COGR
an organization of research universities

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May 31, 2013

Mr. Daniel I. Werfel
Controller, Office of Federal Financial Management
Office of Management and Budget
725 17th Street NW
Washington, DC 20025

Subject: Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (including Single Audit Act)

OMB-2013-0001, Proposed Uniform Guidance
Federal Register, Vol. 78, No. 22 - February 1, 2013

Dear Mr. Werfel:

On behalf of the Council on Governmental Relations (COGR) and its members, we appreciate the hard work that you and many others have contributed to the Grants Reform initiative. Included in this letter is the COGR Response to the Proposed Guidance. This is an unprecedented and impressive undertaking by OMB and the COFAR. We are grateful that you have addressed so many of the issues that are important to the research community. If key items from the Proposed Guidance are maintained or improved upon prior to the release of Final Guidance, then the ultimate outcomes of Grants Reform and reducing administrative burden will be realized.

The Council on Governmental Relations (COGR) is an association of over 180 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 research and other federally sponsored activities carried out at research universities and institutions.

We support OMB's plan to release Final Guidance as soon as possible. ***However, we encourage you to conduct the utmost in due diligence before releasing Final Guidance.*** This is a massive overhaul of the federal rules and guidance applicable to grants management and oversight, and while COGR and other stakeholders have provided thoughtful and in-depth responses, an unintended oversight that is published in the Final Guidance could have significant repercussions for the grantee community.

We are committed to working with you to ensure that the Final Guidance reflects the best possible outcomes for the grantee community and the Federal government. It is essential that the ultimate goals of reducing regulatory and cost burden are achieved – i.e., improving the delivery of federal programs, and in the case of research institutions, strengthening the science and research enterprise.

The COGR Response is presented on the following pages. There are two sections to the COGR Response:

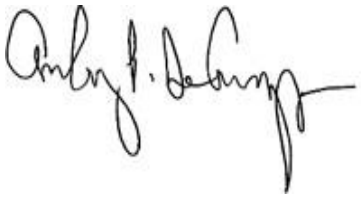
A. **Primary Opportunities**. We have summarized the issues that we have identified as the most significant opportunities to ensure that Grants Reform is meaningful to the research community. We look forward to addressing each of these with OMB and the COFAR prior to the release of Final Guidance.

B. **Detailed Comments**. This is a section-by-section review of the Proposed Guidance. Our comments are extensive. In some situations we have made recommendations for modifying the text that has been published in the Proposed Guidance. We hope to engage OMB and the COFAR on many of these opportunities, as well.

While the COGR Membership primarily consists of research universities and institutions of higher education, we provide an important voice for the entire research community, including nonprofit research organizations and hospitals that conduct research on behalf of the Federal government. Many of our comments are applicable to these entities, in addition to institutions of higher education.

We look forward to collaborating with you on the next phase of this project as OMB and the COFAR work towards releasing Final Guidance. Again, thank you for your hard work and efforts to implement Grants Reform.

Sincerely,



Anthony P. DeCrappeo
President, COGR

PRIMARY OPPORTUNITIES

The following items represent those issues that COGR has identified as the most significant opportunities to ensure that Grants Reform is meaningful to the research community. The Primary Opportunities shown below are arranged in the order that each appears in the Proposed Guidance. While COGR believes, for example, Subrecipient Monitoring and Effort Reporting must be addressed to guarantee a successful implementation of Grants Reform, it is equally important that transparency, accountability, and the logistical implementation issues are addressed. Consequently, we look forward to addressing each of these with OMB and the COFAR prior to the release of Final Guidance.

➢ Discourage Agency Deviations by Strengthening OMB Responsibilities and Prioritizing Accountability and Transparency

COGR believes this is the key to Grants Reform, and with a strong system of accountability and transparency, Grants Reform can succeed. Our primary recommendation is suggested in ***Subchapter A, Section .108 OMB Responsibilities***, and we ask that OMB provide clear mechanisms to resolve disputes and concerns related to agency deviations, reporting requirements, F&A rate establishment, audit standards, and other applicable issues.

➢ Implement the Most Rational and Thoughtful Final Guidance

COGR suggests that a number of steps be taken prior to implementation of the Final Guidance. In ***Subchapter A*** we have provided recommendations including: 1) incorporate the Government-wide Research Terms and Conditions ***(Section .107)***, 2) establish a special review process so that important changes can be implemented before the five-year review cycle ***(Section .110)***, and 3) specify a clear and uniform implementation date for all Federal agencies ***(Section .111)***. We urge OMB to conduct the utmost in due diligence before releasing Final Guidance.

➢ Provide a 90-day Advance Notice for Application Submission Deadlines

COGR believes that a 90-day advance notice, rather than the proposed 30-day advance notice, can have a significant impact on improving efficiency and productivity at research institutions and other non-Federal entities. In ***Subchapter B, Section .204***, we recommend that a 90-day period will allow for the best form of coordination among the anticipated collaborators, and further strengthen the proposal preparation and review processes.

➢ Streamline New Requirements for Subrecipient Monitoring

COGR proposes a revision of ***Subchapter E, Section .501(c)***, which could result in better direction for the Federal awardee community and the potential for reduced administrative burden. If the guidance is overly prescriptive, it will discourage scientific collaboration and the establishment of subrecipient agreements. In our Addendum 1 – COGR Response, we have proposed a streamlined version of Section .501(c) that: 1) presents subrecipient monitoring in a

more intuitive format, 2) eliminates several of the new OMB prescriptions that would add new and unnecessary administrative burden, and 3) proposes "safe harbors" that would remove certain monitoring requirements associated with low risk subrecipients.

➢ Address New Requirements that Link Performance and Financial Reporting

COGR believes that the connection made between performance and financial reporting will establish new expectations that are inappropriate for scientific research. OMB and the research community already have collaborated to develop standardized reports such as the SF-425 and the Research Performance Progress Report (RPPR). The proposed OMB standards could create a new faculty administrative reporting burden. We urge OMB to review our recommendations in ***Subchapter E, Section .502*** and address the new requirements that link performance and financial reporting.

➢ Finalize Productive and Positive Cost Sharing Policies

COGR appreciates the efforts by OMB to address concerns, such as the statement in ***Subchapter E, Section .502(f)*** that Voluntary Cost Sharing is not to be used as a factor in the review of applications. We recommend OMB take additional actions to further address cost sharing concerns: 1) incorporate OMB Memorandum M-01-06 on Voluntary Uncommitted Cost Sharing (VUCS) into the Final Guidance, 2) improve the definition of VUCS as COGR has suggested, 3) maintain incentives to cost share and not require most forms of cost sharing to be included in the institution's organized research base, and 4) eliminate prior approval requirements to use indirect costs as part of a required cost share commitment.

➢ Remove New and Troubling Procurement Requirements

COGR believes that the proposed guidance applicable to Procurement Standards in ***Subchapter E, Section .504*** will disrupt all the efficiencies and advances in institutional procurement policies and practices that have been realized over the past two decades. The following list represents new requirements and we ask that OMB remove each of these burdensome mandates from the proposed guidance: 1) reinstatement of equipment screening prior to an acquisition, 2) notification of disputes to Federal agencies, 3) condition for institutions to disregard certain State laws and regulations, and 4) introduction of new prescriptions to mandate competition, despite the fact that best practices already have been implemented.

➢ Implement Practical Policy for Administrative and Clerical Salaries

COGR appreciates the important proposed guidance in ***Subchapter E, Section .615(d)***, which allows administrative and clerical salaries to be direct charged to Federal awards when those staff are integral to and can be specifically identified with the project. Investigators will be the primary beneficiaries as this allows investigators to use the expertise and skills of administrative and clerical staff to perform selected activities on a project. However, we recommend that the "*explicitly included in the budget*" requirement be replaced with language that is more consistent with existing rebudgeting authorities.

➢ Continue to Address Requirements for F&A Rate Development

COGR appreciates OMB's effort to address several long-term concerns related to F&A rate development. We urge OMB to review remaining concerns in ***Subchapter F & Subchapter H, Appendix IV***. This includes, but is not limited to: 1) inappropriate expansion of the organized research base ***(.607(b))***, 2) consistent definition of MTDC and the organized research base ***(.616(f))***, 3) allowable depreciation ***(.621, C-15)***, 4) required documentation to support interest expense ***(.616, C-27)***, 5) clarification on allocation of utility costs ***(Appendix IV, B.4, and B.6)***, and 6) use of negotiated rates throughout the life of an award ***(Appendix IV, C-7)***.

➢ Mitigate the Faculty and Institutional Burden of Effort Reporting

COGR proposes a revision of ***Subchapter F, Section .621, C-10, (8) and (9)***. A revision of sections (8) Institutions of Higher Education and (9) Standards for Documentation of Personnel Expenses, could reduce the faculty and administrative burden associated with effort reporting. In Addendum 2 – COGR Response, we are proposing: 1) a streamlined version of section (8) that is a more logical presentation of payroll and compensation considerations, and 2) a fine-tuning of the proposed standards of documentation which, if implemented, could mitigate the burden of effort reporting while still supporting the standards that ensure that appropriate salaries have been charged to Federal awards.

➢ Increase Transparency of Agency Actions and the Annual Updates as it Relates to the Single Audit Compliance Supplement

COGR believes access to the annual Compliance Supplement and to certain Federal agency actions are necessary. Otherwise, Federal agencies can implement new requirements or special provisions without a formal comment opportunity from the Federal awardee community. Furthermore, consolidation of the Compliance Requirements in the annual Compliance Supplement adds to the possibility for Federal agencies to place more reliance on special provisions, which could significantly add to the scope of the Single Audit. We encourage OMB to consider our recommendations in ***Subchapter G, Sections .703 & .715*** by making both agency actions, and updating of the Compliance Supplement, more transparent. This would allow the Federal awardee community to more actively participate in the process.

DETAILED COMMENTS

COGR's Detailed Comments on the ***Proposed OMB Uniform Guidance*** are presented below. We have organized our comments by Subchapter/Section. In those instances where we comment on the text in the proposed guidance, we use the ~~strikethrough~~ feature for proposed deletions and the underline feature for proposed additions. Detailed Comments are noted as either: Major Concern, Concern, Recommendation, and/or Thank You. In some cases, there may be overlap. While many of the items in this section are not included in the Primary Opportunities section of the COGR Response, we hope to engage OMB on these opportunities.

Subchapter A – General Provisions

__ .100 through __ .111

.100 and .101 – RECOMMENDATION: Purpose and Applicability of the Proposed OMB Guidance Should be Clear and Succinct

COGR encourages OMB to work toward consistent use of key terms and their applicability in the Final Guidance. "*Federal award*" has been used as a key operational term throughout the proposed guidance. The definition as shown in Subchapter H, Appendix 1 – Definitions would be clearer if modified as follows:

> ***Federal Award*** *means Federal financial assistance, ~~and~~ Federal cost-reimbursement and Federal fixed price contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities where the Federal funds are used to carry out a program or project for a public purpose. It does not include procurement contracts, including procurement contracts under grants or contracts that are used to buy goods or services from contractors where the goods or services are ancillary to the operation of the Federal program or project. Contracts to operate Federal government owned, contractor operated facilities (GOCOs) and direct Federal contracts are excluded from the requirements of this guidance.*

In addition, there are applicability uncertainties throughout the proposed guidance. COGR's suggestion is that the guidance in Subchapters B through G and the relevant appendices in Subchapter H should be stated as applicable to all Federal awards. In other words, Administrative, Costing, and Audit principles should be applicable to Federal financial assistance and Federal cost-reimbursement contracts.

We recognize that streamlining applicability would represent a significant policy change. We also are aware of the potential challenge of synchronizing the Final Guidance with the FAR. However, making the guidance applicable to all Federal awards would be an important step towards reducing the administrative burden associated with managing multiple sets of federal rules. If this policy change cannot be made, then the use of the term "*Federal awards*" must be used much more carefully throughout the entire document. In addition, a number of sections, for example .100(b)(1) and

.101(b)(1)(A), will need to be written more carefully so that the applicability of each Subchapter is accurate.

.100(c) – RECOMMENDATION: Better Clarity on Restrictions on Individual Cost Items

COGR suggests that from both a transparency and equity perspective, it is necessary that any restrictions, as well as exceptions, on the treatment of individual cost items be clear to the grantee community. In this section .100(c), and corresponding to section .102(b), COGR recommends the following:

> *(c) Cost Principles … Agencies are not permitted ~~expected~~ to place additional restrictions on individual items of cost, except as described in .102 Exceptions. In general and …*

.102(b) – CONCERN: More Transparency Needed on Agency Exceptions

COGR is concerned that the conditions for and documentation of permissible individual exceptions, including limitations on cost reimbursement, be clearly described for all parties. In addition, the process for granting OMB approval of classes of exceptions, including limitations on cost reimbursement, should be published on the OMB website.

> *(b) Exceptions on a case-by-case basis for individual recipients and subrecipients may be authorized by the affected Federal agencies except where otherwise required by law or where OMB or other approval is expressly required by this guidance. Where case-by-case exceptions are approved by OMB, exceptions will be published on the OMB website at www.whitehouse.gov/omb. ~~No case-by-case exceptions may be granted to the provisions of Subchapter G- Audit Requirements.~~*

.103(a) – RECOMMENDATION: Add Cross Reference

COGR recommends a cross-reference be added – Subchapter F, section .607 as a cross-reference to "allocability of cost provisions".

> *(a) To promote increased effectiveness and efficiency in program administration and to improve outcomes or return on investment, OMB authorizes conditional exemption from parts of this Guidance except Subchapter F, section .607, allocability of cost provisions, and Subchapter G-Audit Requirements for certain Federal programs.*

.107 – MAJOR CONCERN: Required Action Should Include Incorporation of Research Terms and Conditions

COGR believes it should be made clear that when OMB issues Final Guidance, the Government-wide Research Terms and Conditions are incorporated into or referenced, accordingly. If not, the result could be the unintended disruption of the streamlining and simplifications brought about with the Government-wide Research Terms and Conditions. One approach, which COGR believes may be the

best, is to incorporate the research terms and conditions into the appropriate sections of the guidance. We have proposed this approach in sections .502(j)(4) and .505(c),

> *The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in Subchapters B through G and the Appendices in Subchapter H of this Guidance. Federal agencies making Federal awards to non-Federal entities, either directly or indirectly, shall implement the language in the Subchapters B through G and the Appendices in Subchapter H of this guidance in codified regulations, unless different provisions are required by Federal statute or are approved by OMB. Implementation of the language in Subchapters B through G and the Appendices in Subchapter H of this guidance further requires continued implementation of the Government-wide Research Terms and Conditions.*

.108 – MAJOR CONCERN: OMB Responsibilities Should Include Provisions for Grantee Appeal to OMB, and if Applicable, OMB Intervention

COGR believes it is imperative for the non-Federal recipient community to have a mechanism to appeal to OMB those decisions or actions by agencies that: 1) are not in compliance with this Final Guidance, 2) have been interpreted by an agency in a manner that requires OMB engagement, or 3) require special consideration due to other circumstances. This provision will maximize accountability and transparency between the non-Federal recipient community and the Federal agencies, and further, will establish a formal process where ambiguities and disputes in policy interpretation are effectively resolved.

> *OMB will review agency regulations and implementation of this guidance, and will provide interpretations of policy requirements and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented. Non-Federal entities can contact OMB or a neutral third-party in those situations when agency decisions or actions are not in compliance with this guidance, when there is a dispute in interpretation of this guidance, or in other applicable situations. OMB will provide a formal mechanism to resolve the issue, which will include a written statement and documentation of the resolution.*

.109 – RECOMMENDATION: Include Contact Information

COGR requests that an electronic address be added to the existing contact information.

> *Further information concerning this Guidance may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, in Washington, DC at the following [enter phone number] or [enter email].*

.110 – RECOMMENDATION: Rigid Review Date May Preclude Necessary Updates

To ensure that there is adequate publicly available information regarding implementation of this guidance, COGR requests that OMB describe the review process and post the review results on its website. In addition, we expect there will be situations that require a review prior to the five year

proposed standard. For example, FASB may release new requirements for leasing in the near future, which could necessitate a more immediate review. We propose these changes:

> *OMB will review this Guidance every five years after date of issuance. Review results will be publicly available on the OMB website. In the event that targeted sections of this guidance require special review, these sections can be reviewed prior to the five year anniversary. OMB will accept written requests from the affected entity(ies) and will initiate a special review process.*

.111 – CONCERN: Specify a Clear and Uniform Effective Date

COGR is concerned regarding the possibility for delay by some agencies in implementing the guidance, leading to significant discrepancies in effective date between various agencies. This inconsistency will create unnecessary confusion and additional administrative burden. We recommend that the Final Guidance be made effective by all agencies on the same date. We also recommend that the implementation date remain flexible in this guidance as we anticipate a number of implementation questions will be raised by all affected parties once implementation planning begins.

For the special case of Subchapter G – Audit Requirements, we recommend that the effective date be the second fiscal year after OMB issues Final Guidance. The timing of the annual Single Audit Cycle is such that it may be appropriate to implement the Section G – Audit Requirements under a lagged model to provide both the grantee and audit communities with the appropriate lead time to prepare for the changes in audit requirements.

> *(a) The standards set forth in this guidance which affect administration of Federal awards ~~grants and cooperative agreements~~ issued by Federal agencies become effective once codified by Federal agencies as described below.*
>
> *(b) Federal agencies shall implement the policies and procedures applicable to recipients of awards and agreements (and subrecipients) by promulgating final regulations and any other appropriate guidance documents effective on a date specified by OMB and made in consultation with the affected non-Federal entities. ~~a specified date which will be within one year after this guidance or any amendment to this guidance becomes final.~~ In the event an agency does not promulgate final regulations within the one year deadline, this Final Guidance will supersede the agency's policies until such time the agency implements final regulations.*
>
> *(c) The standards set forth in Subchapter G- Audit Requirements which apply directly to Federal agencies, shall be effective [date to be inserted when this guidance becomes final], and shall apply to audits of fiscal years beginning the second fiscal year after [date to be inserted when this guidance becomes final].*

Subchapter B – Pre-Award Requirements

__ .201 through __ .209

.204(a)(G) – CONCERN: Agency Solicitations and Submission Deadline

COGR is concerned that Agencies do not issue solicitations far enough in advance of the application submission deadline to permit adequate coordination among anticipated collaborators, proposal preparation, and review. As institutions embark on and Federal agencies encourage intra- and inter-institutional faculty collaboration, as well as partnerships with private industry, a 30-day submission deadline becomes more and more problematic. With such limited lead time, faculty must sacrifice sufficient project planning and institutions must undertake inefficient administrative practices rather than manage their proposal submission process using a more timely and rational methodology. Intra- and inter-institutional faculty collaboration effectively is discouraged.

The proposed guidance includes language that permits exceptions. As such, it seems reasonable to establish a standard of 90 days rather than the proposed 30 days. The following change is requested:

> *(G) Agencies shall make all solicitations available for application for at least ~~30~~ 90 days, unless exigent circumstances dictate otherwise, as determined by the head of the agency.*

.204(b)(B) – CONCERN: Cross-Reference and Improve Consistency with Text in Section .616(c)(1)

COGR is concerned that the language in section .204(b)(B) and the related language in section .616 are not consistent and lack clarity in relation to the agency limitation approval process for negotiated facilities and administrative cost (F&A) rates. While COGR appreciates the insight into the process (elaborated upon in section .616), additional detail in this section will maximize transparency. Awardees need to understand OMB's role in approval of limitations and the basis for approval by both agency heads and OMB. Otherwise, the process will remain ambiguous.

> *(B) Federal award information. Federal award information may include total amount of expected funding, anticipated number of Federal awards, types of available Federal awards (i.e., grant, cooperative agreement, or other instrument), as well as any expected limitations to negotiated indirect cost rates or other cost sharing requirements as required by statute or regulation. Section .616(c)(1) requires that negotiated rates shall be accepted by all Federal agencies. Consequently, limitations not required by statute or regulation must be approved by the agency head and OMB and are subject to the requirements specified in Section .616(c)(1). ~~or approved by the agency head and OMB (see section __.616 Indirect (F&A) Costs (c));~~*

.206 – THANK YOU AND RECOMMENDATION: Reducing Information Collection Burden

COGR appreciates OMB's efforts to establish clear processes and approvals when agencies establish new information collection requirements. However, COGR notes that no information has been provided with regard to how OMB will evaluate justifications for increasing information collection

burdens in applications or reporting. We encourage OMB to provide these criteria on its website and report exceptions which have been approved. Furthermore, it would be helpful if this section was cross-referenced to section .108 OMB Responsibilities. This will allow Awardees to request OMB engagement in those situations where an information collection action by an agency has not been implemented through the proper procedures.

> *Federal agencies that desire to collect information in addition to that approved by OMB for governmentwide use must submit to OMB a justification for increasing the reporting burden from that which is already OMB-approved, establishing, for example, how additional detail or frequency of reporting contributes to the ability of the agency to significantly improve program outcomes or inform Federal policy. OMB will authorize the collection of additional information only on a limited basis. Also see Section .108 OMB Responsibilities.*

Appendix II – Full Text of Notice of Funding Opportunity

III. Eligibility Information – RECOMMENDATION: Definition of Cost Sharing

Cost sharing can be a complicated issue, and the use of multiple terms causes more confusion in describing cost sharing requirements. "*Matching*" as used here refers to a proportion of cost sharing dollars to sponsor-provided funds, but this phrase is used by agencies to mean different things. We suggest this be deleted. Similarly, "cost participation" is not defined, and should be deleted. COGR believes that simply stating that cost sharing is required for a project to be eligible for funding is sufficient.

> *2. Cost Sharing ~~or Matching~~ –Required. Announcements must state whether there is required cost sharing~~, matching, or cost participation~~ without which an application would be ineligible (if cost sharing is not required, you must explicitly say so). Required cost sharing …*

IV. Application and Submission Information – RECOMMENDATION: Deadlines Based on Local Business Hours

COGR requests that OMB encourage agencies to set deadlines during local business hours. For example, at least one agency sets deadlines for electronic submission at 11:59 PM EST. Using local business hours leads to a better distribution of the activity on the grants submission systems, is a more rational model, and improves the performance of those systems for all users.

