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**COGR Attachment to NIH RFI Input on Reduction of Cost and Burden Associated with
OMB Circular A-21**

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COUNCIL ON GOVERNMENTAL RELATIONS

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EXECUTIVE SUMMARY

Recommendations to Reduce Cost and Burden Associated with OMB Circular A-21 and Related Cost Principles and Administrative Requirements

COGR proposes implementation of the following Recommendations. Timely implementation will result in a reduction of administrative burden and cost savings for Research Universities and research institutions and the Federal government, without compromising the important responsible compliance and accountability standards in place at these institutions. Upon implementation, we request that OMB clearly articulate to regulatory entities and the audit community that those changes that have been implemented represent official Federal policy and any review or audit activity should be conducted in accordance with the new standards.

Ultimately, the Recommendations are designed to enhance research productivity by: a) eliminating onerous and non-productive requirements currently imposed on the faculty, and b) providing more streamlined and effective administrative and compliance support to faculty and the broad scientific community. Each Recommendation is described in more detail in the sections that follow this Executive Summary.

Group A: Clarification or Modification of Existing Regulations to Enhance Faculty Productivity and Administrative Efficiency

*A1) The expectation of “**Effort Reporting**” should be discontinued and replaced with institutionally designed compliance-based approaches that meet accountability standards for “Payroll Distribution” systems. An “outcomes-based” approach that demonstrates to agency officials and program officers that faculty, investigators, technical staff, students, and other personnel are actively engaged in the proposed research can be an appropriate foundation for institutional systems.*

*A2) Allow the direct charging of costs associated with **Project Management Activities** when those activities can be specifically identified with an individual project.*

*A3) Reduce **Subrecipient Monitoring** requirements for those Subrecipients subject to the Single Audit Act (Circular A-133 audit) and to Federal/National Policies Compliance Assurances with the Federal Government.*

*A4) **Research Communications, Tools, and Similar Equipment** (and related supply items) that are necessary for the efficient and effective conduct of research activities should be allowable as direct charges to Federally-sponsored research, service and educational programs.*

Group B: Enforcement of Current Rules with an Emphasis on Consistency, Fairness and Simplicity

B1) **The Negotiated F&A Rate** should be reimbursed by all Federal funding agencies on all Federally-sponsored research, service and educational programs, unless statutorily prohibited.

B2) Prohibit arbitrary Federal funding agency restrictions on F&A cost recoveries associated with **Bulk Purchase, High-Volume, and/or Significant Dollar Transactions**. If arbitrary restrictions persist, develop solutions to update Circular A-21 and the definition of “modified total direct cost”.

B3) Prohibit **Voluntary Committed Cost Sharing** on all Federally-sponsored research, service, and educational programs.

B4) Create a **Mandatory Cost Sharing Exemption** for Research Universities and Institutions.

B5) Formalize an **F&A Rate Negotiation Model** that is transparent, unambiguous, consistent and collaborative between the Federal government and Research Universities and Institutions.

B6) The **1.3% Utility Cost Adjustment** should be made applicable to each eligible higher education institution that does not currently receive it. Each affected university shall be issued an amended F&A rate agreement, subject to the discretion of the institution with respect to the timing of the amended agreement.

B7) Modernize and Streamline **Documentation Retention Requirements** to recognize the efficiencies of electronic records imaging technology, and make consistent the requirements of Grants versus Contracts (i.e., FAR).

B8) Delete or Update **Sections of OMB Circular A-21**, which will result in additional reduction in burden.

B9) Harmonize and coordinate procedures and practices related to implementing the **A-133 Single Audit** regulations across all Federal agencies.

B10) Eliminate duplicative reporting requirements, such as the **Federal Financial Report**, when it can be established that an agency maintains the necessary information in its internal systems.

B11) The **A-133 Compliance Supplement** should be updated, accordingly, for policy changes that are implemented per the Recommendations made in this letter. The appropriate communications should be made to regulatory entities and the audit community that the policy changes represent official Federal policy and any review or audit activity should be conducted in accordance with the new standards.

Group C: Expand Scope of Reform Initiatives to Capture Additional Regulatory Areas, which can lead to Further Reduction of Burden and Cost

C1) **Harmonize Regulations & Policies** across all Federal Agencies.

C2) Stabilize the governance structure and funding mechanism of **Grants.gov** to ensure its continuation as the central grant identification and application portal for federal grant programs.

C3) Designate a high level official within OMB's Office of Information and Regulatory Affairs to serve as a **Federal Ombudsman**, responsible for addressing university regulatory concerns and for seeking ways to increase regulatory efficiency.

C4) Require a **Cost of Compliance** analysis as a part of the Unfunded Mandates Reform Act requirements for any proposed regulations that will be required of any entity subject to the Single Audit Act. The Congressional Budget Office should estimate the cost impact of proposed legislation on research institutions without regard to annual dollar thresholds.

C5) Through the use of Executive Branch Authority, provide targeted exemptions for Research Universities and Institutions similar to protections provided for small entities under the **Regulatory Flexibility Act**.

GROUP A

CLARIFICATION OR MODIFICATION OF EXISTING REGULATIONS TO ENHANCE FACULTY PRODUCTIVITY AND ADMINISTRATIVE EFFICIENCY

Recommendation A1): The expectation of “Effort Reporting” should be discontinued and replaced with institutionally designed compliance-based approaches that meet accountability standards for “Payroll Distribution” systems. An “outcomes-based” approach that demonstrates to agency officials and program officers that faculty, investigators, technical staff, students, and other personnel are actively engaged in the proposed research can be an appropriate foundation for institutional systems.

Proposed Actions:

- 1) OMB should write a “Memorandum to Agency Heads, Representatives from the Regulatory and Audit Community, and Research Universities and Institutions” that states the expectation of “Effort Reporting” is discontinued, effective October 1, 2011. Also, the Memorandum should state that research universities and institutions have the option to: a) continue to use their existing “Effort Reporting” systems, or b) develop new compliance-based approaches that meet accountability standards for “Payroll distribution” systems, with “outcomes-based” approaches as an acceptable foundation. If the institution chooses to develop a new compliance-based approach, the institution must document how that system is in compliance with the proposed changes (see below) to section J.10.b(2), Criteria for Acceptable Methods.
- 2) OMB and other applicable Federal agencies should work with Research Universities and institutions to implement the proposed changes to Section J.10, Compensation for personal services. Proposed changes are shown below.
- 3) Included in the proposed changes to Section J.10 is the deletion of Section J.10.b(2)(f). OMB immediately should direct the audit community that this criterion is no longer applicable. This criterion states that the “*system will provide for independent internal evaluations*” – this criterion is vague, redundant and results in a zero-value-added administrative task. This requirement is not imposed on any other administrative system and immediately should be deleted from Section J.10.
- 4) The audit community should be directed by OMB to utilize the proposed changes to section J.10.b(2), Criteria for Acceptable Methods, as the sole basis for determining a compliant Payroll distribution system.
- 5) OMB and other applicable Federal agencies should work with Research Universities and institutions to explore other improvements. For example, “incidental work” and “a residual category” of activity are terminologies that are not well understood and create confusion. For example, faculty time contributed to IRB, IACUC, IBC, and other compliance activities benefit the Federal government, and when this time is uncompensated time, treating it as “incidental work” and outside of the faculty member’s normal activities would be appropriate. Additional solutions that would eliminate the perception that all time, 24 hours/7 days per week, is considered the baseline for faculty time would be innovative and could result in real faculty productivity gains.

Rationale: The term “Effort Reporting” is not used in Circular A-21 – however, Section J.10 Compensation for personal services, has evolved into an overly complex and ineffective system referred to as Effort Reporting. Institutions have spent millions of dollars developing Effort Reporting systems. These systems contain complicated formulas for averaging salary charges over multiple pay periods that are difficult to explain to faculty and administrators. If changes to salary charges are required, most systems do not interface directly with the institution’s Payroll system and rely on manual processes for corrections and do not guarantee that the Effort Reporting system and the Payroll system (and therefore the accounting system) are synchronized.

Confirmation of effort, through these Effort Reporting systems, is overhead intensive and requires significant faculty time for a process that is not well understood and has evolved significantly away from the original intent of validating that the salaries charged to federally sponsored programs represent reasonable estimates of the work performed. Because research universities are not compensated for administrative efforts above the 26% cap, they constantly must redirect resources from their educational and public service missions to new and necessary compliance initiatives, such as Effort Reporting.

Fortunately, the process can be dramatically simplified, without compromising the primary accounting principle that is to be followed for distributing salaries and wages. Section J.10.b(1)(a) states:

The distribution of salaries and wages, whether treated as direct or F&A costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities.

Furthermore, the beginning of Circular A-21, Purpose and Scope, states that institutions are not required to engage in accounting practices that are inconsistent with generally accepted accounting practices and that “adequate documentation” that is consistent with generally accepted accounting practices is the critical factor for supported charges to federally sponsored agreements. Section A.2.e states:

The application of these cost accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

Institutions have developed sophisticated and effective Payroll distribution systems that provide detailed documentation and audit trails on all salary and wage transactions. Institutional Payroll distribution systems are designed to allocate payroll costs to Federal projects and to provide the mechanisms and controls that allow for adjustments to the original allocation. Effort Reporting requires an additional, expensive, and convoluted process to be layered on top of already existing Payroll distribution systems, when in fact, the Payroll distribution systems have been designed to provide the documentation necessary to demonstrate institutional accountability and stewardship of federal funds.

