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May 2015 Update

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TO: COGR Membership
FROM: COGR Staff
SUBJECT: May 2015 Update

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Animal Welfare Developments

The Department of Agriculture, **Animal and Plant Health Inspection Service (APHIS)** issued a March 30 notice in the Federal Register entitled, “Petition to Define Alternatives to Procedures that May Cause Pain or Distress and to Establish Standards regarding Consideration of these Alternatives. ” This notice addresses The Physicians Committee for Responsible Medicine (PCRM) petition to APHIS to amend parts of Title 9 of the CFR, specifically to *add a definition to alternatives, amend the existing definition of painful procedures , and to specify what must occur as part of a consideration of alternatives.* APHIS would like the comments to address six questions in the notice. Comments are due May 29th. COGR will be responding to this notice. Please send your comments to Jackie Bendall at jbendall@cogr.edu For more information see: <http://www.gpo.gov/fdsys/pkg/FR-2015-03-30/pdf/2015-07221.pdf>

In addition to the above, the **National Association for Biomedical Research (NABR)** has reached out to COGR asking for our assistance in the completion of an online survey about the ways the 3Rs, collectively called “alternatives,” are being implemented. The survey is brief and focuses on which methods have been most effective for this purpose, and which are not as productive. NABR believes that this is an opportunity to highlight regulatory burden on research if factual evidence exist to support revised regulations. The survey results will assist NABR’s draft comments in response to USDA APHIS Federal Register Notice and the [petition for new federal rulemaking proposed by the Physicians Committee for Responsible Medicine \(PCRM\)](#). Responses from individual institutions will be kept confidential. If your institution has not already done so, **please spread the word about the survey found at: <https://survey.zohopublic.com/zs/SLyS9D>**

Grant Reform and New Transparency (GRANT) Act

COGR, AAU and APLU recently met with Senate and House staff to share concerns about the impact of the draft legislation to its member universities. The GRANT Act has revived itself in the new Congress and if implemented could add additional burden to Universities. The purpose behind this draft legislation is for agencies to be aware of what their counterparts are doing and funding and requires Universities to post grant applications for transparency purposes. There is no set date for introduction as of yet; suggested revisions are being considered. AAU will be presenting on this topic at the upcoming June COGR meeting. For additional background information on this matter, see:

<http://www.aau.edu/WorkArea/DownloadAsset.aspx?id=12874>

<http://www.aau.edu/WorkArea/DownloadAsset.aspx?id=13142>

<http://www.aau.edu/WorkArea/DownloadAsset.aspx?id=13132>

NIH Single IRB Initiative for Multi-site Research

COGR Staff Jackie Bendall and Lisa Nichols along with David Wynes, Emory University and Lois Brako, University of Michigan (via telecon) met with the NIH Staff on NIH’s campus to discuss further questions that the NIH had regarding the various comments received from the University community in response to the NIH Draft Policy on the use of a Single IRB. There is some discussion by the NIH that they are looking to potentially narrow the policy. Within the timeframe allotted, several points were reiterated; see below:

- IRB’s are not designed or staffed to function as a central IRB for all NIH funded multi-site studies.
- The development and negotiation of reliance agreements are time consuming, and often build in the unique IRB SOPs of an institution, local laws, institutional culture and factors for accepting risks. Public institutions are often governed by state laws regarding issues such as liability, open records laws, financial interest, etc.
- Institutional relationships are complex. Universities have different relationships with health care facilities and in some cases own the healthcare system.
- Collaborator’s, such as the VA, often will not allow the use of an independent IRB and would likely not agree to many of the other central IRB arrangements. In other cases,

affiliated hospitals may have specific criteria such as requiring consideration of Ethical Religious Directives (ERDs) in the IRB process. Likewise, HIPAA covered entities may be structured differently at each institution, all of which cause delay in study progress.

- Requirements and Expectations differ regarding both consent language as well as waivers across institutions thus requiring research teams, as well as institutional IRB staff, to know and follow varying SOPs for the conduct of the research. This can include issues such as training requirements, reporting unanticipated problems and non-compliance, financial disclosure.
- Due to growth over time in the human subject research community, IRBs are only a slice of the overall pie of the Human Research Protection Program (HRPP) for which systems have been built to communicate between components in order to a) assure consistent communication and b) to reduce duplication of effort by research teams in providing information to each committee. This process “breaks” when an external IRB is used. Any staff “savings” from using a central IRB is “expended” by having to coordinate a process to assure that all components of the HRPP are properly included.
- Staffing to serve as a central IRB requires additional resources. There is no “savings” through using outside IRBs to offset the costs. The concept that institutions using fee-for-service IRBs can charge those as a direct cost supports the concept that the costs are real; however, most universities do not fit this category.

Recommendations

NIH should consider the following examples as approaches to address the need for more use of single IRB reviews of multi-site studies.

- Development of a central/single IRB policy by NIH should have, at its core, the principle of keeping the number of central/single IRBs to a minimum.
- Expanded use of NCI CIRB. The NIH could first require the use of the NCI CIRB for all studies that are currently reviewed by that Board as long as the NCI CIRB maintains its accreditation. There should be allowances for local IRB review in specific cases such as when a local investigator has a COI.
- The NCI CIRB should expand to cover the review of all NCI-funded multi-site studies. The NCI IRB is already in place and has over a decade of experience. Rather than create a cottage industry of new, inexperienced central IRBs, NIH should expand its currently operating model.
- This same model of a single IRB managed by an Institute should be extended to other Institutes at the NIH. This can be done by a) hiring an external contractor to operate the Institute’s central IRB as in the NCI case, b) contracting with an external commercial IRB, or c) funding the establishment of a central IRB at an academic or other research institution to perform this central role on behalf of the Institute. The specific model chosen is, perhaps, less important than the point that as few central IRBs as possible should exist, in the interest of study, investigator, and administrative efficiency.

Agency Conflict of Interest Policies

COGR members are beginning to see various agencies implement their Conflicts of Interest policies in accordance with the Uniform Guidance. We are seeing a blended approach containing what would typically be in place in an institution's procurement department. We are asking our members to be on alert and to send any such policies to our attention to address, many of which we believe go beyond the requirements of the Uniform Guidance.

Dual Use Research of Concern – OSTP Workshop

The U.S. Government will hold a Public Stakeholder Meeting on Institutional Oversight of Dual Use Research of Concern - The White House Office of Science and Technology Policy and the National Institutes of Health will co-host this public meeting for interested stakeholders to discuss implementation of the [U.S. Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern](#). The purpose of the meeting is to inform and engage stakeholders; collect feedback about resources needed to effectively implement the policy; and discuss stakeholder experiences, challenges, and innovative practices.