> *3. Any deadline in terms of a date and local time; agencies are encouraged to set deadlines during normal business hours of the applicants.*

VI. Award Administration Information – RECOMMENDATION: Add Cross-Reference

COGR is concerned that agencies frequently deviate from the agreed upon standard forms (e.g. Standard Form 424). Agencies should be reminded that OMB must approve unusual reporting requirements in advance, including those that deviate from the government wide data elements.

> *3. Reporting–Required. This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-award reporting requirements. Agencies are encouraged to rely on government wide data standards and submission methods, as specified in Section .502(c). OMB, in advance of their use, must approve agency deviations from those standards. Highlight any special reporting requirements for awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what your agency's awards usually require.*

Subchapter C – Federal Award Notice

__ .301 through __ .304

.302 – RECOMMENDATION: Implementation of Unique Award ID Codes and Similar Federal Identifiers

COGR applauds OMB efforts to streamline the many Federal identifiers and codes. Federal award recipients are required to manage a wide variety of Federal identifiers and systems (e.g., CFFA, SAM, etc.), and any change can have a significant impact as both internal accounting systems and external reporting requirements are dependent on these Federal identifiers and codes. We recommend that the CFFA number be included in the notification of the Federal award.

Also, we encourage OMB to implement any changes in Federal identifiers and codes in a manner that is not overly prescriptive and recognizes that what may appear to be a rational change from the Federal perspective can be potentially burdensome on the non-Federal entities. We propose the following change:

> *(a) A Federal agency must provide notification of a Federal award to the recipient for each Federal award it makes, which shall include the information listed below:*
>
> > *(1) Award recipient;*
> >
> > *(2) Recipient's DUNS number (see Appendix I - Definitions, Data Universal Numbering System (DUNS) number);*
> >
> > *(3) Unique award identification code;*
> >
> > *(3 4) Federal award project description; ~~and~~*
> >
> > *(4 5) Date and amount of the Federal award;*
> >
> > *(6) CFFA number; and*
> >
> > *(7) OMB shall minimize burden on Federal award recipients by implementing changes in Federal award identifiers and other Federal codes in a manner that does not negatively impact the continuity of comparing data across multiple years.*

Subchapter D – Inclusion of Terms and Conditions in Federal Award Notice

.401 through .404

.403 – THANK YOU: Requirement to Include all Terms and Conditions

COGR appreciates the requirement that Federal awarding agencies must include with each award notice and announcement of funding opportunity any terms and conditions needed to communicate additional administrative or programmatic requirements, whenever possible.

.404 – THANK YOU: Recognition of Performance Goals in the Context of Research Awards

COGR appreciates the specific reference to discretionary research awards and the understanding that the requirement for performance goals may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Appendix III – Contract Provisions for Recipient and Subrecipient Contracts

RECOMMENDATION: Consistent Definition of a Contract

COGR proposes that this section be changed to revise and clarify key terminology related to "contracts". It is not clear with the current terminology which type of activities or instruments these provisions will be applicable to. The first definition below is the definition (with a proposed minor revision). Below that is the proposed change:

> *Contract means a legal instrument by which a recipient purchases property or services needed to carry out a project or program under ~~an~~ a Federal award. The term as used in this guidance does not include a legal instrument, even if the recipient considers it a contract, when the substance of the transaction meets the definition of a ~~subaward~~ Federal award. ~~(see definition of Subaward).~~*
>
> *All Federal award or subaward recipient's contracts must contain the following provisions. Contracts are defined in Subchapter H, Appendix I - Definitions. Contracts do not include a Federal cost-reimbursement or fixed price contract that an agency makes to a non-Federal entity. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the OMB Office of Procurement Policy.*

Subchapter E – Post Federal Award Requirements

__ .501 Subrecipient Monitoring and Management

SPECIAL NOTE: As a companion to the assessment and recommendations shown below, we have included ***ADDENDUM 1 – COGR Response***, which includes our suggested reorganization and revision of section .501(c) Subrecipient Monitoring and Management. COGR is concerned that if section .501(c) is not adequately addressed in the Final Guidance, the impact on the Higher Education community, as well on other recipients of Federal awards, will be a significant increase in administrative burden associated with Subrecipient Monitoring and Management. We appreciate the consideration OMB will give to the comments below and those in ***ADDENDUM 1 – COGR Response***.

.501(a) – RECOMMENDATION: Text on Who Performs the Scope of Work is Not Clear

COGR suggests the following change to section (a):

> *(a) Applicability. Eligible recipients may perform the entire scope of work under a Federal ~~sub~~ award, or the eligible recipients may subaward ~~the performance of all or~~ a portion of a scope of work under a Federal award …*

.501(b) – THANK YOU: Definition of Role of Pass-through Entity in Making Classification Decisions

COGR appreciates the clarity added in section (b) to make it clear that the pass-through entity is responsible for making the "case-by-case determination whether each agreement it makes for the disbursement of federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor." The respective roles of the Federal agencies and pass-through entities have not always been clear in this regard and the proposed language provides helpful clarity.

.501(b) – CONCERN: Burdensome and Unnecessary Requirement to Document Classifications of Transactions

COGR believes section .501 already provides adequate guidance on how subaward and procurement classifications are to be performed by recipients. For research institutions, more than 90% of our subawards are included in the scope of work reviewed by Federal agencies during their proposal review, giving the Federal agency an opportunity to decide at that point if work is misclassified. Federal agencies rarely need to reclassify our transactions from procurement to subaward, or vice versa. We believe it is therefore unnecessary and inefficient for Federal agencies to impose new record-keeping and documentation requirements on recipients to document how individual transactions are classified. If such classification decisions are not routinely being made correctly by other recipients

of Federal awards, we believe that any additional requirements should be limited to those cohorts. COGR recommends the following change:

> *(b) Subrecipient and Contractor Determinations. An entity may concurrently receive Federal funds as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal agencies and pass-through entities. Therefore a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds cast the party receiving the funds in the role of a subrecipient or a contractor. ~~Federal agencies may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.~~*

.501(c)(1)(D) – THANK YOU AND RECOMMENDATION: Required Use of the Subrecipient's F&A or De Minimis Rate

COGR strongly supports section (1)(D) that indicates that pass-through entities are expected to use a subrecipient's federally-negotiated F&A rate, and if no such rate exists, allow for the flexibility of negotiating a rate or applying a de minimis F&A rate. In section .616(e), we provide a recommendation that a 15% MTDC or a 10% TDC rate would be a very conservative rate, and more likely to achieve the goal of minimizing burden for those institutions that may not have the resources to calculate a rate.

The de minimis rate also should be included in the value of cost-shared services. This is consistent with our recommendations in sections .502(f)(5) and .621, C-13(6)(B) to reflect that donation of services by a third party should include direct costs and a calculation for F&A costs.

Finally, we recommend a clarification to section (1)(D) as to the proper handling of F&A when the federal program has an approved exception to use a lower F&A rate. This suggestion is shown below:

> *(D) Unless the Federal program has been granted an exception to use a lower F&A rate as specified in Section .616, the pass-through entity shall use an approved Federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through and subrecipient entities (in compliance with Federal guidelines in this guidance), or a de minimis indirect cost rate ~~equal to 10% of total modified direct costs~~ as defined in section __.616 Indirect (F&A) Costs paragraph (b) of this guidance.*

.501(c) – MAJOR CONCERN: Overall Revision and Reorganization for Section .501(c)

We found the organization and structure of section .501(c) difficult to follow. To achieve a clear understanding of what obligations are assumed by a pass-through entity, we believe that a reorganization of information is important. In the COGR comments that follow, we have provided explanations as to why a revision to section .501(c) is important. ***ADDENDUM 1 – COGR Response*** incorporates the explanations and recommendations into our proposed revision to section .501(c).

.501(c)(1)&(4) – CONCERN: Role of Federal Agencies and Pass-through Entities on Provision of Award Terms

Sections (1)(A) and (1)(B) include an overly detailed list of specific individual requirements that pass-through entities are required to flow down to subrecipients. This is likely to create unnecessary cases of disagreement among Federal agencies, auditors, and recipients about what should or should not have been flowed down to a subrecipient. We recommend that this section be reworded to mirror the language already used in sections .403 and .713(c)(2) of the proposed guidance describing the responsibilities of Federal agencies making awards to their recipients. We recommend that Federal agencies include in their award documents the specific citations or specific requirements that are needed by recipients to meet the flow down requirements of this section. This will lead to efficient subawarding and promote clear understanding with agencies, auditors, pass-through entities and subrecipients about which requirements are applicable.

In addition, section (C)(4) appears to duplicate these requirements and includes an expectation for pass-through entities to add additional Federal requirements that the pass-through entity needs to meet its own responsibility to the awarding agency. This language contradicts the efforts of the Federal Demonstration Partnership (FDP) to streamline for efficiency and effectiveness, and is expected to reduce the widespread use and current effectiveness of the broadly adopted, agency-approved FDP subaward templates. This new language may increase the likelihood that pass-through entities impose (or attempt to impose) inappropriate requirements onto subrecipients in an excess of caution or simply because the recipient believes it may be in its best interest or reduce its risk. We recommend that the text in (C)(4) be deleted or that parameters be added specifying legitimate circumstances under which the addition of such requirements would be appropriate.

(c) All pass through entities shall:

(1) Ensure that every subaward includes:

~~(A) All clauses required by Federal statute, regulations, guidance, E.O.'s and their implementing regulations;~~ All requirements imposed on them by Federal laws, regulations, and the terms and conditions of Federal awards, as included in the pass-through entity's award

~~(B) Each administrative, national policy, and program specific requirements that the Federal awarding agency requires the pass-through entity to flow down to its subawards and subrecipients.~~

~~(C)Any additional Federal requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal agency~~

~~(4) Ensure that subrecipients are aware of requirements imposed upon them by Federal laws, regulations, the provision of subawards, and any supplemental requirements imposed by the pass-through entity. See also section _402 Administrative and National Policy Requirements.~~

.501(c)(3) – CONCERN: Frequency and Flexibility of Provision of Standard Data Elements

COGR believes that the list of data elements included in section (c)(3), which would be required to be submitted by the pass-through entity to the subrecipient (e.g., CFFA title and number, Federal award name and number, etc.), should be required only to the extent that such elements have been properly provided to the recipient by the Federal agency in accordance with section .713, and further, should only be required in the initial issuance of a subaward or whenever any data element changes during the life of the subaward.

(3) As provided by the Federal Agency, inform the subrecipient of the CFFA title and number, Federal award name and number, Federal award year, whether the Federal award is research and development (R&D) as defined in Appendix I- Definitions, Research and development of this guidance, and the name of the Federal awarding agency. The pass-through entity shall provide this information to each subrecipient, ~~at the time of Federal~~ and if any of these data elements change, include such changes in any subsequent subaward modification. If a disbursement contains funds from multiple Federal awards or non-Federal funds, the pass-through entity shall identify the dollar amount made available under each Federal award. When some of this information is not provided by the Federal agency, the pass-through entity shall provide the best information available to describe the Federal award.

.501(c)(5) – MAJOR CONCERN: Overly Prescriptive Subrecipient Monitoring Requirements.

COGR is concerned that the new guidance imposes burdensome and unnecessarily prescriptive subrecipient monitoring requirements on pass-through entities.

Existing monitoring requirements, including the expectation that pass-through entities ensure that subaward performance goals are achieved, represent the appropriate level of review for most research-based subawards and are consistent with OMB's goal of providing improved project outcomes in a more streamlined manner. The specific and burdensome requirements imposed in section (c)(5)(A), including "*analyses of financial and programmatic reports submitted by subrecipients to identify patterns and trends of program activity*", is neither necessary nor a wise use of federal research dollars. Pass-through entities should have the freedom and flexibility to use an approach of their choice to monitor their subrecipients, in general conformance with the section .505, Performance and Financial Monitoring and Reporting. COGR therefore recommends modification of this section as follows:

501(c)(5) Monitor the activities of subrecipients as necessary to ensure that Federal subawards are used for authorized purposes, in compliance with laws, regulations, and the provisions of subawards; and that subaward performance goals are achieved, in accordance with the guidance in section 505 Performance and Financial Monitoring and Reporting. The mechanisms used to

monitor subrecipients are at the discretion of the pass-through entity and ~~Pass-through entity monitoring of subrecipients shall~~ may include:

(A) Analyzing financial and programmatic reports submitted by subrecipients ~~(including analyses to identify patterns and trends of program activity)~~ and performing such other procedures as necessary to ensure proper accountability and compliance with program requirements and achievement of the performance goals of the award.

(B) Following up and ensuring that subrecipients take timely and appropriate action on deficiencies detected by the pass-through entity. ~~through audits, on-site reviews, and other means~~.

~~(C) Issuing a management decision for audit findings affecting the pass-through entity's programs as required by section __.714 Management Decision. For cross-cutting findings, pass-through entities may rely on management decisions issued by the cognizant or oversight agency for audit in lieu of issuing a separate management decision.~~

.501(c)(6) & (7) – MAJOR CONCERN: Audit and Risk Assessment Reviews are Unnecessarily Duplicated

COGR appreciates the potential opportunity for pass-through entities to avoid duplication of effort by allowing use of management decisions issued by the cognizant or oversight agency. We believe that both the risk assessment sections and the audit sections of this guidance need to be revised to permit pass-through entities to rely on work previously performed and accepted by the Federal government. COGR therefore strongly reiterates the recommendation it has made in other comment letters to OMB – for subrecipients subject to A-133 audits where audits are on file, and corrective action plans are already in place and already being monitored by that entity's auditor – that the Federal government allow the pass-through entity to be granted a "safe harbor" to rely on any corrective action plan already in place without engaging in a duplicative review or assessment process.

Subrecipient monitoring and management is an administratively burdensome and costly activity – the "safe harbor" proposed above will provide relief. COGR considered a recommendation to allow F&A recovery on the first $25,000 of expenditures by the subrecipient on an annual basis, rather than the life of the subaward. However, if the subrecipient monitoring burden can be eased by adopting a "safe harbor", as well as the other changes recommended throughout this section, F&A reimbursement on the first $25,000 for the life of the award remains an acceptable baseline level of reimbursement. Of course, when special subrecipient monitoring is needed 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 and federal funding can be provided to the recipient to allow that level of monitoring to be performed.

Note, the "safe harbor" and our other recommendations are not intended to eliminate the obligation for a pass-through entity to properly flow down terms and conditions of the federal program, nor to routinely monitor a subaward for adherence to the conditions of an award (including achievement of performance goals and proper use of federal funds) and to take corrective action if it detects unallowable costs or problematic performance. They would, however, allow pass-through entities to

use their monitoring resources more effectively to concentrate on high risk subrecipients and/or to provide more assistance to those experiencing difficulty achieving programmatic objectives.

Further, this approach would eliminate a current timing problem that exists in the proposed guidance. The current proposed guidance stipulates in section .714 that the cognizant or oversight agency's management decisions are required to be listed in the Federal Audit Clearinghouse on the same date as the pass-through entity is expected to have its own management decision finalized. Thus, unless the cognizant or oversight agency happens to have loaded its decisions early, there is no practical opportunity for the pass-through entity to rely on the cognizant or oversight agency's management decision. In addition, it is unclear what is included or excluded in the definition of "cross-cutting" finding. Since cognizant agencies, auditors, and oversight agencies follow up on findings that apply to a single agency or program as well as to those that are inter-agency, pass-through entities should be able to rely on all management decisions, not just those that are cross-cutting.

At the individual award level, life-of-award subrecipient monitoring is far more likely to allow for early detection of individual award issues than a review of audit findings or questioned costs from a subrecipient's audit reports on those same awards, since audit reports are not due until nine months following the end of the subrecipient's audit year. This could mean as much as a 21 month gap between the occurrence of the issue causing the finding, and its appearance on an audit report.

We recommend the following changes to sections (6) and (7):

> *(6) Evaluation of risk posed by subrecipients for purposes of monitoring may include such factors as:*
>
> > *(D) The extent of Federal monitoring if the subrecipient entity also receives direct awards. If a pass-through entity confirms that a proposed subrecipient has a current 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 perform ongoing monitoring of its subawards and take necessary corrective action in accordance with the remainders of this section.*
>
> *(7) ~~Ensure~~ Verify in the Federal Audit Clearinghouse that every subrecipient is audited as required under section _.701 Audit Requirements if it has expended Federal Funds during the respective year that equaled or exceeded the threshold for audit set forth in that section. Audits are not required for entities not meeting the audit specifications in Section 701.*

.501(c)(8) – RECOMMENDATION: Audits of For-Profit Entities

COGR recommends deletion of the last sentence of this paragraph, as the first two sentences of the section conflict with the guidance in the last sentence. We believe the first two sentences reflect the correct approach for handling audits of for-profit entities.

> *(8) As applicable, establish audit requirements for for-profit subrecipients, which are not covered by the Single Audit Act, as amended (31 U.S.C. Sections 7501-7507), or Subchapter*

G - Audit Requirements of this Guidance. Pass-through entities may adopt the audit requirements set forth in Subchapter G- Audit Requirements or devise their own. See also section. ~~.502 Standards for Financial and Program Management paragraph (i)(3) of this guidance.~~

501(d) – CONCERN: Roles and Responsibilities Applicable to Pass-through Entities

We believe that section (d) is far too broad and does not appropriately delineate the respective roles of the Federal government and pass-through entities. For example, this paragraph could be interpreted to mandate that pass-through entities absorb all obligations in section .713, many of which are clearly aimed at Federal agency representatives only. We recommend that this paragraph be deleted in its entirety, or that explicit obligations be itemized so that pass-through entities will be aware of their obligations.

~~(d) Pass-through entities other than States. In addition to paragraph (c) of this section, Federal agencies shall require pass-through entities other than states to comply with all provisions of this guidance which are otherwise directed at Federal agencies when awarding and administering subawards.~~

.501(f) – THANK YOU AND RECOMMENDATION: Fixed Price Subawards up to the Simplified Acquisition Threshold

COGR appreciates the clarification that fixed price subawards are permitted on Federal awards, but believes that it is unnecessary to add administrative burden and delays in subaward issuance by creating a threshold over which fixed price subawards cannot be used, or cannot be used absent Federal agency approval. In addition, we recommend use of the standard FAR nomenclature by adopting the term "fixed price" rather than "fixed amount." We therefore recommend the following change:

(f) All pass-through entities may provide fixed price subawards ~~up to the simplified acquisition threshold set in the Federal Acquisition Threshold at 48 CFR 13 and authorized by 41 U.S.C. Section 1908 ($150,000 at time of publication.)~~ after the pass-through entity's review of the Federal award's terms and conditions, the subrecipient's programmatic scope, and/or factors arising from the pass-through entity's risk assessment of a subrecipient.

__ .502 Standards for Financial and Program Management

.502(a) & .502(c)(4) – MAJOR CONCERN: Inappropriate Linkage between Performance and Financial Reports (also see .505(d))

COGR believes this section is in direct conflict with previous efforts by OMB to develop standardized Grants Reporting Forms. We propose the changes below to several sections in .502 that will require the use of already developed standardized reports such as the SF-425 and the Research Performance Progress Report (RPPR). In those applicable situations, OMB should require agencies to use Government Wide Standard Grants Reporting Formats.

Research projects are unique and often do not have a steady correlation between expenses and project results. There are many factors that account for this, but the most common is that a research project may never yield the desired results, and consequently, the output is often times a report detailing the work done. Expenditure trends also can be misleading, as many projects require an upfront expenditure for equipment and supplies. Furthermore, research may be accelerated during the summer months when teaching loads are either significantly diminished or non-existent, which also contributes to uneven patterns between expenditures and reporting of project results. COGR believes strongly that performance measurement throughout the project should focus on the results of the research conducted.

For the reasons described above, correlating the project's performance to financial data is not applicable in most cases. If OMB retains this correlation requirement in its Final Guidance, the effort necessary to implement this at research institutions would be significant and the new and increased administrative burden on faculty and staff would be prohibitive.

COGR proposes that the following changes be made to sections .502(a) and .502(c)(4). If OMB determines that a more direct correlation is applicable to certain federal programs, then we propose that an exception for research be incorporated into the Final Guidance.

> *(a) Performance measurement. Federal awarding agencies shall require recipients to use Government Wide Standard Grants Reporting Forms when providing financial and performance reports. ~~relate financial data to performance accomplishments of the award whenever practicable. Where available, recipients shall also provide cost information to demonstrate cost effective practices (e.g., through unit cost data).~~ The award recipient's performance should be measured in a way that will help Federal agencies and other recipients to improve program outcomes, share lessons learned and spread the adoption of promising practices. Federal awarding agencies should provide recipients with clear performance goals, indicators, and milestones expected as a condition of the grant. Performance reporting frequency and content should be established to not only allow the Federal agency to understand recipient progress but also to facilitate identification of promising practices among recipients and build upon the evidence base on which the Federal agency's program and performance decisions are made.*
>
> *(4) Comparison of outlays with budget amounts for each Federal award utilizing Government Wide Standard Grants Reporting Forms. ~~Whenever possible, financial information should be provided in the context of performance accomplishments of the award (e.g., unit cost data).~~*

.502(e)(3)(L) – CONCERN: Interest Earnings and Remittance to Agencies

COGR believes that the current threshold of interest earnings on Federal advances that may be retained by the recipient of $500 is outdated compared to the cost of tracking and investing Federal advances deposited to interest-bearing accounts. We recommend increasing this threshold to $5,000. COGR further recommends that the previous language in Circular A-110 ("*shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852*") should be reinstated. Use of the term "promptly" in the proposed language is vague and could lead to differing interpretations by agencies. More frequent remittance and the requirement to remit to each agency will increase administrative burden for both recipients and Federal agencies.

> *(L) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest-bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852 ~~promptly refunded to the Federal awarding agency unless specifically prohibited by law, per the guidance in the Treasury Financial Manual at I TFM 6-2000~~. Interest amounts up to $5,000 ~~$500~~ per year may be retained by the recipient for administrative expense …*

.502(f)(1) – THANK YOU: Treatment of Voluntary Committed Cost Sharing

COGR appreciates the new requirement that Voluntary Cost Sharing is not expected and not to be used as a factor in the review of applications or proposals.