Foundation of an Outcomes-based System

Federal officials acknowledge that the research grant making process is significantly different than the federal procurement contracting process used, for example, with the defense industry. Federal grants for research are a form of federal assistance and do not cover the full costs of the research. The federal

grant making process includes peer review of the proposed research to determine the scientific importance of the proposed work as well as the opportunity for success. Peer review also includes an assessment of whether the project can be completed at the proposed funding level.

An “after the fact confirmation” is defined as one of the “Criteria for Acceptable Methods” (Section J.10.b(2)(b)) to be present in an institution’s Payroll Distribution system. This criterion can be met through simpler and less burdensome processes than the current Effort Reporting system. Institutions should be empowered to develop solutions that are consonant with institutional policies and practices and that are in compliance with generally accepted accounting practices for colleges and universities with respect to payroll distribution.

For example, reports from an institution’s payroll distribution system could be produced and attached to existing agency progress and final reports. The reports would include a listing of the personnel being paid from the project, the amount paid for the reporting period, and a statement by the PI that the salaries funded by the project are reasonable relative to the work performed for the reporting period. Progress reports and final reports already are designed to address the important scientific/technical questions and challenges that are inherent to fundamental research and the project’s objectives – outcomes are demonstrated to agency officials and program officers when faculty, investigators, technical staff, students, and other personnel are actively engaged in the proposed research and conducting those activities that are unique to scientific discovery. Elimination of the “Effort Reporting” expectation would foster solutions such as this, as well as other solutions that demonstrate accountability standards have been met and that those outcomes unique to science are being advanced.

Proposed ~~Deletions~~ and Additions to Circular A-21, Section J.10.b(2) and J.10.c:

J.10.b(2) Criteria for Acceptable Methods.

- (a) The payroll distribution system will
 - (i) be incorporated into the official records of the institution;
 - (ii) reasonably reflect the activity for which the employee is compensated by the institution; and
 - (iii) encompass both sponsored and all other activities on an integrated basis, but may include the use of subsidiary records. (Compensation for incidental work described in subsection a need not be included.)

- (b) The method must recognize the principle of after the fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached. Direct cost activities ~~and F&A cost activities~~ may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement ~~for either direct or F&A cost activities~~ if other responsible persons make appropriate confirmations.

- ~~(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify F&A costs and the functions to which they are allocable. The activities chargeable to F&A cost categories or the major functions of the institution for employees whose salaries must be apportioned (see subsection b.(1)b)), if not initially identified as separate categories, may be 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.~~

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. ~~Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.~~ Payroll distribution systems may reflect categories of activities expressed as a percentage distribution of total activities or may reflect activity in other formats that are supported by the institution's payroll distribution system.

(e) Direct and F&A charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used, significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. 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 an academic period.

~~(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.~~

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

J.10.c Examples of Acceptable Methods for Payroll Distribution:

Strike entire section that includes:

~~J.10.c.(1) Plan Confirmation.~~

~~J.10.c.(2) After the Fact Activity Records.~~

~~J.10.c.(3) Multiple Confirmation Records.~~

Recommendation A2): Allow the direct charging of costs associated with Project Management Activities when those activities can be specifically identified to an individual project.

Proposed Actions:

- 1) OMB should write a “Memorandum to Agency Heads, Representatives from the Regulatory and Audit Community, and Research Universities and Institutions” that states project management activities are allowable as direct costs on sponsored programs, effective October 1, 2011.
- 2) OMB and other applicable Federal agencies should work with Research Universities and institutions to implement the proposed changes to Section F.6.b and other related sections of Circular A-21.
- 3) The audit and the F&A rate negotiation communities should be directed by OMB to utilize the proposed changes to section F.6.b and the other related sections of Circular A-21 as the sole basis for determining institutional compliance with the federal costing principles.

Rationale: The current methodology that regulates clerical and administrative charging was developed over two decades ago and was generally focused on “secretarial activities” that supported multiple institutional activities and could not readily be allocated to a specific project. Although these activities continue to exist, the manner in which this reference was written is often interpreted to prohibit the direct charge of other allocable compliance and project administration activities that have grown exponentially over the past twenty years. These project compliance and management related costs, referred to here as “project management activities”, can be specifically identified to individual projects, are allocable to projects based on proportional benefit, and should be allowed as direct charges to the directly benefiting projects.

The 2007 Federal Demonstration Project (FDP) Burden Survey of over 6,000 researchers revealed a critical statistic: specific to the time that faculty committed to Federal research activity, 42 percent of that time was devoted to pre and post-award administrative activities – not to active research. The significant growth of these compliance and project management activities, as demonstrated in the FDP survey, is overwhelming to faculty and negatively impacts their ability to focus on scientific productivity. These project management activities are project-specific and include protocol and compliance support, purchasing activities, recruitment and hiring of staff, travel arrangements, and other activities necessary to project-specific support.

The proposed changes to Circular A-21 (see below) would acknowledge the expansion of these project-specific activities and would result in a significant contribution to the reduction of faculty administrative burden. Further, the proposed changes to Circular A-21 support the direct charging of allocable personnel who would conduct these activities in a much more cost effective manner than the PI, thus freeing up faculty time to conduct specific research activities. There would be a favorable net cost impact on research funding for faculty who now spend significant portions of their time supporting administrative requirements. By funding other personnel to perform project management tasks, sponsors will be paying a lower rate of pay than faculty researchers currently receive, thus leading to cost efficiencies in both science and administration. These changes recognize the nature of research activities in the 21st century and acknowledge that investigators require project management

support to successfully navigate those rules, regulations, and reporting requirements that were not required when Circular A-21 was written.

Proposed Deletions and Additions to Circular A-21:

The goals of the proposed changes are (1) to enhance faculty productivity and reduce the administrative burden on faculty by allowing the direct charging of costs associated with Project Management Activities, (2) to maintain the important accountability standard of treating “like costs” in a consistent manner, (3) to recognize that the criteria and administrative systems used to account for “like costs” are unique to each institution, and consequently, methodologies for recovering F&A costs should not be prescriptive, (4) to eliminate references to specific items of cost and to eliminate terminology that is overly prescriptive, and (5) to make other changes that clarify the allowability and allocability of costs related to project activities.

J.10.a. General.

Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining compliance activities, assurances, and protocols (e.g., humans, animals, substances/chemicals, stem cells, etc.), project specific data and image management and security, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

F.6.a(2)(a) Academic Departments and F.6.a(4).

Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (~~including department heads~~), ~~and other professional personnel conducting research and/or instruction~~, shall be allowed at a rate of 3.6 percent of modified total direct costs.

Federal agencies may authorize reimbursement of additional costs for ~~department heads~~ ~~and~~ faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

F.6.b and Exhibit C. The following guidelines apply to the determination of departmental administrative costs as direct or F&A costs.

F.6.b(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or F&A costs. For example, salaries of technical staff, project management support activities, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs shall be treated as direct cost wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefiting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances.

F.6.b(2) The ~~salaries costs~~ of administrative and clerical ~~staff activities~~ should normally be treated as F&A costs. Direct charging of these costs ~~may be~~ is appropriate where a ~~major project or the activity explicitly budgets for administrative or clerical services and individuals involved~~ can be specifically identified with the project. ~~or activity.~~ "Major project" is defined as a project that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. Some examples are described in Exhibit C.

F.6.b(3) ~~Items such as office supplies, postage, local telephone costs, and memberships shall normally be treated as F&A costs.~~

F.6.b(4) [NEW SECTION] Institutions should follow the accountability standard of treating "like costs" in a consistent manner as defined in the Circular. However, it is recognized that the criteria and administrative systems used to account for "like costs" are unique to each institution. Consequently, methodologies for recovering F&A costs should not be prescriptive.

Exhibit C. Examples of ~~"major project"~~ projects or activities where direct charging of administrative or clerical staff salaries may be appropriate.

Recommendation A3): Reduce Subrecipient Monitoring requirements for those Subrecipients subject to the Single Audit Act (Circular A-133 audit) and to Federal/National Policies Compliance Assurances with the Federal Government.

Proposed Actions:

- 1) For subrecipients subject to A-133 audits require (a) confirmation that the most current audit is posted to the Federal Audit Clearinghouse; (b) certification by subrecipient of compliance with Research Policy Terms and Conditions, Appendix C, National Policy Requirements, as applicable.
- 2) For those policy requirements requiring a separate Federal assurance, e.g., protection of human research subjects, the care and use of animals, etc., the prime awardee will ensure that the subrecipient has the appropriate current assurances or certification on file with the Federal government and has provided verification of necessary approvals as appropriate. There should be no implied requirement for secondary review at the Prime institution for institutions holding approved assurances. For subrecipients that are not subject to the A-133 audit requirements, the prime will follow the risk assessment recommended in the A-133 Compliance Supplement and follow the requirements as prescribed by applicable requirements as appropriate.
- 3) OMB should change Circular A-21, Section G.2 to allow prime awardees to recovery F&A on the first \$25,000 of each subgrant or subcontract for each and every year during the life of the project.
- 4) Federal Agencies should expand the use of linked awards to support multi-institutional projects.

Rationale: Over the past decade, federal agencies have changed the approach used to support collaborative research and research-related programs relying on the designation of a prime awardee to manage the collaborations through subawards. The shift of administrative responsibilities to a single prime has significantly increased the number of subawards issued on these grants and contracts. Currently, prime awardees are required to perform subrecipient monitoring on all entities that will be receiving Federal funds through a subaward mechanism. The guidance provided for this monitoring is distributed throughout various regulations and is inconsistent across agencies and mechanisms. The principal guidance offered by OMB through the A-133 Compliance Supplement focuses on the financial relationship between the prime and subrecipient.

