

COGR

an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

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January 20, 2016

Mr. David Mader
Controller and Acting Deputy Director of Management
White House Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Subject: Implementation of Sensible Procurement Standards

Dear Mr. Mader:

On behalf of the Council on Governmental Relations (COGR) and its members, we want to thank you and your staff from the Office of Federal Financial Management (OFFM) for the professionalism and attentiveness you have shown to the grantee community throughout the development and implementation of the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR part 200).

While we fully appreciate that the learning curve will be with us for several years, much of the hard-lifting is behind us. ***What certainly awaits, however, is the significant challenge of implementing 2 CFR 200.317-326, Procurement Standards.*** We are thankful for the extension of the grace period to FY 2018 (i.e., July 1, 2017 effective date for most of our members). We hope that we can work with you over the next several months to address specific concerns, and identify solutions, to ensure the successful implementation of the Procurement Standards for all grantees, federal agencies, and other stakeholders.

We have shared this letter beyond our core COGR membership of senior research and financial administrators by reaching out to our wide network of partners and professionals, including Procurement Directors, Program Administrators, Accountants, Scientists, Nonprofit Administrators, State and Local officials, Tribal Government leaders and University Presidents.

The comments enclosed in this letter are submitted on behalf of the COGR Membership and the undersigned organizations shown on the final page of this letter. The letter is divided into the following three sections:

- *Focus on Federal Program Outcomes: Investigator Productivity and the Science*
- *Focus on The President's Directive to Reduce Administrative Burden*
- *Proposal to Ensure Successful Implementation of the Procurement Standards*
 - 1) *Grantee Exemption Process*
 - 2) *Common-Sense Improvements to 2 CFR 200.317-326*
 - 3) *Increase Micro-purchase Threshold to \$10,000*

After your review of this letter, we would be grateful for the opportunity to meet with you and your staff to discuss the main points, with a focus on identifying solutions. A collaborative and thorough approach is necessary as the grants community continues its work to accomplish the President's call for grants reform.

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| <p>FOCUS ON FEDERAL PROGRAM OUTCOMES: INVESTIGATOR PRODUCTIVITY AND THE SCIENCE</p> |
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Effective and high-quality delivery of federal programs has been at the heart of the efforts led by OMB and the Council on Federal Assistance Reform (COFAR) to implement meaningful grants reform, without compromising the high standards of accountability and stewardship of federal funds. In parallel, administrators who oversee the operation of these essential federal programs skillfully balance the oversight of federal funds with needs of those in the field delivering the service and program outcome.

Each federal program has its unique blend of characteristics that are mission critical to successful delivery of the program's outcome. In the case of research, absolute precision is required to deliver cutting-edge science that can pave the way for future breakthroughs and discoveries. Good science requires timely and consistent sourcing of supplies, equipment, and services in order to avoid the introduction of unwanted variables into the experimentation. If an Investigator is burdened with unnecessarily cumbersome rules to acquire supplies, equipment, and services, productivity is impaired, the science is delayed, and worse, the quality of the research suffers.

The formal introduction of the "Micro-purchase" concept into the Uniform Guidance (as defined in 2 CFR 200.67) is a grant reform with significant potential to enhance Investigator productivity by facilitating the acquisition of critical research tools and supplies.

§200.67 Micro-purchase. *Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost [emphasis added]. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.*

The corresponding \$3,000 threshold, however, hurts science and it is not clear what the rationale is for matching the micro-threshold applicable to grants to the level used for contracts, as defined in the Federal Acquisition Regulations (FAR).

The Federal Grant and Cooperative Agreement Act of 1977 set guidelines that established important distinctions in the use of contracts, on the one hand, and grants (including cooperative agreements), on the other. Contracts are awarded by the Federal Government when the agency seeks to acquire a good or service. A deep and detailed review of all costs is a prerequisite when an agency issues a contract. While a thorough review of costs is important when issuing a grant, the 1977 law is clear that the Federal Government is supporting the work (via “financial assistance”) of the recipient and that micro-management of the work is neither expected, nor productive.

Implementing a \$3,000 threshold for grants and cooperative agreements solely on the basis of making the threshold consistent with the FAR would be a breach of important principles established in the 1977 law, and in addition, would be counterproductive to grants reform.

