May 14, 2021

Subject: NSF OIG Audit Finding: Application of F&A Cost Rates

Jean Feldman, Head, Policy Office, DIAS
(Submitted via Email)

Dear Ms. Feldman,

The Council on Governmental Relations (COGR) is an association of 190 public and private U.S. research universities and affiliated academic medical centers and research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions. COGR appreciates the trusting and productive relationship between the National Science Foundation and COGR. This relationship has been nurtured over decades, and we look forward to continuing that relationship for decades to come.

Recently, a finding in selected audit reports by the NSF Office of Inspector General, and supported by NSF policy, has raised concerns to NSF grantees and the research community at-large. ***Consequently, COGR is requesting a meeting to discuss the current NSF policy on F&A cost rate application to NSF awards. In the spirit of our positive and longstanding partnership, our hope is to share the university perspective and to better understand the NSF perspective.***

Specifically, the audit finding in question states:

> *According to 2 Code of Federal Regulations (CFR) 220, Appendix A, Section G.7, and to 2 CFR 200, Appendix III, Section C.7, when identifying and computing indirect rates at Institutes of Higher Education (IHEs), NSF must use the negotiated indirect cost rates in effect at the time of the grant award throughout the life of the award.*

Below are additional citations that COGR believes are informative to the issue-at-hand.

---

2 CFR 200.306(a): "Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals.

> **COGR comment:** COGR fully supports this rule and its application to developing a federal research proposal to NSF (and all agencies). This rule is specific to the proposal stage of the grants cycle.

2 CFR FAQs, #132 (released May 3, 2021): Q-132. "Can a Federal agency or pass-through entity allow a non-Federal entity with a negotiated indirect cost rate to voluntarily charge less than or waive their indirect rate to an award? ANSWER: The non-Federal entity should consult with the Federal agency or pass-through entity. ***If a non-Federal entity receiving a Federal award or subaward voluntarily chooses to waive indirect costs or charge less than the negotiated indirect cost rate, Federal awarding agencies and pass-through entities may allow this {emphasis added}.*** The decision must be made solely by the non-Federal entity that is eligible for indirect cost rate reimbursement, and must not be encouraged or coerced in any way by the Federal awarding agency or pass-through entity."

> **COGR comment:** Our understanding is that FAQ #132 allows institutions to charge a less than negotiated F&A cost rate.

OMB Memorandum M-01-06 (also see OMB Memoranda webpage), Voluntary Uncommitted Cost Sharing (VUCS): "Most faculty organized research effort is either charged directly to the sponsor, or is considered mandatory or voluntary committed cost sharing (i.e., cost sharing specifically pledged in the proposal's budget or award) on the part of the recipient. Both mandatory and voluntary committed cost sharing are consistent with the terms and conditions of a sponsored agreement and captured in the accounting system. ***Voluntary uncommitted cost sharing effort, on the other hand, is faculty-donated additional time above that agreed to as part of the award {emphasis added}***."

> **COGR comment:** COGR fully supports this longstanding and important OMB Memorandum. While the primary focus of M-01-06 is the applicability of VUCS to faculty effort, waiving a portion of F&A at the post-award stage presents a similar opportunity for research institutions to voluntarily contribute direct costs to the project without negative repercussions. When aligned with institutional policy, waiving a portion of F&A can benefit the PI and can be necessary to make the PI whole in certain situations ***(see Practical Considerations below)***. If after the issuance of an award, VUCS is determined to be appropriate, this should be determined by institutional policy and the relevant PI considerations.

2 CFR 200, Appendix III., C.7.(a): "Except as provided in paragraph (c)(1) of §200.414, Federal agencies must use the negotiated rates in effect at the time of the initial award throughout the life of the Federal award."

> **COGR comment:** While this rule is the basis for the NSF OIG finding, our understanding is that FAQ #132 (see above) provides the necessary flexibility to address the important practical considerations shown below.

Practical Considerations: Institutions are diligent around policies that protect the PI and the direct costs budgeted by the PI in the proposal stage. From a university perspective, and we believe an NSF perspective, it is crucial that a PI not be asked to reduce the direct cost budget, which they initially determined was crucial to the science.

For example, if a PI (with federal awards) transfers to a new institution, and the new institution has a higher F&A cost rate, the institution should have the option to honor the lower rate from the previous institution. Conversely, if the new institution has a lower rate than the previous institution, the lower rate remains applicable. While institutional policy may vary, a policy that protects the PI by not reducing the direct cost budget should be available to the institution without risk of an audit finding.

Further, in the scenario where a PI proposes an original (lower) F&A cost rate to NSF, and at the time of the award, a new (higher) F&A cost rate has been negotiated, the institution should have the option to honor the lower rate. ***If this option is not available, the PI will be required to reduce their direct cost budget.*** Conversely, if the PI proposes an original (higher) F&A cost rate to NSF, and at the time of the award, a new (lower) F&A cost rate has been negotiated, the institution should have the option to use the new (lower) F&A cost rate. Again, while institutional policy may vary, a policy that protects the PI by not reducing the direct cost budget should be available to the institution without risk of an audit finding.

Thank you for the opportunity to describe our concerns. We look forward to engaging with you to continue this important discussion. Please contact David Kennedy at dkennedy@cogr.edu if you have further questions.

Sincerely,

Wendy D Streitz

Wendy D. Streitz
President

Cc: Dale Bell, Division Director, DIAS
Alex Wynnyk, Deputy Division Director, DIAS
Rochelle Ray, Branch Chief, DIAS

Teresa Grancorvitz, Chief Financial Officer and Head, BFA
Janis Coughlin-Piester, Deputy Office Head, BFA

Victoria Collin, Branch Chief, OMB
Gilbert Tran, OMB