.502(f)(1) – CONCERN: Treatment of Cost Sharing in the F&A Research Base, including Voluntary Uncommitted Cost Sharing

The January 5, 2001 OMB Memorandum (M-01-06), Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing (VUCS) and Tuition Remission Cost, should be incorporated into Final Guidance. It is important that the purpose of M-01-06 be included in the OMB Final Guidance; otherwise, various communities, including the audit community, may not acknowledge the authority of this important and helpful 2001 OMB Clarification Memo.

Furthermore, this will provide OMB with the opportunity to clarify and improve the definition of VUCS. The intent of M-01-06 was to provide the incentive for research personnel and the institution to contribute institutional resources, without penalizing the institution by increasing the F&A research base. Further, as stated in M-01-06, "*The reporting burdens on universities and their faculty associated with detailed recording of voluntary uncommitted cost sharing may be providing a disincentive for the universities to contribute additional time to the research effort*."

To incentivize institutional commitment, rather than penalizing it, the language should be clarified to exclude from the F&A research base all expenditures such as, project cost overruns, salaries that exceed Executive Level salary limitations, and other similar institutional cost sharing not committed in the proposed project budget. This update will provide consistency in the treatment of VUCS and will

eliminate the unintended financial penalty incurred by institutions when required to include non-reimbursable, uncommitted costs in the institution's F&A research base.

As part of the recommendation above that M-01-06 be incorporated into the Final Guidance, COGR recommends that section .502(f)(1) be modified to confirm that only mandatory and budgeted cost sharing should be included in the F&A research base.

> *(1) Voluntary committed cost sharing is not expected under Federal research proposals and is not to be used as a factor in the review of applications or proposals. See also section __.616 Indirect (F&A) Costs. Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget shall be included in the organized research base for computing the F&A rate or reflected in any allocation of F&A costs. Where cost sharing is allowed, all contributions, including cash and third party in-kind contributions, shall be accepted as part of the recipient's cost sharing ~~or matching~~ when such contributions meet all of the following criteria …*

.502(f)(2) – RECOMMENDATION: Treatment of Unrecovered Indirect Costs

Unrecovered indirect costs are real costs of an institution's support of a Federal award and should be allowed toward meeting a cost sharing commitment, without specific approval required. Unrecovered indirect costs include those costs allocable to the Federal award and/or to any committed cost share expenditures. Removal of this requirement will eliminate an unnecessary administrative step associated with seeking prior approvals.

> *(2) Unrecovered indirect costs, including indirect costs on direct cost sharing, may be included as part of cost sharing ~~or matching only with the prior approval of the Federal awarding agency~~.*

.502(f)(5) – CONCERN: Exclusion of F&A Costs on Third-Party Cost Sharing

COGR believes that a third party should be able to include a factor for its F&A costs in its cost sharing contribution, equal to either its federally negotiated rate (if available), or absent a federally negotiated rate, at the de minimis rate in accordance with section .616(e). The following changes are suggested to make this section consistent with our recommendations to sections .501(c)(1)(D) and .621, C-13(6)(B).

> *(5) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that is reasonable, allowable, and allocable, ~~but exclusive of~~ F&A costs ~~overhead costs~~ at either the employer organization's approved federal rate or, absent an approved federal rate, a de minimis rate in accordance with section .616(e), provided these services employ the same skill(s) for which the employee is normally paid.*

.502(f)(9)(C) – CONCERN: Unclear and Burdensome Text

COGR proposes that the text under section (9)(C) be deleted, or at a minimum, not be made applicable to research institutions. Specific language related to the valuation of third-party in-kind contributions

already is included in several sections under .502(f), and this additional text if made applicable to research institutions would be particularly burdensome.

(9) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(A) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.
(B) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.
~~(C) Some third-party in-kind contributions are goods and services that, if the recipient, subrecipient, or contractor receiving the contribution had to pay for them, would have been as indirect costs. Cost sharing or matching credit for such contributions shall be given only if the recipient, subrecipient, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.~~

.502(g)(2) – RECOMMENDATION: Modify the Definition of Program Income

COGR recommends using the definition contained in Circular A-110 be used in the Final Guidance.

(2) Definition of program income. Program income means gross income received by the recipient or subrecipient that is directly generated by a supported activity, or earned as a result of the award during the award period. "During the award period" is the time between the effective date of the Federal award and the ending date of the Federal award reflected in the notice of award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., license fees and royalties on patents and copyrights, or interest earned on any of them.

.502(g)(7) – CONCERN: Program Income Deduction Method Should Not be Applicable to Higher Education and Nonprofit Research Institutions

COGR appreciates the exclusion of research projects from the Deduction method for use of program income. However, we think this should be further clarified by exempting all Federal awards made to higher education and nonprofit research institutions from the deduction method.

(7) Use of Program Income. In the event that the Federal agency does not specify in its regulations or award how program income is to be used, paragraph 8 shall apply automatically to all projects or award programs except ~~research~~ for Federal awards made to higher education and nonprofit research institutions. For Federal awards ~~that support research~~ made to higher education and nonprofit research institutions, paragraph (9) shall apply automatically unless the awarding agency specifies an alternative (or a combination of alternatives) in the award notice. In specifying alternatives, the Federal agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of

income. When Federal agencies authorize the alternatives in paragraphs (9) and (10) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(8) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income that the recipient did not anticipate at the time of the Federal award shall be used to reduce the Federal agency and recipient contributions rather than to increase the funds committed to the project.

.502(h)(3)(C) – RECOMMENDATION: Absence of the Principal Investigator

The absence of a principal investigator has been interpreted differently over the years. Some interpret this as an absence from the project while others interpret as an absence from their campus location. COGR believes "absence" should not be inferred if the investigator simply is "absent" from a physical location. This can be confusing in instances where a principal investigator is taking a research leave or sabbatical to work on the project in another location. COGR believes this is a good time to clarify what an absence means and recommends the following:

(C) The ~~absence~~ disengagement from the project, regardless of where the project work is taking place, for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

.502(h)(3)(E) – RECOMMENDATION: Eliminate Prior Approval Requirement for Rebudgeting Funds from Indirect to Direct and Vice Versa

The charging of F&A costs is already highly regulated. Requiring agency prior approval to rebudget funds from indirect cost to direct cost or vice versa increases the administrative burden on faculty during their evaluation of account balances and projecting of available funds. COGR recommends the option for agencies to require this as a prior approval be deleted.

~~*(E) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.*~~

.502(h)(3)(I) – THANK YOU AND RECOMMENDATION: Requirement that Deviations be Approved by OMB

COGR appreciates the new requirement that "*No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.*" However, COGR recommends that additional consideration be given to establish a more formal process where Awardees have a formal mechanism to appeal to OMB those decisions or actions that are inconsistent with this guidance. COGR has recommended that OMB establish a formal process under Section .108 OMB Responsibilities. It would be helpful if this section was cross-referenced to section .108 OMB Responsibilities. This will allow Awardees to request OMB engagement in applicable situations.

(l) No other prior approval requirements for specific items may be imposed unless a deviation has been approved in advance by OMB. Also see Section .108 OMB Responsibilities.

.502(h)(6) – RECOMMENDATION: Change Incorrect Reference

(6) All other changes to non-construction budgets, except for the changes described in paragraph ~~(7)~~ (8) do not require prior approval.

.502(h)(9) – RECOMMENDATION: Delete Notification Language

COGR believes that this section, which is currently in Circular A-110, is no longer useful in the management of Federal awards and should be deleted. Recipients are not likely to be able to anticipate a balance of $5,000 or more until the last 30-60 days of the project period. Notification of the sponsor at that time will yield little value. We suspect that agencies have had very few of these notifications in the past indicating that the regulation itself has little value.

~~(9) For both construction and non-construction Federal awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation Federal award.~~

.502(i) – RECOMMENDATION: Delete Language for Non Federal Audits

COGR recommends that section .502(i) be removed entirely since audits are addressed in Subchapter G.

~~(i) Non-Federal audits.~~
~~(1) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals), or state and local governments shall be subject to the audit requirements contained in Subchapter G- Audit Requirements of this Guidance.~~
~~(2) For-profit hospitals not covered by the audit provisions in Subchapters G and H shall be subject to the audit requirements of the Federal awarding agencies.~~
~~(3) Commercial or for-profit organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the Federal award document.~~

.502(j)(3) – RECOMMENDATION: Add Clarity

COGR believes the section below is unclear as to its applicability and recommends that a reference back to the definitions of Subrecipients and Contractors (see .501(b)(1) and(2)) would provide a more clear definition.

(3) A cost type contract means a contract or subcontract under an award or subaward for which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee, for the purpose of obtaining goods and services and where such a contract or subcontract creates a procurement relationship between the parties (see .501(b)(2)). ~~but~~ It does not include a Federal award ~~cost reimbursement contract~~ that an agency makes to a non-Federal entity.

.502(j)(4) – RECOMMENDATION: Grant Prior Approvals Granted Under the Research Terms and Conditions

COGR believes that the authorities granted to higher education, hospitals, and nonprofit research institutions under the Research Terms and Conditions should be expressly stated in this guidance. We propose this be accomplished under a revised section .502(j)(4).

(4) Allowability of costs of the recipient and subrecipients shall be determined in accordance with the cost principles in Subchapter F of this guidance, except that higher education, hospitals, and nonprofit research institutions are exempt from the following prior approval requirements in Subchapter F.

(a) Direct charges for capital expenditures to purchase general purpose equipment and special purpose equipment (see .621 C-18(2)(A)&(B)).
(b) Direct charges for capital expenditures for improvements to equipment that materially increases the equipment's value or useful life (see .621 C-18(2)(C))
(c) Pre-agreement costs to the extent described in .502 (h)(4)(A).
(d) Rearrangement and reconversion costs under $25,000 (see .621C-41(1)) subject to the following conditions
(1) The alteration or renovation must be essential to the project supported;
(2) The facility to be altered or renovated must have a useful life consistent with research purposes and be architecturally and structurally suitable for conversion to the type of space required;
(3) The space involved must actually be occupied by the project or program;
(4) The space must be suitable for human occupancy before the alteration or renovation work is started, except where the purpose of the alteration or renovation is to make the space suitable for some purpose other than human occupancy (e.g., storage);
(5) If the space is rented, evidence must be provided that the terms of the lease are compatible with the alteration and renovation proposed
(e) Costs may be allocated to interrelated projects supported by multiple Federal awards on any reasonable documented basis (see .607(d)). The interrelationship between or among projects does not have to be formally documented, but must be demonstrable on the basis of any of the following criteria:
(1) The theoretical approaches are interrelated;
(2) Studies of the same phenomena are conducted by the same or different techniques; or
(3) Studies of different phenomena are conducted by the same technique

.502(k) – RECOMMENDATION: Add Cross-Reference and Clarification

COGR recommends a cross-reference be added to the section below as .502(j)(4)(c) and .502(h)(4)(A) address pre-award cost approvals.

> *(k) Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from actual costs incurred during the funding period, ~~and~~ any pre award cost authorized under .502(j)(4)(c), any costs incurred before the Federal agency made the award that were authorized by the Federal awarding agency in accordance with section .502(h)(4)(A), and any costs allocable to the production of the final report.*

__ .503 Property Standards

.503(b)(3) – RECOMMENDATION: Clarify Disposition Instructions

We appreciate the need to obtain federal sponsor approval for disposition of equipment with a market value even after the original Federal award has expired. However, the proposed guidance suggests that disposition instructions should be obtained regardless of the current market value of the item that is no longer needed for the original Federal award. Also, a time standard in which the Federal agency must follow to provide disposition instructions would be helpful. We suggest the following changes:

> *(3) Disposition. When real property is no longer needed for the originally authorized purpose, the recipient or subrecipient will request disposition instructions from the Federal awarding agency if the market value of the property is $5,000 or more. ~~The instructions will provide for one of~~ The Federal agency shall provide disposition instructions within 90 days, citing one of the following alternatives …*

503(c)(1)(A) – RECOMMENDATION: Add Clarity for Title to Federally-Owned Property

COGR recommends changing the word from "*restore*" to "*report*". This is more appropriate since the remainder of this section deals with the options for Federal agencies to have the equipment returned or left with the entity.

> *(A) Title to federally-owned property remains vested in the Federal government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the recipient shall ~~restore~~ report the property to the Federal awarding agency for possible further Federal agency utilization.*

.503(c)(2) – RECOMMENDATION: Clarify Classification of Exempt Property

To provide more clarity to recipients in determining if property acquired with award funds is "exempt" or "non-exempt", COGR recommends that when statutory authority exists, property purchased in whole or in part with award funds be classified as exempt. The award document should specify when property is not exempt.

> *(2) Exempt property. When statutory authority exists, the Federal awarding agency ~~has the option to~~ shall vest title to property acquired with Federal funds in the recipient without further obligation to the Federal government. ~~and under conditions the Federal awarding agency considers appropriate.~~ Such property is "exempt property." If the Federal awarding agency considers conditions appropriate for property to be classified as non-exempt it, will be noted in the award document. Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal government.*

503(d)(1) – RECOMMENDATION: Define Title to Equipment as Non-Exempt and Exempt

COGR recommends that this section be categorized into two sections, "non-exempt" and "exempt", to recognize the differences between the two as follows:

> *(A) Title - non-exempt: Subject to the obligations and conditions set forth in this section, title to equipment acquired in whole or in part under an award or subaward will vest upon acquisition in the recipient or subrecipient respectively.*
>
> *(B) Title - exempt: Title to exempt equipment acquired in whole or in part with federal funds or federal pass-through funds vests in the recipient or subrecipient without further obligation to the Federal government. With the exception of section (3) (C) the provisions below are not applicable to exempt equipment.*

.503(d)(4)(A) – CONCERN: Documenting "Use" Will Create Burden

COGR suggests the requirement to document "use" be deleted. This addition of gathering data on the current use of equipment will cause institutions to incur additional administrative burden. In addition many institutional systems for maintaining property records will need to be re-programmed to add this data element.

> *(A) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, ~~use and~~ condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.*

.503(d)(5)(E) – CONCERN: Cost of Equipment Disposal

COGR recommends the deleted section from Circular A-110, section (g)(3) be added back. The costs associated with equipment disposal can be significant and should not be a financial obligation of the non-Federal entity. We suggest adding a section (E) to this section.

> *(E) If the recipient is instructed to otherwise dispose of or transfer the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition or transfer.*

.503(e) – RECOMMENDATION: Correct Error

The correct reference in this part should .621 not .620.

> *(e) Supplies See also section ~~.620~~ .621 Selected Items of Cost, item C-31 Material and supplies costs, including costs of computing devices.*

.503(h) – RECOMMENDATION: Move from Section .621 to Section .503

COGR suggests that the section below should be moved from section .621, C-18(2)(G) and included as a new section under .503 Property Standards.

> *(h) When replacing equipment purchased in whole or in part with Federal funds, the entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.*

__ .504 Procurement Standards

.504(b)(3) – RECOMMENDATION: Update Outdated Text

Although the following language has been in the circulars for many years, the research environment has become increasingly complicated and we have learned that under the right circumstances, potential conflict of interests circumstances can be properly managed to the benefit of a project or activity. Therefore COGR suggests the following edit:

> *(3) The recipient and subrecipients shall maintain written standards of conduct governing the performance of its employees engaged in the selection, award and administration of procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract supported by Federal funds if he or she has a ~~real or apparent~~ conflict of interest ~~would be involved~~. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial ~~or other~~ interest in or a tangible personal benefit from a ~~the~~ firm ~~selected~~ considered for an award. If however, the recipient or subrecipient has established policies to assess the suitability of issuing a procurement contract to a conflicted firm, the contract may be issued based on written justification as part of the procurement file. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subawards. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.*

.504(b)(4) – CONCERN: Reinstatement of Equipment Screening Requirement

COGR believes the proposed language requires the reinstatement of equipment screening procedures which were eliminated in two decades ago by requiring a "review of proposed procurements to avoid acquisition of unnecessary or duplicative items". Equipment screening was eliminated due to the burden created and the lack of any cost saving for the Federal government. The language requiring a review should be removed.

> *(4) Recipient and subrecipient procedures will ~~provide for a review of proposed procurements to~~ avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.*

.504(b)(9) – CONCERN: Overly Burdensome Requirement

Other general accountability standards throughout the guidance are sufficient to ensure that the appropriate level of record keeping is maintained. This section is overly prescriptive and we suggest that it be deleted.

~~*(9) Recipients and subrecipients will maintain records sufficient to detail the history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.*~~

.504(b)(12) – CONCERN: Notification to Agencies Regarding Procurement Disputes

COGR believes there is no value in informing the Federal Awarding agency in the event of a procurement dispute and therefore requests that the requirement be eliminated from the proposed regulation. This is an unnecessary administrative step that creates additional burden.

(12) Recipients and subrecipients will have protest procedures to handle and resolve disputes relating to their procurements ~~*and shall in all instances disclose information regarding the protest to the Federal awarding agency*~~*. A protestor must exhaust all administrative remedies with the recipient and subrecipient before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:*

(A) Violations of Federal law or regulations and the standards of this section (violations of state or local law will be under the jurisdiction of state or local authorities), and

(B) Violations of the award or subaward recipient's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the recipient or subrecipient.

.504(c)(2) – MAJOR CONCERN: Prohibition of State Requirements under Procurement Actions

Public Universities will be subject to State Law regarding procurement activities that require geographical preference in certain situations. We know of several examples where State Law requires preference be applied to in-state bids when bids are received from other states. Despite the clause that states: "*Nothing in this section preempts state licensing laws*", the proposed regulation would put many public universities in a conflicted position between State law and the requirements under this section. COGR recommends the deletion of this entire section.

~~(2) Recipients and subrecipients will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.~~

.504(d) – MAJOR CONCERN: Troubling and Overly Burdensome Procurement Requirements

The "*Methods of procurement*" described in this section are far too prescriptive. Defining the specific procurement methods allowed does not provide for progressive thinking for new ways to achieve the best value for the University and the Federal government. As an example, a popular approach to procuring goods and services today known as "Strategic Sourcing" is not included as a possible option. In addition, restricting procurement activities to the methods listed would inhibit the ability of universities and nonprofit research institutions to quickly obtain critical research equipment and supplies necessary to meet the demands of science. Research often requires consistent sourcing of supplies, components, and/or reagents in order to avoid the introduction of unwanted variables into the course of the experimentation.

COGR believes that the principles of competition were well stated in section C43 of OMB Circular A-110 and that those principles should replace the prescriptive methods that have been included in the proposed guidance. We recommend that the language shown directly below be used for .504(d) and that the currently proposed sections of .504(d)(1-4) be deleted.

> *(d) Procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Awards shall be made to the bidder or offeror whose bid is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered.*
>
> ~~*(d) Methods of procurement to be followed. In all of the below methods, some form of cost or price analysis is required as described in paragraph (f)(1) of this section.*~~
>
> ~~*Recipients and subrecipients may be required to submit the proposed procurement to the Federal awarding agency for pre-Federal award review in accordance with paragraph (g) of this section.*~~
>
> ~~*(1) Procurement by small purchase procedures …*~~
>
> ~~*(2) Procurement by sealed bids (formal advertising) …*~~
>
> ~~*(3) Procurement by competitive proposals …*~~
>
> ~~*(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source or, if after solicitation of a number of sources, competition is determined inadequate …*~~

.504(f)(1) – THANK YOU: Increasing the Threshold for a Cost or Price Analysis to the Simplified Acquisition Threshold ($150,000 at the time of Publication)

COGR appreciates that the new required cost or price analysis threshold for procurement actions has been set in accordance with the simplified acquisition threshold.

__ .505 Performance and Financial Monitoring and Reporting

.505(d)(2)(B)(i) – MAJOR CONCERN: Inappropriate Relationship between Performance and Financial Reports (also see .502(a) and .502(c))

As stated in COGR's response to sections .502(a) and .502(c), we believe this section is in direct conflict with previous efforts by OMB to develop standardized Grants Reporting Forms. In addition, the uniqueness of research projects, also discussed in sections .502(a) and .502(c), is a critical consideration when attempting to link performance and financial reports.

COGR proposes that the following changes be made to sections .505(d)(2)(B)(i). If OMB determines that a more direct correlation is applicable to certain federal programs, then we propose that an exception for research be incorporated into the Final Guidance.

> *(i) A comparison of actual accomplishments to the objectives of the award established for the period. ~~Where the accomplishments of the award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful.~~ Where performance trend data and analysis would be informative to the Federal agency program, the agency should include this as a performance reporting requirement in accordance with Section .404 and utilizing Government Wide Standard Grants Reporting Forms.*

__.506 Record Retention and Access

.506(a)(1)(D) – RECOMMENDATION: Add Cross-Reference

COGR recommends a cross-reference be added to the section below as .501(b)(2) addresses the earlier definition of Contractor.

> *(D) This section does not apply to records maintained by ~~contractors~~ Contractors or ~~subcontractors~~ Subcontractors as defined in .501(b)(2).*

.506(b) – THANK YOU AND RECOMMENDATION: Substitution of Electronic Records

COGR appreciates the new language in this section that allows for the "Substitution of electronic records." While we recognize the potential challenge of synchronizing the Final Guidance with the FAR, making the guidance applicable to all Federal awards would be a significant step towards reducing the administrative burden associated with managing multiple sets of federal rules. COGR encourages OMB to pursue this challenge and we are prepared to assist in any way possible to facilitate this important policy change.

.506(c) – RECOMMENDATION: Add Research Terms and Conditions Language Regarding Site Visits

COGR recommends that the language regarding site visits that was included in the Research Terms and Conditions be added to reflect the importance of when and how site visits are arranged. We propose this be accomplished under revised section .506(c),

> *(c) Access to records. (1) Records of recipients and subrecipients. The Federal awarding agency, Inspectors General and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent documents, papers, or other records of recipients and subrecipients which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to a recipient's or subrecipient's personnel for the purpose of interview and discussion related to such documents. In the event a site visit is necessary, such visit shall be scheduled at reasonable times and in a manner that does not unduly interfere with or delay the work.*
>
> *Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the recipient and Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency.*

__.509 Post-Closeout Adjustments and Continuing Responsibilities

.509(a)(2) – RECOMMENDATION: Post-Closeout Adjustments

COGR suggests adding a materiality threshold of $500 for refunds after award close-out. The cost of processing small dollar refunds after close-out for both the recipient and the Federal government far exceeds the funds recovered by the Federal government.