The principal subrecipients for research universities and institutions are organizations subject to the same financial and administrative requirements that the prime is subject to under Federal regulations, including and most notably the A-133 audit. Entities that hold assurances under other Federal programs such as the Federalwide Assurance required by the human subject protection programs, or are subject to inspections or reviews under Federal regulations like the select agents and toxins regulations, report directly to the Federal government.

The expectation for the level of subrecipient monitoring under the A-133 audit is often higher than the monitoring provided by the Federal funding agency. For other Federal regulations, the subrecipients continue to report to and be monitored by the appropriate Federal agency.

The increased use of subawards and the heightened focus on subrecipient monitoring has contributed to the financial burden on research universities and institutions. The cost of administering these subawards has well surpassed the F&A recovered due to the limitation of receiving F&A on only the first \$25,000 of a subaward during a competitive segment. The responsibilities for monitoring the award throughout the life of the grant do not diminish after the first year. On the contrary, those responsibilities for issuing a subaward agreement, maintaining that agreement through the life of the award, reviewing financial and progress/final reports, ensuring compliance with all applicable regulations/policies, communicating with the federal funding agencies, etc., represent real and growing administrative costs that are related to the project. Consequently, the prime awardees of grants with identified subrecipients should recover F&A on the first \$25,000 of each subgrant or subcontract on each year of the award.

Another complementary way to minimize the financial and administrative burden is for federal agencies to return to the practice of directly awarding these funds as linked or collaborative awards which would significantly reduce the subrecipient monitoring burden.

Recommendation A4): Research Communications, Tools, and Similar Equipment (and related supply items) that are necessary for the efficient and effective conduct of research activities and should be allowable as direct charges to Federally-sponsored research, service and educational programs.

Proposed Actions:

- 1) OMB should write a “Memorandum to Agency Heads, Representatives from the Regulatory and Audit Community, and Research Universities and Institutions” that states research communications, tools, and similar equipment (and related supply items) that are necessary for the efficient and effective conduct of research activities are allowable as direct charges to Federally-sponsored research, service and educational programs, effective immediately.
- 2) OMB and other applicable Federal agencies should work with Research Universities and institutions to implement the proposed changes to Section J.18, Equipment and capital expenditures. Proposed changes are shown below.
- 3) The audit community should be directed by OMB to utilize the proposed changes to section J.18 as the sole basis for determining allowability of research communications, tools, and similar equipment (and related supply items).

Rationale: Technology, and how it is used in the conduct of research, has changed dramatically since Circular A-21 was introduced. Despite many changes to the Circular over the past two decades, text specific to current technology, including research communications and similar technologies, has not been updated in the Circular. Research communications equipment/devices and other “research tools” including laptop and desktop computers, printers, video equipment, cell phones, other equipment/devices that facilitate data processing/data transfers/etc. between research colleagues, and other “research tools” are necessary for the efficient and effective conduct of research activities.

The current requirement in Circular A-21, Section J.18, that requires these types of equipment and tools to be treated as “*general purpose*” and specifies them as “*unallowable as direct charges*” (Section J.18.b(1)) ignores the important and direct role they play in research. When research communications equipment/devices and other research tools can be supported as a direct benefit to a federally sponsored program, they should be an allowable charge to the project, subject to cost allocability principles defined in Circular A-21. In the case where the item(s) do not meet the institution’s threshold for capitalization, the same principle should be applied and the item(s) should be an allowable charge to the project.

Implementation of this change will provide faculty and investigators with easier access to the research communications, tools, and similar equipment (and related supply items) that are necessary to conducting their research activities.

Proposed ~~Deletions~~ and Additions to Circular A-21, Section J.18:

a.(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, communications, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, spectrometers, laptop/desktop computers, and other research tools.

a.(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific, communications, or other technical activities. Examples include office equipment and furnishings, modular offices, ~~telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment,~~ and motor vehicles.

b.(7) [NEW SECTION] The same rules of allocability used for "General purpose equipment" and "Special purpose equipment" should be followed for similar items that do not meet the institution's capitalization threshold.

GROUP B
**ENFORCEMENT OF CURRENT RULES WITH
AN EMPHASIS ON CONSISTENCY, FAIRNESS AND SIMPLICITY**

Recommendation B1): The Negotiated F&A Rate should be reimbursed by all Federal funding agencies on all Federally-sponsored research, service and educational programs, unless statutorily prohibited.

Proposed Actions:

- 1) OMB should write a “Memorandum to Agency Heads” that reaffirms the following text from Circular A-21 (and comparable text in Circular A-122 and the Hospital Costing Principles):

Introductory memo to the Heads of Executive Departments and Establishments: The principles are designed to provide that the Federal Government bear its fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law. Agencies are not expected to place additional restrictions on individual items of cost.

Section G.11.b. Acceptance of rates: The negotiated rates shall be accepted by all Federal agencies. Only under special circumstances, when required by law or regulation, may an agency use a rate different from the negotiated rate for a class of sponsored agreements or a single sponsored agreement.

- 2) If an Agency seeks to deviate from Circular A-21, a formal request must be made to OMB and approved by the OMB Controller.
- 3) If a funding announcement includes limitations on the F&A rate, the institution can make a formal petition to the OMB Controller and should receive a response from the OMB Controller at least two weeks before the grant application is due.

Rationale: Research institutions are willing and enthusiastic contributors to the research enterprise and view their financial contributions as essential investments in the educational and research missions. However, when agencies limit F&A rates, they impose a mandatory cost sharing requirement. These practices by Federal funding agencies place research institutions in the difficult position of accepting awards that provide tremendous value to that nation, but are problematic by requiring institutions to subsidize the research beyond those financial contributions that already are being made.

Managing unique F&A rates that do not conform with the negotiated F&A rates for the institution can require manual accounting processes and interventions. Additional management time must be expended to approve the waivers and document the financial impact of the cost sharing burden. And the senior financial management team for the institution must scrutinize the annual institution-wide financial impact and determine other institutional and educational financial resources that can be utilized to cover the cost share burden.

Recommendation B2): Prohibit arbitrary Federal funding agency restrictions on F&A cost recoveries associated with Bulk Purchase, High-Volume, and/or Significant Dollar Transactions. If arbitrary restrictions persist, develop solutions to update Circular A-21 and the definition of “modified total direct cost”.

Proposed Actions:

1) OMB should write a “Memorandum to Agency Heads” that reaffirms the following text from Circular A-21 (and comparable text in Circular A-122 and the Hospital Costing Principles).

Introductory memo to the Heads of Executive Departments and Establishments: *The principles are designed to provide that the Federal Government bear its fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law. Agencies are not expected to place additional restrictions on individual items of cost.*

2) If an Agency seeks to deviate from Circular A-21 by placing additional restrictions, a formal request must be made to OMB and approved by the OMB Controller. In the case of the NIH policy on Genomic Arrays (see reference below), the OMB Controller should require NIH to rescind this policy.

3) If additional restrictions on individual items of cost are approved by the OMB Controller, institutions can petition the OMB Controller to adjust their currently negotiated F&A rates.

4) If arbitrary restrictions persist, a working group including OMB, DCA, ONR, and representatives from Research Universities and institutions should be convened to develop solutions to update Circular A-21 and the definition of “modified total direct”.

Rationale: Examples have been identified in which an agency has required transactions involving procurement of consumables, supplies, and/or services that meet or exceed a certain dollar threshold to be treated and accounted for as a subaward – however, these transactions do not meet the definition of subaward (see *Sub-recipient and vendor determinations*, OMB Circular A-133 [Section §____.210]). In effect, the characterization of the transaction is based on its total cost and not the substance of the relationship itself. Such action thus limits F&A recoveries to only the first \$25,000 of direct cost, versus a vendor purchase in which the full direct cost is subject to F&A recovery. In a similar example, the May 2010 NIH policy on Genomic Arrays [*NOT-OD-10-097, May 13, 2010*] placed limits on the amount of F&A recoveries for a specific supply by citing them as “high-throughput commodity and service.”

In these types of examples, institutions negotiate F&A rates based on rate proposals that include similar significant cost items in their organized research modified total direct cost (MTDC) base, and consequently, are penalized by the reduction of F&A recoveries (see Circular A-21, Section G.2. “*The distribution basis. F&A costs shall be distributed to applicable sponsored agreements ... on the basis of modified total direct costs, consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract ...*”). Arbitrary limits on transaction costs subject to F&A recovery results in inconsistent treatment of similar costs included in the MTDC base and in a financial inequity to the institution.

From a grants administration standpoint, institutions use a wide-variety of accounting systems and the cost of modifying systems to account for these types of artificial restrictions involves significant time, effort and human resources.

F&A rate determination is premised on the “averaging concept” where it is recognized that the actual cost burden across both grants and cost items will vary. The averaging concept is the prescribed Circular A-21 solution – otherwise, an unmanageable number of F&A rates would have to be established. Agency policies that change the definition of MTDC could create a precedent that F&A application to selected grants or cost items can be reduced whenever there is a real or perceived disproportionate administrative burden specific to that grant or cost. Under this logic, other grants or cost items should be assessed higher F&A rates when administrative burden is disproportionately higher.

Recommendation B3): Prohibit Voluntary Committed Cost Sharing on all Federally-sponsored research, service, and educational programs.

Proposed Actions:

- 1) OMB should write a “Memorandum to Agency Heads” that reaffirms the text from OMB Policy Directive on Financial Assistance Program Announcements, June 23, 2003 (Federal Register, Vol. 68, No. 120, p. 37378).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section III.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants...

