



March 13, 2023

Mr. Steven Mackey
Policy Analyst
Office of Federal Financial Management at the OMB
Washington, DC 20006

Re: *COGR Response to Federal Register Notice, 88 FR 8480*
2 CFR Chapter 1, Parts 25, 170, 175, 176, 180, 182, and 183
2 CFR Chapter 2, Part 200

Submitted Electronically to:

<https://www.federalregister.gov/documents/2023/02/09/2023-02158/omb-request-for-information-rfi>

Enclosed: Cover Letter (pages 1-2)
COGR Response (pages 3-8) – Six pages total, < 2,500 words

Dear Mr. Mackey,

We are writing in response to the Federal Register Notice (Document Citation: 88 FR 8840), dated February 9, 2023 – [OMB Request for Information](#). We appreciate your consideration of the comments enclosed in this letter.

The Council on Governmental Relations (COGR) is an association of over 200 public and private U.S. research universities and affiliated academic medical centers and research institutes. We are a leading voice on the impact of federal regulations, policies, and practices on the performance of research conducted at our member institutions—and when appropriate, we advocate for reducing administrative burden associated with federal regulation.

Our responses reflect the perspective of institutions of higher education (IHEs) and other research institutions conducting federally sponsored research. At the same time, we recognize OMB will consider responses from other types of grantees. While COGR cannot write on behalf of other types of grantees, we hope that our comments in this letter benefit the broad and diverse grantee community, as well as the federal agencies that administer federal research programs.

Our responses are meant to provide OMB with a broad range of ideas and suggestions that will improve 2 CFR Parts 25, 170, and 200 and, at the same time, help OMB to achieve important goals of ***reducing administrative burden across the grantee community, enhancing clarity, and working toward equity and fairness across all stakeholders***. Our understanding is that OMB is interested in a collaborative approach, and we are hopeful that we will have opportunities to work with you as you set upon the task of drafting proposed revisions to 2 CFR Parts 25, 170, and 200. We are available to provide additional clarification, detail, and/or data upon your request.

Our comments are included in the attachment to this letter and comply with the seven page / 2,500-word limit. Thank you for the opportunity to comment on this Request for Information. Please contact David Kennedy at dkennedy@cogr.edu or Krystal Toups at ktoups@cogr.edu if you have questions.

Sincerely,

A handwritten signature in blue ink that reads "Wendy D. Streit". The signature is written in a cursive style with a large, looped 'S' at the end.

Wendy D. Streit
President

COGR Responses
OMB Request for Information – Document Citation: 88 FR 8840

I. High Priority Items (ordered by 2 CFR 200 section number)

200.107 OMB Responsibilities. One purpose of 200.107 is to reinforce the principle that new agency policy and changes to policy be available for public comment—*in compliance with the Administrative Procedures Act (APA)*. COGR has documented many situations where rather than issuing a Notice of Public Rulemaking (NPRM), agencies implement “policy by guidance” and/or “policy by FAQ.” Consequently, grantees have limited opportunity to provide comments and input to the policymaking process.

COGR RECOMMENDATION: Strengthen 2 CFR 200.107 to compel agencies’ compliance with the APA and provide remedies for grantees when agencies don’t comply.

200.112 Conflict of Interest (COI). *This section has caused confusion since 2014.* In fact, agency policies around researcher conflict of interest are being regularly created/updated by federal agencies in compliance with NSPM-33, which is the more appropriate mechanism for researcher COI to be addressed.

COGR RECOMMENDATION: Delete 200.112 and [OMB FAQs](#) Q-18 and Q-19. If needed, address COI specific to procurement actions in 200.317-327 (Procurement Standards).