Furthermore, research universities and other nonprofit research organizations have operated at micro-purchase thresholds of \$5,000, \$10,000, and in some cases, at higher levels, for years. Internal institutional risk assessment, and in some cases, State law, have dictated the appropriate micro-purchase threshold on an institution-by-institution basis. In all cases, formal institutional policies and procedures have been developed, accompanied by a system of internal control designed to provide reasonable assurance that micro-purchase transactions are not only reasonable from a cost standpoint, but also accurate, allowable, properly allocated, and adherent to the highest levels of accountability and stewardship of both federal and non-federal funding sources.

Implementation of a \$3,000 threshold will force institutions into expensive modifications of electronic systems and procurement management processes, and without question, will negatively impact Investigator productivity and the quality of the research. For example, acquisition of a \$4,500 reagent with specific properties to support a precise chemical reaction, rather than being an allowable “micro-purchase” under current institutional policy, now would be classified as a “small purchase” and be subject to 2 CFR 200.320(b), Procurement by small purchase procedures:

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources {emphasis added}.

The requirement to obtain and document price or rate quotations from an adequate number of qualified sources will impede the timely acquisition of critical research tools and supplies by causing unacceptable delays as thousands and thousands of transactions now will be subject to these documentation requirements. Specifically, the \$4,500 reagent that needs to be obtained immediately, which previously would have been available to the Investigator in 1-day, now may be subject to delay of up to 1-week (or more) due to the requirement of acquiring and documenting multiple price and rate quotations. The \$4,500 reagent is a component that must remain constant throughout the life of the experiment. Using alternative suppliers likely will compromise controls in the experiment. Even using a sole source justification creates an additional burden layered onto the Investigator. ***Plain and simple, the science will suffer and administrative burden will increase.*** This surely was not the intent of OMB and the COFAR.

Institutional control structures are built on the highest standards of accountability and stewardship, for both federal and non-federal funding sources. Our institutions have strong policies in place covering code of conduct, faculty consulting, ownership of intellectual property, ethics training, fraud, waste and abuse, internal auditing, and compliance that are designed to prevent and detect the inappropriate use of resources. In the specific case of procurement, procurement directors at our institutions employ common-sense business principles and share the government's goal of obtaining goods and services in the most cost-effective and timely manner. Our procurement systems have been designed to achieve these goals and we have been successful in achieving them.

It should be noted that there are a plethora of strategies, methods, and internal controls used at our institutions for meeting the standard of reasonable costs. Use of competition is necessary; however, an overreliance on competition only will compromise outcomes. We have developed procurement policies, including those related to strategic sourcing, sole source acquisitions, and use of procurement cards (to name a few) in a manner that enables the fine balance between receiving the best value and the need for Investigators to quickly and seamlessly obtain the critical research tools and supplies necessary to meet the demands of science. We urge OMB to stay focused on the quality of research and all federal program outcomes.

**FOCUS ON THE PRESIDENT'S DIRECTIVE
TO REDUCE ADMINISTRATIVE BURDEN**

The joint interim final rule issued December 19, 2014, implementing the final *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), published by OMB on December 26, 2013, states:

Implementation of this guidance will reduce administrative burden {emphasis added} and risk of waste, fraud, and abuse for the approximately \$600 billion per year awarded in Federal financial assistance. The result will be more Federal dollars reprogrammed to support the mission, new entities able to compete and win awards, and ultimately a stronger framework to provide key services to American citizens and support the basic research that underpins the United States economy.

The President's directive to reduce administrative burden, and at the same time, strengthen oversight over federal funds to reduce the risk of waste, fraud, and abuse, first was made public in 2009. It resulted in extraordinary efforts by Federal leaders from OMB and the COFAR to deliver on the promise of grants reform. The goal of reducing administrative burden, while not sacrificing oversight, has been a regular challenge; however, through partnership between Federal leaders and stakeholders from the grantee and audit communities, important strides have been made towards the goal.

We strongly encourage OMB to embrace the President's directive, and accordingly, implement sensible procurement standards that will reduce administrative burden. Enactment of sections 200.317-200.326, as currently written, is contrary to the goals outlined in the President's directive. Implementing sections 200.317-200.326 will adversely impact institution-wide procurement policies and effective and efficient procurement practices and create new administrative burden. In some cases, institutions will be forced to manage dual procurement systems: one for federal funds and one for all other funding sources. Implementation of 2 CFR 200.317-200.326, as currently written, would result in a substantial increase in full-time equivalent (FTE) administrative staff, while simultaneously damaging administrative efficiency. This contradicts the President's mandate.