- 2) If an Agency seeks to deviate from the 2003 Policy Directive, a formal request must be made to OMB and approved by the OMB Controller.

- 3) If a funding announcement includes vague statements or similar statements that “cost sharing is encouraged”, the institution can make a formal petition to the OMB Controller and should receive a response from the OMB Controller at least two weeks before the grant application is due.

- 4) All agencies that fund research activities should adopt the January 2011 NSF policy that prohibits voluntary cost sharing – this would provide important consistency across all research programs and activities. Based on a 2009 recommendation by the National Science Board, the new NSF policy was introduced on page II-17 of the 2011 NSF Grant Proposal Guide (GPG):

Inclusion of voluntary committed cost sharing is prohibited and Line M on the proposal budget will not be available for use by the proposer. In order for NSF, and its reviewers, to assess the scope of a proposed project, all organizational resources necessary for, and available to a project, must be described in the Facilities, Equipment and Other Resources section of the proposal (see GPG Chapter II.C.2.i for further information). NSF Program Officers may not impose or encourage cost sharing unless such requirements are explicitly included in the program solicitation.

- 5) The audit community should be directed by OMB to utilize the following standard when determining if an institutional cost sharing commitment has been made – OMB Circular A-110, Section C.23.(a)(6) specifies that one of the criterion necessary to validate an institutional contribution as cost sharing is: “ ... [the contributions] are provided for in the approved budget when required by the Federal awarding agency.” This is an important standard – when any form of institutional commitment is not included in the approved budget, that contribution should not be considered cost sharing and should not be subject to audit.

6) OMB should update the January 5, 2001 OMB Memorandum (M-01-06), Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Cost. While this memorandum has been effectively implemented since its issuance, the definition of Voluntary Uncommitted Cost Sharing (VUCS) should be clarified to include all expenditures (in addition to faculty and senior researchers), project cost overruns, and other similar uncommitted institutional cost sharing. This update to M-01-06 will provide consistency in the treatment of VUCS and will support the other Recommendations in this letter applicable to cost sharing.

Rationale: Program officials often “encourage” institutions to pledge voluntary cost sharing commitments (including the waiver of F&A costs). This can be done either in a formal program announcement, or off-line, during a negotiation of the award budget. This practice leads to an uneven playing field where those institutions with the most resources have an unfair advantage. Ultimately, this practice results in the draining of institutional resources, an environment of unhealthy gamesmanship, and a devaluation of the peer-based merit review system.

Managing voluntary cost sharing commitments is a manual and time-consuming process that requires onerous cost sharing record-keeping. It often is the subject of audit scrutiny, which requires significant university staff time to manage the audit and respond to auditors. When institutions are compelled to make voluntary cost sharing commitments in order to be “competitive”, this results in the diversion of institutional financial resources away from the educational and public service missions of the institution.

Recommendation B4): Create a Mandatory Cost Sharing Exemption for Research Universities and Institutions.

Proposed Actions:

- 1) OMB should write a “Memorandum to Agency Heads” that prohibits mandatory cost sharing, except in those situations where the requirement is necessary for long-term program success or when it is required by statute. This is consistent with recommendations made in a 2009 National Science Board report, “Investing in the Future: NSF Cost Sharing Policies for a Robust Federal Research Enterprise” (see http://www.nsf.gov/pubs/2009/nsb0920/nsb0920_1.pdf, page 9):

Recommendation 1. NSF should define and communicate, both internally and externally, a set of overarching principles to guide the limited application of mandatory cost sharing in NSF programs. NSF may implement mandatory cost sharing in individual programs where deemed appropriate according to established principles. Mandatory cost sharing should be applied to only a small fraction of NSF programs, and all mandatory cost sharing requirements must be subject to approval by the NSF Director.

Recommendation 2. NSF should continue its current practice of not requiring mandatory cost sharing in unsolicited proposals.

- 2) If an Agency seeks to include mandatory cost sharing as an eligibility requirement for a program, a formal request must be made to OMB and approved by the OMB Controller.
- 3) If a funding announcement includes a mandatory cost sharing requirement that is not well-supported as being necessary for long-term program success (and is not required by statute), the institution can make a formal petition to the OMB Controller and should receive a response from the OMB Controller at least two weeks before the grant application is due.

Rationale: Mandatory cost sharing requirements, while appropriate in selected situations, generally are inappropriate for Federally-sponsored research, service, and educational programs. The National Science Board report (referenced above) encourages mandatory cost sharing requirements only for a small subset of NSF programs – specifically, programs where it has been determined that an institutional commitment is critical to long-term program success, as well as programs built on partnerships with industry and state and local governments.

Programs sponsored by other agencies should be subject to similar scrutiny before mandatory cost sharing can be imposed. For example, the Department of Energy has a long history of requiring a mandatory cost share commitment with its industry partners, and unfortunately, has regularly imposed similar requirements on research institutions. The President’s Council of Advisors on Science and Technology, in a 2010 report, recommended that universities be exempted from cost-sharing requirements. While it may be an appropriate expectation of for-profit industry enterprises, to require the same commitment from university research partners ultimately requires the institution to utilize funds that otherwise would be used to support the educational and public service missions of the institution.

Managing mandatory cost sharing commitments are a manual and time-consuming process that requires onerous cost sharing record-keeping. It often is the subject of audit scrutiny, which requires significant university staff time to manage the audit and respond to auditors. When institutions are required to make mandatory cost sharing commitments, this results in the diversion of institutional financial resources away from the educational and public service missions of the institution.

Recommendation B5): Formalize an F&A Rate Negotiation Model that is transparent, unambiguous, consistent and collaborative between the Federal government and Research Universities and Institutions.

Proposed Actions:

- 1) OMB should write a “Memorandum to Cognizant Agencies and Research Universities and Institutions” that defines the following principles to be utilized in F&A rate negotiations:
 - Establishing F&A rates should be guided by transparent documentation related to a) the proposed F&A rate (as included in the “standard format” of the F&A rate proposal), and b) the potential F&A rate adjustments (provided by the cognizant agency),
 - Rate increases should not be artificially limited,
 - F&A rates should be negotiated within six-months after the submission of the F&A rate proposal,
 - A Central office and/or OMB-designee should be available to resolve exceptional situations – if the Central office cannot settle an unresolved negotiation, an appeals process should be clearly defined and understood by all parties.
- 2) OMB should convene an annual meeting between representatives from DCA, ONR, OMB, other applicable Federal entities, and Research Universities and institutions to review current trends, rate development methodologies, and other issues specific to F&A rate negotiations.

Rationale: There are two federal agencies that have F&A rate-setting responsibilities (i.e., “cognizance”) for colleges and universities: 1) Division of Cost Allocation, Department of Health and Human Services (DCA/HHS), and 2) Office of Naval Research, Department of Defense (ONR/ DOD). There are four regional DCA offices and a single, national ONR office. Each DCA office and the ONR national office approaches the negotiations based on historical practices and the unique culture of each entity. Some research institutions are comfortable with the process of how their rates have been established, while others have been frustrated with a sense of “arbitrariness” in the negotiation phase. One observation is that the ONR model appears to be more predictable and results in establishment of F&A rates that are closer to the F&A rates proposed by the institution. This was articulated in a recent GAO Study (see <http://www.gao.gov/products/GAO-10-937>, page 13):

Across all schools, wide variation was identified in proposed rates, negotiated rates, and in the difference between the proposed and negotiated rates at schools receiving DOD research funding in fiscal year 2007. The difference between the proposed and negotiated rates was significantly larger for schools that negotiate with HHS [DCA] than for those that negotiate with DOD [ONR]. Differing policies and procedures employed by the two cognizant rate-setting agencies, including, for example, different approaches and differing use of rate types, may explain some of this variation.

Many stakeholders from the Federal government and research institutions have recognized a maturity of the F&A rate-setting process. This has been driven by several factors: the “standard format” for proposal submissions (Circular A-21, Exhibit C, Documentation Requirements for F&A Rate Proposals) has resulted in consistent audit trails and documentation; improved guidance from DCA has helped to standardize some aspects of the research space survey; and sophisticated software applications have automated significant portions of the rate calculation. Consequently, F&A rate

proposals are strong in terms of quality and accuracy. This, in turn, continues to enhance the credibility of the F&A rates that are proposed to DCA and ONR.

Institutions utilize significant resources to develop and negotiate their F&A rate proposals. This includes both internal staff time and the use of external resources. Some of the resources expended are attributable to how institutions understand the F&A rate negotiation process to work – i.e., they worry it will be unpredictable and arbitrary. Eliminating these elements of uncertainty should result in a more rational and efficient use of institutional resources when developing and negotiating their F&A rate proposals.

Recommendation B6): The 1.3% Utility Cost Adjustment should be made applicable to each eligible higher education institution that does not currently receive it. Each affected university shall be issued an amended F&A rate agreement, subject to the discretion of the institution with respect to the timing of the amended agreement.

Proposed Actions:

- 1) OMB should write a “Memorandum to Cognizant Agencies and Research Universities and Institutions” that specifies that each eligible higher education institution that does not currently receive the 1.3% UCA shall be issued an amended F&A rate agreement, subject to the discretion of the institution with respect to the timing of the amended agreement.
- 2) Exhibit B. “*Listing of institutions that are eligible for the utility cost adjustment*”, should be deleted from OMB Circular A-21.

