develop biographical sketch(es) in compliance with NSF proposal preparation requirements,
- New requirement to separately uploaded Biosketches for **senior personnel** as well as Current and Pending Support for senior (including internal funds allocated toward specific projects)
- A new requirement to justify the need for a late submission of NSF approved extensions after the grant end date
- notifications and requests be electronically signed and submitted by the AOR via use of NSF's electronic systems (unless excepted)
- revises due date for final project reports and project outcomes reports for the to no later than 120 days following expiration of the grant.

For a full list of clarifications and changes, go to: Proposal and Award Policies and Procedures Guide

Revised Research Terms and Conditions

COGR recently responded to the NSF's , Request for public comment on updated Research Terms and Conditions (RTCs) by thanking the NSF, NIH , and the Research Business Models (RBM) interagency working group for the positive changes and clarifications implementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200 (Uniform Guidance). A few of the significant changes include acknowledgment that research awards already have standard information collection methods for performance reporting (i.e., RPPR) that does not relate financial information and therefore is sufficient for this purpose. Inclusion of the 120 day closeout period for all reports—financial, performance, and other reports (equipment, small business, etc.) and revision of budget and program plans were other positive changes. COGR acknowledged that absent the Appendices, a full review could not be provided. A request to review and comment on the Appendices was made prior to any finalization of the terms. Click here for COGR's letter.

U.S. Army Medical Research Materiel Command (USAMRMC), Conflict of Interest Requirements

After hearing a number of concerns from the membership regarding administrative burden associated with Conflict of Interest requirements in the General Application Instructions from Broad Agency Announcements under Congressionally Directed Medical Research Programs,

COGR responded by submitting a letter to the USAMRMC on November 9th. COGR requested that the requirement for disclosure of all conflicts of interest (COIs) or potential COIs at the proposal/application stage be removed and encouraged USAMRMC, as a model of effectiveness, to review NSF's policy.

COGR also requested that the application instructions be clear to address the applicability that prime recipient and subrecipient institutions in receipt of federal funds follow their own conflict of interest policies when the award or resultant subaward is clearly programmatic in nature and not for the procurement of good and services.

Update: USAMRMC responds to COGR's letter on December 8 announcing that a committee had reviewed COGRs comments and will be revising language in funding opportunity announcements that will less burdensome to awardees.

Public Access

COGR, AAU, and APLU have recommended harmonization of Public Access Procedures and Submission via its recent posting on the National Dialogue website. We encourage our member institutions to vote and submit separate comments.

COGR would like to obtain data on issues you face in areas such as navigating through various agency systems, varying data management plan requirements, etc. Data will be collected to formulate a response documenting the administrative burden associated in complying with a plethora of agency systems, policies and procedures. Please send your comments to jbendall@cogr.edu

COGR Comments on Proposed ED Open Licensing Requirement for Grants

On November 3, 2015 the Department of Education (Ed) issued a proposed rule (NPRM) to require that all Ed grantees (except for research grants funded by the Institute of Education Sciences) openly license to the public all copyrightable intellectual property created with Ed grant funds (80FR67672). The requirement would apply to all new copyrightable materials and copyrightable modifications after the effective date of the final regulations. Under the proposal, Section 200.315(b) of the Uniform Guidance would be inapplicable (the former normal OMB Circular A-110 copyright provision). Instead the Ed Uniform Administrative Regulations implementation would include the open licensing requirement at a new 2 CFR 3474.20.

On December 14 COGR joined AAU, APLU and AUTM in a comment letter to Ed. We expressed concern that a "one size" fits all open licensing approach to disseminating copyrightable works developed with Ed funding would neither be appropriate nor effective. We pointed out that under the current (former A-110) Ed policy, universities can choose the best strategy for dissemination. Our principal concern with the Department's proposed policy is that it limits the ability of our members to transfer tested and validated educational technologies to the private sector, because exclusive or non-exclusive copyright licenses and stewardship by the author and institution are what attract the private investment necessary for value-added further development, refinement, and effective marketing and distribution of those technologies.

We also noted that disruptive educational technologies tend to be licensed to startup companies. Startups typically require investments in further development, training and support that would not be supplied without a copyright license**.** The government has repeatedly emphasized that commercialization of federally-funded IP is a high priority. The proposed rule appears to frustrate the government's commercialization initiative. There are numerous examples of startups based on Ed-funded technologies and materials.

We also raised a number of other questions. These include the disposition of rights to preexisting or background intellectual property (IP) that may be included in the new materials or necessary for their use; a number of issues related to derivatives, including the potential for user confusion with third party modifications, the risk of undesirable outcomes with unvalidated modifications, and reputational risks for the creators; and finally, a potential conflict with the Bayh-Dole Act. The NPRM does not address any of these issues.

We noted that the NPRM rests on a number of assumptions about the current lack of public access to Ed-funded materials and assertions that relatively few grantees develop and market copyrighted content, with no supporting data. We suggested that a policy change of this magnitude should be supported by clearly demonstrated need. We urged the Department to reconsider the proposed rule and explore ways in which stakeholders such as our institutions and faculty can directly participate in helping to define the problems the Department is seeking to address and in developing appropriate solutions. We asked for an opportunity to work with the Department to develop a more carefully calibrated set of provisions that would expand free or low-cost access to and use of Ed-funded copyrightable materials without jeopardizing quality control or foreclosing proprietary management of copyrightable materials when that is the best option for ensuring the development and distribution of the materials for the public's benefit.
The comment deadline has been extended to December 18. We understand a number of COGR member institutions have submitted their own comments.

