COGR Letter to OMB on Uniform Administrative Requirements, Cost Principles and Audit Requirements

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COGR
an organization of research universities

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

Subject: Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200)

Docket Number OMB–2015–0001 (formerly OMB–2014–0006)
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Dear Mr. Mader:

On behalf of the Council on Governmental Relations (COGR) and its members, we appreciate the hard work that many Federal leaders have contributed to the development and implementation of the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). This letter is the COGR Response to Docket Number OMB–2014–0006.

This is an unprecedented and impressive undertaking by OMB and the Council on Financial Assistance Reform (COFAR). OMB and the COFAR have utilized a process that has allowed all stakeholders to participate in crafting the final version of the Uniform Guidance. A significant portion of the final version of the Uniform Guidance reflects the transparent and responsive approach taken by OMB and COFAR. Consequently, COGR believes that OMB and the COFAR are on the right path toward achieving the President's goal of instituting grants reform and reducing administrative burden.

However, there are several items that we believe require common-sense modification in order to ensure the best implementation of the Uniform Guidance. In this letter we highlight those items that require policy calibration and we urge OMB to take a proactive approach to addressing these items prior to full implementation. Resolving these items in a timely manner will allow for a successful roll-out of the Uniform Guidance and further elevate the overall, excellent work completed by OMB and the COFAR over the past four years.

COGR is in a unique position to partner with OMB and the COFAR over the next several months to make the modifications we believe are necessary to ensure the successful roll-out of the Uniform Guidance. COGR is an association of over 190 research universities and affiliated academic medical centers and research institutes. Our member institutions conduct over $60 billion in research and development activities each year and play a major role in performing basic research on behalf of the Federal government. We bring a unique perspective to regulatory and cost burden: our focus is on the influence of federal regulations, policies and practices on the performance of federally sponsored research carried out at research universities and institutions.

The policy calibrations that we are suggesting are strongly endorsed by the COGR membership.

Furthermore, these policy adjustments will:

1) Reduce administrative cost and burden and/or prevent an increase,
2) Support and be consistent with the audit and accountability standards that have been established, and
3) Reinforce equity and fairness across all non-Federal entities.

We are committed to working with you to ensure that the Uniform Guidance reflects the best possible outcomes for the grantee community and the Federal government. It is essential that the goal of reducing regulatory and cost burden, without jeopardizing accountability, is achieved. Ultimately, achieving this goal will allow our community to deliver on the ultimate goal: ***The best and most effective delivery of Federal programs to the public, and in the case of research institutions, strengthening the science and research enterprise.***

We have proposed 8 items to be prioritized. We have presented these 8 items in the order in which they are presented in the Uniform Guidance, but to emphasize, COGR considers each of these 8 items as high priority items that we request be addressed by OMB in a collaborative manner that honors the partnership approach that has been established, to-date. The COGR Response follows below:

1) Conflict of Interest, § 200.112

We appreciate that OMB published FAQ .112-1 that stated section § 200.112 was not meant to refer to "*scientific conflicts of interest that might arise in the research community*." Further, the FAQ is helpful by specifying that section § 200.112 refers to "*conflicts that might arise around how a non-Federal entity expends funds under a Federal award*."

However, FAQ .112-1 is problematic by incorporating a "*selection of a subrecipient*" into the FAQ. In discussions with representatives from OMB and the COFAR, our understanding is the intent of section § 200.112 is to address conflicts specific to procurement actions, not the selection of collaborators. Research institutions and their Principal Investigators select collaborators based on a number of factors, most prominent being the enhanced scientific value that the collaborator will contribute. To impose a requirement designed to maintain the integrity of the selection of a vendor/contractor onto the selection of a subrecipient is inappropriate and jeopardizes the quality of the scientific endeavor. This same position was confirmed in an August 25, 2000 letter from the OMB Deputy Controller, to the ONR Executive Director of Acquisitions, and should be reconfirmed by making this clear in the FAQs and in section § 200.112.

COGR recommends that FAQ .112-1 be modified, accordingly, and that the following policy clarification (as underlined) be made to section § 200.112. By emphasizing that this section is applicable to procurements only will eliminate any ambiguity and confusion created by FAQ .112-1.