> *(2) The obligation of the recipient to return any funds due in excess of $500 as a result of later refunds, corrections, or other transactions.*

Subchapter F – Cost Principles

Subtitle I General Provisions: .601 through .603

.601(d) CONCERN: Policy Guidance Should Address the Dual Role of Students

Recognition of the dual role of students speaks to the fundamental mission of colleges and universities, and even more so, within higher education research institutions. Regardless of funding source, sponsored award objectives are heavily dependent on the efforts and contributions provided by students, postdocs, and fellows. This involvement is significant, encouraged and provided for under sponsored awards and should be reflected in this costing guidance. COGR proposes to revise section .601 to incorporate important language already included in Circular A-21. Subsequent sections already included would be re-lettered accordingly.

> *(d) For institutions of higher education, the dual role of students engaged in research and the resulting benefits of sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.*

.602(b) THANK YOU AND RECOMMENDATION: Cost Accounting Standards and the DS-2

COGR appreciates that references to Cost Accounting Standards (CAS) and to the DS-2 have been essentially eliminated. However, we request the following changes be made: 1) eliminate reference to an "*advance agreement*" as it is unclear what the need is for an advance agreement, and 2) clarify that in situations where a Federal contract is awarded to an entity and a CAS clause has been incorporated, the CAS clause is applicable only to the Federal contract to which the clause is incorporated and not to the entire portfolio of the institution's Federal awards.

> *(b) Federal Contract. Where a Federal contract awarded to a non-Federal entity incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply ~~. In such cases, the non-Federal entity and the cognizant Federal agency shall establish an appropriate advance agreement on how the entity will comply with applicable CAS requirements when estimating, accumulating, and reporting costs under CAS-covered contracts. The agreement shall indicate that the requirements of this guidance will be applied to other Federal awards~~ only to the CAS-covered contract, and not to other Federal awards. In all cases, only one set of records needs to be maintained by the non-Federal entity.*

Subtitle II Basic Considerations: .604 through .614

.605(c) & (d) – CONCERN: Treatment of Non-Federal Awards

The paragraphs cited under sections (c) and (d) are taken from Circulars A-87 and A-122 and this language appears to restrict the cost and charging principles for non-federally funded programs. Circular A-21 does not contain this language. We believe sections (c) and (d) can be combined and reworded to emphasize the important principle of "consistency" across Federal awards, without appearing to prescribe management practices associated with non-federal awards. This change provides for both appropriate Federal costing guidance as well as costing latitude on non-federal awards.

> *(c) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.*
>
> ~~*(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the organization.*~~
>
> ~~*(d) Be accorded consistent treatment.*~~

.605(g) – RECOMMENDATION: Clarify Text for Adequate Documentation

COGR suggests the following edit to provide additional clarity:

> *(g) Be adequately documented in accordance with the entity's established policy.*

.606(c) – RECOMMENDATION: Remove Text to Clarify Intent

While COGR agrees that market prices are a good indicator that a cost is reasonable, the additional words "for the geographic area" is confusing and could be subject to misinterpretation. We suggest the additional words be deleted.

> *(c) Market prices for comparable goods or services ~~for the geographic area~~.*

.606(d) – RECOMMENDATION: Add Text to Recognize Students

Reasonable costs must recognize the importance and significance of the role of students in the conduct of federally sponsored activities at institutions of higher education. Instruction and research often go hand-in-hand; therefore, the responsibility of institutions to its employees cannot exclude the active participation of students in overall campus operations. COGR proposes the following edit:

(d) Whether the individual concerned acted with prudence in the circumstances considering their responsibilities to the non-federal entity, its employees, its students in the case of institutions of higher education, the public at large, and the Federal government.

.607(b) – CONCERN: Expansion of the Allocation Base

The proposed language inappropriately expands the allocation base for F&A costs. Since donated services do not draw a proportionate share of administrative or facilities costs, such guidance would result in an inequitable adjustment to the institution's basis for determining the fair level of F&A cost reimbursement. We propose the following edit:

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities ~~and donated services by the non-Federal entity or third parties~~, will receive an appropriate allocation of indirect costs, in accordance with Section .615(f).

.607(d) – RECOMMENDATION: Restore Helpful Text from Circular A-21

COGR recommends that the text used in Circular A-21 to define the treatment of equipment under the direct cost allocation principles be restored.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost should be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c), the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital items is specifically authorized under a Federal award, the amounts authorized for such purchases are assignable to the Federal award regardless of the use that may subsequently be made of the equipment or other capital items involved.

.608(a) – CONCERN: Inappropriate Relationship of Applicable Credits to Program Income

The proposed language in this section confuses the distinction between the definitions of "applicable credits" and "program income." Applicable credits are not gross income generated by award supported activity, and therefore, should not be related to the definition of program income included under Section 502(g)(2). COGR recommends that .608(a) be modified and that .608(c) be deleted.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they shall be credited to the direct cost of the Federal award or treated as a credit to F&A cost items/pools, as appropriate. ~~, they shall be credited to the Federal award either as a cost reduction or treated as program income as described in ___.502 Standards for Financial and Program Management paragraph (g), as appropriate.~~

(b) In some instances …

~~*(c) For rules covering program income (i.e., gross income earned from federally supported activities), non-federal entities should refer to section _.502 Standards for Financial and Program Management paragraph (g) Program Income.*~~

.610 – RECOMMENDATION: Require a Written Response from the Federal Agency

"*Advance Understanding*" between an award recipient and a Federal agency is an important principle that can avert inappropriate disallowances and disputes. Section .610 addresses this principle, but does not address how the Federal agency should respond to a written request from an award recipient. COGR suggests the following edit:

Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with non-Federal entities that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, a non-Federal entity may seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The cognizant or awarding agency shall provide timely written responses to all such requests. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

.613 – RECOMMENDATION: Unallowable Cost Determination and Changes in Accounting Practices

Non-Federal entities, from time to time, must change their cost accounting practices to comply with changes to the installation and implementation of a new accounting and/or budgeting system, or changes to generally accepted accounting principles (GAAP). These changes may result in increased or decreased costs. COGR suggests, to avoid inhibiting entities from making reasonable or required changes to accounting practices, this section should be updated as follows:

The following provision applies to the collection of unallowable costs, excess costs due to noncompliance with cost policies by a non-federal entity, and increased costs due to failure to follow a disclosed accounting practice. ~~, and increased costs resulting from a change in cost accounting practice~~. The following costs …

Subtitle III Direct and Indirect (F&A) Costs: .615 through .616

.615(b) – RECOMMENDATION: Clarify Text

COGR proposes a minor clarification to provide consistency with language in other parts of the guidance.

> *(b) Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances …*

.615(d) – THANK YOU AND CONCERN: Salaries of Administrative and Clerical Staff

COGR appreciates the proposed language that OMB has incorporated into this section. This important change under the OMB Grants Reform initiative has the potential to reduce faculty administrative burden by allowing those activities conducted by administrative and clerical staff to be directly charged to Federal awards.

However, we are concerned that section (d)(3), "*such costs are explicitly included in the budget*." could be misinterpreted to suggest that such costs would not be allowable if not included in the original project budget. Institutions regularly rebudget and are allowed to do so under expanded authorities. Rebudgeting for activities that involve the direct charging of administrative and clerical staff should not be prohibited if it is in the interest of the Federal award. COGR suggests the following change.

> *(d) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate where all of the following conditions are met:*
>
> *(1) administrative or clerical services are integral to a project or activity;*
>
> *(2) individuals involved can be specifically identified with the project or activity;*
>
> *(3) such costs are ~~explicitly~~ included in the budget or are documented in accordance with the Federal awarding agency's guidelines; and*
>
> *(4) the costs are not also recovered as indirect costs.*

.615(f) – RECOMMENDATION: Clarify Text

COGR proposes a minor clarification to provide consistency with language in other parts of the guidance.

(f) The cost of certain activities are not allowable as charges to Federal awards. However, even though these ~~costs~~ activities are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their fair share of the non-Federal entity's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the non-federal entity's indirect (F&A) costs.

.616(b) – RECOMMENDATION: Clarify Text

COGR proposes a minor clarification to provide consistency with language in other parts of the guidance.

(b) … "Facilities" is defined as depreciation ~~and use allowances~~ on buildings, equipment and capital improvements, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses.

.616(c) THANK YOU AND CONCERN: Further Enhance Transparency

COGR appreciates OMB's willingness to address one of the most challenging issues for both the Federal agency and the Federal awardee communities. The text in this section is a helpful starting point. However, COGR recommends that additional steps be added to provide enhanced transparency, and ultimately, to foster better trust and partnership between our communities. In addition, COGR recommends that the text in this section be updated to coincide with the text in section .204(b)(B).

(c) Federal Agency Acceptance of Negotiated Indirect Cost Rates. (Please see also section .502 Standards for financial and program management (f) cost sharing ~~and matching~~.)

(1) The negotiated rates shall be accepted by all Federal agencies. Only when required by law or regulation, or when approved by a Federal agency head based on documented justification to OMB as described in paragraph (3) below may an agency use a rate different from the negotiated rate for a class of Federal awards or a single Federal award.

(2) ~~Agency heads shall notify OMB of any approved deviations.~~ Limitations not required by statute or regulation must be approved by the agency head and OMB.

(3) Agencies shall implement and make ~~publically~~ publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates,

(4) Per the requirements in section .204 Announcements of Funding Opportunities, policies and the justification for those policies relating to indirect cost rate reimbursement, ~~matching~~, or cost share as approved per paragraph (1) above must be included in the announcement of funding opportunity, and as appropriate, incorporated into agency outreach activities with the grantee community prior to the posting of a funding opportunity announcement.

(5) Non-Federal entities can appeal to OMB, per Section .108 OMB Responsibilities, in those situations where an agency deviation is inequitable to the non-federal entity and/or the broader non-Federal community. While prior deviations may not be remedied, the

appeal process will allow OMB, the Federal agency, and the affected non-Federal entity(ies) to address and remedy the deviation as it relates to future funding opportunities for the program in question.

(~~5~~6) Pass-through entities making subawards are subject to the requirements in section ___.501 Subrecipient Monitoring and Management.

.616(e) THANK YOU AND RECOMMENDATION: Allow De Minimis Rate to be Extended Without Time Restrictions and Increase the Level of the De Minimis Rate

COGR appreciates the concept of a de minimis indirect cost rate as both federal and non-federal entities devote resources to the calculation and negotiation of rates. It is understood that the de minimis rates are targeted to those entitles with a small volume of Federal awards, including those receiving their first Federal award.

However, we have two recommendations. First, we suggest that the de minimis rate be available, to those institutions that choose to use it, without a time restriction of four years. Most likely, institutions that choose to use the de minimis rate will have done so because they do not have the resources to calculate an actual rate. A time restriction for its use seems unnecessary and inconsistent with the spirit of this reform to reduce burden for both non-Federal entities and the Federal government. Second, we suggest the proposed de minimus rate be increased. COGR's research suggests that a 15% MTDC or a 10% TDC rate represent very conservative rate levels which still would achieve the goal of minimizing burden for institutions that do not have the resources to calculate a rate. If the de minimis rate is set too low, institutions that would benefit from using it may choose not to do so because they are certain they can support a higher rate. Furthermore, for institutions that engage in subrecipient agreements with smaller institutions, allowing for the higher de minimis rate should result in more frequent acceptance of the de minimis rate by subrecipients, and consequently, fewer rate negotiations with subrecipients. We propose the following change:

(e) In addition to the procedures outlined in the appendices above, any entity that has never received or does not currently have a negotiated indirect cost rate is eligible for a de minimis indirect cost rate of ~~10%~~ 15% of modified total direct costs (MTDC) or 10% of total direct costs (TDC). ~~, which may be utilized for an initial period of up to four years~~. …

.616(e) THANK YOU AND RECOMMENDATION: Allow Additional Extensions, Subject to Approval of the Cognizant Agency

COGR appreciates the significant administrative savings for both the government and for non-Federal entities by allowing for extensions of negotiated F&A rates. In addition, we recommend that additional extensions be allowed, subject to the approval of the cognizant agency for indirect costs.

(e) … All entities may apply for ~~a one-time~~ an extension of their ~~of a~~ current negotiated indirect cost rates for a period of up to 4 years. This extension will be subject to the review and approval of the indirect cost cognizant agency. If an extension is granted the entity may not request a rate review until the extension period ends. Future extensions can be applied for and are subject to the same review and approval conditions of the cognizant agency for indirect cost.

.616(e) CONCERN: Definition of MTDC and Agency Deviations

The definition of Modified Total Direct Costs (MTDC) in this section does not include "scholarships and fellowships." However, the definition included in Appendix IV, C.2 does. As a point of reference, Circular A-21 also includes "*scholarships and fellowships*." On the other hand, "*participant support costs*" is cited in this section, but is not cited in Appendix IV. COGR recommends that both scholarships and fellowships and participant support costs consistently be defined in both this section and Appendix IV. In addition, we recommend that "*tuition*" should be shown as "*tuition remission*" and that other minor changes should be made to improve clarity.

COGR is concerned about the disregard of the definition of MTDC by some agencies. Recently, one Federal agency maintained that the MTDC exclusion for the portion of a subaward greater than $25,000 was applicable to a third-party vendor contract issued by the Federal awardee. However, the definition of a "subaward" per this proposed guidance is "*an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a program for which the recipient received Federal support*." A contract for goods or services issued to a third-party vendor is not a subaward and should not be categorized as an MTDC exclusion. Consequently, COGR proposes a revision to the definition of MTDC so to avoid misinterpretations.

COGR also proposes that the final sentence in this section be strengthened. When an agency makes a claim that an MTDC exclusion is necessary to "*avoid a serious inequity*," there should be clear mechanisms in place so that agency deviations can be addressed by OMB and/or an independent arbiter. This will help to ensure that institutions are allowed to recover their costs through the application of their F&A rate in the same manner in which the rates were proposed and negotiated with the Federal cognizant agency for indirect cost.

> *… MTDC is defined as all salaries and wages, fringe benefits, materials and supplies, services, travel, and ~~subgrants and subcontracts~~ subawards (including subawards issued under federal cost-reimbursement or fixed price contracts) up to the first $25,000 of each ~~subgrant and subcontract~~ subaward (regardless of the period covered by the ~~subgrant and subcontract~~ subaward). Equipment, capital expenditures, charges for patient care, ~~rental costs~~ rental of facilities, tuition remission, ~~participant support costs,~~ scholarships and fellowships, and the portion of ~~subgrants and subcontracts~~ subawards in excess of $25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cognizant agency for indirect cost, subject to the guidance in Section .108 OMB Responsibilities, ~~or awarding agency~~ determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.*

.617(a) & (b)(1) RECOMMENDATION: Enhancements to Certification Requirements

COGR believes that the modifications suggested below are a more reasonable approach to completing the required certifications.

> *(a) To assure that expenditures are proper and in accordance with the terms and conditions of Federal awards and approved project budgets, the annual and final fiscal reports or vouchers*

requesting payment under the agreements will include a certification, signed (electronically or on paper) by an authorized official, which reads essentially as follows: "To the best of my knowledge, I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a cognizant agency or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices IV through VIII. The certificate must be signed on behalf of the non-Federal entity by ~~an individual at a level no lower than~~ the chief financial officer or an individual designated by the chief financial officer. ~~that submits the proposal or component covered by the proposal~~.

Subtitle V - Costs Incurred by State and Local Governments: .620

.620(b) CONCERN: Recognize Other Forms of Documentation from the State

COGR supports the concepts of this section and seeks to simplify the requirement by allowing other forms of documentation. For example, interest payments provided by a state building authority that were made on behalf of a university should be an acceptable form of documentation.

(b) The costs are properly supported by appropriate documentation or approved cost allocation plans in accordance with applicable Federal cost accounting principles.

Subtitle VI General Provisions for Selected Items of Cost: .621

.621 – RECOMMENDATION: Clarify Text

COGR proposes a minor clarification in the introduction to section .621 to provide consistency with language in other parts of the guidance.

> *… In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award should govern.*

C-1 – RECOMMENDATION: Correct Error

The correct reference in this part should be .621 not .620 and "obligation" should be plural.

> *(A) The recruitment of personnel required for the performance by the recipient of obligations arising under a Federal award (See also section ~~.620~~ .621 Selected Items of Cost item C-42 Recruiting Costs);*

C-2 – CONCERN: Treatment of Allowable Costs for Advisory Councils

Since all of the costing circulars (A-21, A-87 and A-102), listed these costs as allowable, and there was no discussion as to why documented advisory council costs (e.g., an Institutional Review Board) that benefit a Federal Award or the institution would be an unallowable cost, we hope this change was a transcription issue rather than a policy change. Accordingly, we have suggested the change below.

> *Costs incurred by advisory councils or committees are allowable to the extent they benefit a Federal Award or institution ~~unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards~~. See C-22 also General Government Expenses, applicable to state, local and Indian tribal governments.*

C-9 – RECOMMENDATION: Restore Text on Communication Costs

Section C-9 addresses Commencement and Convocation Costs. Circular A-21, section J.9 addresses Communication Costs. In the proposed guidance, there appears to be no explicit statement on the allowability of communication costs. We recommend this section be restored.

> *Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.*

C-10 – MAJOR CONCERN: Compensation - Personal Services

SPECIAL NOTE: As a companion to the assessment and recommendations shown below, we have included ***ADDENDUM 2 – COGR Response***, which includes our suggested reorganization and revision of sections (8) and (9) Compensation–Personal Services and the Standards for Documentation. COGR is concerned that if sections (8) and (9) are not adequately addressed in the Final Guidance, the impact on the Higher Education community, as well on other recipients of Federal awards, will be a significant increase in administrative burden associated with the Standards for Documentation. We appreciate the consideration OMB will give to the comments below and those in ***ADDENDUM 2 – COGR Response***.

C-10(3) – CONCERN: Inappropriate Reference to Conflict of Interest Policies and Agency Determinations

COGR recommends removing the reference to "*conflict of interest policies*." We believe it is inappropriate to single-out or differentiate this specific institutional policy within the context of describing costing principles for institutional payroll systems. Federal guidance and corresponding conflict of interest policies for an institution are addressed in other capacities, but should not be done so in this guidance. In addition, we believe that any text that allows determinations of the adequacy of institutional policies to be made by Federal agency officials should be deleted.

(3) Non-institutional professional activities. Unless an arrangement is specifically authorized by a Federal sponsoring agency, a recipient must follow its organization-wide policies and practices ~~(including conflict-of-interest policies)~~ concerning the permissible extent of professional services that can be provided outside the organization for non-organizational compensation. ~~Where such organization-wide policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal government may require that the effort of professional staff working on Federal awards be allocated between (1) organizational activities and (2) non-organizational professional activities. If the sponsoring agency considers the extent of non-organizational professional effort excessive or inconsistent with conflicts-of-interest terms and conditions, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.~~

C-10(5) – CONCERN: Special Considerations are Redundant and Confusing

COGR recommends deletion of this section. The discussion of "Special Considerations" is confusing and seems redundant to sections (1) and (2), where allowability and reasonableness already are addressed.

~~(5) Special considerations. Special considerations in determining allowability of compensation will be given to any change in an organization's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.~~

C-10, (8) and (9) – MAJOR CONCERN: Overall Revision and Reorganization for Sections (8) and (9)

We found the organization and structure of sections (8) and (9) difficult to follow. To achieve a clear understanding of how institutions of higher education account for and document payroll charges to Federal awards, we believe that a reorganization of information is important. In the COGR comments that follow, we have provided explanations as to why revisions to sections (8) and (9) are important. ***ADDENDUM 2 – COGR Response*** incorporates the explanations and recommendations into our proposed revision to these sections.

C-10(8)(B)(i) – CONCERN: Separate and Clarify the Definitions of Allowable and Incidental Activities

COGR recommends separating "Related Activities" from "Incidental Activities" below. COGR understands these as two distinct activities, and the coupling in the same paragraph causes confusion. We have added some additional language for clarification. Also, we are unclear about the meaning of "Incidental Work" as described below. COGR's understanding is that this is work outside of the work performed for the employee's institutional base salary, and in the unusual case where it could be charged to a Federal award, the amount would be a de mininis amount and be subject to agency approval. We have provided suggested changes to this section.

> ~~*(i) Related and incidental activities. Charges to Federal awards may include reasonable amounts for activities contributing and intimately related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work for which supplemental compensation is allowable under institutional policy need not be included in the payroll distribution systems described in paragraph (9) of this section, provided that the work and compensation are separately identified and documented in the financial management system of the institution.*~~
>
> *Allowable ~~Related and incidental~~ activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly ~~intimately~~ related to work under an agreement. Additionally, other allowable activities can include, but are not limited to ~~such as~~ delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, project management activities in support of the project, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.*
>
> *Incidental activities. Incidental work for which supplemental compensation is allowable under institutional policy (i.e., excluded from institutional base salary) need not be included in the payroll distribution systems described in paragraph (9) of this section, provided that the work and compensation are separately identified and documented in the financial management*

system of the institution. To direct charge payments for incidental work, such work must be specifically provided for in the award budget as approved by the Federal awarding agency or subsequently approved by the Federal awarding agency.

C-10(8)(B)(ii)(a) & (b) – CONCERN: Use More Relevant Descriptions for Institutional Base Salary, Intra-University Consulting, and Extra Service Pay

COGR is concerned about the terminology used in the sections (a) and (b). The concept of "*extra service pay*" is introduced, as well as concepts such as "*paid appointment period*" and "*periods outside the academic year*." We suggest it would be more appropriate to use the concept of "Institutional Base Salary (IBS)," which is widely accepted across the higher education community, rather than the more ambiguous reference to "*full-time workload*." IBS normally is defined as the annual compensation paid by a university for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the university. We propose the IBS be used as the standard terminology in the guidance.