As an example, information technology, management and training policies have been developed based on current institutional micro-purchase thresholds (e.g., \$5,000, \$10,000, etc.) that have met internal institutional risk assessment standards. Implementation of the \$3,000 micro-purchase threshold will produce costly redesign of electronic and management systems, which have been operating effectively and efficiently for years without any evidence of waste, fraud, or abuse. ***An increase in FTE administrative staff would be inevitable.*** In the case of State universities, many institutions have linked their thresholds to be in compliance with State requirements, and the fact that States have been supportive of the higher thresholds (e.g., \$5,000, \$10,000, etc.) is compelling testimony that a higher threshold is appropriate.

Several additional sections of 2 CFR 200.317-326, with a small investment of time, could be reviewed and updated with common-sense improvements. This includes, though may not be limited to, the following:

1. Eligibility of State institutions to be covered under 200.317, Procurement by States;
2. Intersection of Conflict of Interest (as written in section 200.112) with sections 200.318(c)(1) and (c)(2);
3. Recognizing practical considerations associated with “*geographical preferences*” (200.319(b)) and the fact that many institutions are required to encourage local consideration;
4. Clarifying documentation requirements associated with the requirements: “*To the extent practicable ... distribute micro-purchases equitably*” (200.320(a)) and “*price or rate quotations must be obtained from an adequate number of qualified sources*” (200.320(b)), and recognizing how these requirements contradict efforts to reduce cost;
5. Addressing the “*publicized*” requirement for RFPs for competitive proposals (200.320(d)) in the same manner as sealed bids (200.320(d));
6. Clarifying the documentation expectations and addressing the practical logistics of the requirements for documenting independent estimates prior to receiving proposals from the supplier community under section 200.323(a);
7. Recognizing the impracticality of the negotiation of profit requirement under section 200.323(b).

Also, it should not be too late to incorporate selected Frequently Asked Questions (FAQs) into 2 CFR 200.317-326. FAQs, such as .320-2 (Sole Source for Research) and .320-3 (Strategic Sourcing and Shared Services) encompass key principles that should be formalized as part of the Procurement Standards and would be an important improvement.

The delicate balance between easing administrative burden and maintaining robust oversight can be realized. Our procurement systems have been designed to include the internal controls that ensure appropriate approvals, exercise the highest quality stewardship of all funding sources, including federal funding sources, and promote cost savings and efficiencies by using strategic sourcing and other mechanisms to ensure the best price is received. Furthermore, our systems provide the flexibility to safeguard the necessary focus on the science and the critical importance of acquiring research tools and supplies in the timeliest manner. Addressing the items above will uphold the President’s call for true and significant grants reform.

**PROPOSAL TO ENSURE SUCCESSFUL IMPLEMENTATION
OF THE PROCUREMENT STANDARDS**

OMB, COFAR, the grantee community, and all stakeholders are equally vested in the successful implementation of the Procurement Standards. To ensure success, we urge OMB and COFAR to consider the following solutions:

1) Grantee Exemption Process

Like States, other entities/grantees must be afforded the same option given to States and be permitted to use their existing procurement systems, rather than being mandated to follow the overly-prescriptive requirements in 2 CFR 200.318-326. Therefore, 2 CFR 200.317 should be revisited.

***§200.317 Procurements by states.** When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds [emphasis added]. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §200.318 General procurement standards through §200.326 Contract provisions.*

Many grantees, in addition to States, maintain state-of-the-art procurement systems that have resulted in significant cost savings and efficiencies for both the grantee and the Federal Government. For research universities and nonprofit research organizations, the track record of these systems with both the Single Audit and Federal Audit communities is stellar and there has been little, if any, evidence of these systems promulgating fraud, waste, or abuse. These systems, predicated on compliance with OMB Circular A-110, should be championed rather than dismantled by costly modifications to comply with overly-prescriptive procurement standards.