200.306(k) Voluntary Uncommitted Cost Sharing (VUCS). This section references [OMB Memorandum M-01-06](#), which exempts VUCS from treatment as cost sharing and other reporting requirements. By creating additional resources for science, *M-01-06 has been beneficial to both research institutions and the federal government for over two decades.*

COGR RECOMMENDATION: Rather than reference the OMB Memoranda, sections 200.306(k) and 200.1 (Definitions) should be updated as follows: *VUCS is the voluntary contribution of an institution’s resources—not specifically pledged as a commitment of cost share in the proposal budget/justification—which advances the aims of the federal research award. VUCS does not need to be accounted for or reported on, and further, is not subject to audit.*

200.333 Fixed amount subawards. This section permits fixed amount subawards to be issued, with prior written approval, when the subaward meets the requirements in 200.201—*improving this section will enhance the ability of IHEs to effectively use fixed amount subawards.*

COGR RECOMMENDATION: Eliminate the prior written approval requirement, and rely instead on agencies’ existing policies for approving subawards. Additionally, eliminate the simple acquisition threshold and incorporate OMB FAQs Q-35 and Q-36, accordingly.

200.340 Termination. COGR expressed concern in 2020 that eliminating “for cause” in (a)(2) creates an inappropriate and arbitrary mechanism for award termination.

COGR RECOMMENDATION: Replace the phrase “...to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities” with the phrase “for cause.” Also, provide grantees an opportunity to appeal and cure concerns, and if an award is terminated, provide 180-day notice.

200.403(h) Factors affecting allowability of costs. Publication and printing costs (2 CFR 200.461) and data management and sharing costs ([NIH Policy, NOT-OD-21-015](#)) are two examples of allowable costs that may be incurred after project closeout—and as science evolves, the list will grow. Alternative accounting methodologies are required to recognize these costs as allowable and chargeable to federal awards.

COGR RECOMMENDATION: Define criteria for the class of costs that typically occur after project closeout. Allow costs meeting the criteria to be prepaid, charged after the project closeout via a supplement, and/or charged through an allowable, alternative methodology.

200.419 Cost accounting standards and disclosure statement. COGR regularly has raised concerns about the administrative burden associated with the disclosure statement (DS-2) process. [A COGR survey from 2014](#) and a new survey we are compiling confirms the DS-2 is not used by the audit or oversight community. Furthermore, IHEs are the only type of grantee subject to this requirement. All policies included in the DS-2 are available in official institutional policy documents, making the DS-2 redundant. Also, the DS-2 still refers to OMB Circular A-21, not 2 CFR 200. Finally, Cost Allocation Services—the federal entity responsible for reviewing and approving the DS-2—does not have adequate resources to review and approve revised DS-2s in a timely manner.

COGR RECOMMENDATION: Eliminate the DS-2 requirement for IHEs and delete OMB FAQs 16 and 17. Further, work with FAR representatives to modify/coordinate DS-2 expectations (as described in 48 CFR Chapter 99 Subchapter B 9903.202-1) when an institution receives a CAS-covered contract.

Part 200 Appendix III. B.4.a. Operations and Maintenance. This section defines examples of operations and maintenance (i.e., facilities) costs typically incurred by IHEs. The examples are not exhaustive, but several important examples are excluded, including all forms of data transmission, related network infrastructure, management of the data, research computing, research security, and other information technologies. In the two decades since this section was written, operating and maintaining a telecommunications enterprise has effectively become a new institutional activity more closely associated with a facilities/utilities function than an administrative function.

COGR RECOMMENDATION: Include the examples listed in the definition of operations and maintenance, and institutions that previously recovered these costs as “administrative” should now be directed to recover them as “facilities” costs.

Part 200 Appendix III. B.4.c. Utility Cost Adjustment (UCA). COGR has raised concerns about the UCA (limited to 1.3%) since it was codified in 2014. OMB is required to update the research square footage weighting factor, which is then used to determine the UCA, “no more than annually nor less than every 5 years.” [In November 2015, COGR shared a letter with OMB](#) that showed **the “relative energy utility index,” or REUI (used to weight research square footage to calculate the UCA), of 2.0 was grossly flawed and that an REUI of 4.2 would be more accurate.**

COGR RECOMMENDATION: Permit institutions to elect a default UCA of 1.3%, thus reducing administrative burden both for grantees and the federal government. Alternatively, IHEs can use a more accurate REUI (e.g., 4.2), which would allow them to calculate a UCA that exceeds 1.3%.