In addition, the description of "*intra-university consulting*" has changed compared to what currently is used in Circular A-21. We propose that the Circular A-21 text be restored as a separate section (b). Finally, we are concerned as to the intent of including the discussion on "*extra service pay*". Our understanding is that it is meant to address overload compensation; however, the presentation of this concept in the proposed guidance is vague and could create confusion in the research and higher education communities. We have proposed that the discussion of "*extra service pay*" be included as a separate section (c). We further request to address this topic with OMB and the COFAR, as well as the other issues we have raised, in more detail prior to the release of Final Guidance.

~~(a) Salary basis. Many faculty members accrue salary during an institutionally defined "academic year" (typically 9 months) which is paid to them over a 12-month period. In such cases, efforts during periods outside the academic year (typically summer months) are generally compensated separately, if at all. Additionally, policies of some universities allow for "extra service pay" for effort beyond that expected (and otherwise compensated) during the paid appointment period. In all cases (including, where appropriate, for calculation of indirect cost rates), the basis of an individual faculty member's salary is the regular compensation received for the committed period of employment under the policies of the institution concerned~~.

(a) Salary basis ~~rates for the academic year~~. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the Institutional Base Salary (IBS) ~~the base salary~~ rate. IBS is defined as the annual compensation paid by a university for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the university.

(b) Intra-university consulting. Intra-university consulting by faculty is assumed to be undertaken as a university obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above the IBS are allowable

provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the awarding agency.

(c) "Extra service pay" normally represents overload compensation, subject to institutional compensation policies, for services above and beyond IBS. It is allowable if the following conditions are met:

(1) The entity establishes ~~uniform,~~ consistent policies which apply uniformly to all employees of a given class, not just those working on Federal projects. See Subchapter F Section .621 C-10 Compensation-Personal Services …

(2) The entity establishes a consistent definition of ~~a full-time workload~~ of the work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentation.

(3) The amount paid is commensurate with the IBS rate of pay for ~~base pay rate and~~ the amount of additional work performed. See Section .621 C-10 Compensation – Personal Services …

~~(4) The supplementation amount paid is commensurate with the base pay rate and the amount of additional work performed. See Section .621 C-10 Compensation - Personal Services …~~

(4 ~~5~~) The salaries, as supplemented, fall within the salary structure and pay ranges established by or otherwise applicable to the entity.

~~(6) The total salaries and workload as supplemented are considered the full activity of the individual and constitutes 100 percent of effort under the entity's activity reporting system.~~

(5 ~~6~~) The total salaries charged to Federal awards are subject to the Standards of Documentation as described in paragraph (9). ~~and workload as supplemented are considered the full activity of the individual and constitutes 100 percent of effort under the entity's activity reporting system.~~

C-10(8)(B)(ii)(d) – CONCERN: Description of Part-time Academic Faculty

COGR believes the current text does not adequately recognize the breadth and complexity of relationships that universities may have with academic faculty. Institutions may hire part-time faculty and staff to perform activities such as teaching, research, public service, outreach, etc. Compensation for those activities will vary depending upon the nature of the work and institutional standards for compensation. For example, an individual hired to work 50% on a research project would be paid based on institutional policy regarding the portion of the time involved; however, the person would not be paid based on the going rate for teaching. The example in section (d) confuses the discussion in this section, and we propose that it be deleted.

(d) Part-time faculty. Charges for work performed on Federal awards by faculty members

having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments. ~~For example, if an institution pays $5,000 to a faculty member for half-time teaching during the academic year, it should pay the same amount (chargeable to the agreement) for an equal commitment to teaching on a sponsored activity. Total compensation may not exceed "full-time" ($10,000 in this example).~~

C-10(9) – THANK YOU AND MAJOR CONCERN: Standards for Documentation Continue to Create Significant Faculty and Administrative Burden

COGR appreciates the elimination of the "Examples of Acceptable Methods for Payroll Distribution" that are included in Circular A-21. We believe this sets the stage for allowing non-Federal entities to implement documentation methodologies that are less costly and burdensome, while still ensuring that charges to Federal awards are appropriate. We look forward to engaging with OMB and the COFAR on this topic and to work toward productive and effective solutions.

COGR proposes a revision of section (9). In ***ADDENDUM 2 – COGR Response***, we have marked the proposed standards of documentation with additions and ~~strikethroughs~~ while preserving the basic format that has been included in the proposed guidance. If our proposed changes are implemented in the Final Guidance, we believe this could set the stage for reducing the long-standing faculty and administrative burden associated with effort reporting, while still providing the necessary institutional accountability that ensures appropriate salaries have been charged to Federal awards.

The pillars for ensuring appropriate accounting for salaries charged to Federal awards include: 1) official records that are maintained in the institution's payroll distribution system, 2) institutional controls and processes ensure payroll charges to Federal awards are appropriate, 3) institutional controls and processes further identify changes in employee activity and update those changes to the payroll distribution system in a timely manner, and 4) a system is in place for after-the-fact confirmation of payroll charges by a responsible person. If an institution can demonstrate that these four pillars are established, then any other system or certification requirement is prescriptive, burdensome, costly, and does not add value.

COGR and its member institutions are absolutely committed to providing the necessary institutional accountability that ensures appropriate salaries have been charged to Federal awards. Our commitment is anchored by the four pillars described above. We urge those who are in favor of perpetuating effort reporting to forego this outdated and complex method. Effort reporting is a prescriptive approach that results in increased faculty and administrative burden, is unnecessarily costly for institutions, and adds no additional value to the salary conformation process.

A streamlined solution that relies on the institution's official payroll system, in combination with rational accounting and management procedures, is the best way to reduce the real burden associated with effort reporting. Our proposed changes to section (9) are included in ***ADDENDUM 2 – COGR Response***.

C-11(2) – CONCERN: Treatment of Leave Costs

The language in this section is confusing. Institutions of Higher Education charge leave costs to Federal awards using either the accrual basis or cash basis. The language below is not clear as to what would be allowable. We recommend either this section be deleted or be rewritten to provide more clarity.

> *~~(E) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When an entity uses the accrual basis of accounting, in accordance with GAAP allowable leave costs are the lesser of the amount accrued or funded.~~*

C-11(5) & (8) & (11) – THANK YOU AND RECOMMENDATION: Treatment of Selected Benefits

COGR appreciates the efforts to update the fringe benefit section of the guidance, in particular those related to post-retirement health plan costs. The following recommendations are intended to improve clarity and correct typographical errors.

> *(5)(B) Where an organization follows a consistent policy of expending actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment ~~with the prior approval of the awarding agency~~, provided they are allocated to all activities of the organization.*
>
> *(8) Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph ~~(9)~~ (7) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written ~~polices~~ policies of the entity.*
>
> *(11)(B) The costs are properly supported by appropriate documentation or an approved cost allocation plan~~s~~ in accordance with applicable Federal cost accounting principles; and*

C-11(9) – RECOMMENDATION: Recognize that Severance Pay may be treated as Compensation

COGR recommends that this section acknowledge that severance pay may be treated as compensation or that this section be moved to section C-10 Compensation - Personal Services. While it is possible that severance costs could be included as a fringe benefit, for educational institutions they are more likely to be a direct result of a particular project or activity that has been terminated or suspended. Also, provisions related to projects outside of the United States may not be consistent with the laws of the country in which the work is being performed. As such, we suggest the following change:

> *(iv) Severance payments to foreign nationals employed by the organization outside the United States, which are customary or prevailing practices for the country in which the work was performed or the prevailing practices of the organization in the United States are allowable. Severance payments to foreign nationals employed by the organization outside the United States,*

to the extent that the amount exceeds the customary or prevailing practices for the country in which the work was performed or the policy of the organization in the United States (whichever is higher), are unallowable, unless they are necessary for the performance of Federal programs. ~~*to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.*~~

~~*(9)(v) Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.*~~

C-12(2) – RECOMMENDATION: Clarify Text on Contingency Provisions

COGR appreciates the recognition that contingency provisions for certain types of Federal Awards are appropriate for budgeting. Our comment on (2) is intended to clarify the language.

(2) It is permissible for contingency amounts ~~*other than those excluded*~~ *as included in paragraph (1) above to be explicitly included in budget estimates …*

C-13 – CONCERN: Clarify Text on Contributions and Donations

The comments below are intended to highlight the treatments of incoming and outgoing contributions and donations and to appropriately recognize the full value of services donated by other organizations.

(2) The value of donated services and property received by the entity are not allowable either as a direct or indirect (F&A) cost, except that depreciation on donated assets is permitted in accordance with C-15 Depreciation. ~~*In addition*~~ *However, the value of donated services (including professional and technical personnel, consultants, and other skilled and unskilled labor) and property received by the entity may be used to meet cost sharing* ~~*or matching*~~ *requirements (see section .502 Standards for Financial and Program Management (f) of this guidance).*

~~*(3) Donated or volunteer services may be furnished to an entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not allowable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of section __.502 Standards for Financial and Program Management (f) of this guidance.*~~

(6)(B) Services donated by other organizations. When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (~~*exclusive*~~ *inclusive of fringe benefits and indirect costs at either the organization's federally approved F&A rate or the approved de minimis rate), provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with paragraph (A).*

C-15(1) – RECOMMENDATION: Remove Specific Reference to GASB 51

Section (1) references the Government Accounting Standards Board Statement Number 51 (GASB51). While state institutions are subject to GASB, private institutions are not. In addition, this language is confusing as it could be interpreted that GASB 51 is not only applicable to software projects, but also to buildings, capital improvements, and equipment. GASB51 is the regulation for "Accounting and Financial Reporting for Intangible Assets" and does not cover the capitalization of tangible assets. Because software capitalization thresholds vary depending on the institution and factors such as whether it is purchased software or internally developed software, capitalization of software projects should conform to institutional policy. COGR recommends the following language change:

> *(1) Depreciation is a ~~of the~~ method for allocating the cost of fixed assets to periods benefitting from asset use. Entities may be compensated for the use of their buildings, capital improvements, equipment, and software projects ~~capitalized in accordance with Government Accounting Standards Board Statement Number 51 (GASB51),~~ provided that they are used, needed by entities' activities, and properly allocated to Federal awards. Such compensation shall be made by computing depreciation. Software projects should be capitalized and depreciated, or expensed, in accordance with established institutional policy.*

C-15(3)(A) – CONCERN: Allowable Depreciation and Providing Appropriate Incentives

Section (3)(A) raises several concerns. First, per section .621, C-13(2), depreciation is allowable on donated assets. This should be made clear in this section, as well.

Second, COGR suggests language for (ii) to recognize those unusual circumstances when a federal program is designed to provide initial or start-up funding for equipment but with the expectation that the replacement equipment will be paid from the accumulated depreciation. In addition, the last sentence in section (ii) regarding valuation of a donated asset does not seem to fit within the section of exclusions. We suggest that it be moved to Section (3)(A) before the list of exclusions.

Third, we are concerned about the language in section (iii). This seems to suggest that the funds the institution contributes to a building cannot be included in the depreciation calculation for F&A. Specifically, institutions may provide a cost share contribution for the construction of a research facility. If depreciation on the cost share portion is not allowable, this would represent an OMB change in policy and will impact the incentive structure that encourages institutions to provide cost sharing. It also may act as a disincentive for institutions to compete for construction grant funding. Circular A-21 recognizes this, except when prohibited by law or agreement. We believe it would be shortsighted to reverse this long-standing policy.

Finally, section (iv) also is inconsistent with current OMB policy. Assets acquired to support non-Federal awards may also support Federal awards. Also, assets initially acquired to support only non-Federal awards may be used on Federal awards after the non-federal award has ended. These practices should not be discouraged. The proposed OMB language would no longer allow institutions to recover the legitimate costs of depreciation associated with assets purchased on non-federal awards. COGR recommends the following changes:

(A) The computation of depreciation shall be based on the acquisition cost of the assets involved. For an asset donated to the entity by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost. For this purpose, the acquisition cost will exclude:

(i) the cost of land;

(ii) any portion of the cost of buildings and equipment borne by or donated by the Federal government, irrespective of where title was originally vested or where it is presently located, unless specifically approved by the providing Federal agency;

(iii) any portion of the cost of buildings and equipment contributed by or for the entity~~, or a related donor organization, in satisfaction of a matching requirement or~~ where law or agreement prohibit recovery; ~~For an asset donated to the entity by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost;~~ and

(iv) any asset acquired solely for the performance of a non-Federal award for the period of time the non-Federal award is active and the equipment is available solely for use on the active non-Federal award.

C-17 – RECOMMENDATION: Clarify Text

COGR proposes a minor clarification to provide consistency with language in other parts of the guidance.

Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and the recipient is allowed to incur such costs ~~and are authorized~~ under the terms of the award.

C-18(1)(A) and (B) – CONCERN: Treatment of the Depreciation of Software

The language in section (1)(B) includes software in the definition of equipment at a maximum threshold of $5,000. Many institutions have a higher threshold for software and treat it as a separate class of capital assets. Capitalizing costs for every minor software project or acquisition of $5,000 will be an added administrative burden. COGR recommends "software" be deleted from this section. We also recommend that references to GASB 51 be removed since private institutions are not covered under GASB.

(A) *"Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land and software project costs capitalized under ~~GASB 51~~ the entity's capitalization policy), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs*

for software includes those development costs capitalized in accordance with ~~GASB 51~~ the entity's capitalization policy. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the entity's regular accounting practices.

(B) "Equipment" means an article of nonexpendable, tangible personal property ~~or~~ including the information technology systems and software necessary to make it usable for the purpose for which it was acquired, ~~and software~~ having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the entity for financial statement purposes, or $5,000.

C-18(2)(G) – RECOMMENDATION: Move from Section .621 to Section .503

COGR suggests that the section below should be moved from this section and be included as a new section under .503 Property Standards.

~~(G) When replacing equipment purchased in whole or in part with Federal funds, the entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.~~

C-20 – CONCERN: Treatment of Fundraising and Investment Management Costs

Changes to this section, compared to the text from Circular A-21, could result in inappropriate costing methodologies applicable to fundraising and investment management costs. While investment counsel and staff and similar expenses to enhance income from investments normally are unallowable costs, the text in this section should be broadened to recognize those activities of investment counsel and staff that are allowable. In addition, the new text that specifies that these fundraising and investment activities should be allocated an appropriate share of indirect costs should be deleted. Section .607(b) addresses the "*appropriate allocation of indirect costs*", and to address this treatment in this section is redundant and appears to create a special rule for the fundraising and investment management activities.

(2) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, ~~or~~ other funds which include Federal participation allowed by this guidance, or other activities outside the scope of enhancing income from investments.

~~(4) Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described __.615 Direct Costs.~~

C-23 – RECOMMENDATION: Goods or Services for Personal Use and Recognition of Special Consideration for Projects in Foreign Countries

COGR has modified this section to reference a new section for projects conducted in a foreign country. This is an opportune time to address some of the unique costs associated with conducting a federally sponsored project in a foreign country. We recommend the following addition to this section:

> *(2) Except for projects conducted in a foreign country (see C-23(3)), costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs they must be necessary for the performance of a Federal award and approved in advance by a Federal awarding agency.*
>
> *(3) For projects conducted in a foreign country, the costs for legal counsel, employee relocation, and in-country operating costs are generally allowable as noted below.*
>
> > *A. The costs associated with establishing a legal presence in a foreign country for the purpose of conducting a funded project is allowable. These costs may include in-country and domestic legal counsel, filing fees and other costs imposed by the foreign government. In addition, in-country legal counsel retainer fees and charges associated with on-going legal issues that may be encountered are allowable.*
> >
> > *B. The costs of relocating employees for assignment on a project conducted in a foreign country for six months or more are allowable including, but not limited to, pre-departure health consultations and immunizations not paid by the employee's health insurance, travel costs for the employee and family, shipping costs for personal possessions, passports and visas, and special health insurance.*
> >
> > *C. Costs associated with establishing and operating a research site in a foreign country are allowable and may include but are not limited to costs associated with hiring in-country nationals, payment of in-country employment taxes and employee fringe benefits, and other costs required for compliance with local laws and regulations.*

C-24 – RECOMMENDATION: Clarify Text on Idle Capacity

This section refers to "idle capacity" as an allowable cost if it is reasonably anticipated to be necessary to carry out the purpose of the award. Idle capacity often may be recognized as a space related cost and recovered in the indirect cost rate of the institution, rather than the direct cost of a project. Consequently, COGR recommends that this section be modified as follows:

> *(3) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary ~~to carry out the purpose of the award~~ or was originally reasonable, and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices …*

C-25 – RECOMMENDATION: Treatment of Insurance and Indemnification

COGR believes the sentence at the end of section (3) is inappropriate. While institutions have no expectation that Federal agencies should bear a disproportional amount for costs, those costs that are allocable should not be restricted; this text should be deleted. Furthermore, these costs often are indirect costs and agency-by-agency agreement to participate is not practical. In regard to section (5), the costs listed could be treated as a direct fringe benefit charges. There should be no requirement that these costs be treated as a general administrative expense; this text should be deleted.

> *(3) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal government will participate in actual losses of a self-insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable. ~~Federal agencies may choose whether to participate in such losses not covered by a recipient's self-insurance reserves.~~*
>
> *(5) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided ~~(i)~~ the entity follows a consistent costing policy ~~and (ii) they are allocated as a general administrative expense to all activities of the entity~~.*

C-27 – THANK YOU AND CONCERN: Requirements to Support Interest Expense are Still Burdensome

While COGR appreciates the removal of the lease-purchase analysis requirement, several remaining parts of this section are unnecessarily burdensome and add no value. Institutions are acutely aware of the need for resources to be used in the most efficient manner possible. Determination of the most efficient method can vary across institutions as many variables need to be considered. Section (3)(D) raises concern for institutions as it requires limitations on claims for Federal reimbursement of interest costs to the least expensive alternative. In effect, this would require a lease-purchase analysis or similar study to prove the least expensive alternative was undertaken. Sound financial stewardship, and the checks and balances that are required with Governing Boards, already require that the most appropriate financial decisions are pursued. Section (3)(D) is redundant, creates an unnecessary administrative burden, and should be deleted. Section (3)(G) also should be deleted. While this is not new language, it can be a complex analysis, especially if the 25 percent threshold was not met by the institution.

> *~~(3)(D) The recipient limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement shall be limited to the amount of interest determined if leasing had been used.~~*
>
> *~~(3)(G) The following conditions shall apply to debt arrangements over $1 million to purchase or construct facilities, unless the recipient makes an initial equity contribution to the purchase of 25~~*

~~*percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the recipient for the acquisition of facilities prior to occupancy.*~~

~~*(i) The recipient shall reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.*~~

~~*(ii) The recipient shall impute interest on excess cash flow as follows:*~~

~~*(a) Annually, the recipient shall prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the cost of land), and interest payments.*~~

~~*(b) To compute monthly cash inflows and outflows, the recipient shall divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.*~~

~~*(c) For any month in which cumulative cash inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used shall be the three-month Treasury bill closing rate as of the last business day of that month.*~~

C-28 – RECOMMENDATION: Treatment of Lobbying Activities

COGR agrees with the spirit of the guidance provided on lobbying but asserts that a minimum $10,000 fine for each occurrence is unnecessarily punitive. The audit and certification processes already highlight instances of non-compliance. Additional certifications serve only to create a new administrative burden. Examples of non-compliance may be better remedied by an educational and corrective process, rather than a punitive process. Also, we recommend the deletion of the required certification related specifically to lobbying. This is included in the overall certification that is submitted with each F&A rate proposal per Appendix IV, F.2.c.(3). Redundant certifications create unnecessary administrative burden.

~~*(1)(B) Any violations of this prohibition is subject to a minimum $10,000 fine for each occurrence.*~~

~~*(3)(B)(v) Entities shall submit as part of their annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with.*~~

C-29 – RECOMMENDATION: Treatment of Losses on other Federal Awards and Contracts

COGR believes that the language below is unnecessarily confusing and could be misconstrued by various users. If the text in this section is meant to suggest a special treatment associated with cost sharing, the text is equally confusing and unclear as to the intent. COGR proposes the following edit, which we believe would be a reasonable expectation.

Any excess of costs over authorized funding levels ~~*income under*~~ *transferred from* ~~*any other*~~ *a Federal award or contract to another unrelated Federal award or contract* ~~*of any nature*~~ *is unallowable.* ~~*This includes, but is not limited to, the entity's contributed portion by reason of cost-*~~

~~*sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs.*~~

C-31 – THANK YOU AND RECOMMENDATION: Treatment of Computing Devices and Requested Clarifications

COGR appreciates the new language in this section which allows computing devices and associated support costs to be treated as an allowable and allocable cost under the same standards as other material and supply costs. We also recommend section (3) be modified to recognize that general stores and stockrooms must be staffed to order, receive and distribute materials and supplies. The costs associated with those processes are also allowable direct costs and should be recognized in this paragraph for clarity.

In regard to section (6), COGR understands that the $5,000 residual value threshold has been unchanged for many years and suggests the following language to relieve the administrative burden associated with tracking small amounts on large projects.

(3) Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges and the proportionate share of the costs necessary to order, receive and distribute the materials and supplies are a proper part of materials and supplies costs provided they are not otherwise charged to the Federal government either directly or indirectly.

(6) In accordance with the policy on disposition of equipment valued at less than $5,000 in section .503 Property Standards (d)(5)(A) a residual inventory of unused materials or supplies not exceeding the greater of $5,000 or 1% of the Federal award in total aggregate value upon termination or completion of a Federal award may be retained with no further obligation to the Federal government.

C-32 – RECOMMENDATION: Treatment of Meetings and Conferences

By appending the word "external" to the title of this section, OMB seems to be implying that the costs associated with internal meetings—the primary purpose of which is the dissemination of technical information—are unallowable. There are situations in which it would be more cost effective to hold those meetings or conferences at the institution. COGR therefore urges inclusion of language that would make those meetings and conferences allowable if consistent with the Federal awarding agency's guidelines. The section should address all meetings and "(*external*)" should be deleted from the section header.