> *§ 200.112 Conflict of interest in procurements*
>
> *The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy. This refers to conflicts that might arise around how a non-Federal entity expends funds under a Federal award and does not refer to scientific conflicts of interest that might arise in the design, conduct or reporting of research by the research community.*

2) Requirements for pass-through entities, § 200.331

New rules and requirements applicable to subrecipient monitoring by pass-through entities rank as one of the top areas where new administrative burden has been created. This outcome is exacerbated by the fact that the increase in the single audit threshold from $500,000 to $750,000 will eliminate access to a Single Audit report for a cohort of our subrecipients and instead force pass-through entities to assess the financial adequacy of this cohort using other means, such as the possible use of financial questionnaires about the entity's internal control systems. The cumulative impact of these changes means that many of our institutions will add staff/FTEs to comply with the new requirements specified in § 200.331(d).

However, some of the burden can be offset when OMB approves new and rational policies and corresponding "Safe Harbors", which would eliminate duplicative monitoring activities that add burden without enhancing the compliance environment. On a number of occasions, OMB and COFAR have shared their willingness to address this topic, and the following OMB clarification would confirm OMB's and the COFAR's commitment to employ a common-sense approach to reduce administrative burden. This clarification could be incorporated into § 200.331(d), and cross-referenced to § 200.521(c), as specified in the Audit Requirements:

> *If a pass-through entity confirms that a proposed subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may rely on the subrecipient's auditors and cognizant agency oversight for routine audit follow-up and management decisions. Such reliance does not eliminate the obligation of the pass-through entity to issue subawards that conform to agency and award-specific requirements and to manage risk through ongoing subaward monitoring.*

Effectively, COGR is proposing an Audit/Management Decision "Safe Harbor" when the subrecipient is a peer-institution with a current Single Audit report, and not currently debarred or suspended. This Safe Harbor does not eliminate the obligation for a pass-through entity to properly flow down terms and conditions of the Federal award, nor would it eliminate ongoing monitoring to ensure adherence to the conditions of an award (including achievement of performance goals and proper use of Federal funds), nor to take corrective action if it detects unallowable costs or problematic performance. The Safe Harbor would, however, allow pass-through entities to

devote their limited resources to high-impact monitoring activities, rather than engaging in duplicative audit and monitoring activities already performed by the auditors of their subrecipients and the Federal agencies.

OMB previously recognized the need for additional refinements in this arena, confirming that at the present time, pass-through entities do not have access to management decisions already issued by other auditors or agencies engaged in review of a non-Federal entity. Thus, pass-through entities cannot properly take advantage of work already performed. In addition, the current requirements add burden for subrecipients since they are required to provide documents and undergo separate reviews by every pass-through entity with whom they do business, in addition to the audits or agency reviews they undergo during their normal course of business.

The Safe Harbor would eliminate the need for duplicative and unnecessary audit and monitoring activities by the pass-through entity, and more importantly, will improve program performance. Specifically, subawards could be finalized in a more timely manner, which will allow research collaboration between scientists to begin early in the project. It is, in our opinion, far more effective to allow auditors and Federal agencies to devote their resources to systemic reviews of the internal control systems of subrecipients, and allow pass-through entities to focus their limited resources on ongoing monitoring. If, in certain instances, special subrecipient monitoring is required for an individual award, the monitoring expectations should be agreed to between the pass-through entity and the Federal agency at the time of award. In those cases, Federal funding can be provided to the recipient to allow that level of specialized monitoring to be performed.

Subrecipient monitoring and management is an administratively burdensome and costly activity; the Safe Harbor will provide relief. In the past, COGR has considered a recommendation to allow F&A recovery on the first $25,000 of expenditures by the subrecipient on an annual basis, as this would begin to recognize the significant burden associated with subrecipient monitoring. However, if subrecipient monitoring burden can be eased by adopting the proposed Safe Harbor, COGR recommendations concerning F&A reimbursement need not be addressed at this time.

3) Procurement Standards, § 200.317 - § 200.326

We appreciate that OMB has granted a grace period, which allows institutions to defer implementation of new procurement standards until the beginning of their fiscal year FY2017. The grace period will allow OMB the opportunity to consider the three recommendations described below. The first two are more immediate and COGR proposes that they be made as policy calibrations to the Uniform Guidance. We propose the third recommendation to be addressed through a series of meetings and discussions with OMB.