Rationale: Research buildings and laboratories are more expensive to operate than instructional buildings and classroom space. Circular A-21 prohibited special utility studies in the 1998 revisions. However, sixty-five institutions were designated as eligible to receive a 1.3% utility cost adjustment (UCA) based on evidence that utility studies were completed at these institutions in prior years. Unfortunately, the 1.3% factor represented an understatement of the real costs of utilities. Even more unfortunate, the criteria for receiving the UCA was arbitrary, and furthermore, was not reassessed in 2002 as required in Circular A-21 (Section F4, states: “*Beginning on July 1, 2002, Federal agencies shall reassess periodically the eligibility of institutions to receive the UCA.*”)

In a recent GAO Study (see <http://www.gao.gov/products/GAO-10-937>), the GAO asked OMB to “[c]larify the roles and responsibilities of federal agencies (including DOD, HHS, and OMB) in accepting applications and reevaluating the eligibility of schools to receive the [UCA] ...” In recognition that the cost of utilities associated with research space is expensive, and furthermore, the fact that an important fairness principle has been ignored, the UCA should be made applicable to all higher education institutions.

Recommendation B7): Modernize and Streamline Documentation Retention Requirements to recognize the efficiencies of electronic records imaging technology, and make consistent the requirements of Grants versus Contracts (i.e., FAR).

Proposed Actions:

- 1) OMB should coordinate the removal of requirements from applicable regulations that apply to universities that require an institution to request advance authorization before substituting electronic records for original (paper) records.
- 2) OMB should coordinate the removal of all requirements from all regulations that apply to universities, including the FAR (4.703), which require retention of paper documents after imaging to permit periodic validation of the imaging system.
- 3) Institutions should be permitted to meet document retention guidelines in any manner they deem reasonable with the understanding that it is their ultimate responsibility to provide backup documentation as required to substantiate all expenditures, proposals, agreements, and related items. This documentation, whether paper or electronic, must be available and legible for the appropriate retention period.

Rationale: Universities are continuing to transition to electronic systems, both for enterprise business processes such as general ledgers, accounts payable/receivable, and procurement system, and also in the last decade, to imaging systems for document retention and workflow. This includes both paper-based systems that are transitioned to electronic systems where a paper document never existed (e.g., recent examples include effort reporting systems and purchasing systems); and scanning paper documents into an imaging system that allows an institution to workflow documents, share documents via corporate systems such as a general ledger, and most importantly maintain/retain the documents in an electronic format so that the original paper documents can be disposed of, as well as the associated file cabinets.

Technology has improved over the recent years so that imaging solutions are full featured and searchable, secured, and add significant value to the business process while often reducing transaction cost. Many institutions have made progress in this area in the procurement cycle and are now considering an expansion of the use of technology, including the entire grant cycle from proposal through closeout. Other opportunities include the travel/reimbursement business process, procurement card, and check request.

OMB Circular A-110, Section C.53.(c) states: “*Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.*” The Office of Grants and Acquisition Management (OGAM), DHHS has identified a process to transition to electronic records, but also cites the FAR requirement (Transmittal No.: OGAM AT 99-1, Date: 8/9/99): [*institutions should*] *be aware that Federal contract documents are subject to FAR 4.703(c)(3), which states, "the contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems."*

For some institutions, even if they have a low volume of contracts in proportion to grants, it is impractical from a business process perspective to determine which source document is related to a federal contract and which isn't. For example, in the case of procurement documents, an institution is

likely required to maintain all paper documents in order to conservatively meet this requirement. At many institutions, this would include documents associated with federal and non-federal sponsors, student and academic programs, and associated health systems because there is no readily available means to separate federal contract documents from others. At some institutions, this would require the filing and retention (including costs associated with clerical staff, office supplies, storage space, file cabinets) of hundreds of thousands of documents even though their contract volume is less than 2% of their institutional spending. OMB coordination of the removal of all out-of-date requirements, including the FAR (4.703), would result in consistency and less burden for research institutions.

Recommendation B8): Delete or Update Sections of OMB Circular A-21, which will result in additional reduction in burden.

Proposed Actions:

- 1) OMB should write a “Memorandum to Cognizant Agencies and Research Universities and Institutions” that summarizes the proposed changes to Circular A-21 and specifies that they are effective immediately.
- 2) OMB and other applicable Federal agencies should work with Research Universities and institutions to formalize the proposed changes into Circular A-21.

Rationale: There are a number of sections in Circular A-21 that could be either eliminated or updated. The Recommendations below would result in no increase in cost to the Federal government and no shift from direct to indirect costs. The reduction in institutional burden will result in cost savings to research institutions. Each proposed change will have a positive impact to the research enterprise, without diminishing institutional accountability.

Proposed Changes to Circular A-21:

- a) **Delete section C.10, C.11, C.12, C.13, and Appendix A. “Cost Accounting Standards.”** These sections and the corresponding standards are redundant and already are duplicated in other sections of Circular A-21, Funding agency guidance and policy statements, and Generally Accepted Accounting Principles (GAAP). Institutions routinely incorporate these standards into their internal policies and practices, and A-133 auditors routinely incorporate detailed reviews of these and related principles into their audit plans. Elimination of these sections and Appendix A from Circular A-21 will not compromise accountability, while simplifying the Circular at the same time.

NOTE: In order for this proposed change to have maximum effectiveness, Research Universities should be exempted from CAS coverage, as applicable to both grants and contracts. OMB should facilitate this exemption with the appropriate Federal entities.

- b) **Delete section C.14 and Appendix B. “Disclosure Statement.”** This section requires that research institutions that received aggregated federally sponsored agreements of \$25 million or more during their most recently completed fiscal year to disclose their cost accounting practices in a Cost Accounting Standards Board Disclosure Statement (DS 2). The DS 2 requirement is burdensome, redundant and results in a zero-value-added administrative task. The cost accounting policies and practices that are described in the DS 2 normally are documented in other institutional systems. Furthermore, A-133 auditors, independent of the DS 2, already incorporate reviews of items covered in the DS 2 into their audit plans. Many institutions that historically have maintained an up-to-date DS 2 have been frustrated by long delays in having their DS 2 approved. For institutions that have not met the \$25 million threshold to-date, they will be required to engage in the time-consuming exercise of completing their first DS 2. Elimination of this section and the Appendix B from Circular A-21 will not compromise accountability, while also eliminating a burdensome compliance requirement.

NOTE: In order for this proposed change to have maximum effectiveness, Research Universities should be exempted from CAS coverage, as applicable to both grants and contracts. OMB should facilitate this exemption with the appropriate Federal entities.

c) **Delete section F.2.c. “Large Research Facilities.”** This section requires institutions to conduct reasonableness reviews of research building construction costs. “Reasonable costs” standards are defined in section C.3 of Circular A-21, so section F.2.c is redundant. Furthermore, institutions take the primary risk when constructing new buildings and are fully-incentivized to ensure all building construction is conducted in the most prudent manner possible. This requirement results in results in a zero-value-added administrative task.

d) **Delete sections J.14.d(1) and (2) “In the use of the depreciation method, the following should be observed”, and replace with new text.** Federal F&A negotiators and institutions often disagree over the useful lives for the various asset classes. Negotiators often ask institutions to justify their useful lives based upon the institution’s actual experience. In practice, most institutions do not maintain that type of information because of the cost involved. Instead, institutions base useful lives used in F&A proposals and financial statements upon industry standards. Requiring an institution to incur costs to justify the useful lives based upon an institution’s own actual experience is unreasonable when acceptable industry standards exist and when those same lives have been used for financial statement purposes. Accepting useful lives used for financial statements would be consistent with the current J.14.d(2) requirement that: “*The depreciation methods used to calculate the depreciation amounts for F&A rate purposes shall be the same methods used by the institution for its financial statements.*”

Consolidation of J.14.d(1) and (2): *Both the period of useful service (useful life) and the depreciation method shall be the same as that used for an institution’s financial statements unless an institution can show evidence that based upon actual experience shorter lives and/or accelerated depreciation methods are more appropriate.*

e) **Delete sections J.14.h, (1), (2), and Exhibit A. “Institutions shall expend ... F&A cost payments ... to acquire or improve research facilities.”** This section and Appendix A are in conflict with the premise of F&A reimbursement: F&A reimbursement is for the recovery of expenditures already incurred, and upon reimbursement, F&A reimbursement is general fund revenue for the institution. Any requirement that mandates the use of F&A reimbursement is inconsistent with standard accounting practices. Institutions incur the primary risk when engaging in new construction and any requirement that mandates how F&A reimbursement should be spent most likely will lead to inefficient and wasteful spending.

f) **Delete section J.26.b(1). “For facilities costing over \$500,000, the institution shall prepare ... a lease-purchase analysis.”** This section requires institutions to conduct a lease-purchase analysis prior to engaging in construction of new research facilities, and suggests that if leasing would have been a more cost-effective decision, interest associated with the construction decision would not be an allowable cost. Normally, leasing would not be cost-effective, so this requirement is superfluous. Even in the rare situation where leasing could be cost-effective, other considerations (e.g., proximity to campus) could make the construction decision more favorable. Institutions take the primary risk when constructing new buildings and are fully-incentivized to ensure all building construction is conducted in the most prudent manner possible and any requirement that distorts the decision-making process most likely will

lead to inefficient and wasteful spending. This requirement results in a zero-value-added administrative task.

g) **Delete section J.26.b(5).** *“For debt arrangements over \$1 million, unless the institution makes an initial equity contribution ... of 25 percent or more, the institution shall reduce claims for interest expense ...”* Institutions take the primary risk when constructing new buildings, regardless of the initial equity contribution. Institutional financing decisions are predicated on the proper balance of debt-financed arrangements and considerable attention is paid to debt-to-equity ratios. Restricting reimbursement in a situation where it is a financially-sound decision to contribute less than 25 percent equity is an unfair limitation. Furthermore, the cash-flow analysis described in section J.26.b(5) is grossly complex and further reinforces the unfair limitation on legitimate interest expense incurred by the institution.

h) **Delete section J.26.c(2).** *“Interest attributable to fully depreciated assets is unallowable.”* In an overly simplified example where a 30-year debt financing agreement was established and the building is fully depreciated and is no longer usable after 25 years, this section would be applicable. However, the simple situation normally is not the case – buildings often exceed their useful life through capitalized renovations and improvements. There are already mechanisms available in the F&A rate-setting process that ensure that interest would not be allowable on buildings that are fully depreciated and are no longer usable. This section of Circular A-21 creates an ambiguity in those situations where the interest should be allowable.

i) **Update section K.1.** *“To assure that expenditures for sponsored agreements are proper ... the annual and/or final fiscal reports ... will include a certification, signed by an authorized official ...”* In recognition that more and more transactions and related certifications are conducted using electronic communications, this section should be updated.