The meeting will be held on July 22, 2015, from 9:00 a.m. to 4:45 p.m. in the Building 10 [Lipsett Amphitheatre](#) on the campus of the [National Institutes of Health](#), 9000 Rockville Pike, Bethesda, Maryland 20892. Pre-registration for the meeting is required. Registration is on a first-come, first-served basis and is subject to space limitations. Interested participants can register to attend the meeting online at: www.PHE.gov/DURCworkshop

Additional information about the meeting, including the draft agenda and information about NIH security and other logistical matters is also posted on the meeting's [webpage](#). For further information about the meeting, please email DURC@ostp.gov.

OSTP will be presenting at the June 4th COGR meeting on DURC and Gain-of-Function Studies.

DNSF Draft Proposal and Award Policies and Procedures Guide (PAPPG)

The NSF published a notice on May 19, 2015 in the Federal Register announcing the availability of a “for comment” draft of the *Proposal & Award Policies & Procedures Guide* (PAPPG). The Foundation is accepting comments from the external community until cob July 20, 2015.

To facilitate review, revised text has been highlighted in yellow throughout the document and explanatory comments have been included in the margins, where appropriate.

The following are links to the draft PAPPG and associated Federal Register Notice:

[Draft PAPPG](#); and <http://www.gpo.gov/fdsys/pkg/FR-2015-05-19/pdf/2015-12086.pdf>.

COGR is reviewing the draft. Please send your comments to jbendall@cogr.edu

Congressional Interest in Patent Troll Legislation Continues

The March [Meeting Report](#) discussed two Congressional hearings held in March on anti-patent troll legislation. Active Congressional consideration of such legislation continues. On April 14, the House Judiciary Committee held another hearing on H.R. 9, the Innovation Act, which would radically alter litigation laws affecting how patent cases are adjudicated. USPTO Director Michelle Lee testified that her agency is generally supportive of the legislation, which COGR

and the other higher education associations oppose as currently written. Ms. Lee did express concerns about the joinder provisions in the legislation, which is one of the provisions the associations most strongly oppose (see COGR February [Update](#)). However, she expressed support for fee shifting, another provision the associations strongly oppose (for a copy of Ms. Lee's written testimony, see http://judiciary.house.gov/_cache/files/4dbf7741-4c63-4a2f-a409-242160899aab/michelle-lee-testimony.pdf

On April 16, the House Energy and Commerce Committee held another hearing on the Targeting Rogue and Opaque Letters (TROL) Act, legislation focused on empowering the Federal Trade Commission to go after patent troll activities. COGR and the other groups are generally supportive of this approach, which narrowly focuses on the problem of mass mailings of vague demand letters while leaving intact the protection for inventors provided by the U.S. patent system. The main focus of the hearing was on the bill provisions on affirmative defense and preemption of state attorneys general authority. The witnesses felt there were too many loopholes in the affirmative defense provision, and that there should not be preemption. (For the webcast of this hearing see <http://energycommerce.house.gov/hearing/hr-targeting-rogue-and-opaque-letters-act-trol-act#video>).

AAU and APLU issued a statement thanking the subcommittee for holding the hearing on the TROL Act. They said: "We appreciate the Subcommittee's efforts to meaningfully address the abusive demand letter practices of patent trolls in a targeted fashion. The TROL Act appropriately employs a practical approach to combating patent troll practices, including by authorizing the Federal Trade Commission to use its authority even more effectively to treat such demand letters as an abusive, deceptive, and potentially fraudulent business practice." The Act was approved by the House Subcommittee on Commerce, Manufacturing and Trade on April 22, with an amendment requiring a preponderance of evidence for an affirmative defense.

In the Senate bipartisan patent troll legislation was introduced on April 29 (S. 1137; PATENT Act). The higher ed. associations including COGR on April 30 issued a statement thanking the sponsors and expressing the view that the bill "was a substantial improvement over H.R. 9," particularly in its fee shifting and joinder provisions (<http://www.aau.edu/policy/article.aspx?id=16152>). The New York Times also has come out in support of the Senate bill (http://www.nytimes.com/2015/05/06/opinion/curbing-abusive-patent-lawsuits.html?emc=edit_th_20150506&nl=todaysheadlines&nliid=27902371

A hearing was held by the Senate Judiciary Committee on S. 1137 on May 11. The university community was not invited to provide a witness for this hearing. (For an archive of the hearing see http://www.judiciary.senate.gov/meetings/s-1137-the-patent-act_finding-effective-solutions-to-address-abusive-patent-practices). The associations are in the process of working with our patent counsel to develop a document that articulates recommendations for improvements in the bill. These might include clarification of micro entity status eligibility and the extension to include affiliated university research foundations).

As mentioned in the [March Report](#), the associations strongly support Sen. Coons' (D-DE) STRONG Patents Act (S. 632), which is aimed primarily at abusive demand letters, but also addresses some other issues, including concerns which have recently arisen about abuse of the new *inter partes* review procedures established in the America Invents Act (AIA). We expect the sponsors may seek to incorporate elements of the STRONG Patents Act as amendments to S.

1137, and that the TROL Act may be merged with H.R. 9. Reports suggest that both H.R. 9 and S. 1137 may be marked up the first week in June.

We are planning a session at the June COGR meeting to update COGR members on the status of the patent troll and related legislation.

AAU/APLU Presidents Express Opposition to House Bill

On April 8 the Presidents of AAU and APLU responded to a letter sent to many universities by the Consumer Electronics Association (CEA) urging them to withdraw from previous statements of opposition to H.R. 9. The AAU/APLU Presidents expressed strong support for reining in abusive demand letters. However, they noted H.R. 9 would substantially weaken the patent system by significantly increasing the risks and costs of legitimate patent enforcement. They noted that fee shifting is highly unusual in U.S. civil litigation and inappropriate given the importance of intellectual property rights to the U.S. economy. They also noted the joinder provision is unclear in its application to non-practicing entities such as universities. Finally, the letter expressed the view that loss of confidence in the ability of universities to protect their intellectual property rights would seriously undermine technology transfer.