As a point of comparison, compensation represents the largest component in terms of dollars charged to federal awards. 2 CFR 200.430, *Compensation – personal services*, is the section of the Uniform Guidance where the most significant shift from prescriptive to principle-based compliance was made. Per 2 CFR 200.430(1): *Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must: (i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated [emphasis added] ...*

That same approach, which relies on a system of internal controls, must be the gold-standard to affirm the effectiveness of grantee procurement systems; that approach should be available to all grantees, not just States. 2 CFR 200.317 recognizes that States have implemented such controls as it relates to its federal and non-federal funds. Research universities and nonprofit research organizations, and many other grantees, have implemented the exact same controls as the States.

We propose an institution to have the following in place in order to qualify for a Grantee Exemption from 2 CFR 200.318-326:

1. Written policies and procedures documenting institutional procurement standards,

2. Internal controls to enforce institutional procurement standards, and
3. Acceptance of the institution's written policies, procedures, and internal controls; acceptance is confirmed via the Single Audit process, and, if applicable, after any required corrective actions are made.

As Congress intended over thirty years ago when it first passed the Single Audit Act of 1984, the Single Audit mechanism provides the necessary affirmation that federal funds are being expended properly. Maximizing the use of this important piece of legislation, which revolutionized and established best practices for accounting for federal funds, is the appropriate vehicle to ensure the most sensible and effective implementation of the procurement standards.

2) Common-Sense Improvements to 2 CFR 200.317-326

For those grantees that cannot or choose not to be exempted, it is important that selected sections be updated and clarified with some common-sense improvements; doing so can help ensure that implementation of the procurement standards does not result in unnecessary and new administrative burden.

We have addressed sections eligible for common-sense improvements in the previous section, *Focus on the President's Directive to Reduce Administrative Burden*. On many occasions, we have indicated our willingness to assemble a working group that could include procurement directors, grant administrators, faculty, program managers, other professionals, as well as a diverse group of stakeholder entities, to work with OMB and COFAR to review sections 200.317-200.326 and to provide recommendations to improve these sections. In fact, we could make available a red-lined version of the current version of 2 CFR 200.317-326, which then could serve as a starting point for OMB and COFAR to consider selected changes.

Note, we are not proposing a significant rewrite of 2 CFR 200.317-326. ***Rather, we propose that a working group from the grantee community engage with OMB/COFAR beginning in early 2016, with the goal of completing its work by June 30, 2016, to finalize necessary, common-sense improvements to 2 CFR 200.317-326.*** The small investment of time devoted to making these common-sense improvements will yield an enormous benefit to clarity, implementation, and ultimately, stewardship of federal funds. We believe these common-sense improvements can be finalized over the course of no more than six months and can be made available to the grantee community well before the FY 2018 implementation date.

3) Increase Micro-purchase Threshold to \$10,000

Raising the micro-purchase threshold from \$3,000 to \$10,000 remains a priority. In fact, this has been a priority since the *Final Guidance* was published on December 26, 2013. It was in the *Final Guidance* that the grantee community first was introduced to the \$3,000 micro-purchase threshold. While we fully support the broad concept and see the value for facilitating low-dollar, low-risk purchases, the introduction of the micro-purchase threshold circumvented the required rule-making process by not being included in the February 1, 2013, *Proposed Guidance*. ***Consequently, we were unaware that OMB and the COFAR were considering a policy change in Federal procurement policy and were not provided the opportunity to make a formal public comment on this major policy change.*** In effect, sometime between February and December of 2013, it appears

OMB and the COFAR developed a new policy, without input from the grantee community, and formalized that policy in the December 26, 2013, *Final Guidance*.

The good news, however, is that OMB and COFAR have been receptive to and have relied on data to inform many of the policy decisions that have been made related to the roll-out of the Uniform Guidance. This has allowed the grantee community to remain engaged and confident that implementation of grants reform and the Uniform Guidance truly is being accomplished through a robust and productive partnership.

We propose revisiting the micro-purchase threshold anew, using transparency and data as the basis for establishing the appropriate threshold. The Federal Demonstration Partnership (The FDP) has accumulated an enlightening set of data, and the story that the data tells is significant. When using a Risk-based Audit Model (similar to what OMB and COFAR used to increase the single audit threshold from \$500,000 to \$750,000), the FDP data definitively shows that a micro-purchase threshold set at \$10,000 would allow OMB and COFAR to achieve a foundational goal of grants reform: reduction of administrative burden, without sacrificing oversight of the most high-risk federal transactions.