In addition, COGR supports the intent to make federal funding more family friendly by allowing dependent care costs for individuals needing such service while in travel status. However, we believe the reference to "identification of locally available dependent-care resources" is confusing in this context. Dependent care costs are allowable under C-53 Travel Costs; therefore, the reference here does not seem necessary. Our suggested changes to the language are:

Costs of external meetings, workshops and conferences where the primary purpose is the dissemination of technical information ~~beyond the recipient entity~~ are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings, workshops or conferences~~, and when the meeting is external to the recipient entity the provision of the identification of locally available dependent care resources~~ unless further restricted by Federal awarding agency policy. Federal awarding agencies may authorize exceptions where appropriate for programs including federally recognized Indian tribes, children, and the elderly. Costs of internal meetings are allowable. See also C-17 Entertainment Costs, C-35 Participant Support Costs, C-53 Travel Costs, and C-54 Trustees.

C-33 – CONCERN: Treatment of Memberships, Subscriptions, and Professional Activity Costs

COGR is concerned that the term "substantially engaged in lobbying" in section (5) could be inconsistently interpreted and applied and that institutions are generally not in a position to make that determination. Also, COGR requests the inclusion of a statement, as section (6), which would allow the cost of individual memberships in professional organizations when membership is necessary to attend and present material developed under the Federal award.

(5) Cost of membership in organizations whose primary purpose is ~~substantially engaged in~~ lobbying is ~~are~~ unallowable.

(6) Costs of an individual membership in a professional organization when membership is necessary to attend and present material developed under a Federal award are allowable.

C-34 CONCERN: Treatment of Organization Costs and Foreign Entity Start-up Costs

COGR believes the costs described in this section could constitute allowable costs, if such costs are allocable as either a direct or an indirect cost. In addition, similar costs associated with Federal awards in foreign countries could be clarified in this section and cross-referenced to our recommendations in section .621, C-23.

(1) ~~For nonprofit organizations,~~ Expenditures such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors; whether or not employees of the organization, in connection with establishment or reorganization of an organization, are allowable. ~~unallowable except with prior approval of the awarding agency.~~

(2) Costs associated with establishing a legal presence in a foreign country are allowable either as a direct cost or an indirect (F&A) cost as appropriate when such legal status is necessary under the laws of that country in order to conduct the Federal award(s).

C-35 – RECOMMENDATION: Modify the Definition of Participant Support Costs

COGR recommends the following modification to the definition of participant support costs. We suggest the prior approval requirement be eliminated so as to be consistent with the allowability standards for other cost items.

Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. ~~These costs are allowable with the prior approval of the awarding agency~~.

C-37 – CONCERN: Treatment of Pre-Award (or Pre-agreement Costs)

While COGR understands the spirit of the language, we feel it is overly prescriptive and could be interpreted to require specific justification and tracking of the justifications, resulting in increased administrative burden. COGR suggests a return to the language consistent with Circular A-21 on sponsor approval, allowing flexibility for expanded authorities when granted by Federal agencies. We suggest the following changes in language:

Pre-award costs are those incurred prior to the effective date of an award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary ~~to comply with the proposed delivery schedule or period of~~ for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and ~~only with the written approval of the awarding agency~~ in compliance with agency policy. (See also section ___.502 Standards for Financial and Program Management paragraphs (e) and (h)).

C-38 – RECOMMENDATION: Professional Service Costs Clarification

COGR suggests the following modification to (2)(G) to clarify that this concept applies to all non-federal activities, and is not limited to only non-federal projects and awards. This will eliminate the perception that non-federal externally funded projects are treated differently from how the entity spends its institutional funds.

(G) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal activities ~~awards~~.

C-40(3) – RECOMMENDATION: Treatment of Publication and Printing Costs

COGR agrees with the language which now takes into account contemporary publication practices. We also encourage OMB to take this opportunity to resolve a long-standing issue with charges necessary to publish research results, which typically occur after expiration, but are otherwise allowable costs of an award. COGR suggests the following language be appended to this section:

(3) Non-Federal entities may transfer from the grant account to an institutional account an amount equal to valid unpaid obligations outstanding at the time of expiration for the costs of publication or sharing of research results. This is allowable if it is not possible to effect an actual payment for such charges by the time the final reimbursement request must be submitted.

C-42 – RECOMMENDATION: Clarification of Recruiting Costs

COGR assumes that "special emoluments, fringe benefits, and salary allowances that do not meet the test of reasonableness or do not conform with established practices of the entity would be unallowable regardless of where the personnel are currently employed; section (2) can be clarified, accordingly. COGR further requests clarification of the language in section (3), which seems to indicate that the Federal government should be reimbursed for 100% of relocation costs whether they paid 100% of them or not. COGR believes that the need to refund relocation costs occurs infrequently and is immaterial with respect to the F&A rate; it therefore recommends that the reference to the F&A rate be deleted.

(2) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel ~~from other non-Federal entities~~ that do not meet the test of reasonableness or do not conform with the established practices of the entity, are unallowable.

(3) Where relocation costs incurred incident to recruitment of a new employee have been ~~allowed either as an allocable direct or indirect (F&A) cost~~ funded in whole or in part as a direct cost to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the entity will be required to refund or credit the federal share of such relocation costs to the Federal government.

C-43 – RECOMMENDATION: Clarify Text on Relocation Costs of Employees

COGR believes that many of the benefits listed in this section are more appropriately contingent on policies of the institution, consistently applied to all funding instruments. We recommend the following modifications and deletions:

(1) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the policies of the entity that are consistently followed and the limitations described below: ~~in paragraphs (2), (3), and (4) of this section, provided that:~~

(A) The move is for the benefit of the employer.

(B) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(C) The reimbursement does not exceed the employee's actual (or when paid as a flat amount does not exceed a reasonable estimate of anticipated ~~reasonably estimated~~) expenses.

(D) When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within the employee's control within 12 months after hire, the organization shall refund or credit the Federal government for its share of the cost.

~~(2) Allowable relocation costs for current employees are limited to the following:~~

~~*(A) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.*~~
~~*(B) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 days.*~~
~~*(C) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (D), are limited to 8 per cent of the sales price of the employee's former home.*~~
~~*(D) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.*~~
~~*(E) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.*~~

~~*(3) Allowable relocation costs for new employees are limited to those described in paragraphs (2)(A) and (B) above. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within the employee's control within 12 months after hire, the organization shall refund or credit the Federal government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with C-53 Travel Costs, and not C-43 Relocation Costs of Employees, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.*~~

C-47 – RECOMMENDATION: Allowability of Specialized Service Facility and Other Service Center Costs

This section addresses "Specialized Service Facilities" (or SSFs), which as the name suggests, are specialized enterprises that provide scientific support for federal research awards. In addition to SSFs, research institutions also make charges to Federal awards for services that may not be "complex" or "specialized" as defined in the proposed guidance. To acknowledge that such charges made by more generic institutional service centers are allowable, we propose that the text below be included in this section.

In addition, COGR believes this is an opportunity to raise two issues that would most appropriately be addressed in this section. Recognition by OMB that working capital reserves are necessary to operate SSFs and Service Centers from one billing cycle to the next would be a helpful addition. Subchapter H, Appendix VI - State/Local- Wide Central Service Cost Allocation Plans, acknowledges working capital reserves as allowable and the same acknowledgement should be extended to research institutions.

Finally, we suggest to OMB that this is an opportunity to introduce the concept of an "equipment replacement fund". Currently, when federally-funded equipment is being used in an SSF or a Service Center, the depreciation charges on this equipment are not allowed to be included in the rates charged to users of the equipment. Consequently, this restricts the ability of the institution to recover funds that could be used to replace the equipment in the future. Allowing institutions to establish an "equipment

replacement fund" will help to ensure that institutions are in a position to fund future equipment without having to rely on equipment grants from research funding agencies.

(5) The costs of services associated with other institutional service centers or recharge centers may be charged directly to Federal awards based on actual usage of the services on the basis of a schedule of rates that does not discriminate against federally-supported activities of the entity.

(6) A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant agency for indirect cost in exceptional cases.

(7) For the purpose of establishing an "equipment replacement fund", billing rates may include a depreciation component for the costs of federally funded equipment.

(8) Up to ten percent of revenues remaining at the end of an accounting period may be reserved for the purpose of establishing an "equipment replacement fund".

C-50 – RECOMMENDATION: Delete Selected Text on Termination Costs

While there is no substantive change in the proposed guidance from the existing circulars, we are unsure why indirect costs are being specifically cited, and worry that it could be misinterpreted as somehow limiting the allowable indirect costs to only a portion of termination costs. Therefore, we recommend section (5)(C) be deleted.

~~(5)(C) Indirect (F&A) costs related to salaries and wages incurred as settlement expenses in paragraphs (A) and (B) above. Normally, such indirect (F&A) costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.~~

C-53 – RECOMMENDATION: Correct Errors and Clarify Allowable Commercial Airfare Related to Travel Costs

COGR believes the language in (2)(A), (2)(B), and (2)(C) are duplicative of the basic considerations found in sections .604 through .609, and since only some are relisted in this section, it might lead auditors to believe these items take on extra importance for lodging costs. As a result, COGR believes this text should be deleted. Per section (1), note the word "activities" has been duplicated.

In section (3)(1), the references to both "*customary standard commercial airfare*" and "*lowest commercial discount airfare*" are confusing. If customary standard commercial airfare is allowable, then a reference to the lowest commercial discount airfare is not necessary since it will be the same or less than the customary standard commercial airfare.

(1) General. Travel costs are … allowed in like circumstances in the entity's non-federally-funded activities ~~activities~~ and in accordance with entity's written travel reimbursement policies …

(2) Lodging and subsistence. Cost incurred by employees … General. Travel costs are … ~~In addition, documentation must justify that:~~
~~(A) Participation of the individual is necessary to the Federal award;~~

~~(B) The costs are reasonable and consistent with entity's established travel policy; and~~
~~(C) The dependent care costs are direct results of the individual's travel requirement for the Federal award and are only temporary during travel period.~~

(3)(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent) or Federal government contract airfare (where authorized and available)~~, or the lowest commercial discount airfare~~ are unallowable except when such accommodations would: (a) require circuitous routing; (b) require travel during unreasonable hours; (c) excessively prolong travel; (d) Result in additional costs that would offset the transportation savings; or (e) offer accommodations not reasonably adequate for the traveler's medical needs. The entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

C-54 – CONCERN: Treatment of Trustee Expenses

While the costs identified under this section are not material in relation to the total cost of operations for institutions of higher education, it seems reasonable to allow the costs associated with official business operations. These costs currently are allowable under Circulars A-21 and A-122, and there seems to be no basis for categorizing these costs as unallowable.

Travel and subsistence costs of trustees (or directors) to attend established business meetings at institutions of higher education and nonprofit organizations are allowable ~~unallowable without prior written approval from the Federal awarding agency.~~

Subchapter G – Audit Requirements

Subtitle II - Audit Requirements

.701(a) – CONCERN: New Subrecipient Monitoring Burden due to $750,000 Threshold should be Offset in Other Areas

COGR recognizes that increasing the threshold to $750,000 will allow Federal agencies to focus audit follow-up resources on higher-risk entities and also provides administrative burden relief to approximately 5,000 entities whose expenditures fall below the new threshold. This will have the effect of increasing the subrecipient monitoring burden on research institutions as they can no longer rely on a single audit for the entities that do not meet the new threshold.

However, the additional burden can be minimized by implementing the suggestions we have made in section .501(c). COGR proposes that in those instances where the pass-through and subrecipient both are subject to these Subchapter G audit requirements, the pass-through is provided a "safe harbor" from certain subrecipient monitoring responsibilities. This "safe harbor" would be designed to eliminate any expectation of conducting site visits and other expensive, time consuming activities associated with monitoring subrecipients who are also recipients that meet the audit threshold in this Subchapter G guidance. Therefore, when a subrecipient is subject to the single audit, the primary responsibility of the pass-through is to ensure the quality and integrity of science that is being conducted such that performance goals are achieved and that any required audit follow-up monitoring should be triggered only when there are audit findings that include questioned costs on the subaward issued by the pass-through and when the pass-through detects subrecipient deficiencies in meeting accountability and compliance with program requirements.

COGR's proposed updates for the Final Guidance are shown in our comments to section .501(c) and in ***ADDENDUM 1 – COGR Response.*** While we have proposed no updates to section .701, the connection between sections .701 and .501(c) is important and provides a unique opportunity to focus audit resources on higher-risk entities, and at the same time, minimize administrative burden on the pass-through entity when the subawardee is an established institution already subject to the Single Audit.

.701(h) – CONCERN: Overly Prescriptive Methods to Monitor For-Profit Subrecipients

COGR believes the language below may inappropriately set an expectation that all three of the suggested methods to ensure compliance are required to be performed by the pass-through entity. This expectation is inconsistent with guidance included in sections .501(c)(5)&(6**),** which describes these as subrecipient "monitoring tools" that may be useful depending on the pass-through entity's assessment of risk. We propose the following edit:

> *(h) Since this Subchapter G guidance and the Single Audit Act, as amended (31 U.S.C. §§ 7501-7507) does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing audit requirements, as necessary, to ensure compliance by for-profit*

subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. ~~Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.~~ See also section ___.501 Subrecipient Monitoring and Management.

.703(a) – RECOMMENDATION: Audit Burden and Duplicative Federal Audits

Some Federal audits are duplicative and effectively ignore the work done in an institution's A-133 Single Audit. While the Inspectors General (IG) offices are fully within their boundaries to initiate audit programs specific to areas they perceive as high risk, agency "reviews" outside the scope of IG activity can be duplicative of items already covered in the institution's A-133 audit. In selected situations, an institution should have access to an OMB-managed appeals process that could result in either an "audit waiver" or a "reduction of scope" decision. The proposed guidance (and the current guidance in Circular A-133) recognizes this: "*Any additional audits shall be planned and performed in such a way as to build upon work performed*." COGR recommends additional text be included under section .703(a) to reinforce the point that appropriate due diligence be performed by Federal entities. This may result in a reduction of audit burden and the elimination of duplicative audits for Federal awardees, as well as lead to the more efficient use of Federal audit resources.

Also, once an audit, other than an audit pursuant to Subchapter G or the Single Audit Act is completed, clearer guidance as to how an institution should navigate the audit resolution process would be helpful. For example, an OMB "*senior accountable agency official*", similar to that proposed for Federal Agency responsibilities in Section .713(c)(7) & (8), which is accessible to non-Federal entities would be a helpful resource. The role of the Cognizant agency for audit is not well understood and every agency seems to implement a unique audit resolution process. An OMB senior accountable official could be given the responsibility to review unusual audit findings that may prove to be inconsistent with agency and/or OMB policy – non-Federal entities often are put in precarious positions where an audit finding by an agency's IG is inconsistent with standard practice and/or official policy. An OMB senior accountable official could be an independent arbiter that is able to comment and intervene in those situations when the audit finding may be inappropriate.

(a) Audit under this guidance in lieu of other audits. An audit made in accordance with this guidance shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs; the agency shall rely upon and use this audit. The provisions of this guidance neither limit the authority of Federal agencies, their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews), nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed, including the working papers, sampling, and testing already performed, by other auditors. Steps to ensure such planning occurs include:

(1) As part of the planning prior to initiating a new not-for-cause audit or review, the Federal Agency or Inspectors General should review the Federal Audit Clearinghouse and directly contact the Auditor or Firm having conducted the single audit under this guidance.

(2) Any not-for-cause audit or review would proceed based on cost benefit considerations. If it is decided to proceed, a written justification for initiating the not-for-cause audit or review will be included in the notice of audit, as well as documentation that shows contact with the Auditor or Firm having conducted the single audit occurred.

(3) OMB will review the written justification and other documentation described in (2) above in order to monitor each Federal agency's audit requests for reasonableness as well as to monitor frequency of requests. Also see Section .108 OMB Responsibilities.

.703(c) – CONCERN: More Transparency Needed for Federal Agency Requests

COGR believes more transparency is needed when a Federal agency makes requests for programs to be audited as major programs. As written, the Federal agency has the ability in this section and in the Compliance Supplement to add to the audit burden of the auditee. We do not see any opportunity in the proposed language for non-Federal entities to inquire about the basis for the request to have a program audited as a major program or added to the Special Provisions compliance area. We are concerned that when Federal agencies are not satisfied with the coverage of their programs in the single audit, they unilaterally can add audit burden to institutions by requesting their program(s) be included as major programs and/or by implementing Special Provisions.

One such recent example was the unilateral decision by NSF that all NSF awards meet the definition of research and development and therefore are major programs for A-133 audit purposes. COGR argued that this was an inappropriate action by NSF and that there was no formal process to oppose the NSF action. Consequently, COGR has proposed new text as Section .703(d) that would provide important transparency to similar Federal agency requests and actions.

(c) Request for a program to be audited as a major program. A Federal agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in __.719 Major Program Determination and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

(d) Federal agency actions requesting a program to be audited as a major program, adding special provisions and/or new requirements to the Compliance Supplement, or other similar actions must include a public notification to the affected Federal awardees prior to approval by OMB and/or other appropriate approving bodies. As appropriate, the affected Federal awardees can provide comments to OMB and/or other approving bodies prior to final initiation of the agency action.

Subtitle III - Auditees

.710(b)(5) – CONCERN: New SEFA Requirement Will Create Burden

We recommend deletion of section (b)(5) from the list of items expected to be included in the Schedule of Expenditures of Federal Awards (SEFA). These data currently are not mandatory under Circular A-133, section .310(b)(5) and this change would represent a new burden for pass-through entities. This information is already available in the Federal FSRS reporting system so Federal agencies and auditors should be able to obtain that information via that mechanism, as needed.

> *~~(5) Identify in the schedule the total amount provided to subrecipients from each Federal program~~.*

.711(b) – RECOMMENDATION: Incorporate Text from Circular A-133

COGR believes language in section .711(b)(3) is superfluous to the requirements stated in (b)(1) & (b)(2). With respect to (b)(1), once an audit finding is fully corrected it should not matter if the corrective action taken differed from what was reported in a corrective action plan as long as the findings were fully corrected and can be reported as such per section .711(b)(1). In the case where the finding is not fully corrected, (b)(2) requires describing the reasons for recurrence and presumably would include explanation of any change in corrective action plan. COGR proposes that section .711(b)(3) be deleted.

Further, COGR believes the language outlining reasons for an auditee to find an audit finding as not warranting further action should be added back to Section .711(b)(4). Without these explicit criteria we are concerned about situations where the auditee judgment pertaining to valid reasons will be challenged. The guidance as written does not specify with whom and how that challenge would be settled. We propose reinstating text (with one suggested edit) that currently is included in OMB Circular A-133, section .320(b)(4).

> *(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.*
>
> > *(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.*
> >
> > *(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken.*
> >
> > *~~(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.~~*

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal Audit Clearinghouse;

(ii) The Federal agency ~~or pass-through entity~~ is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued by the Federal agency, cognizant agency for audit, or the oversight agency.

.712 – THANK YOU AND CONCERN: Report Submission by Subrecipients

COGR appreciates the reduction in burden that should occur by streamlining report submissions, i.e., the elimination of the additional requirements for subrecipients to submit reporting packages to pass-through entities (Circular A-133, .320(e)(1&2)), and the corresponding elimination of the requirement for a pass-through entity to retain copies of subrecipient reports for three years. However, an unintended consequence of this change is the impact on the timing requirements associated with management decisions. We have elaborated more on this concern in our comments per section .714(a) & (c) below.

.712(a) – CONCERN: Elimination of Deadline Extensions in Exceptional Circumstances

COGR believes, though rare, there may be exceptional circumstances which warrant an extension to completing and submitting the audit report package – the proposed guidance does not provide any opportunity for an extension to be granted. For example, in the case of a natural disaster that disrupts operations for extended periods, such as what happened with Hurricane Katrina in 2005 and Super Storm Sandy in 2012, deadline extensions are necessary. Circular A-133, section .320(a) included these provisions, and COGR proposes the following language be added:

(a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period. Where there are extenuating circumstances, and on a case-by-case basis, auditee requests for extensions to the report submission due date can be made. The cognizant agency for audit may grant extensions in extraordinary circumstances.

.712(b) THANK YOU AND RECOMMENDATION: Audit Report Packages Publicly Available at Federal Audit Clearinghouse Website

COGR appreciates the audit reporting packages being made publicly available at the Federal Audit Clearinghouse designated by OMB and urges OMB to further clarify that Federal Agencies are no longer authorized to require direct submissions from awardees as has been the practice, for example, by the Department of Education.

(1) The auditee shall submit required data elements described in Appendix XI- Audit Data Collection Form (Form SF-SAC), which state whether the audit was completed in accordance with this guidance and provides information about the auditee … the reporting package does not include personally identifiable information, the Federal clearinghouse designated by OMB is authorized to make the reporting package and the form publicly available on a website, and the information included in its entirety is accurate and complete. The Federal Audit Clearinghouse designated by OMB is the repository of record for Subchapter G reporting packages and all Federal Agencies, Pass-through entities and others interested in the reporting package shall obtain such by accessing the OMB designated Federal Audit Clearinghouse.

Subtitle IV - Federal Agencies

.714(a)&(c) – CONCERN: Electronic Posting of Single Audit Report Reduces Burden, but Management Decision Responsibilities Result in New Burdens

COGR believes it is inappropriate for a pass-through entity to have the primary responsibility for issuing a management decision. The primary responsibility of the pass-through is to ensure the quality and integrity of the science that is being conducted. Any required follow-up should be initiated only when there are single audit findings that include questioned costs on the subaward issued by the pass-through and when the pass-through detects subrecipient deficiencies in meeting accountability and compliance with program requirements.

COGR believes the pass-through entity should be allowed to rely on the management decision issued by a subrecipient's cognizant agency for audit. In doing so, administrative burden and potentially duplicative efforts associated with management decisions by the pass-through entity would be reduced. When the Single Audit of a subrecipient is on file and when the applicable corrective action plan is being monitored by that entity's auditor (per section .715(e)) and the applicable Federal agency (per section .713(c)(5)), it is a reasonable expectation that the pass-through entity can rely on any corrective action plan already in place without engaging in a duplicative review or assessment process that requires a management decision.