The *Wall Street Journal* on April 14 published an op-ed by Boston University President Robert A. Brown and Clemson University President James P. Clements that describes their concerns that H.R. 9 would have the broader effect of disrupting university technology transfer. In "A Patent-Troll Bill with Bad College Grades," the two presidents express agreement that patent trolls are a problem, but they argue that the Innovation Act (H.R. 9) is so broad that it would make patent enforcement considerably more costly and risky for all patent holders, not just patent trolls. They note that recent court decisions and regulatory actions have strengthened the patent system's capacity to protect businesses from patent trolls, which suggests that Congress should "proceed with caution in considering broad statutory changes." They add, "As we work to address the abusive practices of bad actors in the patent system, let's tread carefully to ensure that the ideas and inventions produced by university research continue to be nurtured and supported for the benefit of all."

President Brown is co-chair of the AAU Patent Technology Transfer Working Group (see #3 below); President Clements chairs the APLU Board of Directors.

Grace Period Restoration Act Introduced

On April 14 Sens. Baldwin (D-WI) and Vitters (R-LA), along with Reps. Sensenbrenner (R-WI) and Conyers, Jr. (D-MI), introduced legislation (S. 926; H.R. 1791) to restore the effective one-year protection, known as the "grace period," for inventors who publicly disclose discoveries prior to filing a patent application on those discoveries. COGR and the other higher ed. associations strongly support this legislation, which would correct an ambiguous provision in the American Invents Act that has been narrowly interpreted by the USPTO. We believe USPTO's interpretation is wrong and contrary to the legislative history (see COGR February 2013 Meeting Report for a full discussion).

The bill's findings state that USPTO's interpretation does not comport with the legislative intent, points to the uncertainties as to the scope of the grace period for universities, and to the resulting discouragement of scientific publication and collaborative research activities. The bill would protect inventors against disclosures by anyone for one year after disclosure in a printed

publication and permits consideration of prior art only on or before the date (thus preventing the intervening disclosure of an obvious variant either by the inventor or by a third person from defeating the patent, which was the main problem with the USPTO interpretation). For a helpful fact sheet see <http://www.baldwin.senate.gov/download/?id=cb3c5c1e-ae02-44cd-8385-dff1ec127efa&download=1>

Previously the USPTO interpretation required that any intervening disclosure be identical. Some concern has been expressed that the proposed provision could result in an inventor subsequently expanding the scope of the claimed patent during the grace period which could be further expanded for an additional year through filing of a provisional patent application at the end of the period. However, we believe that the need to encourage publication and sharing of research results should override these concerns. The press release accompanying the bill pointed to the importance of encouraging dissemination and collaboration (see <http://www.baldwin.senate.gov/press-releases/baldwin-vitter-sensenbrenner-conyers-introduce-bipartisan-bill-to-protect-american-inventors>).

AAU/APLU Working Groups on Tech Transfer Issue Statements

We have previously reported on the AAU and APLU Working Groups on Technology Transfer and Intellectual Property. COGR participated as an observer in both groups. On March 27 the groups issued separate statements with a joint cover memo to AAU and APLU Presidents and Chancellors. The memo stated:

“There is significant overlap between the principles and recommendations the two groups have outlined. Our two associations support and stand firmly behind them.

Following is a summary of the principles and recommendations contained in the two documents:

- ***The primary focus of university technology transfer efforts should be to advance the public interest and public good.*** Both groups recommend that institutions underscore this purpose by developing a clear mission or purpose statement for the management of intellectual property, in accordance with the first recommendation of the National Research Council’s 2010 report, “[Managing University Intellectual Property in the Public Interest](#).”
- ***Universities should have high-level policies in place to ensure that intellectual property management and technology transfer practices align with both the public interest and their core research, education and service missions. Technology transfer practices must not conflict with these missions.*** Many universities already have high-level policies in place, which help ensure that they are managing intellectual property in the public interest. Our associations urge all of our universities to establish such policies and to make them clear and transparent.
- ***Universities should not deal with patent trolls.*** With respect to so-called “patent trolls,” many universities have policies in place restricting their dealing with such entities. Universities that do not already have such policies in place should establish them. Such policies need not negate the ability of universities to rightfully employ outside counsel or other organizations to legitimately enforce their intellectual property rights against infringement.

- ***Technology transfer operations should be evaluated and assessed by several means, not solely or even primarily revenue generation.*** Revenues generated from university management of intellectual property should be viewed as a positive outcome, providing resources that further advance research and education. However, the primary force driving technology transfer should be the transfer of knowledge and new discoveries from universities to the private sector and others to benefit the public.
- ***It is critical for universities to continue to share best practices for managing intellectual property and improving technology transfer operations in ways that serve the public interest.*** Effective practices especially include those that ensure the quick movement of new ideas and technologies generated with federal support from the laboratory to the marketplace.

For those member universities that have not already done so, we recommend that they take specific actions to protect and preserve these principles. Additionally, we urge you to review the attached recommendations and engage others on your campuses in discussions concerning steps that your institutions might take to implement them.”

The memo further indicated that APLU and AAU will continue to support efforts related to these recommendations. The APLU task force will collect examples of innovative and effective practices in university intellectual property management and will disseminate those examples later this year. AAU will take steps to identify measures and methodologies for evaluating the effectiveness of technology transfer beyond revenue generation. Both associations plan to discuss the recommendations at upcoming meetings of presidents and provosts.

The AAU Statement may be found at <http://www.aau.edu/WorkArea/DownloadAsset.aspx?id=16025>

The APLU statement is at <http://www.aplu.org/projects-and-initiatives/research-science-and-technology/task-force-intellectual-property/March2015TaskForceManagingUniversityIntellectualProperty.pdf>

Expanded Requirements Issued for Combatting Trafficking in Persons

Expanded federal contract requirements for combatting trafficking in persons became effective on March 2 (80FR4967; FAR 22.1700). These requirements originally were added to the FAR in 2006 implementing provisions of the Trafficking Victims Protection Reauthorization Act of 2005 (PL 108-193). COGR commented that some of the proposed requirements went beyond the statutory requirements and expressed particular concern about the potential effects on scholarly social and behavioral research. As a result some changes were made in the interim rule which became final in 2009 (72FR46335; 74FR2741); see COGR Fall 2007 Update).

The new requirements implement Executive Order (EO) 13627 “Strengthening Protections Against Trafficking in Persons in Federal Contracts,” and Title XVII of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 “Ending Trafficking in Government Contracting.” They apply to all FAR contracts, and flow down to all subcontractors.

The basic “zero tolerance” government policy for government employees and contracting personnel engaging in trafficking activities is unchanged. However, the requirements are strengthened in two primary ways:

- 1) Expanded notification requirements, and
- 2) Compliance plans and certification requirements for contracts involving supplies (other than COTS) or services to be performed outside the U.S. where the estimated value exceeds \$500,000 (this requirement is based on the NDAA).