Revised Section K.1: *To assure that expenditures for sponsored agreements are proper ... the annual and/or final fiscal reports ... will include a certification, signed or submitted (electronic or on paper) by an authorized official ...*

j) **Delete section K.2 (a) and (b).** *“Certification of F&A costs.”* These sections are a relic to a different era of F&A cost reimbursement. There are other remedies available to the Federal government if an institution is alleged to have committed fraud. The certification statement in section K.2.b states: *“I declare under penalty of perjury that the foregoing is true and correct”* – this is unfortunate language and diminishes the spirit of the research partnership.

Recommendation B9): Harmonize and coordinate procedures and practices related to implementing the A-133 Single Audit regulations across all Federal agencies.

Proposed Actions:

- 1) OMB should ensure that agencies rely on the audit work performed in the A-133 audit and minimize duplicative audit coverage. In situations where an institution believes that a proposed audit or review is duplicative of work covered in the institution's A-133 audit, the institution should have access to an OMB-managed appeals process.
- 2) OMB should work with the audit community to improve the federal audit clearinghouse process and content so the goal of the A-133 Single Audit can be more efficiently achieved.
- 3) OMB should work with the audit and research communities to explore a process that would allow "exemptions" from selected audits or reviews when the institution has established itself as a long-term, low-risk auditee. This should include establishing clear procedures to require agencies to review the federal audit clearinghouse prior to initiating a new "not-for-cause" audit or review.
- 4) OMB should work with the audit community to explore ways to "protect" subrecipients of federal flow-through dollars from intrusive audits in those cases where the prime recipient (e.g., state or local government) disregards the results of the subrecipient's A-133 audit and engages in unnecessary audit activity.

Rationale: The goal of the Single Audit Act is to provide a consistent set of audit standards, which once met, provide a strong measure of confidence to federal agencies and the organization's management that the organization operates under sufficient internal controls to appropriately administer federal funds. In the current environment, there appears to be no coordination of audit performance or utilization within or across federal agencies. 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. Research universities are unique in that they receive funding from over 25 different federal agencies – lack of coordination of audit activities across agencies leads to unnecessary and repetitive audits at research universities, which are historically low-risk auditees and recipients of high quality audits.

The National Single Audit Sampling Project, conducted under the Audit Committee of the President's Council on Integrity and Efficiency, in a June 2007 report, found that while the number of "acceptable" A-133 reports compared to the total number of reports sampled was only 48.6%, the acceptable audits represented 92.9% of the dollars included in their sample. Further, while there was a significant number of audits that were determined to be "unacceptable", those audits only covered 4.8% of the Federal award dollars in their sample. Based on a stratified sampling technique, the sampling project was able to determine that the audit quality was much more likely to be acceptable for audits of entities receiving and managing large dollar amounts of Federal awards (for their samples, \$50 million or more in Federal awards was considered large). Research universities fall in the cohort of institutions that manage large dollar amounts of Federal awards.

In a recent GAO study, “Federal Grants: Improvements Needed in Oversight and Accountability Processes” (GAO-11-773T), the GAO found that “*the federal oversight structure is not adequate to monitor the efficiency and effectiveness of the single audit process. Specifically, federal agencies do not systematically use audit findings to identify and understand emerging and persistent issues related to grant programs and grantee use of funds.*” Research universities commonly experience the inefficiency of the various federal agency responses, overlapping responses, and non-response to the results of the A-133 audit. Inconsistent federal agency processes for addressing A-133 audit reports results in inefficient and ineffective assessment of awardees and increased administrative burden for the awardees in responding to various agency requirements. A single and coordinated process, which is consistent with the legislative intent of the Single Audit Act, needs to be reemphasized and coordinated by OMB.

Recommendation B10): Eliminate duplicative reporting requirements, such as the Federal Financial Report, when it can be established that an agency maintains the necessary information in its internal systems.

Proposed Actions:

- 1) OMB should survey how each agency manages the Federal Financial Report (FFR) process, and if it is determined that duplicative information already is available in other agency systems, determine if the FFR requirement can be eliminated.
- 2) OMB should convene meetings between representatives from Federal funding agencies, other applicable Federal entities, and Research Universities and institutions to review the status of duplicative federal reporting requirements. The goal of the meetings would be to identify opportunities for streamlining reporting requirements.

Rationale: This situation is best demonstrated in the case of the quarterly submission of the Federal Financial Report (FFR). Some agencies require institutions to make cash requests on an award-by-award basis. When this methodology is required, case payment requests represent the most current financial expenditures associated with the award. At the time of the cash request, the agency has access to the most-up-to-date financial expenditure information for the award. Consequently, much of the information entered onto the quarterly FFR is redundant information, and the time and effort contributed by institution staff to preparing the FFR creates an unnecessary compliance burden.

Recommendation B11): The A-133 Compliance Supplement should be updated, accordingly, for policy changes that are implemented per the Recommendations made in this letter. The appropriate communications should be made to regulatory entities and the audit community that the policy changes represent official Federal policy and any review or audit activity should be conducted in accordance with the new standards.

Proposed Actions:

- 1) OMB should update the A-133 Compliance Supplement, accordingly, to reflect any policy changes that are implemented per the Recommendations made in this letter.
- 2) OMB should communicate to regulatory entities and the audit community that the policy changes represent official Federal policy and any review or audit activity should be conducted in accordance with the new standards.

Rationale: Those policy changes that are made as a result of any Recommendations made in this letter (or made through other recommendations) must be made clear to regulatory entities and the audit community. This will help to ensure that the policy changes have wide acceptance, which will minimize audit risk when institutions implement the policy changes at their institutions.

GROUP C

EXPAND THE SCOPE OF REFORM INITIATIVES TO CAPTURE ADDITIONAL REGULATORY AREAS, WHICH CAN LEAD TO A FURTHER REDUCTION OF BURDEN AND COST

Recommendation C1): Harmonize Regulations & Policies across all Federal Agencies.

Proposed Actions:

- 1) In submitting regulations and/or policies for approval under the Administrative Procedures Act (5USC§553) and consistent with the directive in Executive Order 13563 Sec. 3 to coordinate, simplify and harmonize regulations to minimize the cumulative burden of regulations on the regulated communities, OMB should direct agencies to include an assessment of whether the proposed regulation/policy modifies, improves or repeals a current proposing agency regulation/policy; and whether it duplicates similar regulations/policies of another agency. If it duplicates another agency regulatory/policy requirement, the proposing agency should provide a rationale for proposing the new regulation/policy including efforts made by the agency to harmonize and coordinate the regulations/policies.
- 2) Amend the Federal Acquisition Regulation (FAR) to establish OMB Circular A-110/2CFR215 as the Administrative Requirements for Contracts with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- 3) Federal agencies should avoid duplicative reviews of research protocols that fall under policies/regulations that require federally funded recipients to conduct review and approval of participation in research and research-related activities.

Rationale: Research and research-related activities are funded by over 25 different Federal agencies, each with a unique approach to regulatory and policy implementation. While regulations concerning areas like human subject protections, animal welfare, export controls, select agents, responsible conduct of research, and financial conflicts of interest all serve important public policy goals, unique interpretations and implementations across agencies are difficult to manage, create inefficiencies, and increase costs. Additional challenges occur when rules applicable to grants (established by OMB) are inconsistent with rules applicable to contracts (established under the Federal Acquisition Regulations Councils).

Federal agencies continue to consider and take advantage of opportunities for creating common rules or approaches to regulations and policies including the creation of a single title, Title 2, in the Code of Federal Regulations as the common, central location for Federal government policies on grants and other financial assistance and non-procurement agreements, Government-wide Debarment and Suspension (Chapter I, part 180) and Drug-free Workplace Requirements (Chapter I, part 182). Additional common approaches and procedures have provided opportunities for streamlining the management of federal financial assistance awards including the Federal-wide Research Terms and Conditions.

Nonetheless, actions of some federal agencies undermine the achievement of real harmonization and the application of common approaches. In many of the cases noted above, agencies can add or alter the

common approach to meet statutory requirements or agency-determined program needs. In some cases, additions or changes to the standard require prior OMB review and approval. We have found, however, that changes incorporated during the implementation of a common rule or policy do not necessarily trigger review and can result in incremental burdens that when repeated across the agencies defeats the common approach.