The two policy calibrations to section § 200.320 of the Uniform Guidance that we are proposing address two core foundations, both of which are fundamental to sound and effective regulatory policy: audit clarity and fair and reasonable administrative expectations.

First, COGR has suggested to OMB on a number of occasions that FAQs, while helpful, do not always provide the audit clarity necessary to communicate to auditors the official Federal policy position. In fact, COGR can provide examples where Inspectors General (IG) personnel have publically stated that FAQs do not carry the force of official Federal policy, and consequently, the IG has published significant audit disallowances in their final audit reports.

While we are thankful that OMB considered several of the requests COGR made to incorporate FAQs into the final version of the Uniform Guidance, one FAQ that was not incorporated (FAQ 320.2, Sole Source for Research) represents an important policy clarification and we propose it be made to section § 200.320(f). The underlined section (5) below would be an addition to section § 200.320(f) and would provide needed audit clarity that "*research, scientific, or other programmatic reasons*" clearly represent a valid justification for using a sole source procurement.

> *(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:*
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> *(1) The item is available only from a single source;*
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> *(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;*
>
> *(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; ~~or~~*
>
> *(4) After solicitation of a number of sources, competition is determined inadequate; or*
>
> *(5) The procurement is necessary for research, scientific, or other programmatic reasons. For example if the procurement is of special quality that is offered by only one company or only one company can deliver in the time frame required for the project, the purchase order can be made under the sole source purchase provision.*

Second, COGR proposes that the "*procurement by micro-purchases*" methodology be updated in order to be consistent with the core regulatory policy foundation of fair and reasonable administrative expectations.

Section .504(d)(4), "*Methods of procurement to be followed*" (as specified in OMB-2013-0001, Proposed Uniform Guidance, February 1, 2013) did not include the proposal to establish "*procurement by micro-purchases*" as one of the methods of procurement. In COGR's May 31, 2013 response to OMB-2013-0001, we included detailed comments to section .504, *Procurement methods*, but because "*procurement by micro-purchases*" was not defined, we could not provide a formal comment on this central topic. While OMB actively has engaged the research community and all stakeholders in many facets of the Uniform Guidance, in this critically important area, the community was not provided the opportunity to comment. COGR believes a more robust and interactive process is needed to finalize a policy on "*procurement by micro-purchases.*"

In the Final Uniform Guidance (December 26, 2013), section § 200.67 (the definition for "micro-purchase") cites the Federal Acquisition Regulation at 48 CFR Subpart 2.1 as the basis for setting the threshold at $3,000. The $3,000 threshold as it relates to contracts may be appropriate and validated by the FAR Council. However, in the context of Federal financial assistance and grants, the $3,000 threshold has been selected without: 1) an objective analysis on what is appropriate for grants, 2) any input from the grant recipient community, and 3) any attention paid to the impact on new administrative burden that will be created.

The added administrative burden will be significant. A majority of IHEs and Nonprofit Research Institutions have established similar thresholds between $5,000 and $10,000, and in some cases, higher. Institution-wide

procurement policies, including procurement card policies have incorporated these thresholds, and IT, management and training policies have been developed based on these thresholds. A $3,000 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. In the case of State universities, many IHEs have linked their thresholds to be in compliance with State requirements, and the fact that States have been supportive of the higher thresholds is a compelling testimony that a higher threshold is appropriate.

Ultimately, what is at risk is the ability of Principal Investigators to acquire research supplies and tools in a timely manner, and any compromise to timeliness may have a detrimental impact on the quality of research. Our procurement systems have been designed to include the internal controls that ensure appropriate approvals, oversight, and monitoring of micro-purchases. Defining the micro-purchase threshold at a level that is in-line with internal IHE/Nonprofit Research Institution/State government policies will allow our institutions to continue delivering the highest quality research without any compromise to accountability for Federal funds.

Citing OMB's commitment to use evidence-based data to address important policy challenges and to promote cost-effectiveness across Federal programs, we propose that an initial adjustment of the micro-purchase threshold be made from $3,000 to $10,000. And as data supports a higher threshold, we request that OMB consider future adjustments. COGR and our members can provide data that demonstrates both the cost and administrative burden that will be created with a $3,000 threshold, and we further can provide information that articulates how our procurement systems have been designed to achieve cost-savings and efficiency, while promoting the integrity and stewardship of Federal and institutional funds. Therefore, we propose that OMB make the following policy calibration to section § 200.320(a).