Previously the notification requirement for contractor employees required notification only of the zero tolerance policy and penalties for violations. The new requirement set forth in FAR clause 52.222-50 apparently requires employees to be notified of all prohibited trafficking-related activities of which 9 categories are listed in the policy. The definition of “employee” to whom the notification requirement applies has not changed (“employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance”). However, the requirement now also applies to “agents,” who are defined as “any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.” In addition, contractors are to inform contracting officers and the agency Inspector General immediately of any “credible information” received from any source alleging that any contractor employee, subcontractor, subcontractor employee or their agent has engaged in conduct that violates the policy. This expands in several ways the previous requirement for notification of contracting officers. A long list of mitigating and aggravating factors for contracting officers to consider in determining appropriate remedies is included in the FAR clause. Information about trafficking violations also is required to be posted by contracting officers in the Federal Awardee Performance and Integrity Information System (FAPIIS).

The compliance plan requirements are not overly prescriptive (appropriate for the size and complexity of the contract and nature and scope of the activities to be performed for the government) but include certain minimum requirements. These include an awareness program for employees, a process for them to report prohibited activities without fear of retaliation, a recruitment and wage plan meeting certain requirements, a housing plan, and procedures to monitor agents and subcontractors at any tier for engagement in trafficking activities. The plan must be posted at the contractor’s workplace. An annual certification to the contracting officer is required that the compliance plan has been implemented and that “after having conducting due diligence,” no agents or subcontractors have engaged in trafficking activities and that remedial action has been taken if abuses have been found. The requirement follows down to subcontracts meeting the criteria (non-COTS supplies or services performed outside the U.S. over \$500k).

In our previous comments COGR repeatedly raised concerns about imposing contractual obligations on contractors for the activities of their employees outside of work under the federal award or in their personal lives. In response the FAR Councils stated “The Government seeks to ensure that contractor employees who traffic in persons or procure commercial sex do not work on Government contracts.” As discussed in the 2007 Update, the government views this extension to non-work hours as appropriate because contractor employees are perceived as representing the federal government and their actions reflect on the government’s integrity and ethics. While the requirement initially proposed to monitor employee behavior was removed, contractors subject to the new compliance plan requirements are required to monitor, detect and

terminate any agents, subcontracts or subcontractor employees who have engaged in prohibited activities. No guidance is provided as to how this requirement can be implemented effectively.

There obviously are significant compliance burdens associated with the expanded requirements, particularly for those institutions subject to the compliance plans and certification requirements. We do not believe it is likely that many COGR members will encounter these requirements. However, they may be a factor in considering whether to enter into research contracts involving services performed outside the U.S. over \$500k. We suggest that all COGR member institutions should consider updating their employment policies and materials to reflect the notification requirements. While there may be some ambiguity in determining which employees are subject to the requirements, an employee awareness program is a mitigating factor in determining remedies for violations.

NIST Issues Revised CUI Standards

The February Update discussed the draft NIST standards for protecting Controlled Unclassified Information (CUI). On January 16 COGR and AAU jointly commented on the draft standards. (A copy of the comment letter is posted on the COGR website).

On April 2 NIST issued revised draft CUI security requirements (NIST Special Publication 800-171; http://csrc.nist.gov/publications/drafts/800-171/sp800_171_second_draft.pdf). The revised draft is responsive to the COGR/AAU comments in a number of ways:

- 1) provides a clearer distinction between federal and nonfederal information systems;
- 2) deletes all mention of basic and applied research as subject to these requirements;
- 3) recognizes that nonfederal organizations may not be able to fully comply with all of the requirements and can take equivalent safeguarding measures (including isolating the CUI in its own security domain rather than requiring all the organization's IT systems to comply with the requirements).

However, the draft still sets forth 14 "families" of security requirements and over 100 specific controls for protecting CUI. It is clear that they will occasion substantial additional compliance burdens and may be challenging to implement particularly for large decentralized universities. Essentially institutions will be required to implement requirements similar to FISMA for a larger number of contracts. One effect will be the need to segregate more information in separate business units rather than having researchers maintain the information at the lab level.

The NIST standards will be implemented for federal contracts by a FAR rule. It is difficult to fully assess the impact of the requirements without the ability to review the pending FAR rule. The NIST publication states that actual compliance requirements will be addressed by the FAR rule which is expected to be issued in 2016 (however, a footnote indicates that until the FAR clause is issued, the NIST requirements may be referenced in federal contracts). Recently DOD issued new guidance for DOD contracts on Safeguarding Unclassified Controlled Technical Information (DFARS/PGI 204.73) which reinforces the need for a uniform federal approach.

COGR and AAU submitted comments on the revised standards on May 12. We acknowledged NIST's responsiveness to our previous comments but expressed two principal concerns:

- a) While 800-171 recognizes that nonfederal organizations may implement alternative security requirements to satisfy particular requirements, this flexibility will be lost in the FAR compliance clause with the NIST standards likely to become prescriptive;
- b) Implementing the NIST requirements at universities will be a significant compliance burden given that the IT infrastructure at institutions tends to be highly decentralized and significant personal and infrastructure resources will be needed.

We urged NIST to address these concerns in the final guidance. A copy of the comment letter is posted on the COGR website.

NARA Issues Proposed CUI Rule

On May 8 the National Archives and Records Administration (NARA) published a proposed rule for federal agencies on CUI (<http://www.gpo.gov/fdsys/pkg/FR-2015-05-08/pdf/2015-10260.pdf>). This is the second of the three-part federal implementation of EO 13556 on CUI, along with the NIST security standards and the pending FAR rule. The purpose is to establish uniform policies and practices across the federal government with regard to CUI. The proposed rule is primarily directed to federal agencies. However, it requires agencies to include compliance requirements in all contracts that require a contractor to handle CUI for an agency. It also encourages agencies to enter into information sharing agreements that include compliance requirements with other entities to which agencies disseminate CUI. The scope of these requirements is not entirely clear nor is how they interact with the pending FAR rule.

The proposed rule contains detailed requirements on accessing, disseminating, marking, and decontrolling CUI, among other provisions. It provides that agencies may not include any requirements other than those contained in the proposed rule when entering into contracts or other agreements with outside entities. All information designated as CUI must be included in categories approved by NARA and published in a publicly accessible CUI registry maintained by NARA. NARA previously defined 22 main categories of potential CUI information, some of which include subcategories (<http://www.archives.gov/cui/registry/category-list.html>). Previous NIST publications provided guidance for developing safeguarding requirements for each category. The default for all categories is CUI Basic safeguarding standards. CUI Specified handling requirements may be applied to certain categories as approved by NARA.