New Service Contract Reporting Requirements Raise Concerns

A number of COGR member institutions have reported receiving new reporting requirements on research and other service contracts from a number of agencies, particularly NIH. Of particular concern is a requirement to report on the number of direct labor hours expended in performance of the services. Reports are to be submitted through the SAM system (A SAM "Quick Start" Guide for Service Contract Reporting is available).

By way of background, the requirements stem from the Omnibus funding legislation for FY2010. The Act (Sec. 743) requires agencies to submit annual inventories to OMB of service contracts based on the Federal Activities Inventory Reform (FAIR) Act inventories, including a number of categories of information. While much of this information is already reported by agencies in the Federal Performance Data System (FPDS), certain required information is not, and requires additional reporting by contractors to the agencies.
To implement this requirement, two new clauses have been added to the FAR, 52-204-14 and 15, and a new prescription for use of the clauses has been added at FAR 4.17. The clauses include the labor hour reporting requirement, which also flows down to first tier subcontractors. (For the final FAR rule see http://www.gpo.gov/fdsys/pkg/FR-2013-12-31/pdf/2013-31148.pdf).

The rule was effective January 30, 2014. Cost reimbursement service contracts awarded after that date were supposed to include the new clauses (existing contracts were not affected, with a

few exceptions). Note that service contracts subject to the new requirements are those covered by FAIR Act inventory codes, which include R&D contracts. Under the FAR (37.101), R&D contracts are considered service contracts. These should not be confused with contracts subject to the Service Contract Act, which excludes most research contracts since professional, administrative and executive personnel are exempt from the Service Contract Act wage rates.

The required contractor information is due every October 31, with an additional month allowed for agency review and required corrections. Agencies are required to submit the inventories to OMB by January 15. The inventories are to be made public, both at the individual agency level and the overall OMB level. The objective is to provide identification of inherently governmental activities and commercial activities that can be performed by contractors. (See https://www.whitehouse.gov/omb/procurement_fair-default/ for the most recent public FAIR Act inventories).

It appears that agencies now may be responding to the FY '15 reporting deadlines, which would explain the notices received by COGR member institutions. In most of these cases the contracts do not include the new FAR reporting clauses, but agencies may amend the contracts to include the requirements.

The labor hours reporting requirement stems from a requirement in the legislation to report the number of full time equivalents for direct labor (743(3)(G)). In the final rule, the FAR Councils chose to require submission of aggregate labor hours, rather than FTEs. A number of comments were received on this point when the rule was proposed. In response, the FAR notice indicates the requirement to report direct labor hours instead was adopted to reduce the burden on contractors. The government will develop a system to automatically convert the aggregate labor hours reported to FTEs, to meet the statutory requirement.

We understand the concerns expressed by COGR members about the labor hour reporting requirement; in particular, how it may apply to clinical faculty. However, given that this derives from a statutory requirement, it appears compliance may be unavoidable. There is ambiguity in the FAR as to the status of R&D contracts, but agencies have included R&D in their FAIR Act contract inventories and not limited them to contracts subject to the Service Contract Act. In our view an argument that the reporting requirements should apply only to Service Contract Act contracts, or that all research contracts should be excluded is unlikely to be successful.

With regard to possible audit concerns, some years ago there was a similar situation with Army manpower reporting requirements. We obtained a statement that the numbers reported should not be considered binding for audit purposes (see June 2007 COGR Meeting Report). The same approach might be followed here, especially given that the conversion will be done automatically by the government rather than institutions.

Other Agency Developments

a) NASA Indemnity and Invention Reporting. In response to the letter sent to NASA in September about these issues (see COGR October Update), COGR was informally advised that "a NASA Grants Policy Team with members from the NASA Centers, Office of General Counsel and the Mission Directorates regularly meets to address

various financial assistance policy questions that arise during the year. Over the past few weeks we have received several comments on these two policies. Your comments, as well as others we received, will assist us in the next six months in determining the impact that the policy has on the NASA grant community as the NASA Grants Policy team analyzes the points that you made in your letter." We also were assured that our concerns were being taken seriously. A fuller response is expected by spring. We will keep COGR members informed.

b) New DOD Cybersecurity Requirements. We understand an increasing number of institutions are receiving these requirements (e.g. revised DFARS 7012 clause). On October 8 DOD issued a class deviation allowing a 9 month delay after contract award for contractors to comply with the multifactor authorization requirement. The deviation applies to the DFARS 252.204—7008 and 7012 Safeguarding clauses. It requires contractors to notify the contracting officer that they will implement the requirement within 9 months. Contractors also should provide written notification if they view a particular NIST security requirement as inapplicable or if they plan to use an alternative but equally effective security measure. Note that this deviation does not apply to the October 2 DOD cyber incident reporting requirement.

   A number of questions have been raised by COGR members about the necessary degree of compliance, especially since the clause is interim and we were advised that it eventually will be phased out. If there is sufficient interest by the membership, we may try to arrange direct discussions with appropriate officials at DOD/NARA/NIST on these matters.

c) Labor Law Violations Reporting Requirements. The proposed new FAR reporting requirements were discussed in the August Update. They would require increased disclosure of labor law violations by contractors at all tiers, and "pay transparency." COGR commented in late July that a suggested alternative be adopted of having DOL evaluate subcontractor compliance in lieu of prime contractors. To date the requirements have not been finalized.

d) Patent Troll Legislation. The good news is that no action was taken by Congress this year. However, we understand the proponents remain determined to try to push this legislation forward next year. The implications for the legislation of the change in House leadership and procedures remain unclear. We will continue to follow and report on the status.