> *(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed $10,000 ~~$3,000~~ (or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.*

Third, COGR requests that we utilize the grace period to meet with OMB and review the applicability of the Procurement Standards, sections § 200.317 - § 200.326, to selected classes of non-Federal entities. Section § 200.317, Procurements by states, specifies: "*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 …*"

COGR believes that when an IHE or Nonprofit Research Institution can demonstrate that its current policies and procedures have been long-established and legitimized thorough the Single Audit process, and that those policies and procedures have been determined to provide effective oversight and stewardship of both Federal and institutional funds, then the IHE or Nonprofit Research Institution can be exempted from the Procurement Standards, as defined in sections § 200.317 - § 200.326, and can continue to follow its current policies and procedures.

Without an accommodation as described above, IHEs and Nonprofit Research Institutions will be obliged to develop two sets of procurement policies and procedures; the first for institutional funds and the second for Federal funds. This would be an unfortunate and costly outcome as the administrative burden of operating concurrent procurement systems would be unwieldy. IHEs and Nonprofit Research Institutions, like States,

have built their procurement systems to protect equally their Federal and institutional funds, and consequently, IHEs and Nonprofit Research Institutions should be provided the same latitude as States to continue operating their current procurement systems.

4) Closeout, § 200.343

We are encouraged by the current initiative taken by several Federal agencies to standardize a 120-day financial closeout model. Our understanding is that this model will be incorporated under the new Research Terms and Conditions (RTCs) and will be applicable to those agencies that adopt the RTCs. In addition, we are aware of at least one other agency not participating in the RTCs that also will standardize a 120-day financial closeout model, which will be consistent with the RTCs.

Standardization of a 120-day financial closeout model across all Federal agencies, and further including performance and other reports under a uniform 120-day model is consistent with a Uniform Guidance pillar, which regularly has been endorsed by OMB and the COFAR: *["Uniform Guidance" delivers on the promise of a 21st-Century government that is more efficient, effective and transparent and streamlines the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. These modifications are a key component of a larger Federal effort to more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders.]*

Standardization of a uniform 120-day model across all Federal agencies will streamline the grants closeout process and will be true to OMB's and the COFAR's desire to institute Uniform Guidance.

This is especially crucial to research institutions, which often are funded by over 25 separate federal agencies and increasingly have portfolios that include both domestic and international subawards, which, by their nature, require a longer timeframe to manage both the administrative and programmatic requirements. Without consistency in agency policies and practices, management of the Federal research program is more costly and an administrative challenge for central administrators, as well as departmental administrators and the Principal Investigators (PIs) that are being supported. Management of multiple sets of agency policies first affect central administrators and IT systems, and unfortunately, trickles down to the departments and the PIs. The obvious burden and cost is reflected in the nuanced training programs, workflows, and IT systems that have to be modified and cultivated. The damaging outcome is the inherent inefficiency of such a process, and ultimately, decreased research productivity.

The following policy calibration to section § 200.343(a) and (b) will create a consistent Federal policy across all agencies and will result in an instantaneous elimination of a potential administrative burden, which will produce immediate benefits in the form of improved efficiency, compliance and performance on Federal programs.

> *(a) The non-Federal entity must submit, no later than 120 ~~90~~ calendar days after the end date of the period of performance, all financial, performance, and other reports as required by ~~or~~ the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.*

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 120 ~~90~~ calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

Furthermore, we suggest that with the issuance of this policy calibration to the Uniform Guidance, OMB also affirm that the new and uniform 120-day model be applied retroactively to all Federal awards. Like other parts of the Uniform Guidance that have been defined as system-wide requirements (e.g., Procurement, Compensation, etc.) applicable to all Federal awards, Closeout, too, falls into the category of system-wide. To have one set of awards abide by a 90-day model and a second set by a 120-day model would create an unnecessary and self-inflicted administrative burden. Consequently, an OMB affirmation of a retroactive implementation will ensure that the benefits of a new and uniform 120-day model are maximized.