It is not clear what categories of information generated by universities on behalf of or required by the government will be included as CUI Specified in accordance with the proposed rule, or what specific requirements will be applicable. We still are analyzing the proposed CUI rule. Comments are due July 7.

Uniform Guidance: Friday Morning Session at the June COGR Meeting

A Friday morning session at the June 4-5 COGR Meeting is titled: Midterm Report Card on the Uniform Guidance Implementation. COGR leaders from our member institutions and COGR staff will share perspectives and solutions to several of the “hot topics” that have arisen in the first six months of the Uniform Guidance Implementation. Topics will include: Compensation & Documentation and alternatives to effort reporting (200.430); Procurement and the micro-purchase threshold (200.320); Agency implementation of Conflict of Interest policies (200.112);

Agency requirements/deviations specific to Cost Sharing (200.306) / F&A restrictions (200.414); as well as other areas of interest and/or concern.

An update on the soon-to-be-available Research Terms & Conditions could be on the agenda for this session. Our community anxiously is awaiting word on the timing of Research Terms & Conditions, and if Federal officials are in a position to talk freely about this topic, we have a commitment from one Federal leader to provide an update. In addition, the Costing Committee will meet with policy leaders from the Department of Defense (DOD) during its Wednesday morning committee meeting. Based on what we learn, we will provide an update on the pending release of new DOD Terms & Conditions.

Uniform Guidance Issues Update

The Friday morning session described above will serve as a Uniform Guidance Issues Update. However, as a backdrop to this session, a number of developments over the past several months are worth noting.

As we know, the interim joint final rule implementing the Uniform Guidance was published in the [Federal Register](#) (Vol. 79, No. 244, Friday, December 19, 2014 - *Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*) in December. Title 2, Part 200 of the Code of Federal Regulations ([2 CFR, Part 200](#)) shows the complete Uniform Guidance, with the technical corrections/amendments incorporated.

COGR submitted its comments to the December 19, 2014 Federal Register Notice on February 13th. The COGR letter is available at www.cogr.edu on the homepage (see Latest News, February 13, 2015). In the letter, we addressed those topics COGR leaders considered the most pressing and critical issues. On March 20th, COGR staff and leaders from the RCA and Costing Committees conferenced with OMB and COFAR to discuss the status of the COGR Comment Letter submitted on February 13th. We summarized the conference call in a March 27th email to the COGR ListServe.

Since the March 27th summary to the COGR ListServe, we have refined priorities and strategy. COGR has been in regular contact with OMB and expects to get additional updates before the COGR meeting. A status update on several issues of interest is shown below:

- **Status of “Final Rule” for 2 CFR Part 200.** OMB will not be publishing a “Final Rule”. The interim joint final rule implementing the Uniform Guidance that was published in the Federal Register on December 19, 2014 is final. However, OMB anticipates making a few technical corrections based on the comments received in February and plans to issue those technical corrections this Summer. We do not know what those corrections will entail.
- **Conflict of Interest, 200.112.** COGR’s position is that we need FAQs and/or clarifications, ASAP. It seems every month a different agency is posting new guidance. FAQs and/or clarifications are needed to help create rationality across the agencies.
- **Procurement, 200.320(a).** As we gear up for implementation next year, we need to fix the \$3,000 micropurchase threshold. FDP has started data collection and COGR may

piggyback with similar data. COGR is requesting a meeting with OMB/COFAR to propose solutions based on data. Our position is that this issue, more than any, is going to negatively impact faculty researchers and offset any potential successes of the Uniform Guidance.

- **Compensation, 200.430.** COGR is working toward an interpretation that a change in practice that complies with 200.430, does not require a DS-2 approval. This interpretation may be consistent with at least one of the Cognizant Agencies for Indirect Cost. Also, COGR is working toward an interpretation that IHEs should be allowed to choose their implementation date for 200.430 to coincide with the best date (as determined by the IHE) for rolling all awards under a single standard for supporting payroll charges. We are following up to determine if OMB has shared this interpretation with the Single Audit community.
- **Treatment of tuition benefits for employees, 200.431(j).** COGR remains focused on the following: Undergraduate/Graduate coursework and the reciprocal arrangements across institutions need to be clarified as allowable. We do not know if this will be incorporated as one of the technical corrections.
- **2015 Compliance Supplement.** The release of the 2015 Compliance Supplement is expected by the end of June. The FAQs to the Uniform Guidance will be referenced in the Compliance Supplement to indicate that the FAQs represent implementation guidance.
- **Utility Cost Adjustment.** COGR's understanding is that OMB, in coordination with the Cognizant Agencies for Indirect Cost, have implemented the following: 1) For IHE's currently receiving the 1.3% UCA under OMB Circular A-21, for FY2014 and FY2015 F&A rate proposals, they will retain the 1.3% UCA. F&A rate proposals for FY2016 and forward must propose the UCA using the new methodology. 2) For IHE's not currently receiving the UCA, they may begin proposing the UCA for F&A rate proposals beginning with FY2014, and going forward.
- **DS-2.** COGR primarily is focused on the approval process and is pursuing a clarification that states: "*Changes to a cost accounting practice that complies with the Uniform Guidance does not require approval.*" In addition, COGR's understanding is that OMB, in coordination with the Cognizant Agencies for Indirect Cost, have implemented the following approach: The CASB is responsible for updating the DS-2 form. Until it is finalized and published, an IHE that is required to file a DS-2 according to the triggers specified in FAQ .110-3 (for most IHEs, this will be at the time of the next F&A rate proposal) can either: 1) complete the current DS-2 form, but annotate those sections of the DS-2 that are changed due to the Uniform Guidance with "See Continuation Sheet" and describe the changed accounting practices in the Continuation Sheet, or 2) describe the changed accounting practices in the cover letter or separate document in the F&A proposal package identifying the affected sections of the DS-2. Upon the publication of the revised DS-2 form, any IHE that has completed such filings according to the triggers

in FAQ .110-3 shall complete and file a revised DS-2 within 90 days. IHEs are encouraged to contact their Cognizant Agency for Indirect Cost to confirm these steps.

The above is not the complete list of issues. In fact, the COGR list is intended to be fluid, flexible and responsive to priorities of the COGR membership. For example, an audit/management decision “Safe Harbor” and a “uniform” 120-day closeout model for all agencies both were included in the COGR Comment Letter submitted on February 13th and will continue to be pursued. We will provide regular status updates and keep the Membership posted on all developments.