Part 200 Appendix III. C.6. Provisional and Final Rates for Indirect (F&A) Costs. COGR has raised concerns about significant delays in issuing F&A cost (and fringe benefit) rate agreements in a timely manner. A recent COGR survey demonstrates the challenges with this situation and **grantees need to have recourse when rate agreements are not issued in a timely manner.**

COGR RECOMMENDATION: Provide remedies for grantees when rate agreements are not issue in a timely manner. For example, a default “provisional” rate puts the institution at audit risk. When the cognizant agency cannot respond in a timely manner, the existing rate should be extended as a “predetermined rate.”

Part 200 Appendix III. C.8. Limitation on Reimbursement of Administrative Costs. This section was added to OMB Circular A-21 in 1991 and carried into 2 CFR Part 200 in 2014. **The dramatic and persistent expansion of research regulations accentuates this restriction’s inequitable effect. IHEs are the only type of grantee subject to the limitation.** Federal regulations impose *no* limitation on any other type of grantee, including private industry, which also charges a profit factor. COGR has documented both the [regulatory expansion since 1991](#) and the ever-increasing cost of compliance through numerous studies and analyses (e.g., [research security](#), data management and sharing, harassment reporting). It is typical for a research institution to have incurred over \$1 million of new and recurring research compliance costs over the past three years—**and in the case of smaller and emerging research institutions, the impact of the limitation may discourage them from participating in the federal research ecosystem.**

COGR RECOMMENDATION: OMB should consider solutions that will promote fairness across all stakeholders. In April 2019, COGR published [Excellence in Research](#)—describing how the F&A cost reimbursement system works. Chapter 9 shows alternative methodologies for F&A cost reimbursement, including a section on how an “uncapped compliance cost pool” could be an effective solution. While the most equitable solution is to eliminate the administrative limitation for IHEs, an uncapped compliance cost pool would allow institutions to recover federally mandated compliance costs—also resulting in the federal government contributing its “fair share.” Many good ideas and data-driven analyses have been raised over the past decade, and we encourage OMB to implement solutions that will benefit all stakeholders.

II. Codification of Frequently Asked Questions (FAQs)

COGR recommends the following FAQs, published [May 3, 2021, on the U.S. Chief Financial Officers \(CFO\) website](#) be codified into 2 CFR Part 200.

200.1 Equipment. Clarify the definition in conjunction with Q-81 to address the treatment of software, as follows: “*Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000. Software should be treated either as equipment or as an expense in accordance with institutional policies and Generally Accepted Accounting Principles (GAAP).*”

200.303 Internal controls. The text from Q-67 should be codified: “*While non-Federal entities must have effective internal controls, there is no expectation or requirement that the non-Federal entity document or evaluate internal controls prescriptively ...*”

200.320(c)(2) Noncompetitive procurement. Scientific equipment often is available from only a single source. Q-88 recognizes this. Codification will ease administrative burden and benefit scientists doing the research.

200.332(a)(4)(ii) Acceptance of F&A Cost Rate by Pass-through Entity. Incorporating text from Q-119, Q-133, Q-134, and Q-135 will strengthen this section.

200.400(g) Profit. This section, in conjunction with Q-96, should be clarified to indicate that any residual unexpended balance that remains at the end of a completed fixed amount award is not “profit” and, therefore, can be retained.

Part 200 Appendix XI. Compliance Supplement. The FAQs for 2 CFR Part 200 are included, by reference, in the annual Compliance Supplement. In addition, the primary page for accessing 2 CFR Part 200 is at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>. A reference to the FAQs for 2 CFR Part 200 should be included on this page.

III. Other Items (ordered by 2 CFR 200 section number)

While we have not included the following in part I. High Priority Items, these items are “low-risk, high-reward” revisions that will benefit all stakeholders.

200.1 Definitions. As a legal instrument of financial assistance between a federal awarding agency and a recipient, Other Transaction Authority (OTA) should be defined in 2 CFR 200.1 and criteria established for when/how an OTA can and cannot be used by agencies (i.e., for cases when standard legal instruments are not adequate).