The FDP consolidated data from 55 institutions supports establishing the \$10,000 micro-purchase threshold. The FDP data (based on a three-year average for FY12/FY13/FY14) shows that over 97% of the procurement transactions were incurred for less than \$10,000, while accounting for only 26% of the total procurement dollars. This suggests that using the Risk-based Audit Model is appropriate: the most focused audit and oversight resources can be devoted to a manageable number of procurement transactions (i.e., 3% of total procurement transactions), while still providing coverage to the high-dollar/high-risk transactions (i.e., 74% of the total procurement dollars).

An even more intriguing way to use data may be in terms of a Change in Workload Model. For example, some institutions have conducted ad-hoc studies that show by reducing the internal institutional micro-purchase threshold (e.g., from \$10,000 to \$3,000), the number of transactions that would require price or rate quotations would increase by over 300%, while the amount of dollars subjected to more intense oversight would increase by as little as 10%. ***A tripling of workload, resulting in a major escalation in administrative burden and FTE administrative staff, without significantly increasing dollar coverage is a poor use of institutional resources and should not be mandated by the Federal Government.***

Of course, audit and oversight of micro-purchases remains a crucial and important component of the internal control environment. The argument to increase the micro-purchase threshold to \$10,000 is not meant to eliminate oversight of smaller-dollar transactions: separation of duties, account monitoring, training, and other institutional compliance activities ensure that oversight of micro-purchases is robust. However, our position is that achieving the best price should not hinge on obtaining a certain number of price or rate quotations (i.e., over-reliance on “competition”), but rather should be dependent on an institution's commitment to ensuring that costs are reasonable through a purchasing infrastructure that relies on a sound system of internal controls.

We propose that OMB/COFAR implement the following:

1. Increase the Micro-purchase threshold to \$10,000 via an OMB policy clarification and/or a technical correction to the Uniform Guidance.
2. Provide an application process for grantees to obtain a Micro-purchase threshold greater than \$10,000 (e.g., \$20,000 threshold). Grantees that apply for a higher threshold must demonstrate appropriate internal controls, which will not allow federal dollars to be put at risk for fraud, waste, or abuse.

The resounding majority of grantees will establish their micro-purchase thresholds at or below \$10,000. In fact, many State and Public universities are required by State law to align their threshold with the State. In the case of research universities and other research organizations, a \$10,000 threshold will avoid the potentially halting situation where a critical research tool, normally acquired via a 1-day turnaround, results in an unacceptable 1-week (or more) turnaround.

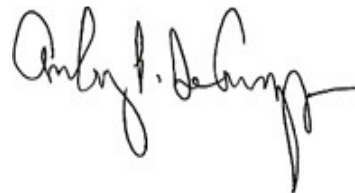
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In summary, the adoption of these proposed solutions will solve the concern of creating unintended and new administrative burden, while not sacrificing oversight of the most dollar intensive, high-risk federal transactions. For the Research community, this will guarantee that the critical research tools and supplies continue to be obtained in the most timely and efficient manner, and that there is no risk of degradation to the quality of research and science.

We appreciate your willingness to engage with the grantee community on this important issue. Below are several partners that will join us to work with you to pursue the Implementation of Sensible Procurement Standards. And as you know, the broader coalition of stakeholders that COGR helped to organize several years ago remains an integral voice in the successful implementation of all areas of the Uniform Guidance.

Please contact me or David Kennedy at (202) 289-6655, ext. 4, if you have questions. We look forward to addressing this issue in more detail at your earliest convenience.

Sincerely,



Anthony P. DeCrappeo
President, COGR

On behalf of:

- Association of American Universities (AAU)
- Association of Independent Research Institutes (AIRI)
- National Association of College and University Business Officers (NACUBO)
- National Association of Educational Procurement (NAEP)
- National Council of Nonprofits
- Procurement Leadership Group

Cc: Karen Lee, Branch Chief, Office of Federal Financial Management
Gilbert Tran, Office of Federal Financial Management
Howard Shelanski, Administrator, Office of Information and Regulatory Affairs (OIRA)