COGR Guide to Compensation and Documentation (2 CFR 200.430)

Compensation and Documentation requirements from the Uniform Guidance (2 CFR 200.430) will be addressed in several sessions at the June COGR Meeting. COGR has developed a Guide to 2 CFR 200.430 that is intended to serve as a resource to assist member institutions as they assess the alignment of their written policies and procedures and internal controls with this section of the OMB Uniform Guidance. The Guide should be viewed as a *first assessment*, which is based on our initial understanding of this section. As we learn more with regard to auditor perspective and interpretation from Federal and Higher Education leaders, this could inform updates. The Version 1 Draft of the Guide may be available prior to the June COGR Meeting.

Costing Committee Update: Thursday Morning Session at the June COGR Meeting

A Thursday morning session at the June 4-5 COGR Meeting will provide an update on a number of issues in which the Costing Committee is engaged. Representatives from the Costing Committee will lead this panel discussion. Topics will include updates on: the transition to NIH Subaccounting and its relationship to Grant Closeout and the Payment Management System; the COGR Guide (in DRAFT form) covering Compensation & Documentation (also see above) under the UG; recent developments on F&A-related issues under the UG; the quickly growing sphere of Cloud Computing and the corresponding accounting challenges; as well as other areas of interest and/or concern.

NIH Subaccounting, Grant Closeout, and the Payment Management System (PMS)

COGR has reported and advocated on various threads of these topics for two years. The Costing Committee Update on Thursday morning at the June 4-5 COGR Meeting will include an update and further elaboration on where each stands and how they tie together. As a quick preview:

- **NIH Subaccounting and Final Transition starts on October 1, 2015.** The final transition is almost upon us. The final version of the NIH subaccounting policy can be found in [NIH Notice Number: NOT-OD-14-103](#) (July 11, 2014); *Revised Timeline for Administrative Changes to NIH Domestic Awards to Transition to Payment Management System Subaccounts*. Institutions should be focused on understanding what needs done to prepare for October 1st, and, as applicable, revamping systems and business processes to make for a smooth transition. Additionally, institutions should be considering how to support the additional work and financial risk associated with NIH subaccounting.

- **Grant Closeout and 120-day Closeout Model.** Under NIH subaccounting, award-by-award financial management and closeout is the new standard. In the [2015 NIH Grants Policy Statement](#), section 8.6 CLOSEOUT states: *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.* While we are thankful for the new NIH 120-day closeout model, NIH-specific operational issues, as well as internal institutional management issues will provide unique challenges. Further note, the 120-day closeout model transcends NIH; as other funding agencies consider implementing similar models, institutions must be aware of those challenges created by potential inconsistencies across agencies.
- **PMS Consistency with the 120-day Closeout Model.** Consistency in the configuration and functionality of PMS with the NIH 120-day closeout model is integral to successful implementation of the NIH 120-day closeout model. PMS is managed by the Division of Payment Management Services (DPM), which organizationally falls under the Program Support Center (PSC) and the Department of Health and Human Services (HHS). COGR is engaged in active dialogue with staff from DPM and is working closely with DPM, NIH, and HHS to work toward PMS consistency with the 120-day closeout model.

We encourage you to bring questions to the Thursday morning session. Your questions will help COGR and the Costing Committee to advance those issues that are of most concern to the COGR Membership.

Equitable Treatment of Off-Campus Research Centers in RFAs

COGR is working with several of our members and the NIH to devise a more equitable mechanism for comparing proposed costs between on-campus and off-campus research centers. Specifically, at issue is the treatment of “space and facility-related costs” when a Research Funding Announcement (RFA) or policy regarding Investigator initiated proposals limits maximum costs in terms of maximum Direct Cost. In the case of an off-campus research center, space/lease costs and other facility-related costs are considered a direct cost, which means that the off-campus research center will disproportionately have to propose these types of costs in comparison to an on-campus research center. In effect, the off-campus research center is at a competitive disadvantage because fewer costs can be proposed for research staff and other research-related costs. The inequity is compounded when a proposed collaborator is associated with an off-campus research center; in this situation, the potential subrecipient would include space and facility-related costs in the proposed budget.

Several options to restore equity, which have been discussed with NIH are: 1) Allow the off-campus research center to exclude space and facility-related costs when the RFA includes a maximum Direct Cost limitation, or 2) Allow the off-campus research center to state maximum costs in terms of Total Cost instead of Direct Cost when the RFA includes a maximum Direct Cost limitation.

Please contact David Kennedy at dkennecy@cogr.edu if your institution has an off-campus research center that has been adversely impacted by RFAs or policies that include a Direct Cost maximum. NIH is interested in addressing this inequity in a fair and constructive manner. By

quantifying a critical mass of institutions that have been affected will help to demonstrate to NIH that this is a significant issue that requires immediate attention.

Regulatory Reform

Meeting with Staff from the Government Accountability Office (GAO) - In October 2012, Representative Mo Brooks, former Chairman of the House Science, Space and Technology Committee's Subcommittee on Research Education, sent a [letter](#) to the GAO comptroller requesting GAO review the current regulations and reporting requirements imposed on research universities. COGR and AAU met with GAO staff on March 25 to discuss federal research regulations and reporting requirements ripe for re-evaluation, trends in funding and federal requirements, resources/recent studies, audit, and other topics. GAO has engaged a number of organizations as they consider the focus/scope of their review.

Meeting with OIRA on the Common Rule ANPRM - COGR staff and representatives from several institutions met with OIRA, OHRP and OSTP staff on March 27 to reiterate COGR's concerns about the Common Rule ANPRM and pending NPRM (Lois Brako, David Wynes and Cindy Kiel participated by phone). The meeting went well. OIRA staff posed a number of questions and requested additional information. At the time of this writing the Common Rule remains under OIRA review though the 90 day review period is drawing to a close. OIRA received the draft NPRM on February 24.

Meeting with Office of Information and Regulatory Affairs (OIRA) Administrator - COGR and AAU, in addition to the Presidents of Emory and Yale Universities and Yale staff, met with the OIRA Administrator Howard Shelanski recently to discuss data on compliance burden we received from 53 institutions in response to a recent survey administered jointly with AAU and APLU. The meeting was in follow-up to an October 2014 meeting to discuss the use of retrospective review to reform or eliminate regulations that increase cost and burden for institutions and investigators without improving safety or accountability. Based upon data from the survey, COGR and AAU presented specific reform recommendations on subrecipient monitoring, PHS FCOI, effort reporting, financial reporting requirements, and continuing review for human and animal research protocols. The meeting went very well. Administrator Shelanski will take our concerns back to agencies and indicated that agencies are interested in reform opportunities for the purposes of retrospective review. Shelanski indicated that President Obama is engaged on this topic and has and will emphasize to agencies the importance of retrospective review. There will be ongoing dialogue between AAU/COGR and Administrator Shelanski over the next few months and a follow-up meeting in September. Shelanski suggested COGR and AAU meet with Secretary of Health and Human Services, Sylvia Mathews Burwell and indicated OIRA may initiate a meeting with the IG community to discuss effort reporting.

