

April 2, 2024

Deidre Harrison  
Deputy Controller  
Office of Federal Financial Management, OMB  
Washington D.C. 20500

*Re: Treatment of Salaries and the Executive Level II Salary Limitation*

Dear Ms. Harrison,

On behalf of the Council on Governmental Relations (COGR) and its 219 member institutions and the Association of Independent Research Institutes (AIRI) and its 82 member institutions, we seek your assistance to withdraw any consideration of a policy change that would apply the Executive Level II salary limitation to indirect salaries paid with institutional funds. This policy change, ultimately, would impact F&A cost recovery and the financial stability of nonprofit research institutes and smaller, emerging research institutions.

We have reviewed this issue in depth and believe this change would harm U.S. research institutions and our nation's research leadership and competitiveness in the world.

**First**, we believe a policy change would be inappropriate for the following reasons:

- 1) The established 30-year policy on the application of the Executive Level II salary limitation for HHS/NIH funded research is clear: it is applicable only to the **direct salaries** of individuals paid from federal funds. This is reiterated in the recent [NIH Notice, NOT-OD-24-057: The Consolidated Appropriations Act, 2023 restricts the amount of direct salary to Executive Level II of the Federal Executive pay scale](#).
- 2) NOT-OD-24-057 is consistent with longstanding statutory language in the annual HHS appropriations bills: *None of the funds appropriated in this title shall be used to pay the salary of an individual through a grant or extramural mechanism, at a rate in excess of Executive Level II.*

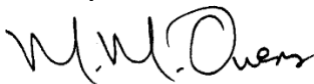
Consequently, a policy change that targets indirect salaries paid from institutional funds would exceed the intent of longstanding statutory language and policy implementation and effectively create new policy. Further, such a policy change would require research institutions to make up the difference in salary funding and thereby compromise their financial stability.

**Second**, any consideration of this potential policy change raises questions and concerns of how federal regulations are made, particularly in the absence of formal stakeholders' input. We believe a policy change of this magnitude made outside the normal regulatory process would lead to disastrous and unintended consequences. Among our specific concerns are:

- 1) The genesis of this issue stems from the HHS OIG report, [Cost Allocation Services Needs to Update its Indirect Cost Rate Setting Guidance](#). We strongly disagree with HHS OIG and this issue now is advancing in an unknown and non-transparent process. Moreover, it now appears HHS OIG is the *de facto* arbiter of HHS/NIH grants policy. Of note, Cost Allocation Services (CAS) did not concur with the HHS OIG finding (p. 20).
- 2) While we believe consideration of this issue is inappropriate in the first place, if there were to be consideration of a policy change, then the policy **must be** subject to public rulemaking procedures, including public comment.
- 3) The unintended consequences of a policy change would be significant, and include:
  - a) New administrative burden for both grantees and for CAS in order to develop and negotiate F&A cost rates.
  - b) The distinct possibility that research institutions will be required to have both an HHS/NIH only F&A cost rate, and a separate F&A cost rate for research funded by all other agencies.
  - c) The impact of a) and b) combined would mean more work for all parties and would lead to delays in establishing F&A cost rates. Note, COGR documented concerns about delays in a [December 14, 2022 letter to Cost Allocation Services](#) – a change in policy will further exacerbate such delays.
  - d) The most dire unintended consequence would be if institutions were forced to downscale their research activities or close their doors. Nonprofit research institutes often conduct niche, groundbreaking research, and their operating budgets rely significantly on F&A cost recovery. Similar issues are true for smaller, emerging research institutions, which also would put these institutions at financial risk.

We appreciate your consideration of our views and we urge your intervention to have this policy change be withdrawn. As this matter is time-sensitive, we request a meeting with you and other appropriate federal officials as soon as possible to discuss our concerns. We believe we can work together on this issue to reach a thoughtful and appropriate resolution.

Sincerely,



Matt Owens  
President  
COGR



Frank Dwyer  
President  
AIRI

cc: Dale Bell, HHS Grants Policy  
Renee Cooper, HHS Grants Policy  
Mak Karim, Cost Allocation Services