If management decisions become a responsibility of pass-through entities, a potentially significant new burden exists in meeting the section .714(d) "*within six months*" timing requirements of acceptance of the audit report by the FAC. While COGR appreciates the reduction of burden that will be realized when the institution is the subrecipient and it can electronically post its Single Audit report to the FAC (section .712(b)), this change results in an unintended new burden for the pass-through entity. Previously, the receipt of a subrecipient's reporting package by the pass-through would trigger the review and determination of whether a management decision was called for, and simultaneously trigger the timing requirements for issuing a management decision. Under the new guidance, those subrecipient's subject to the Single Audit will no longer have to submit the reporting package directly to the pass-through entity. Consequently, the pass-through entity will need to implement a labor-intensive manual task of regularly checking the FAC for the Single Audit reports of all of its subrecipients. Research institutions, in their role as the pass-through entity, can have hundreds of subrecipients that are subject to the Single Audit requirements. Meeting the six-month deadline becomes a challenge as there is no trigger to notify the pass-through entity when those Single Audit reports have been posted.

In order to maintain the benefits that are created by allowing electronic posting of the Single Audit reports per section .712(b), without creating a new burden associated with the labor-intensive manual task where the pass-through entity regularly checks the FAC for the Single Audit reports, COGR proposes that the role of the pass-through entity in management decisions be eliminated. Administrative burden associated with management decisions by the pass-through entity will be reduced by allowing the pass-through entity to rely on the subrecipient's cognizant agency for audit for the audit follow-up and management decisions, which are available through the Federal Audit Clearinghouse designated by OMB. Furthermore, this is a more rational approach to audit oversight as

the applicable Federal agency and/or the subrecipient's cognizant agency for audit is better positioned to provide regular monitoring of corrective action plans.

We propose the following edits to sections (a) and (c):

(a) General. The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or the cognizant agency for audit or the oversight agency ~~or pass-through entity~~ may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(c) Pass-through entity. ~~As provided in __.713 Responsibilities paragraph (c)(5) (d)(5), and ___.501 Subrecipient Monitoring and Management,~~ The pass-through entity may rely on the subrecipient's cognizant agency for audit or the oversight agency for routine audit follow-up and management decisions available through the Federal Audit Clearinghouse designated by OMB ~~shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients. For cross-cutting findings where the cognizant or oversight agency for audit has issued a management decision available through the Federal clearinghouse designated by OMB, the pass-through entity may rely on a management decision issued by the cognizant or oversight agency for audit.~~

Subtitle V - Auditors

.715(d)(3) – CONCERN: Lack of Transparency for Compliance Requirements and Special Provisions

COGR is concerned that the consolidation of the Compliance Requirements and the potential for Federal agencies to place more reliance on Special Provisions could significantly add to the scope of the single audit. COGR believes this concern could be addressed best with more transparency in the development and publication processes associated with the annual update to the Compliance Supplement. COGR would welcome the opportunity to participate formally by coordinating comments/feedback from research institutions as it relates to the proposed changes in the annual Compliance Supplement prior to its publication as Final Guidance. We propose the following update to section .715(d).

> *(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this guidance. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should follow the compliance supplement's guidance for programs not included in the supplement. Three months prior to release of the annual Compliance Supplement by OMB, key stakeholders and representatives of Federal awardees will be provided the opportunity to comment on a draft version of the Compliance Supplement and a summary of the changes made, prior to the release of the final version of the Compliance Supplement.*

.716 – RECOMMENDATION: Further Increase Transaction Threshold to $50,000

COGR appreciates the reduced burden by eliminating audit findings with questioned costs below $25,000. However, in surveying others in the audit community, we believe burden could be further reduced by increasing this threshold to $50,000 and still meet the intention of focusing resources on areas of highest risk of improper payments, fraud and abuse.

.717(b) – RECOMMENDATION: Eliminate the Use of Inappropriate Projection and Extrapolation Techniques

Statistical sampling is approved and recommended by the American Institute of Certified Public Accountants (AICPA), and yields a more reliable result than non-statistical sampling. Therefore, COGR recommends that use of projections should be allowed only when an auditor uses statistical sampling in completing audit testing. COGR believes that use of projections when non-statistical sampling techniques are used by an auditor will lead to an unreliable result, and overstate "likely" questioned costs. Accordingly COGR proposes the following changes:

(b) Audit finding detail and clarity. Audit findings shall be presented in sufficient detail and clarity, and should be accompanied by sufficient supporting documentation for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies ~~and pass-through entities~~ to arrive at a management decision. Consistent with GAGAS, auditors must also place their findings in perspective by describing the nature and extent of the issues being reported and the extent of the work performed that resulted in the finding. To give the reader a basis for judging the prevalence and consequence of findings, auditors should as appropriate, relate the instances identified to the population or the number of cases examined and quantify the results in terms of dollar value or other measures. ~~If the results cannot be projected, auditors should limit their conclusions appropriately.~~ Projections or extrapolations of results should be used only in those cases where the auditor relies upon or uses appropriate and valid statistical sampling techniques.

Subchapter H – Appendices

Appendix I - Definitions
See Subsequent Section

Appendix II – Full Text of Notice of Funding Opportunity
See previous Comments under Subchapter B – Pre-Award Requirements

Appendix III – Contract Provisions for Recipient and Subrecipient Contracts
See previous Comments under Subchapter D – Inclusion of Terms and Conditions in Federal Award Notice

Appendix IV – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Educational Institutions
See Subsequent Section

Appendix V – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations
No Comments

Appendix VI – State/Local- Wide Central Service Cost Allocation Plans
No Comments

Appendix VII - Public Assistance Cost Allocation Plans
No Comments

Appendix VIII - State and Local Indirect Cost Proposals
No Comments

Appendix IX - Nonprofit Organizations Exempted From Subchapter F Cost Principles
No Comments

Appendix X - Hospital Cost Principles
We encourage OMB to address these principles at its earliest convenience.

Appendix XI - Audit Data Collection Form (Form SF-SAC)
No Comments

Appendix XII - Single Audit Compliance Supplement
We encourage OMB to address our recommendations regarding the access to and transparency of updates to the annual Compliance Supplement.

Subchapter H – Appendix I

Definitions

Note: We propose the following Revisions/Deletions and Additions to the Definitions included in Subchapter H, Appendix 1. We use the same ~~strikethrough~~ and underline features used throughout the COGR Response.

Revisions/Deletions:

Allocation COGR requests the following revision. Reasonable proportion adequately delineates the required outcome.

> ***Allocation*** *means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable ~~and realistic~~ proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the entity, a particular service or project, a Federal award, or an indirect (F&A) cost activity, as described in Subchapter F: Cost Principles. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.*

Contract COGR requests the following revision, consistent with the revision we proposed in Appendix III of the proposed guidance.

> ***Contract*** *means a legal instrument by which a recipient purchases property or services needed to carry out a project or program under ~~an~~ a Federal award. The term as used in this guidance does not include a legal instrument, even if the recipient considers it a contract, when the substance of the transaction meets the definition of a ~~subaward~~ Federal award. ~~(see definition of Subaward).~~*

Disallowed Costs COGR requests the last sentence be deleted. Questioned costs are not synonymous with disallowed costs. An audit resolution action could result in the questioned costs being confirmed as allowable.

> ***Disallowed Costs*** *means those charges to a Federal award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.* ~~Additionally, costs questioned by an audit organization that the entity responsible for management decisions has determined should not be charged to the government.~~

Equipment COGR requests the following revision. Definitions and characteristics of equipment and software are found in several sections in the proposed guidance and these should be consistent with the definition in this Appendix I.

Equipment *means an article of tangible, nonexpendable, personal property having*

(a) A useful life of more than one year; and

(b) An acquisition cost of $5,000 or more per unit

(c) A recipient may use its own definition of equipment (i.e., using the capitalization threshold established for purposes of its financial statement) to include an article of property with a useful life of less than one year, an acquisition cost of less than $5,000, or both, as long as the definition includes at least all property included in paragraphs (a) and (b) above.

(d) If a recipient uses its own definition, as described in the preceding paragraph (c), then

(1) In Subchapter F: Cost Principles, "equipment" means all property included in the recipient's definition, except where explicitly stated otherwise.

(2) In all other subchapters of this guidance, equipment means only an article of property with a useful life of more than one year and acquisition cost of $5,000 or more, except where explicitly stated otherwise.

(e) For purposes of this guidance, software generally is not considered as equipment and therefore not subject to the requirements herein, except ~~where explicitly stated otherwise.~~ for software that meets the institutional capitalization threshold or that is an integral component necessary to make the software usable for the functionality of capitalized equipment, according to institutional policy.

Facilities and Administrative (indirect (F&A)) Costs COGR requests the following revision, which may provide additional clarity.

Facilities and Administrative (F&A) Costs has the same meaning as indirect costs (as described in __.616 Indirect (F&A) Costs). Facilities and Administrative Costs means costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular Federal award, an instructional activity, or any other institutional activity. F&A costs are synonymous with "indirect" costs.

Federal Award COGR requests the following revision, consistent with the revision we proposed in sections .100 and .101 of the proposed guidance.

Federal Award *means Federal financial assistance, ~~and~~ Federal cost-reimbursement and Federal fixed price contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities where the Federal funds are used to carry out a program or project for a public purpose. It does not include procurement contracts, including procurement contracts under grants or contracts that are used to buy goods or services from contractors where the goods or services are ancillary to the operation of the Federal program or project. Contracts to operate Federal government owned, contractor operated facilities (GOCOs) and direct Federal contracts are excluded from the requirements of this guidance.*

Management Decision COGR requests the following revision, consistent with revisions we proposed in several sections of the proposed guidance. Management decisions in this context should be the purview and responsibility of the Federal awarding agency, cognizant agency for audit, or the oversight agency for audit.

> ***Management decision*** *means the evaluation by the Federal awarding agency, cognizant agency for audit, or oversight agency for audit~~, or pass-through entity~~ of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.*

Organizational Conflict of Interest COGR requests the deletion of this definition. Including this definition in a broad context for Appendix I purpose may cause confusion with the use in section .504(c)(1), which is used in the narrow context of procurement transactions.

> ~~***Organizational Conflict of Interest*** *means that because of other activities or relationships with other persons or organizations, a recipient (or subrecipient) is unable or potentially unable to be impartial in the selection of a contractor, or the recipient's (or subrecipient's) objectivity in conducting a procurement transaction is or might be otherwise impaired. Such an organizational conflict could arise when a recipient (or subrecipient) selects a parent company, affiliate, or subsidiary. Such entities are considered part of the recipient (or subrecipient) for grant administration purposes.~~

Pass-through Entity COGR requests the following revision, which may provide additional clarity.

> ***Pass-through entity*** *means a non-Federal entity that provides a Federal award ~~subaward~~ to a subrecipient to carry out a Federal program.*

Prior Approval COGR requests the following revision. The additions of (c) and (d) will help clarify the role of the recipient/pass-through entity.

> ***Prior Approval*** *means written approval by an authorized official evidencing prior consent. The term includes the following ~~both~~ approvals–*
>
> *(a) By agency officials for recipients' actions that require approval; and*
>
> *(b) By OMB for agencies' actions that require approval.*
>
> *(c) By authorized recipient for actions requiring only recipient approval; and*
>
> *(d) For subrecipients actions requiring approval, approval by the pass-through entity official.*

Supplies COGR requests the following revision. Consistent with other sections of the proposed guidance, supplies now should include computing devices and, subject to certain conditions, software acquisitions.

> ***Supplies***
>
> *(a) This term means all tangible personal property other than equipment including computing devices and software, subject to institutional acquisition and capitalization policies.*
>
> *(b) The term therefore excludes Intangible property, as defined in __.503 Property Standards paragraph (f) (1).*
>
> *(c) Inventions of a recipient conceived or first actually reduced to practice in the performance of a project or program under a funding agreement ("subject inventions" as defined in 37 CFR 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements").*

Termination COGR requests the following revision, which may provide additional clarity.

> ***Termination*** *when used in connection with an award, means the cancellation of a Federal award, in whole or in part, ~~under the award~~ at any time prior to the planned end of the project or program period.*

Proposed Additions:

Award COGR requests the following addition to Appendix I. A cross-reference to "Federal Award" will be a helpful feature in Appendix I.

> ***Award*** *(see definition for Federal Award)*

Closeout COGR requests the following addition to Appendix I. This term is found in several instances in the proposed guidance.

> ***Closeout*** *means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.*

Exempt Property COGR requests the following addition to Appendix I. This is a helpful definition based on the text in Circular A-110.

> ***Exempt property*** *means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.*

Modified Total Direct Costs (MTDC) COGR requests the following addition to Appendix I, consistent with the revision we proposed in section .616(e).

> ***Modified Total Direct Costs (MTDC)*** *is defined as all salaries and wages, fringe benefits, materials and supplies, services, travel, and subawards (including subawards issued under federal cost-reimbursement or fixed price contracts) up to the first $25,000 of each subaward (regardless of the period covered by the subaward). Equipment, capital expenditures, charges for patient care, rental of facilities, tuition remission, scholarships and fellowships, and the portion of subawards in excess of $25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cognizant agency for indirect cost, subject to the guidance in Section .108 OMB Responsibilities, determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.*

Participant Support Costs COGR requests the following addition to Appendix I. This term is found in several instances in the proposed guidance.

> ***Participant support costs*** *are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects.*

Program Income COGR requests the following addition to Appendix I. This term is found in several instances in the proposed guidance and is a helpful definition currently used in Circular A-110.

> ***Program income*** *means gross income received by the recipient or subrecipient that is directly generated by a supported activity, or earned as a result of the award during the award period. "During the award period" is the time between the effective date of the Federal award and the ending date of the Federal award reflected in the notice of award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., license fees and royalties on patents and copyrights, or interest earned on any of them.*

Project Costs COGR requests the following addition to Appendix I. This term is found in several instances in the proposed guidance.

> ***Project costs*** *mean all costs of accomplishing the objectives of an award that are allowable under the award terms and conditions and included either as:*
>
> *(i) Costs that the recipient incurs and charges to the award, whether;*
>
> > *(a) Paid by Federal funds; or*
> >
> > *(b) Paid by the recipient with non-Federal funds and counted toward cost sharing specified by the award; or*
>
> *(ii) The value of third party in-kind contributions counted toward the recipient's cost sharing specified by the award.*

Published COGR requests the following addition to Appendix I. This term is found in several instances in the proposed guidance and is a helpful definition currently used in Circular A-110.

> ***Published*** *is defined as either when:*
>
> > *(a) Research findings are published in a peer-reviewed scientific or technical journal; or*
> >
> > *(b) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.*

Research Data COGR requests the following addition to Appendix I. This term is found in several instances in the proposed guidance and is a helpful definition currently used in Circular A-110.

> ***Research Data*** *is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:*
>
> > *(a) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and*
> >
> > *(b) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.*

Research Terms and Conditions COGR requests the following addition to Appendix I. We have proposed that this term be incorporated into the Final Guidance and it would be a helpful definition to include.

> ***Research Terms and Conditions*** *are the core set of administrative requirements applicable to research and research-related assistance awards made by Federal agencies to organizations that are subject to the applicable sections in this guidance.*

Schedule of Federal Awards (SEFA) COGR requests the following addition to Appendix I. This term is found in several instances in the proposed guidance.

> ***Schedule of Expenditures of Federal Awards (SEFA)*** *is a list of all expenditures of Federal awards for the year subject to Single Audit requirements. The SEFA is an essential document for planning and conducting the Subchapter G single audit and also provides assurance to those agencies that award federal financial assistance that their programs or grants were included in the audit.*

Suspension of an Award COGR requests the following addition to Appendix I. This term is found in several instances in the proposed guidance and is a helpful definition currently used in Circular A-110.

> ***Suspension of an Award*** *means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."*

Subchapter H – Appendix IV

Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Educational Institution

A.1(d)(3) – RECOMMENDATION: Clarify Text for Other Institutional Activities

At a minimum, the reference to "Specialized service facilities" requires a cross reference to Subchapter F, Subtitle IV (as was the case in Circular A-21). However, we suggest that the reference to Specialized Service Facilities (SSFs) be eliminated; an SSF can be treated as an other institutional activity and allocated an appropriate share of indirect costs. In addition, the section that describes what other institutional activities include should be delineated in a separate paragraph for clarity. COGR recommends the following edits:

(d) Other institutional activities means all activities of an institution except:

(1) instruction, departmental research, organized research, and other sponsored activities as defined above;

(2) Indirect (F&A) cost activities identified in Section B, Identification and assignment of indirect (F&A) costs; and

~~*(3) Specialized service facilities described in Subchapter F, Subtitle VI, Section .621, C-47. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises.*~~

Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises …

A.2(e)(2) – RECOMMENDATION: Clarify Text for Order of Distribution

The proposed guidance expands the "order of distribution" for F&A cost categories. Specifically, it has added "library expenses" to Appendix IV, A2(e)(2). In contrast, the Circular A-21 language does not include library expenses in the order of distribution. Generally, institutions only allocate library expenses to the major benefitting functions. COGR disagrees that library expenses should be specified in the order of distribution, as these expenses should not have an allocation to Department administration, Sponsored projects administration, and Student services administration. In developing the Library pool, administrative employees are excluded in the FTE calculation for allocation of the library expenses (see Division of Cost Allocation Best Practices Manual for Reviewing College and University Long-Form Facilities and Administrative Cost Rate Proposals, VII, 4.a.). Consequently, any costs associated with the excluded FTEs also should be excluded from the allocation base.

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses~~, and library expenses~~ should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories …

B.2 – THANK YOU: Eliminate Requirement for Large Research Facilities

COGR appreciates the removal of this section, which was an administrative burden without added benefit. As stated in other areas within this response, institutions make prudent financial decisions based on appropriate financial analysis and consultation.

B.4(a) – RECOMMENDATION: Improve Definition of Allowable Operations and Maintenance

COGR recommends a minor change to the operations and maintenance definition to further clarify the allowability of appropriate expenses in the Operations and Maintenance cost pool.

The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; ~~and~~ central receiving; and other related costs that support the infrastructure and other operation and maintenance functions of the institution. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

B.4(c) – THANK YOU AND RECOMMENDATION: Treatment of Utility Costs

COGR appreciates the effort by OMB to introduce a more fair and cost-based approach to allocating utilities. While institutions have made considerable commitments to reducing utility costs, research space continues to be 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. Utilization of the benchmarking tools (i.e., REUI) described in the proposed guidance provides a useful starting point for developing "effective square footage" factors associated with research space. However, it is important to note that unique circumstances associated with any benchmarking tool need to be considered on a case-by-case basis; otherwise, any solution becomes prescriptive and inflexible in addressing legitimate variances among institutions.

Further, while it was not clear in the proposed guidance, our understanding is that the "*effective square footage*" method can be used regardless of whether or not an institution's space is metered. For example, if utility consumption for a floor of a building is determined through a sub-meter, and half of the space is research and half is classroom space, both the sub-metering results and the "*effective square footage*" method can be applied to the space on that floor. If this were not the case, the results

of the utility allocation would be flawed as the instruction space would be allocated on the same basis as the research space.

Finally, COGR recommends that those institutions currently receiving the 1.3% allowance have the option to be "grandfathered" for use of the 1.3% in future F&A rates. This would allow those institutions to have the option of not changing their utility allocation methodology, which in some cases, could be a time-consuming and burdensome change. COGR proposes the following updates to both recognize potential differences and to provide additional clarity in the guidance.

B.4(c) *For allocation of utilities costs, ~~either of~~ the following methodologies ~~alternatives~~ may be employed:*

~~(1) Where space is devoted to a single function and metering at either the building or subbuilding level allows unambiguous measurement of usage either, costs shall be assigned to that function.~~

(1) Metering of utilities is allowed at the sub-building level, building level or multiple building level where an unambiguous measurement of usage is obtained.

(2) In addition to metering of utilities as described in (1) above, ~~Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function,~~ costs can ~~shall~~ be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on square footage for monitored space (site, building, floor, or room), except that the "effective square footage" described in subsection (ii) below ~~will~~ can be used instead of actual square footage for research space. For institutions that have used the 1.3% utility cost allowance, those institutions may continue to use that allowance in lieu of the "effective square footage" method.

(ii) "Effective square footage" allocated to research space shall be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB website at the time of a rate determination. In those cases where use of the REUI may be inappropriate, the institution shall document the basis for adjustment and provide this documentation to the cognizant agency.

B.5(a) – RECOMMENDATION: Correct Error

The reference to "use allowances" in this section should be deleted.

… The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation ~~and use allowances~~, and interest costs.

B.8(b) – RECOMMENDATION: Improve Text that Defines Library Allocation

COGR requests that the "professional employee category" and "other users" be further clarified to ensure a fair and equitable allocation and avoid creating an unreasonable basis for defining the various types of users of an institution's library.

> *(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.*
>
> *(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include postdoctoral fellows and graduate students.*
>
> *(3) The other users category shall consist of ~~all other users~~ a reasonable factor as determined by institutional records to account for other users of library facilities.*

B.9(a) – RECOMMENDATION: Correct Error

This section includes text that appears to be in error.

> *(a) The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Section __.621 Selected Items of Cost, ~~C-9 Commencement and Convocation Costs - For institutions of higher education, costs incurred for commencements and convocations are unallowable, except as provided for in Appendix IV, section (B)(9) Student Administration and services, as student activity costs. C-10 Compensation - Personal Services.~~ This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.*

C.2 – CONCERN: Definition of MTDC and Agency Deviations (see Subchapter F, .616(e))

In our comments to section .616(e), we addressed the inconsistencies and updates between the definition of MTDC in the section and the definition in section .616(e). We recommend that these two sections should be made consistent per our recommendations in section .616(e). Also in section .616(e), we also addressed our concerns related to the disregard of the definition of MTDC by some agencies. Consequently, we proposed a revision to the definition of MTDC to avoid misinterpretations. Finally, in section .616(e), we asked that when an agency makes a claim that an MTDC exclusion is necessary to "*avoid a serious inequity*," there should be clear mechanisms in place so that agency deviations can be addressed by OMB and/or an independent arbiter. COGR recommends that this section be revised and be made consistent with our recommendations in section .616(e).