National Academies Committee on Federal Research Regulations and Reporting Requirements - The Committee held its [second meeting](#), April 16-17, 2015. The meeting included a Discussion with federal officials from the White House Office of Science and Technology Policy (OSTP) and Office of Information and Regulatory Affairs (OIRA) and three research agency panels. Kei Koizumi, Assistant Director for Federal Research and Development, OSTP, provided an overview of recent OSTP initiatives and areas where the Office engages including the process of developing the UG, revisions to the Common Rule, and other initiatives through engagement with the Research Business Models (RBM) Subcommittee, part of the National Science and Technology Council. Kei suggested that RBM seeks to solve specific issues identified by others, such as the National Science Board (NSB) and the NAS Committee, and is not necessarily structured to look at the big picture.

OIRA Administrator Howard Shelanski indicated that OIRA is the place where regulatory burden can be identified and that opportunities for reform include retrospective review. OIRA is looking for specific ideas for reform with numbers attached to them (i.e., the number of hours or dollars that could be saved) that are executable now and suggested that nothing is too small. COGR is gathering ideas for reform based on previously published information, unpublished information received from various sources and feedback from COGR members. Please send your thoughts on regulations, policies or guidance documents (as well as systems and forms, time of submission, etc.) that are most burdensome to your institution and should be subject to elimination or reform to lnichols@cogr.edu and we will pass them on to OIRA in aggregate. OIRA will take these ideas directly to the agencies.

In response to questions from committee members, Administrator Shelanski suggested that there is room for agencies to engage stakeholders during regulatory development more than they do. He suggested that he will review what might be done about expanding use of negotiated rulemaking and other processes for increasing engagement and that this was something that institutions should push for. In response to questions and comments on the broader regulatory process, Shelanski suggested that research institutions would benefit from something similar to the Small Business Regulatory Enforcement Fairness Act (SBREFA) and the Office of Advocacy of the U.S. Small Business Administration which was created by Congress and “advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers”. Regarding overzealous auditors, he suggested that uncertainty in agency policies and guidance is part of the problem and can be fixed and that institutions should alert OIRA when there is uncertainty.

In terms of the research agency panels, officials from NSF suggested the agency will pilot more just-in-time initiatives. On the two-month issue, that NSF trusts universities and their infrastructure and that NSF awards are assistance awards and institutions a partner (funding 22% of R&D) that has a right to make budgetary changes if it doesn't change the project scope. NSF continues to be concerned about declining success rates. NSF and DOE highlighted use of pre-proposals.

In the area of defense research, concern was expressed about the procurement standards in the UG as applied to research purchasing. This wasn't the original intent and DOD has encouraged FDP to take this on. The Director of Basic Research, Office of the Secretary for Defense, DOD, suggested that it would be good if all rules had a periodic zero-based review rather than allowing them to last forever – that the government take stock. In response to questions about the frequency of financial reporting, DOD noted that they no longer have quarterly reporting, only annual and final. On just-in-time, DOD will reach out to NIH. DOD seeks to improve success rates by having informal discussions with investigators prior to application and through initial use of White Papers rather than full proposals. DOD indicated that they would like to see financial information flowing back from institutions in a timely and consistent manner.

Administrative Conference of the United States (ACUS) Retrospective Review Workshop - ACUS held a [workshop](#) on retrospective review on May 13, 2015. The workshop consisted of three one-hour panels. The first panel explored existing use of retrospective review at U.S. agencies and how to promote use; the second focused on use of retrospective review as a mechanism for alleviating reporting burdens on institutions of higher education; and the third on

the use of retrospective review in other nations. Lisa Nichols of COGR and Toby Smith of AAU participated on the panel along with Katie Johnson of OIRA.

COGR and AAU noted that Executive Orders outlining retrospective review are specific to agencies with “significant domestic regulatory responsibility” and have a greater focus on the needs of state, local and tribal governments; that the policies and guidance developed by key research funding agencies such as NIH and NSF have not been subject to retrospective review and other aspects of these orders; that for those agencies subject to review, such as HHS, we are not aware of agencies identifying areas for reform that are specific to research; and the need for regular review of regulations, policies and guidance. COGR suggested that a lack of central authority and a standing process for addressing harmonization and reform has hindered reform efforts and leaves institutions open to escalating regulatory burden and noted other potential mechanisms for reducing administrative work associated with federal awards.

ACUS has issued a [request for proposals](#) for a study on the use of negotiated rulemaking, interagency coordination, and retrospective review in the context of higher education research regulation. Proposals are due by 6:00 p.m. ET on June 1, 2015.

Senate and GAO Investigations of how Federal Agencies use Regulatory Guidance - On May 7, Senators Lamar Alexander and James Lankford launched an [investigation](#) into how federal agencies use regulatory guidance, including whether they are adhering to notice and comment laws and using guidance to “create new requirements for American businesses, colleges and universities, and individuals”. The investigation focuses on the Department of Health and Human Services, Labor, Education and the U.S. Equal Employment Opportunity Commission. Each was sent a letter requesting specific information on guidance released on or after July 24, 2007 and guidance that has been subject to complaints. OMB issued a Final Bulletin for Agency Good Guidance Practices in January of 2007.

On May 19, the Government Accountability Office (GAO) released a [report](#) on regulatory guidance processes at the Departments of HHS, Labor, Education and Agriculture. GAO examined use of guidance, decisions to issue guidance over regulation, the extent that agencies followed applicable criteria and practices when producing guidance and agency dissemination of guidance to ensure public access and feedback. GAO recommended the agencies “strengthen the use of internal controls in guidance production processes and improve online guidance dissemination” and that DOL and HHS “ensure consistent application of OMB requirements for significant guidance”.

Audit Update

NSF Audit Resolution - COGR has reported on a series of audit findings by the NSF OIG published over the course of the last year that have included questioned costs for senior personnel salaries that exceeded two months. Costs related to two-month (summer) salary have been questioned in eight reports and total \$10,325,711. In all of these reports, institutions responded that charges were made in accordance with federal policy.