5) DS-2 Requirement, § 200.419

Per OMB-2013-0001, Proposed Uniform Guidance (February 1, 2013), OMB and the COFAR took the position that the DS-2 should be eliminated. Unfortunately, OMB and the COFAR reinstated the DS-2 requirement in the Final Uniform Guidance (December 26, 2013), with the rationale being: *"Some commenters responded favorably that this would reduce a source of administrative burden, but others were concerned, stating that this disclosure statement was a critical tool to mitigating waste, fraud, and abuse and opposed its elimination."*

COGR has provided OMB and the COFAR with justifications and data suggesting that the DS-2 could be eliminated without compromising the important objective of mitigating waste, fraud, and abuse of Federal funds. Our October 10, 2014 letter to OMB documented those reasons for eliminating the DS-2 requirement. And upon your request for data, we surveyed the COGR membership and found that in 87% of the total Federal audits conducted over the past five years (1,048 of 1,204 Federal audits surveyed), a DS-2 was not requested.

It is clear that the DS-2 is not a critical compliance document; instead, it simply is a transposition of accounting policies and practices that already are documented in the official policies and practices of the institution. We also believe it is inappropriate to require only IHEs to be subject to the DS-2 requirement. We note that all other recipients, including State, Local, and Tribal governments, and Nonprofits are excluded from this requirement.

Despite OMB's best efforts to make the DS-2 requirement manageable under the Uniform Guidance, uncertainty persists. Specifically, the approval process has been designed in a manner such that an IHE may be poised to make an accounting change that is allowable in the Uniform Guidance, but because of the resource challenges for the IHE's cognizant agency for indirect costs, the allowable accounting change may not be approved in a timely manner. There is no recourse for an IHE if the cognizant agency simply notifies them within six months that more time is needed to review their request, and there is no limit on how long an IHE must wait for their DS-2 to be reviewed. In effect, an IHE may be prohibited from making practical and administratively sound changes in accounting practice (e.g., payroll documentation system, treatment of fringe benefits, etc.) for an extended period of time because of approval bottlenecks at the cognizant agency for indirect costs.

Therefore, we propose that OMB replace section § 200.419(b)(1) and (2) with the sections below. This is consistent with FAQs that OMB has provided and will eliminate most of the ambiguity that has surrounded the

DS-2 requirement. Furthermore, section § 200.419(b)(5) should be deleted; specifically, a compliant change in a cost accounting practice would not require approval, therefore, section (b)(5) no longer would be applicable.

> *(b) Disclosure statement …*
>
> *(1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit. The initial DS-2 and revisions to the DS-2 must be submitted in coordination with the IHE's F&A rate proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. IHEs with CAS-covered contracts or subcontracts meeting the dollar threshold in 48 CFR 9903.202-1(f) must submit their initial DS-2 or revisions no later than prior to the award of a CAS-covered contract or subcontract.*
>
> *(2) An IHE is responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. Changes to cost accounting practices that comply with the Uniform Guidance do not require approval of the cognizant agency for indirect costs. Only those cost accounting changes that deviate from the Uniform Guidance require approval by the cognizant agency for indirect costs, in accordance with section § 200.102(b) of the Uniform Guidance.*

Under this policy update, if a change in accounting practice is allowed or is consistent with the Uniform Guidance, the IHE can make a change in accounting practice without approval. If the proposed change is a deviation from the Uniform Guidance, then the change must be approved by the cognizant agency for indirect costs. While COGR requests that we continue to work with OMB and the cognizant agencies for indirect cost to consider opportunities for further minimizing the burden associated with the DS-2 requirement (with a goal of eliminating the DS-2 requirement all together), the update that we have proposed will allow IHEs to implement practical and administratively sound changes in accounting practices in a timely manner.

6) Compensation – fringe benefits, § 200.431

OMB-2013-0001, Proposed Uniform Guidance (February 1, 2013) did not include the text shown in section § 200.431(j) of the Final Uniform Guidance. IHEs, consequently, could not provide a formal comment on this topic. Under OMB Circular A-21, tuition reductions or waivers are allowable to employees for both undergraduate and graduate education, without a restriction on the institution where the employee uses these tuition reductions or waivers.

First, section (j)(1) should be modified; otherwise, (j)(3) reads as though graduate education may not be allowable. Second, a modification to (j)(3) is necessary so that: 1) the awkward reference to the IRC in this section is deleted (note, it is appropriate under paragraph (j)(2)), and 2) it is made clear that reciprocal agreements with community colleges, etc. are permissible. COGR believes that it was not the intent of OMB and the COFAR to establish any policy change in this area, and therefore, the following technical corrections would be appropriate.

