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**June 30, 2015 - Revisions to Procurement Standards and Grace Period Extension**

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# COGR

an organization of research universities

## COUNCIL ON GOVERNMENTAL RELATIONS

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June 30, 2015

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Branch Chief, Office of Federal Financial Management

Mr. Gilbert Tran  
Office of Federal Financial Management

White House Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

*Subject: Revisions to Procurement Standards and Grace Period Extension*

Dear Ms. Lee and Mr. Tran;

Thank you for your leadership during the implementation of the Uniform Guidance (2 CFR Part 200). This has been a monumental effort and OMB and the COFAR have been focused and responsive to the challenging issues raised by the grant recipient community. We especially appreciate the personal attention that OMB and the COFAR have provided to engage in the detail and to consider the impacts of those sections of 2 CFR Part 200 that have required hands-on, urgent attention.

As we look toward the requirement to implement Procurement Standards for FY2017 (i.e., for most IHEs and Nonprofit Research Organizations, this will be July 1, 2016), there are urgent issues that need immediate attention. **We are not confident that key concerns will be resolved in a timely manner.** The lead time to implement changes to our procurement systems is at least one-year. IHEs and Nonprofit Research Organizations (NROs) have initiated this process, but due to continued uncertainty on critical and open issues, it would be irresponsible and a poor use of scarce institutional resources to proceed at the pace necessary to meet the FY2017 implementation date.

COGR's consistent position for the past two years has been that IHEs and NROs should be granted the same opportunity as States to be exempt from sections 200.317 through 200.326. This position is bolstered by the fact that the current procurement systems maintained by IHEs and NROs are state-of-the-art systems

that have resulted in significant cost savings and efficiencies for both the institutions themselves and the Federal government. The track record of our systems with both the Single Audit and Federal Audit communities is stellar and there has been little evidence of our systems promulgating fraud, waste, or abuse.

Our position remains that IHEs and NROs should be granted an exemption and allowed to use our current systems and processes, which are in compliance with Circular A-110. Short of that solution, but at a minimum, it is necessary to address the full scope of sections 200.317 through 200.326, with a diverse group of stakeholders, prior to implementation. Some of the open issues to be addressed include:

- **Raise the Micropurchase Threshold to \$10,000, with biannual adjustments.** Our data shows this will be a fair and safe harbor, which would not put Federal dollars at risk for fraud, waste, or abuse. One analysis that has been helpful is to determine at what dollar threshold would 75% of all procurement dollars be covered. For example, an institution that expended \$200 million in procurement dollars in fiscal year 2014 is likely to have \$150 million (75%) represented by individual transactions that are \$10,000 or greater. **Using a risk-based audit model** (similar to what OMB/COFAR used to increase the single audit threshold from \$500,000 to \$750,000), this would suggest \$10,000 as an appropriate Micropurchase Threshold for the institution. The power of this model is that the number of individual transactions that are \$10,000 or greater is likely to be only 10 to 15% of all transactions.

Consequently, this allows the institutions to rigorously focus its internal audit resources on fewer transactions, while still covering 75% of all procurement dollars. We believe OMB and the COFAR are interested in this risk-based approach to establishing a more appropriate Micropurchase Threshold. **However, time is of the essence.** Without sufficient lead time to finalize the more appropriate Micropurchase Threshold, our institutions will remain in limbo not knowing how to respond to the current FY2017 implementation date.

- **Develop Mechanism to Apply for a Higher Threshold.** Some institutions can support a Micropurchase Threshold greater than \$10,000, while still not putting Federal dollars at risk for fraud, waste, or abuse. Internal institutional risk assessment should dictate whether a non-Federal entity decides to apply for a higher threshold. For example, a track record that demonstrates single audits with no findings related to procurement controls would be one mechanism to support the higher threshold. We recognize this will require a thoughtful and deliberate analysis to finalize the process in which institutions should use to apply for an alternative threshold, which further supports the need for a grace period extension.
- **Ensure Faculty Research Productivity does not Suffer.** This is a “must have” – **research productivity cannot be adversely impacted** and there cannot be any risk to the ability of Principal Investigators and Scientists to acquire research supplies and tools in a timely manner. A \$3,000 threshold will create situations where a critical research tool or supply cannot be obtained in a timely manner. For example, rather than acquiring the tool via a 1-day turnaround, the result may balloon into a 1-week turnaround. Any compromising of timeliness could have a detrimental impact on the quality of Federally sponsored research programs and could be the difference between a critical scientific breakthrough versus an unnecessary and inexplicable lost opportunity.