Examples of the accretion of federal agency additions through implementation abound in the design, management and reporting of research activities. The Department of Interior's recent implementation of the Federal Policy on Research Misconduct (December 2000) within its Integrity of Scientific and Scholarly Activities Departmental Manual (Part 305, Chap. 3) added new definitions of misconduct, altered the basis for a finding of misconduct, and undermined the roles and responsibilities of the research organization in managing allegations of misconduct. The Department of Energy added significant and burdensome detailed expenditure reporting requirements for recipients of funds under the America Recovery and Reinvestment Act (ARRA) and attempted to extend monthly reporting across the ARPA-E programs. Department of State Consular offices have expanded the applicability of the USCIS I129 deemed export certification from H1B to include other visa petitioners.

Executive Order 13563 Sec. 3 calls for greater coordination, simplification and harmonization in the regulatory process. It specifically calls for agencies to promote these elements in developing regulatory actions and identifying appropriate regulatory approaches. Departments and agencies should be required to review if and in what manner other agencies are or are proposing to regulate an area in the design and proposed implementation of a new regulation or policy. For example, agencies considering establishing requirements for personnel reliability should be required to assess the current requirements across the Federal government for personnel reliability, background checks, etc., and determine whether additional regulation is necessary. Agencies holding information required by one agency could provide relevant information to another agency seeking to meet a similar requirement. If an entity or individual meets the requirements of one agency, they should not be required to submit similar information to another agency. This coordination at the Federal level will result in significant reductions in burdens and costs.

A significant reduction in burden and simplification for research organizations – specifically institutions of higher education, hospitals and other non-profit organization – could be achieved with modifications in the Federal Acquisition Regulations (FAR) to provide for the application of the administrative requirements incorporated in OMB Circular A-110/2CFR 215 to all contracts to organizations subject to A-110. The FAR currently accommodates separate provisions for research work with educational institutions and non-profit organizations specifically at Part 35, Sec. 35.015. Such provisions addressing the unique characteristics of research and research-related activities and educational and non-profit organizations appear throughout the FAR. The FAR acknowledgement that cost-reimbursement contracts are usually appropriate for such activity further reinforces the approach that such contracts can be managed in manner different from other contracts for the procurement of goods and services.

The application of A-110 in contracts with educational and non-profit organization would have a significant impact on reducing the administrative costs and burdens. We are seeing this burden most recently in the implementation of the Federal Funding Accountability and Transparency Act (FFATA) and the Federal Awardee Performance Integrity and Information System (FAPIS) as required under Section 872 of the Duncan Hunter National Defense Authorization Act for FY 2009. FFATA subawardee reporting is required under grants and contracts. Unfortunately, the definition of “subrecipient” differs under the two implementations. For prime recipients subject to both the FAR and OMB Guidance, we cannot take advantage of more streamlined electronic approaches to the

review of institutional records and the preparation of reports. Because of the differences in meaning – procurement versus making a substantive contribution to the project – institutions must conduct a manual review of each subaward to ensure accurate reporting. Similarly, for the purposes of FAPIIS reporting, the definition of a “covered person” as opposed to a “recipient” under the FAR and A-110, respectively, is sufficiently different to pose a challenge to research organizations in meeting the requirements. Other examples abound. The application of one set of administrative requirements for educational and non-profit organizations (including hospitals) will provide for significant efficiencies in our management of Federal funds.

Another area of significant concern is duplicative regulatory reviews conducted by federal agencies. Many regulations and policies require that recipients report findings and/or actions taken under a regulatory regime. In some cases, the agency will acknowledge receipt of the report; in other cases, the agency will request additional information and/or clarification; and in still other situations, agencies will conduct an entirely separate review of the matter under consideration. These agency reviews generally duplicate the review conducted by the recipient and occasionally produce different determinations than those of the recipient. These conflicting outcomes generally must be resolved before research can begin. The resulting confusion and delays undermine the roles and responsibilities outlined in the regulation/policy and put the recipient at some risk for failing to follow its own policies and procedures.

One rule that has changed significantly through the accumulation of agency-specific requirements and suffers under duplicative conflicting reviews by federal agencies is the protection of human research subjects. The Department of Health and Human Services (HHS) human subject protection regulations at 45 CFR part 46 serve as the basis for all Federal human subjects protection regulations and policies through the implementation of Subpart A as the “Federal Policy for the Protection of Human Research Subjects,” informally known as the “Common Rule.” Some, but not all agencies, have adopted the other Subparts of 45CFR46 providing additional protections for specific subject groups. The Food and Drug Administration, in HHS, has a separate set of regulations that regulate clinical investigations of products under its jurisdiction, such as drugs, biological products, and medical devices. In addition to meeting the basic regulations protecting human subjects, the Health Insurance Portability and Accountability Act of 1996 (HIPAA, recently amended by the Health Information Technology for Economic and Clinical Health Act, HITECH) requires additional reviews and approvals to ensure the privacy of individually identifiable health information in the conduct of research.

We are very pleased to see the Advanced Notice of Proposed Rulemaking issued on July 26, 2011 that addresses enhancing the protection of subjects and reducing burden, delay and ambiguities. COGR will take the opportunity to provide comments to the Office of Science and Technology Policy and HHS. Many of the questions address concerns COGR has raised over a number of years. We are hopeful in this process of review and potential revisions to the Common Rule, as articulated in Subpart A of 45 CFR 46, that agencies take real advantage of harmonizing and coordinating the regulatory approaches.

Unfortunately, we have found that in implementing this Common Rule, agencies have taken strikingly different approaches. For example, research organizations are required to maintain a Federalwide Assurance (FWA) that demonstrates our operational compliance with the current federal regulations. Nonetheless, agencies have inserted additional requirements in their implementation. The Department of Navy has recently expanded the training requirements for administrative personnel despite the standing training requirement that is part of the FWA process. The most time-consuming and redundant procedure is the requirement to submit to the Federal agency a research protocol describing the human subject research component that has already been reviewed and approved by the applicant

institution's IRB for another review and approval by the agency IRB or, in some cases, by the peer review panels established to recommend the funding of research projects. This duplicate review delays awards and creates ambiguities over which entity – the institution or the agency – is finally responsible for the conduct of the human subjects research. Additional unique reporting, training, and operational requirements create a level of confusion and occasional conflict in maintaining compliance with the actual regulation or policy itself. There is nothing common among these approaches.

In surveys conducted intermittently over the past decade by COGR, we have identified a significant increase in the costs to the institutions associated with the conduct of human subjects research. During the period 1995 to 2000, costs related to human subjects protection increased an average of 263% percent; \$362,000 on average in 1995, and \$954,000 in 2000. These FY 2000 costs did not include the costs to develop and conduct training in human subjects protection – a new mandatory requirement in 2000 – estimated at that time by several large universities to be over \$500,000. When we requested similar information for expenditures in FY2002 and FY2003, the increases in costs continued with average increases of more than 40%. In polling a small group of institutions in preparation for this response, large institutions with affiliated academic medical centers reported costs from \$4 million to \$1.2 million for their human subject protection programs in the current year. Smaller institutions without an affiliated medical center reported costs in excess of \$350,000 with the addition of two FTE staff members over the past year.

We are concerned that our efforts and related costs are being unnecessarily duplicated by federal agencies and their respective panels and IRBs. Federal agencies will save time and resources if they stop these duplicative reviews. If we meet the requirements of our FWA, we believe that research protocols for human subjects research need not undergo a full Federal agency review. In like manner, if we hold a current FWA which requires training of various members of the human research participant protection program, we should not have to meet additional unique training requirements.

Recommendation C2): Stabilize the governance structure and funding mechanism of Grants.gov to ensure its continuation as the central grant identification and application portal for federal grant programs.

Proposed Actions:

- 1) Maintain the system independence and integrity of Grants.gov. The proposed consolidation of Grants.gov Find and Federal Business Opportunities should not proceed because it will weaken the efficiencies and effectiveness for the grantee users.
- 2) Stabilize the funding mechanism by providing for a direct appropriation of funds to support Grants.gov.
- 3) Adopt the new Federal Grants Governance Model proposed by Grants.gov to ensure a responsive and focused leadership.
- 4) Continue to fully engage the grantee communities in the development and deployment of the system.

Rationale: As one of the core responses to the Federal Financial Assistance Management Improvement Act of 1999, PL 106-107, the Grants.gov and its Find and Apply tools have become the key mechanisms for streamlining the grant identification and application process. The research community relies on this systems to apply to the over 25 federal agencies that support research and research related activities. The associated activities by OMB and the Grants Policy Committee (GPC) of the Chief Financial Officers Council to build and deploy common Funding Opportunity Announcement data elements and common application and reporting formats including the SF 424 suite of forms, and federal financial, property and invention reporting has resulted in real efficiencies among the grantee community. The leadership of the Department of Health and Human Services as managing partner and home to the Program Management Office has ensured that the particular concerns of the research community have been considered through the systems development and deployment.

The Government Accountability Office's (GAO) May 2011 report on *Additional Action Needed to Address Persistent Governance and Funding Challenges* (GAO-11-478) focuses its recommendations on critical areas to ensure the continued success of Grants.gov. The research community strongly endorses a continuing commitment to the achievement of crucial goals to ensure the success of Grants.gov.

The proposal to merge the Grants.gov Find functionality and the General Services Administration (GSA) Integrated Acquisitions Environment-system Federal Business Opportunities into a combined Federal Opportunities will not serve the interests of the grantee community. GSA's focus on procurement activities drives the structure of the Federal Business Opportunities and we believe that more, unspecialized information will create a level of confusion for potential grantees and result in a significant wasted effort. The continuing failure to stabilize the funding for Grants.gov through a direct appropriation and the structural impediments to ensure timely transfers of funds to HHS under the current fee-based system has weakened the ability of Grants.gov to enhance the capabilities and ensure the continuation of this vital resource. This instability contributes to the persistence of stand-alone application systems in some agencies. These stand-alone systems fail to provide the level of

functionality such as system-to-system submissions and require applicant organizations to maintain multiple strategies to assist applicants.