> *(j)(1) For IHEs only. Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal*

entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions for undergraduate and graduate education ~~under IRC Section 117(d) as amended~~, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy; however, Federal reimbursement of tuition or remission of tuition is ~~also limited~~ made to the institution for which the employee works. See § 200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

7) Utility Cost Adjustment, Appendix III to Part 200

COGR appreciates the effort by OMB to introduce a more fair and cost-based approach to allocating utilities. However, Appendix III, B.4.c, may be the single most confusing section of Uniform Guidance and will require close collaboration between our institutions and Federal officials to achieve a successful roll-out of this section. Consequently, we encourage OMB to issue a clarification that will result in a less burdensome and more equitable implementation of the utility cost adjustment (UCA). An OMB clarification should be made immediately as applicable to FY2014-based F&A rate proposals and any other outstanding F&A rate proposals that have been (or will be) submitted to establish F&A rates for FY2016 and beyond.

As we highlighted in our May 31, 2013 response to OMB-2013-0001, Proposed Uniform Guidance, our institutions have made considerable commitments to reducing utility costs. Still, research space is the most utility-intensive space on campus. The 24/7 nature of research space, which includes energy-intensive equipment and the maintenance of climate-controlled environments, makes the high-consumption of utilities inevitable. While utilization of the relative energy utilization index (REUI) may be a useful starting point for developing "effective square footage" factors associated with research laboratory space, the 2.0 weighting factor may not be accurate. Engineering experts with whom COGR has engaged suggest that a factor of 3.0 may be more appropriate. More specifically, by using a more accurate cohort of buildings, the denominator for the REUI would be significantly lower and the result would be a research weighting factor exceeding 3.0.

Fortunately, OMB has specified the following in Appendix III, B.4.c.(2)(ii)(B): "*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."* We appreciate this commitment to adjust the REUI on a consistent basis; this will allow our institutions to work with representatives from OMB and the Cognizant agencies for indirect costs to make the necessary adjustments to the REUI. We look forward to the opportunity to meet with representatives from OMB and the Cognizant agencies throughout 2015 to review technical data and to determine any appropriate UCA adjustments to be effective December 26, 2015.

However, until the anniversary date of December 26, 2015 when an adjustment can be made, there will be inequities that must be resolved. In order to address these concerns, we propose that OMB issue the following clarification:

> *For IHEs that have submitted (or will be submitting) a FY2014-based F&A rate proposal (or a FY2013-based F&A rate proposal) to establish F&A rates for FY2016 and beyond, the following is applicable:*
>
> - *If the IHE received the 1.3% UCA per OMB Circular A-21, the IHE may include the 1.3% UCA in their F&A rate proposal without any additional documentation.*
>
> - *If the IHE is applying for the 1.3% UCA for the first time, the IHE may propose a UCA in its F&A rate proposal by following the requirements in Appendix III, B.4.c.(2)(ii)(B). If the IHE is not able to support the 1.3% UCA using a research laboratory factor of 2.0, the IHE and the Cognizant agency for indirect costs should work together to resolve inequities during the rate negotiation process.*
>
> *For all IHEs that are submitting a F&A rate proposal based on FY2015, or later, an adjusted research factor may be applicable. The adjusted research factor, using appropriate technical data, will be established on a consistent basis, in a collaborative manner between OMB, the Cognizant agencies for indirect costs, and IHEs.*

Effectively, institutions submitting a F&A rate proposal that have never been eligible for the UCA, are unfairly penalized as they are required to use a substandard 2.0 research factor. However, we are hopeful that in a good faith negotiation of the F&A rate, any inequities can be resolved. For example, and as agreed to by all parties, a 3.0 factor could be modeled and analyzed during the rate negotiation.

At the same time, institutions submitting a F&A rate proposal that have received the 1.3% UCA per OMB Circular A-21 and have established the 1.3% as a baseline threshold, absolutely should not be penalized during this transition period. Supporting documentation for the UCA is a work in progress, with the goal being simplified and standardized documentation that does not create significant burden for IHEs or the Cognizant agencies. It is reasonable for those institutions that have never been eligible to pioneer this effort; it is not reasonable to thrust any burden on those institutions that have long established the 1.3% as their baseline.