C.7 – CONCERN: Use of Negotiated Rates throughout the Life of an Award

COGR recommends that OMB reinstate the text from Circular A-21 that requires the negotiated rate in effect at the time of the initial award to be used throughout the life of the award. This is the most administratively simple approach to managing those situations where the institution's negotiated rate changes due to the negotiation of a new rate agreement. The new language is both confusing and raises a concern as to whether or not the current regulation (i.e., use the same rate for the life of the award) still can be used for the reimbursement of F&A costs. COGR recommends the following change.

> *Federal agencies shall use the negotiated rates, except as provided in section __.616 Indirect (F&A) Costs paragraph (b)(1) for indirect (F&A) costs, in effect at the time of the initial award throughout the life of the Federal award ~~to fund the Federal award throughout its life~~. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. "Negotiated rates" per the negotiated rate agreement include final, fixed, and predetermined rates and exclude provisional rates. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal funding agency at the time of the award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award shall be extended through the end of the life of the Federal award.*

C.8 – THANK YOU: Removal of Text that Restricted Implementation of Internal Costing Practices

COGR appreciates OMB and the COFAR's recognition of the importance of allowing all Federal awardees to update their internal charging practices, regardless of how a particular type of cost has been treated in the past. Institutions of higher education are the only entities subject to an F&A administrative rate limitation, and to further restrict how institutions of higher education can implement internal costing practices results in inefficiency, and ultimately, higher costs to the institution and to the Federal government. The elimination of this obsolete restriction on moving a charge from indirect to direct now permits all Federal awardees to consider more equitable and cost-efficient internal costing practices.

C.10(f) – CONCERN: Providing Copies of Rate Proposal and Supporting Documentation

COGR disagrees with the requirement in section (f) that institutions provide copies of rate proposals and supporting documentation to all interested agencies. F&A rates are negotiated between the institution and its cognizant agency. Federal agencies are required to accept that negotiated rate. Requiring institutions to provide detailed documentation to a Federal agency would be costly as well as an administrative burden with no added value. COGR recommends removal of this language as follows:

> *(f) Procedure for establishing facilities and administrative rates. ~~The cognizant agency shall arrange with the institution of higher education to provide copies of rate proposals and supporting documentation for the proposal to all interested agencies. Agencies wanting such copies should notify the cognizant agency.~~ Rates shall be established by one of the following methods: …*

C.10(g) – THANK YOU AND CONCERN: Cognizant Agency Documentation

COGR appreciates the new language added specifying what information is to be included in determinations from the cognizant agency, but it is important that the timing for the cognizant agency to provide that documentation be specified. In order to ensure a negotiation environment that is transparent and fair, that documentation is required by the institution prior to conducting the F&A rate negotiation. If not, then the value of the documentation diminishes and the transparency of the process is lost. We recommend the following update.

> *(g) The cognizant agency shall formalize all determinations and should provide copies of all determinations to the educational institution within a reasonable timeframe prior to negotiations. ~~or agreements reached with an educational institution and provide copies to other agencies having an interest.~~ Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments. The cognizant agency also shall formalize agreements reached with an educational institution and provide copies of the formal determinations and agreements to other agencies having an interest.*

C.10(h) – RECOMMENDATION: Engage OMB in Disagreements, Prior to Accessing the Appeal System

OMB can, and has in the past (e.g., allowability of SWAP financial instruments), provided an important role in disagreements between institutions and the cognizant agencies. In those situations where a rate agreement cannot be reached due to a difference in the interpretation of this OMB guidance, OMB should be available to engage in the discussion. While the appeal process should be used in cases where OMB intervention would not be appropriate, in some cases OMB intervention can facilitate a solution and avoid the possibility of a burdensome and non-productive appeal process. This would be similar to the assistance OMB provides to State and Local entities per Appendix VI, G.7 (*OMB assistance. To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner*).

It also would be helpful if this section was cross-referenced to section .108 OMB Responsibilities. This will allow institutions to request OMB engagement in those situations where a rate agreement cannot be reached, but where an OMB intervention could facilitate the resolution of the dispute or disagreement.

> *Disputes and disagreements. Where the cognizant agency is unable to reach agreement with an educational institution with regard to rates or audit resolution, the institution can request OMB's assistance in the dispute resolution. Also see Section .108 OMB Responsibilities. After that process is exhausted, the appeal system of the cognizant agency shall be followed for resolution of the disagreement.*

D.1(a) – RECOMMENDATION: Increase Threshold for Using the Simplified Method

The threshold for using the simplified method remains at $10M has been in place for thirty years. COGR recommends an increase in this threshold to $25M as it would reduce the administrative burden for both the small institutions and the Federal government with little to no risk. Also, we recommend that it be made clear that the threshold is based on Federal awards.

> ***D.1(a)*** *Where the total Federal direct cost of work covered by this guidance at an institution does not exceed ~~$10~~ $25 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs.*

F.2(a) – RECOMMENDATION: Add Cross Reference

This section is missing the reference to the Certificate of Indirect (F&A) Costs and should read as follows:

> *a. Policy. No proposal to establish indirect (F&A) cost rates shall be acceptable unless such costs have been certified by the educational institution using the Certificate of Indirect (F&A) Costs set forth in subsection F.2.c.*

F.2(b) – RECOMMENDATION: Establish Certification Consistency with Section .617(b)(1)

To establish consistency with Subchapter F, .617(b)(1), COGR recommends the following:

> *The certificate must be signed on behalf of the institution by ~~an individual at a level no lower than vice president or~~ the chief financial officer or an individual designated by the chief financial officer. ~~of the institution that submits the proposal~~.*

F.2(c) – THANK YOU AND RECOMMENDATION: Signed Certificate of Indirect (F&A) Costs

COGR appreciates OMB's modification to the Certificate of Indirect (F&A) Costs, which has eliminated the statement "*under penalty of perjury*." Also note, we believe the reference to this section should be c. Certificate, not b. Certificate.

ADDENDUM 1 – COGR Response

Proposed Revision to Subchapter E, .501(c)

Subrecipient Monitoring and Management

.501 Subrecipient Monitoring and Management

Note: The proposed revisions to section .501(c) are meant to present the steps normally taken by a pass-through entity in a logical and intuitive workflow. In addition, the revisions incorporate changes that, if implemented, could reduce the administrative burden associated with subrecipient monitoring and management.

(c) All pass-through entities shall:

(1) **Audit Verification – Federal Audit Clearinghouse.** Verify in the Federal Audit Clearinghouse that every subrecipient is audited as required under section .701 Audit Requirements if it has expended Federal funds during the respective fiscal year that equaled or exceeded the threshold for audit set forth in that section. Audits are not required for entities not meeting the audit specifications in section .701.

(2) **Audit Requirements – For Profit Entities**. As applicable, establish audit requirements for for-profit subrecipients, which are not covered by the Single Audit Act, as amended (31 U.S.C. §§ 7501-7507), or Subchapter G- Audit Requirements of this Guidance. Pass-through entities may adopt the audit requirements set forth in Subchapter G- Audit Requirements, or devise their own. See also section .502 Standards for Financial and Program Management paragraph (i)(3) of this guidance.

(3) **Risk Evaluation**. Evaluation of risk posed by subrecipients for purposes of monitoring may include such factors as:

(A) The results of previous audits;

(B) Whether the entity is a new subrecipient;

(C) Whether the entity has new personnel or new or substantially changed systems; and

(D) The extent of Federal monitoring if the subrecipient entity also receives direct awards. If a pass-through entity confirms that a proposed subrecipient has a current 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 perform ongoing monitoring of its subawards and take necessary corrective action in accordance with the remainder of this section.

(4) **Subaward Terms and Conditions**. Ensure that every subaward includes:

(A) All requirements imposed on the entity by Federal laws, regulations, and the terms and conditions of Federal awards, as included in the pass-through entity's award;

(B) As provided by the Federal agency, inform the subrecipient of the CFFA title and number, Federal award name and number, Federal award year, whether the Federal award is research and development (R&D) as defined in Appendix I – Definitions, Research and development of this guidance, and the name of the Federal awarding agency. The pass-through entity shall provide this information to each subrecipient, and if any of these data elements change, include such changes in any subsequent subaward modification. If a disbursement contains funds from multiple Federal awards or non-Federal funds, the pass-through entity shall identify the dollar amount made available under each Federal award. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award;

(C) Unless the federal program has been granted an exception to use a lower F&A rate as specified in section .616, the pass-through entity shall use an approved Federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through and subrecipient entities (in compliance with this guidance), or a de minimis indirect cost rate as defined in section .616(e) of this guidance;

(D) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section, section .502 Standards for Financial and Program Management and Subchapter G- Audit Requirements of this Guidance; and

(E) Appropriate terms and conditions concerning closeout of the subaward.

(5) **Subrecipient Monitoring**. Monitor the activities of subrecipients as necessary to ensure that Federal subawards are used for authorized purposes, in compliance with laws, regulations, and the provisions of subawards; and that subaward performance goals are achieved, in accordance with the guidance in section .505 Performance and Financial Monitoring and Reporting. The mechanisms used to monitor subrecipients are at the discretion of the pass-through entity and may include:

(A) Analyzing financial and programmatic reports submitted by subrecipients and performing such other procedures as necessary to ensure proper accountability and compliance with program requirements and achievement of performance goals of the subaward;

(B) Following up and ensuring that subrecipients take timely and appropriate action on deficiencies detected by the pass-through entity;

(C) Depending upon the pass-through entity's assessment of risk posed by the subrecipient, the following monitoring activities may be useful for pass-through entities to ensure proper

accountability and compliance with program requirements and achievement of performance goals. Use of such tools or activities are at the discretion of the pass-through entity.

(i) Performing on-site reviews of subrecipients' program operations;

(ii) Providing subrecipients with training and technical assistance on program-related matters;

(iii) Arranging for agreed-upon-procedures engagements as described in section .621 Selected Items of Cost;

(iv) Imposing specific subaward conditions (not previously included in the Federal award announcement) upon learning that a subrecipient has materially failed to comply with the general and program-specific terms and conditions of a subaward. If a pass-through entity chooses to do so, it shall do this as described in section .207 Specific Conditions for Individual Recipients of this guidance with respect to specific Federal award conditions imposed upon pass-through entities by Federal awarding agencies;

(v) Consider taking enforcement action against noncompliant subrecipients, as described in section .507 Termination and Enforcement of this Guidance and in program regulations.

ADDENDUM 2 – COGR Response

Proposed Revision to Subchapter F, .621, C-10(8) and (9)

Compensation and Standards for Documentation

(8) Institutions of higher education.

Note: The proposed revisions to section .621, C-10 (8) are meant to present the payroll considerations at an institution in a manner that better reflects the organizational variations and structures at institutions of higher education. Incorporation of these changes will better represent the payroll considerations at institutions of higher education.

Institutions of higher education are multi-faceted and varied in their administrative and academic structure. Such structures and processes are often defined by the institution's unique mission, and may be influenced by inter/intra-relationships with clinical practice plans, affiliated hospital and organizations, and other associated entities. Institutions of higher education establish compensation policies that account for their unique mission and organization, which ensure that payroll charges to Federal awards are reasonable and are in compliance with federal policies.

(A) Faculty compensation. Institutions of higher education have multiple types of faculty appointments, often depending upon the disciplines, structures and other organizational differences specific to their respective environments. Non-exclusive examples include nine-month appointments, with separate summer assignment (typically found in a non-medical school environment); and twelve-month appointments in which faculty members have assignments specific to their institutional roles throughout the year, including the summer months (typically found in a medical school environment). Variations of these basic types, generally dependent upon specialized settings or circumstances, may also be used. Institutional Base Salary (IBS) is predicated on the type of appointment for which the faculty member has specifically assigned duties and responsibilities to the institution. Special Conditions may pertain and are described in Section (8)(D).

(i) Academic Year Faculty Appointments & Summer Compensation. Many faculty members accrue salary during an institutionally-defined "academic year" (typically on a nine-month appointment type). The salary for the academic period is paid to the individual over the period covered by the appointment (e.g., nine-month, twelve-month, etc.) consistent with the practices of the institution. In such cases, activities during periods outside the academic year (typically summer months) are generally compensated separately (via "summer salary"), if at all.

(ii) Salary basis. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the Institutional Base Salary (IBS) rate. IBS is defined as the annual compensation paid by a university for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the university.

(a) Depending on institutional policy, IBS normally excludes other allowable payments such as bonuses, one-time payments (unless they are given in lieu of an annual increase and as part of an established compensation policy), and incentive pay. Also, normally excluded from the IBS is salary paid directly by another unrelated organization and income that an individual is permitted to earn outside of his or her institutional responsibilities.

(b) IBS for twelve-month appointments, (or special appointments that are beyond the nine month academic year appointment type), is based on the annual compensation paid to the faculty member for the individual's appointment during a twelve-month period and shall not include an additional summer increment.

(iii) Periods Outside of the Academic Year

(a) Except as specified for teaching activity in subsection (b), below, and absent approval of a different method by the awarding agency, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be calculated at a rate not to exceed the IBS received for the applicable academic appointment period.

(b) Charges for teaching activities performed by faculty members on Federal awards during periods not included in the academic year will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(iv) Intra-university consulting. Intra-university consulting by faculty is assumed to be undertaken as a university obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above the IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the awarding agency.

(v) "Extra service pay" normally represents overload compensation, subject to institutional compensation policies, for services above and beyond IBS. It is allowable if the following conditions are met:

(a) The entity establishes consistent policies which apply uniformly to all employees of a given class, not just those working on Federal projects. See Subchapter F Section .621 C-10 Compensation-Personal Services, paragraph (1) and Subchapter F Subtitle II. Basic Considerations of this guidance.

(b) The entity establishes a consistent definition of the work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentation.

(c) The amount paid is commensurate with the IBS rate of pay for the amount of additional work performed. See Section .621 C-10 Compensation – Personal Services, paragraph (8)(A)(ii) of this guidance.

(d) The salaries, as supplemented, fall within the salary structure and pay ranges established by or otherwise applicable to the entity.

(e) The total salaries charged to Federal awards are subject to the Standards of Documentation as described in paragraph (9).

(vi) Part-time faculty. Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(B) Non-faculty

(i) Charges for work performed on Federal awards by non-faculty are allowable at the IBS rate of pay.

(ii) Overtime or "extra service pay" for these employees is allowable as a direct charge at rates and in circumstances that are consistent with established institutional policy, and when in compliance with Subsection F: Cost Principles, Subtitle II. Basic Considerations.

(C) Allowable activities. Charges to Federal awards may include compensation for activities contributing and directly related to work under an agreement. Additionally, other allowable direct charges include, but are not limited to delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, project management activities in support of the project, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(D) Special Considerations

(i) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(a) Administrative Salaries of Deans. Administrative salaries and expenses of deans of faculty and graduate schools (or their equivalent) and their staffs are generally allowable, usually as indirect costs as described in Appendix IV- Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Educational Institutions.

(b) Incidental activities. Incidental work for which supplemental compensation is allowable under institutional policy (i.e., excluded from institutional base salary) need not be included in the payroll distribution systems described in paragraph (9) of this

section, provided that the work and compensation are separately identified and documented in the financial management system of the institution. To direct charge payments for incidental work, such work must be specifically provided for in the award budget as approved by the Federal awarding agency or subsequently approved by the Federal awarding agency.

(E) Sabbatical Leave Costs: Rules for sabbatical leave are as follows:

(i) Costs of leaves of absence are generally granted for the purpose of encouraging academic and institutional revitalization by providing sustained time for research and/or creative activities; development of new courses or programs; acquisition of expanded and/or new qualifications and skills; contribution to academic unit plans to improve and/or refocus instructional, research, or public service activities in accordance with the mission of the institution. Such costs are allowable and should be allocated on an equitable basis among all related activities of the institution.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

(9) Standards for Documentation of Personnel Expenses for Federal Awards

Note: The proposed revisions to section .621, C-10 (9) are meant to address the following:

1) Terminology. Striking of the terms "certification" and "reports," in favor of "confirmation," will help to eliminate any expectation or inference that "effort reporting" is the de-facto and preferred Federal standard.

2) Consistency. For example, unique treatment for employees that work solely on a single award would require multiple confirmation systems. Multiple confirmation systems would lead to additional faculty and administrative confusion and burden.

3) New Requirements. For example, quarterly requirements to revise budget estimates would result in a new faculty task that will create burden.

4) Clarity. There are several examples where the language used and expectations are not clear; these have been addressed.

Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on documented payrolls approved by a person who can verify the payroll charges to Federal awards ~~responsible official of the non-Federal entity~~. The payroll distribution system will (i) be incorporated into the official records of the recipient, (ii) reasonably reflect the activity for which the employee is compensated by the recipient, not exceeding 100% of compensated effort per the institution's definition of Institutional Base Salary, and (iii) encompass both Federally assisted and all other activities compensated by the recipient on an integrated basis, but may include the use of subsidiary records. Payroll documentation will comply with the established accounting policies and practices of the recipient. (See paragraph (8)(D)(i)(b) above for treatment of incidental work.)

In general, the distribution of salaries and wages for individuals working on Federal awards must be supported by the official payroll records of the employee and confirmed by a person who can verify that the work was performed ~~certifications of the consistency of charges with the work executed~~. Confirmation that the work was performed can be made through either an electronic confirmation or a written confirmation of the official payroll or expenditure records. Institutions may implement, but are not required to implement additional systems beyond the official payroll distribution system of the institution for this purpose. ~~All required certifications may either be provided electronically or on paper.~~ Other standards for reporting and for payroll distribution systems are described below.

(A) No documentation ~~outside the payroll distribution system~~ is required for the salaries and wages of employees who are not working on Federal awards ~~work in a single indirect cost activity~~. ~~Such costs may be aggregated in a residual category and subsequently distributed by any reasonable method mutually agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.~~ For employees working on Federal awards, the non-Federal portion of the salary can be accumulated into a residual category. The residual category requires no documentation outside the payroll distribution system and requires no confirmation.

~~(B) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or a responsible supervisory official.~~

(B ~~C~~) ~~Except as noted in paragraph (F) below, certified reports reflecting the distribution of charges within the payroll for each employee (professional or nonprofessional) whose compensation is charged, in whole or in part, directly to Federal awards must be maintained. Reports may be integrated with or separate from the payroll distribution system; where integrated, duplication of records should not be necessary.~~ The payroll distribution system of the institution is the official system of record for all payroll charges, including payroll charges to Federal awards. Institutions may rely on reports produced from the payroll distribution system, or at the discretion of the institution, may utilize additional systems beyond the official payroll distribution system. There is no single best method for documenting the distribution of charges for personal services, but the method used must meet the following standards:

(i) ~~The reports~~ Electronic or paper reports generated either from the institution's payroll distribution system or an independent system that incorporates official payroll records ~~must provide an after-the-fact certification of the conformance of payroll charges with~~ can be used as the basis for an after-the-fact confirmation of the direct charges to Federal awards ~~the activity~~ of each employee~~, unless a mutually satisfactory alternative is approved by the awarding agency~~. ~~Certification~~ Confirmation periods are to be established as appropriate to provide adequate oversight and stewardship of Federal awards consistent with the business and reporting cycles of the recipient. In no case will ~~certification~~ confirmation periods exceed 12 months.

(ii) Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards, but may be used for interim accounting purposes, provided that:

(a) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(b) Significant changes in the corresponding work activity are identified and entered into the payroll distribution system in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as a ~~certification~~ confirmation period;

~~(c) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect significantly changed circumstances.~~

(iii) ~~(ii)~~ Because practices vary as to the activity included in Institutional Base Salary ~~constituting a full workload~~, reports may reflect categories of activities expressed as a percentage distribution of total activities.

(iv) ~~(iii)~~ It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When apportioning and ~~certifying~~ confirming payrolls for institutions of higher education, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected. Reliance may be placed on estimates in which a degree of tolerance is appropriate.

(v) ~~(iv)~~ Payroll charges made to ~~Effort supported by~~ a Federal award should ~~must~~ be confirmed by a person who can verify ~~certified either by the individual employee or by an individual responsible for verification~~ that the work was performed. Where an individual employee receives support from multiple Federal awards and confirmation ~~certification~~ is performed by multiple individuals ~~supervisory personnel~~, each individual ~~certifier~~ need address only elements relevant to ~~their~~ his or her function. ~~but will have access to activity reports compliant with this Section.~~

(vi) ~~(v)~~ For systems which meet these standards, the recipient will not be required to provide additional support or documentation for the work ~~effort~~ actually performed, other than that referenced in paragraph (C) ~~(D)~~ below.

(C ~~D~~) Charges for the salaries and wages of nonexempt ~~nonprofessional~~ employees, in addition to the supporting documentation described in paragraph (B), must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR 516). ~~For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under FLSA.~~

(D ~~E~~) Salaries and wages of employees used in meeting cost sharing ~~or matching~~ requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

(E ~~F~~) Substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of the reports described in paragraph (B) ~~(C)~~ if approved by the cognizant agency. These processes or systems are subject to approval if required by the cognizant or oversight agency. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of charges to Federal awards ~~employee effort~~.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(a) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (F)(iii), below;

(b)The entire time period involved must be covered by the sample; and

(c) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (F)(i) may be accepted by the cognizant or oversight agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the recipient will result in lower costs to Federal awards than a system which complies with the standards.

(iv) Federal cognizant or oversight agencies are encouraged to approve alternative reporting proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant or oversight agency, these plans are acceptable as an alternative to ~~documented~~ the reports described in paragraph (B) ~~(C)~~ of this section.

(v) For awards of similar purpose activity or instances of approved blended funding, recipients may submit performance plans that incorporate funds from multiple awards and account for their combined use based on performance-oriented metrics rather than the reports described in paragraph (B) ~~(C)~~, provided that such plans are approved in advance by all involved awarding agencies. In these instances, recipients must submit a request for waiver of the requirements in paragraph (B) ~~(C)~~ based on documentation that describes the method of charging costs, relates the charging of costs ~~to~~ of the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.