200.106 Agency Implementation. 2 CFR 200 provides a baseline for harmonization of grant administration across all agencies. It will be helpful to leverage 2 CFR 200 by including additional language in this section stating: *“federal agencies, in coordination with OMB, are encouraged to seek harmonization across IT systems, reporting, and policy implementation.”* Similar text should be incorporated into 2 CFR Parts 25 and 170 so that any implementation of new data elements, identifiers, reporting requirements, or other related actions are assessed for the impact on administrative burden in comparison to the value of any benefits to be received.

200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts. Fixed amount awards that require mandatory cost sharing, per (b)(2), should be permitted. Additionally, the requirement in (b)(3) to certify in writing that the activity was completed or the level of effort was expended (and the requirement to reduce the award amount if the required effort varied) should be eliminated.

200.305(b) Federal payments. New language proposed in the 2023 Compliance Supplement should be aligned with this section of 2 CFR 200 (i.e., *when using the cost reimbursement methodology, request for reimbursement is allowable when the cost has been incurred and allocated to the federal award*).

200.308(e)(3) Carry forward of unobligated balances. Some agencies do not fully exercise the provisions allotted by (e)(3) to *“carry forward unobligated balances to subsequent budget periods.”* The text should be strengthened to encourage use of this provision, which significantly reduces administrative burden.

200.330(a)(1)(v) Micro-purchases. In some cases, the cognizant agency for F&A costs has indicated they are not the entity to approve requests for a higher threshold. This section should be clarified to state which federal entity/entities are responsible.

200.406(a) Applicable credits. Applicable credits must be applied to federal awards when the credit can be *“directly assigned to such activities relatively easily with a high degree of accuracy”* (2 CFR 200.413(a)). However, when this is not the case (e.g., procurement card rebates), it should be made clear that there is no expectation to directly apply credits to federal awards.

200.413(a) Unlike Circumstances. *“Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs”* is a recognized and important accounting principle. Additional text that acknowledges the reverse scenario would be helpful—*“In unlike circumstances a cost can be treated as either direct or indirect (F&A) costs.”*

200.414(c) Federal Agency Acceptance of Negotiated Indirect Cost Rates. Some agencies still follow the practice of issuing unilateral F&A cost rates. Most recently, the Cooperative Ecosystem Studies Units (CESU) Network, without OMB approval, imposed an F&A cost rate cap of 17.5 percent. It should be made clear that OMB is the designated point of contact to remedy these situations.

200.414(f) De minimis F&A cost rate. The *de minimis* rate of 10% is well below the actual F&A cost rate for IHEs. Appendix III, section C.9.a, references a default allowance of “24% of modified total direct costs” to recover administrative costs—as such, a *de minimis* rate of 24% would be more appropriate than the current *de minimis* rate of 10%.

500.513 - Responsibilities (Federal Agencies). OMB is responsible for publishing the annual Compliance Supplement, which provides guidance for conducting the single audit. Often, the guidance is subject to interpretation that creates disagreements between the auditor and auditee. It is in the interest of all stakeholders to strike the proper balance between audit risk and audit burden, and when there are disagreements in interpretation, OMB should be designated as the point of contact to resolve the differences.

Part 200 Appendix III.A.1. - Major Functions of an Institution. Rename this header (note: header only) to read “Major Functions/Activities of an Institution.”

Part 200 Appendix III.C.2. - Distribution Basis. The definition of modified total direct cost (MTDC) requires changes to address inequities. First, inclusion in MTDC of the “*first \$25,000*” of a subaward should be updated to at least the “*first \$50,000.*” Second, subrecipient monitoring burden continues to grow—and this is an annual burden, *not* a one-time burden (also see FAQ Q-117), justifying a change to the “*first \$50,000 per budget period.*” Third, new cost elements, such as cloud computing, may create distortions to the MTDC base, and should be recognized.

Part 200 Appendix III.D.1.a. Simplified Method for Small Institutions. The threshold for completing a “Simplified” F&A cost rate proposal should be increased from \$10 million to \$50 million.

NOTE: [COGR provided a detailed response—March 23, 2020](#)—to OMB’s proposed revisions to 2 CFR 25, 170, 183, and 200 (Docket Number OMB–2019–0005, Federal Register/ Vol. 85, 3766-3809/ Wednesday, January 22, 2020). Many of COGR’s responses are still applicable, and we are happy to provide additional detail upon request.