Two NSF audit resolution reports have concluded that the questioned costs related to the two month salary issue are allowable. In the [first report](#), NSF allowed \$2,229,331 of the \$2,358,380 in questioned costs including the full amount of \$2,111,653 related specifically to summer salary. NSF determined that the methodology for calculating summer compensation was

compliant with 2 CFR 220, Appendix A, Section J.10.d(2)(a), and consistent with the academic year methodology. A similar determination was made for the [University of California Santa Barbara](#) in June 2014. In that resolution report all but \$43,551 of the \$6,325,483 in questioned costs were allowed.

In a [second report](#), NSF allowed \$1,539,991 of the \$1,604,129 in questioned costs including the full amount of \$1,456,716 related specifically to salaries exceeding two-months. Related to this finding, the NSF Management Decision Summary indicates the following: NSF's faculty salary compensation policy is budgeting guidance for the preparation and submission of proposals. As stated in the NSF "Frequently Asked Questions (FAQs) On Proposal Preparation and Award Administration" dated January 2013, awardees "can internally approve an increase or decrease in person months devoted to the project after an award is made, even if doing so results in salary support for senior personnel exceeding the 2 month salary rule. No prior approval from NSF is necessary. The caveat is if the change would cause the objective or scope of the project to change, then the awardee would have to submit an approval request via FastLane." NSF recently clarified the policy in the latest version of the Proposal and Award Policies and Procedures (PAPPG; NSF 15-1). Based on the above, **NSF has determined that the basis for this finding misinterprets NSF's faculty salary compensation policy, and as a result, hereby allows all of the \$1,456,716 in questioned costs identified.**

COGR appreciates this affirmation from NSF that institutions are in compliance with federal policy relating to two-month or summer salary. Members are encouraged to review the full findings of both reports and other [management decisions](#) on audits of external awardees.

Recent Audit Reports and the Two-month Senior Personnel Salary Issue - The NSF OIG recently released four reports on institutional audits. The first report ([15-1-003](#)), questions \$913,210 in costs for senior personnel salary that exceeded NSF's two-month limit with no additional findings. The majority of the findings (52 of 63) were for charges made between 0 and 0.9 months in excess of the two-month limit. The institution noted that they have procedures in place to comply with NSF limits to salary compensation for senior personnel; that the questioned costs were related to post-award rebudgeting and consistent with both NSF policy and FAQs; and that this policy was further clarified in the December 2014 PAPPG where the FAQs were incorporated into the policy guide. In response, the auditors suggested that "the FAQ made no mention of the ability to disregard or violate the NSF Award and Administrative Guide (AAG) and rebudget authority does not apply. Furthermore, informal communication in a FAQ does not supersede the official policy per the AAG."

In a second report ([15-1-004](#)) auditors questioned \$992,462 in costs, including \$867,188 in senior personnel salary that exceeded NSF's two-month limit. The university disputed the questioned salary costs and several other questioned charges. In a third report ([15-1-012](#)), auditors questioned \$1,863,351 in costs, including \$1,608,944 in senior personnel salary that exceeded NSF's two-month limit. The university agreed with the findings for \$23,763 in questioned costs. The university indicated that it does not agree with the remaining charges which it maintains are consistent with NSF policy. In a final report ([15-1-014](#)), auditors questioned \$1,669,588 in costs charged to NSF sponsored agreements including \$1,276,668 in senior personnel salary that exceeded NSF's two-month limit. Institutions have made an excellent case for why these costs are allowable and we hope for relatively quick and favorable resolutions.

HHS OIG Reports - The HHS OIG conducted a review of nonpayroll administrative and clerical costs over a two-year period at an institution receiving NIH funding. In its [report](#), the OIG estimated, on the basis of findings from 17 of 142 sample transactions where \$56,375 in nonpayroll costs and \$26,210 in related F&A were determined to be unallowable, that the University claimed at least \$202,401 in unallowable costs. The OIG reports suggests that charges for temporary employees were not adequately supported; certain goods and services not allocable to HHS awards; office supplies improperly charged as direct costs; and F&A costs misclassified. The institution disagreed with all but \$27,519 of the disallowances.

National Science Board Audit & Oversight (A&O) Meeting - The May NSB meeting included a session on [A&O](#). The [webcast](#) has been archived.

The Board approved the NSF OIG Semiannual Report to Congress. The content of the report, and NSF managements' response, were not discussed in this session. The findings from a [FY14 report](#) on NSF's merit review process were presented. Among the findings, there was a 66% increase in research grant proposals in the period from 2001 to 2014 and a decline in success rates from 25% to 20% over the same period. This figure did not include pre-proposals which would further lower the success rate. Despite this increase in proposal, NSF reports using 30% fewer reviewers, though workloads have increased, and reports that 29% of panels were virtual in 2014. In response to a question about how many proposals rated very good or higher go unfunded, the suggested dollar figure was \$4 billion. The closed session of the meeting included a discussion of NSF's two-month grant salary policy.

Other Audit - The NSF OIG Semiannual Report to Congress, approved by the NSB at their May meeting, has not been published on the OIG website at the time of this writing. To our knowledge, the HHS OIG report has also not been published.

COGR regularly checks the [HHS \(NIH\)](#) and [NSF OIG](#) websites, which provide access to published audit reports. In addition to HHS and NSF OIG initiatives, we are interested in activity related to the OIGs at other agencies. Please do not hesitate to contact us on audit issues or developments at your institution.

DATA Act

The implementation of the DATA Act is underway and has moved into a pilot phase. [A National Webinar on DATA Act Implementation](#) hosted by OMB and Treasury highlighted their respective efforts to implement the Act. Treasury is engaged in a Data mapping/blueprint exercise to identify where data resides within agency systems and is revamping USASpending.gov.

OMB is seeking to create standard definitions for data elements used across the federal government. Approximately 60 data elements and their proposed definitions are now listed on the [github website](#) which is being utilized by the Federal Government to inform the public on Data Act implementation. OMB is also partnering with HHS in an effort to reduce administrative burden in the grants community. Further details were provided in the [HHS DATA Act Section 5 Pilot Webinar](#). OMB and HHS will seek to eliminate unnecessary and duplicative financial reporting requirements. Initiatives being rolled out in May include deployment of a blog-type dialogue to initiate a discussion among the grants community on opportunities to reduce burden and compliance costs for Federal award recipients.

COGR has been participating on monthly calls with recipient organizations interested in the DATA Act, led by Helena Sims, Director of intergovernmental affairs, AGA. Federal officials participated on the most recent call. Helena participated in the National Webinar and will provide an update on DATA Act implementation at the June COGR meeting.