Research institutions have made significant investments in time and resources to avail themselves of the Grants.gov functionalities. Because of the nature of the research organization's application profile – multiple applications in response to the same FOA – the implementation of System-to-System (S2S) capabilities remains critical to the community and its ability to prepare, review and submit application in a timely manner. S2S provides true efficiencies in the application process and streamlines the relationship. The growing number of S2S submissions demonstrates that investment in electronic capabilities (from 594 in 2006 to 30,194 in 2009).

The grantee community has built business systems and developed policies and procedures to ensure that potential applicants within organizations can “find” and “apply” using the Grants.gov model. These systems will need to be entirely redesigned if the basic approach is altered significantly by the federal government either through significant changes to the systems or integration of the system into a GSA-created process.

The success and stability of Grants.gov depends on clear and aggressive leadership. The failure to implement the proposed new Federal Grants Government Framework developed by the Grants Executive Board (GEB) and GPC and presented to OMB in December 2009 has resulted in a continuing lack of clear leadership. Without greater clarity in the governance of Grants.gov, the Federal government's ability to ensure the stability and ultimate success of Grants.gov will be compromised.

Recommendation C3): Designate a high level official within OMB's Office of Information and Regulatory Affairs to serve as a Federal Ombudsman, responsible for addressing university regulatory concerns and for seeking ways to increase regulatory efficiency.

Proposed Actions:

- 1) OMB should establish the Federal Ombudsman position within the Office of Information and Regulatory Affairs (OIRA).
- 2) OMB should convene an annual meeting between representatives from Federal funding agencies, other applicable Federal entities, and Research Universities and institutions to review regulatory concerns. The goal of the meetings would be to identify opportunities for reducing regulatory burden.

Rationale: This official will be readily accessible to Research Universities and institutions and will be empowered with broad responsibilities to manage and minimize regulatory burdens applicable to research universities and institutions. The Ombudsman would assist in harmonizing and streamlining Federal regulations and also would have responsibility for reviewing specific regulatory "simplification requests." The Ombudsman, along with a designated representative from the White House Office of Science and Technology Policy (OSTP), should lead an interagency group charged with regularly reviewing regulations affecting research universities. The Ombudsman will be a critical point of contact to ensure frequent and effective contact between the federal government and the research university community.

Recommendation C4): Require a Cost of Compliance analysis as a part of the Unfunded Mandates Reform Act requirements for any proposed regulations that will be required of any entity subject to the Single Audit Act. The Congressional Budget Office should estimate the cost impact of proposed legislation on research institutions without regard to annual dollar thresholds.

Proposed Actions:

- 1) As part of the review required under the Unfunded Mandates Reform Act, OMB/OIRA should require an agency to complete a compliance benefits-cost analysis and/or cost-effectiveness analysis and an analysis of the availability of federal funds to help pay for the mandate for any proposed new regulation or policy that will be required of any institution that is subject to the Single Audit Act.
- 2) The Congressional Budget Office (CBO) should include research institutions (entities subject to the A-133 audit under the Single Audit Act) in its estimates of overall impact of any proposed legislation, without regard to an annual dollar threshold in the case of research institutions.
- 3) The development and implementation of the compliance cost analysis elements should be conducted in consultation with representatives of the affected communities including colleges, universities, academic medical centers, independent research institutes and other research-performing organizations.
- 4) Allow research institutions to recover the costs for meeting the federally mandated unfunded compliance costs either through a direct charge or through a research compliance cost pool that would be an addition to the institution's F&A rate.

Rationale: Congress regulates itself and the federal agencies under the Unfunded Mandates Reform Act (UMRA, 2 USC §§1501-1571) which requires Congress and agencies to give special consideration to the costs and regulatory impact of new regulations on state, local and tribal entities and the private sector. UMRA is designed to identify and, ultimately, limit the high and hidden costs of federal mandates for covered entities forced to undertake regulatory activities without federal compensation. Executive Order 13563 calls, in part, for a more “meaningful opportunity to comment” on proposed rules and regulations by the public in general, and by those who would benefit and those potentially subject to the rule, specifically. Adding to the current system, agencies must consider the combined or cumulative effect of their regulations and those of other agencies on the regulated community.

Unlike most federal funding recipients, research organizations – universities, colleges, specialized nonprofit research institutes and academic medical research centers – receive federal funds through the entire range of federal funding mechanisms – grants and cooperative agreements, contracts, task orders, procurement and service agreements. Unlike state, local and tribal governments, these federal dollars generally support individual projects proposed by a single investigator or team of investigators within the applicant organization or in collaboration with other institutions across the country. The number of new and expanded federal compliance requirements has grown significantly since May 1991. With the imposition of the 26% cap on research institutions' recovery of administrative costs,

institutions that are subject to the cap have no choice but to cover these research compliance costs from other institutional funds.

Changes in regulations and/or policies that meet the needs or funding profile of state, local and tribal governments' block grants or large private industry contractors rarely fit the management and funding profile of research institutions. More akin to small business, the burdens of regulations that can be addressed by large complex organizations create a significant burden for research institutions. The UMRA threshold of \$50 million for state or local governments and \$100 million for the private sector rarely will be met by the research community under a single regulation. It is the cumulative costs and burden of regulations issued by different agencies that creates a unique burden for our institutions.

Additionally, the Paperwork Reduction Act (PRA, 44USC§§3501-3521, as amended) requires that virtually all information collections with special provisions for collections proposed as a part of proposed regulations must be reviewed and approved by OMB/OIRA with the goal of minimizing the paperwork burden on the public, including educational institutions. Agency projections of the paperwork burden generally underestimate the burden and do not address the increased costs associated with new reporting requirements.

Congressional review and agency regulatory development should extend the coverage provided under UMRA to research institutions. An agency estimate of compliance and reporting costs as a part of the UMRA and PRA reviews will meet the key goals of the statutes – identifying and, ultimately, limiting the high and hidden costs of federal mandates for covered entities forced to undertake regulatory activities without federal compensation. Lowering the threshold for UMRA review and extending it to all federal regulations and proposed legislation would ensure that Congress and agencies account for the stacking of regulatory burden and cost and force agencies to be more responsive to the additional cost burdens of new requirements. Allowing institutions to recover the costs of compliance either through direct charges or as an additional cost calculated in their F&A rates would help institutions meet the burdens of federal regulations.

Recommendation C5): Through the use of Executive Branch Authority, provide targeted exemptions for Research Universities and Institutions similar to protections provided for small entities under the Regulatory Flexibility Act.

Proposed Actions:

- 1) OMB should issue a clarification that the Regulatory Flexibility Act (RFA) includes research organizations in the meaning of “small organization” [5USC§601 (4)].
- 2) OMB should direct federal agencies to include research organizations in their required RFA §602-612 analysis and rulemaking in a manner similar to the special consideration provided for other small entities including: a separate analysis of impact, identification of significant alternatives, clarification, consolidation and simplification of compliance and reporting requirements, use of performance rather than design standards and any appropriate exemptions under the rule.

Rationale: Congress recognizes the regulatory burden on small entities and requires federal agencies to consider the special needs and concerns of small entities whenever they engage in rulemaking. The Regulatory Flexibility Act (RFA, 5 USC §§601-612, as amended) requires agencies to prepare and publish a regulatory flexibility analysis describing the impact of a proposed rule on small entities.

Executive Order 13563 adds an important emphasis in the review of regulations under the current system on public participation in the rule making process calling for a more “meaningful opportunity to comment” on proposed rules and regulations by the public in general, and those who would benefit and those potentially subject to the rule. Adding to the current system, agencies must consider the combined or cumulative effect of their regulations and those of other agencies on the regulated community.

Unlike most federal funding recipients, research organizations – universities, colleges, specialized nonprofit research institutes and academic medical research centers – receive federal funds through the entire range of federal funding mechanisms – grants and cooperative agreements, contracts, task orders, procurement and service agreements, etc. More akin to small business, the burdens of regulations that can be addressed by large complex organizations create a significant burden for research institutions. For example, the Chemical Facilities Anti-Terrorist Standards (CFATS) capture universities in the same class with chemical manufacturers and industrial agricultural corporations, requiring identical policy and procedure implementation and reporting.

In a similar vein, the Federal Information Security Management Act of 2002 (FISMA), designed to ensure the security of Federal government information resources, requires contractors that “collect, store, process, transmit or use information” on behalf of an agency must meet FISMA requirements commensurate with the risk from unauthorized access, use, etc. Meeting FISMA requirements deter many institutions from participating in projects falling under FISMA because of the enormous costs and administrative burdens. It is in the institution’s best interests to protect the integrity of research data. But the nature of research has changed significantly and more and more data and research materials are collected, stored and shared through various types of electronic information systems. Data security requirements that prevent the free flow of information undermine the basic principle of scientific inquiry. Alternative approaches to meet regulatory goals like CFATS and FISMA will enable research institutions to continue to partner with the Federal government.

The RFA does not preclude the proposed interpretation of separate consideration for research organizations, and thus, the RFA should be clarified to encompass research organizations.

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Letter to A-21 Task Force – Two Pages – July 28, 2011

Attachment – 45 Pages – July 28, 2011