Finally, it should be noted the 1.3% UCA represents a cap, and any form of a cap on cost reimbursement is arbitrary and results in an institution subsidizing the Federal government. While COGR strongly opposes the 1.3% cap, the justification is that it allows OMB and the COFAR (as specified in the preamble to the Final Uniform Guidance) to monitor results "*until such a time as OMB and Federal agencies can better understand the cost implications of full reimbursement …*" However, as OMB and the COFAR use the cap to address concerns about over-reimbursement, COGR is equally strong in its position that institutions should not be put at risk for under-reimbursement. Collaboration and technical review of data between OMB, the Cognizant agencies for indirect costs, and IHEs throughout 2015, and beyond, will allow the community to work toward the most equitable solutions. Until then, the OMB clarification proposed by COGR will help to ensure that no institution is unfairly penalized during this transition period.

8) OMB Leadership and Advancing the Partnership

COGR's final request for this phase of the Uniform Guidance implementation is that OMB engage in an assertive agenda that regularly assesses, clarifies, calibrates, and reforms Federal grants policy. The OMB "metrics" initiative is important, and in fact, COGR has begun accumulating data and case studies from the COGR membership that will help to inform ongoing assessments of the Uniform Guidance implementation. We will share our research with OMB on a regular basis.

However, more than metrics are required. First, while the Federal agencies have published thoughtful implementation plans, at times, we are overwhelmed by the deviations that are inherent to each agency plan. In some cases, statutory directives drive these deviations. In other cases, agency culture and policies are the driver. As a result, Uniform Guidance is not always uniform. However, if OMB is committed to assess, clarify, calibrate, and reform, we will make greater strides toward Uniform Guidance, and ultimately toward the goal of reducing administrative burden. ***This will require strong OMB leadership that nurtures an intentional partnership, which includes regular meetings and communication between OMB, OIRA, Federal agency representatives, COGR, and other Stakeholders to address deviations and to foster solutions.***

Also important to the partnership equation is engagement with the FAR Council. While contracts and grants each serve a unique public policy purpose, and sometimes policy differences are appropriate, there are opportunities to establish better consistency between these two funding instruments. Unfortunately, the mechanism to meet and collaborate with the FAR Council has not been obvious to COGR. ***Therefore, we encourage OMB to again exercise strong leadership and establish a forum that brings together OMB, representatives from the FAR Council, COGR, and other Stakeholders to identify opportunities to align contract administration policy with grants policy.***

Finally, we respect that a primary emphasis of the Inspectors General (IG) community is to mitigate waste, fraud, and abuse of Federal funds. COGR and our members support this focus. However, it need not contradict the goal of reducing administrative burden. While there may be a natural tension between these two goals, if the IG community and the grant-recipient community are committed to partnership, then tension can be alleviated. Unfortunately, our perspective is that, at times, the IG community tends toward a "gotcha" mode-of-operation rather than one of partnership. COGR would welcome the opportunity to engage with the IG community to shift this dynamic and solidify a productive relationship. ***Strong OMB leadership can provide Federal policy and audit clarity through OMB clarification notices and other OMB communications, which can lead to a better delineation on what should and what should not be subject to IG audit activities.***

OMB and the COFAR were charged with the monumental task of establishing Uniform Guidance across a widely diverse community of Federal agencies and non-Federal entities, not to mention doing so within a landscape of striking variance between numerous Federal programs and the corresponding public policy goals of these programs. Nevertheless, OMB and the COFAR achieved a starting point (i.e., the Final Uniform Guidance). ***By exercising strong OMB leadership coupled with a commitment to making regular policy calibrations***, the twin goals of minimizing administrative burden and mitigating waste, fraud, and abuse of Federal funds will continue to be advanced.

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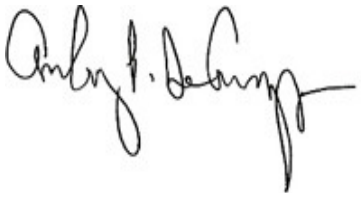
Thank you for your willingness to review the 8 items that we have addressed as high priority items. Please contact me or David Kennedy at (202) 289-6655 if you have questions. We look forward to addressing these 8 items in more detail at your earliest convenience.

Sincerely,



Anthony P. DeCrappeo
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Cc: Karen Lee, Branch Chief, OMB
Victoria Collin, OMB
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