- **Scrub and Fix other broken sections.** While the IHE and NRO communities primarily have been focused on the Micropurchase Threshold, **other sections need to be addressed, clarified, and rewritten.** This includes: 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 Geographic Preferences (200.319(b)) and the fact that many institutions are required to encourage local consideration, 4) clarifying documentation requirements associated with “*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)), 5) addressing the “publicized” requirement for RFPs for competitive proposals (200.320(d)) in the same manner as sealed bids (200.320(d)), and 6) recognizing the impracticality of the negotiation of profit requirement under section 200.323(b).
- **Make Certain the Administrative Burden does not Increase.** This, too, is a “must have” – if administrative burden increases under any section of 2 CFR Part 200, then the President’s mandate to reduce administrative burden has not been met. Implementation of sections 200.317-200.326 provide the most glaring example for potential failure. The added administrative burden to implement sections 200.317-200.326 will adversely impact institution-wide procurement policies and efficient and effective procurement practices. In some cases, institutions will be forced to manage dual procurement systems: one for Federal funds and one for all other funding sources. Preliminary findings suggest that implementation of 200.317-200.326, as is, **would result in an increase in FTE administrative staff, contrary to the President’s mandate.**

In the case of procurement card policies, IT, management and training policies have been developed based on institutional thresholds (e.g., \$5,000, \$10,000, etc.) that have met internal institutional risk assessment standards. 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. Again, **an increase in FTE administrative staff** would be required to administer the \$3,000 threshold. 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.

- **Incorporate FAQs into the Procurement Standards.** FAQs, such as .320-2 (Sole Source for Research) and .320-4 (Strategic Sourcing and Shared Services) encompass key principles that need to be formalized as part of the Procurement Standards. 2 CFR Part 200, in many areas, is premised on principles rather than prescriptions. Incorporating key principles, such as the two FAQs cited above, would represent a major improvement and clarity to sections 200.317-200.326.

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. **Implementation of sections 200.317-200.326, as it is currently written, puts the research enterprise at risk of losing this focus.**

Consequently and in recognition of these concerns, we propose the following solution:

- 1) **Extend the Grace Period to an FY2018 implementation date for sections 200.317-326, AND INCLUDE section 200.112, Conflict of Interest.** The Procurement Standards are intimately tied to section 200.112, Conflict of Interest. In order to achieve the most thoughtful outcome, section 200.112 should be suspended immediately, and going forward, be considered concurrently with sections 200.317-326.
- 2) **Establish a Working Group that includes Procurement Directors, Grant Administrators, Faculty, and other Stakeholders.** This working group from the grant recipient community (IHEs, NROs, State and Local, Tribal, Nonprofits, etc.) would meet with OMB/COFAR to review sections 200.317-200.326, as well as 200.112, and to provide recommendations to improve these sections. During the review, COGR's position should be considered: all non-Federal entities should be granted the same opportunity as States to be exempt from sections 200.317 through 200.326.
- 3) **Complete the revision of sections 200.317-200.326 AND 200.112 by Spring 2016.** This will provide the adequate lead time of one-year, which is consistent with an FY2018 implementation date. For many non-Federal entities, the implementation date will be July 1, 2017.

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We will continue our outreach to other stakeholders and associations from the broad grant-recipient community. This coalition has synergized our mutual interests and has been an important bedrock of building consensus and partnership between the grant-recipient community and OMB/COFAR.

We are thankful for your ongoing willingness to engage with the grant-recipient community, and in this case, to consider our proposed solution. Please contact me or David Kennedy at (202) 289-6655, ext. 112, if you have questions. We look forward to addressing this issue in more detail at your earliest convenience.

Sincerely,



Anthony P. DeCrappeo  
President, COGR

Cc: David Mader, OMB Controller