July 21, 2023

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

Re: *2 CFR Chapter 2, Part 200 – Data-Driven Evidence Supporting Important Revisions*

Dear Mr. Mackey,

Thank you for the invitation to provide data-driven evidence to support modifications to 2 CFR Chapter 2, Part 200 (2 CFR 200) of the Uniform Guidance (UG) affecting federal research awards. As you work to update and revise the UG, we offer analyses related to three priorities of research institutions: 1) Eliminate the Disclosure Statement (DS-2), 2) Recognize Fair Reimbursement for the 21st Century Library, and 3) Timely Establishment of F&A (and Fringe Benefit) Cost Rates.

COGR is an association of over 200 public and private U.S. research universities and affiliated academic medical centers and research institutes. Our membership is diverse and includes the largest research performers in the nation, as well as smaller and emerging research institutions. We focus on the impact of federal regulations, policies, and practices on the performance of research conducted at our member institutions and advocates for sound, efficient, and effective regulation that safeguards research and minimizes administrative and cost burdens. COGR's member institutions understand the importance of being good stewards of federal research funds, and they work diligently to ensure full transparency and accountability as to how they use these funds in accordance with the UG and other federal policies.

Over the past year, COGR has engaged its membership in three studies: *Cost of Compliance – NSPM-33 Disclosure Requirements*, *Cost of Compliance – NIH Data Management and Sharing*, and the *2023 Survey of F&A Cost Rates* (final report to be released later this year). Results of these studies support the need for revisions to 2 CFR 200 that: 1) reduce administrative burden, 2) enhance clarity, 3) encourage the highest standards of stewardship of federal funds, and 4) promote fairness and equity across all stakeholders. Below is COGR's analysis on the three topical areas.

1. ELIMINATE THE DISCLOSURE STATEMENT (DS-2)

The DS-2 is an archaic and outdated document, which still references OMB Circular A-21. It is not used as regular tool by the audit or oversight community to enhance compliance or oversight. This finding is based on the following survey question from COGR's 2023 Survey of F&A Cost Rates: *Has your DS-2 been requested to be reviewed by an auditor, federal official, cognizant agency, or any other entity within the past five years?*

Has your DS-2 been requested to be reviewed by an auditor, federal official, cognizant agency, or any other entity within the past five years?

Total Responses:	97	
"No" (other than cognizant agency requirement)	72	(74.2%)
"Qualified"(external/single auditor check-box)	17	(17.5%)
"Yes" (awarding agency, federal auditor, other)	8	(8.3%)

Almost three-fourths (74.2%) of the survey respondents indicated that other than providing the DS-2 to their cognizant agency (i.e., CAS-HHS, ONR) in the regular course of business, their DS-2 has not been requested by a federal funding agency, audit agency, or any other oversight agency. In addition, 17.5% of the survey respondents provided a qualified response by indicating that their external auditors requested the DS-2 be provided as a "check-box" requirement—not integral to the single audit. ***Consequently, survey responses from over 90 percent of the respondents support the finding that the DS-2 is not an actively used document and can be eliminated.***[1]

Over the past decade, COGR has regularly advocated: 1) the DS-2 adds no value to government oversight, 2) information contained in the DS-2 is readily available in numerous policy portals at research universities, and 3) the DS-2 creates unnecessary administrative and cost burden to research universities as well as to the agencies required to keep them on file. As COGR responded in its March 13, 2023 letter to OMB (page 4), we recommend that OMB eliminate the DS-2 requirement for IHEs and delete OMB FAQs 16 and 17. Further, OMB should work with FAR representatives to modify and coordinate DS-2 expectations (as described in 48 CFR Chapter 99 Subchapter B 9903.202-1) when an institution receives a CAS-covered contract.

2. RECOGNIZE FAIR REIMBURSEMENT FOR THE 21ST CENTURY LIBRARY

The role of the research library has dramatically transformed with the technological and cultural changes over the past several decades. The evolution is witnessed in the movement from physical/printed data to digital data in multiple medias. Research libraries carry significant responsibilities for research data management in addition to other research compliance activities. Recent research from the Association of Research Libraries (ARL) shows libraries as key partners in institutions of higher education in supporting the research enterprise, as some libraries offer services supporting upwards of two dozen activities to enable compliance for data management and sharing.[2] The reality of today's research library should align with new and expanding federal compliance mandates associated with technical and scientific advancements and the new capabilities that are now available.

[1] In less than 10% of the responses, the DS-2 was requested by an awarding agency, federal auditor, or for some other purpose. Even in these cases, the information provided in the DS-2 is readily available through other official institutional policy documents at the institution.

[2] See Association of Research Libraires (ARL) and the Realities of Academic Data Sharing (RADS) Initiative Research Update #3, https://www.arl.org/blog/realities-of-academic-data-sharing-rads-initiative-research-update-3

COGR's *Cost of Compliance – NIH Data Management and Sharing* report described both the changing role of the library and the subsequent cost of compliance. Indeed, the cost of compliance is a major concern:

> *For mid-size to large research institutions, the annual projected cost impact is expected to exceed $500,000 at the central administrative level, while also exceeding $500,000 at the academic level—**a total impact that exceeds $1 million per institution.** Cost impact is measured both by new expenditures and reallocation of effort away from an individual's current responsibilities. In the case of Researchers and Investigators, this results in a shift away from conducting science in the lab toward tasks that might be considered more administrative in nature. For smaller and emerging research institutions, the cost impact also is expected to be significant, and for these institutions, the disproportionate negative impact may discourage their participation in the federal research ecosystem.*

A significant portion of data management and sharing costs will be incurred within the campus library system.[3] However, under the current language in 2 CFR Part 200, Appendix III, B.8, these costs cannot be recovered at a fair reimbursement level. In fact, the current language in B.8 has its roots going back to 1958 when OMB Circular A-21 was first published and has little bearing on how libraries operate in 2023.[4].

COGR has worked in close collaboration with the Association of Research Libraries over the past year, and in the course of our work, we have identified some of the characteristics applicable to today's library that support how crucial libraries are within the research enterprise:

- Services and infrastructure support every stage of the research lifecycle, including: consulting on data-use agreements, supporting intellectual property and copyright considerations, managing active data, and providing data curation and preservation.
- Deep investments have been made in geospatial research services, statistical consulting, computational research, and other modes of cutting-edge research.
- Online Journals are predominant and are critical to the research function of the institution.
- Remote use of library resources is now commonplace, especially after the COVID pandemic.
- Regular support for interdisciplinary collaboration and access to research technologies.
- Major support of research data management and sharing activities, which includes significant research compliance activities.

We believe it is timely to address library expenses in the current revisions to 2 CFR 200 in light of: 1) new library responsibilities resulting from the 2013 Office of Science and Technology Policy

[3] The new NIH Data Management and Sharing (DMS) policy (implemented January 2023) allows DMS costs that are directly attributable to the award to be direct charged to the award. To the extent library costs could be included as a direct charge, institutions must comply with 2 CFR 200.413(a)—*Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs*.

[4] Other sections in Appendix III are grossly outdated. However, COGR's perspective is that with the new NIH policy on Data Management and Sharing, it is timely to address the library in the current revisions to 2 CFR 200.

(OSTP) Holdren memo[5], 2) the new NIH policy on Data Management and Sharing, and 3) upcoming policies stemming from the 2022 OSTP Nelson memo on Public Access. While we understand the revisions to 2 CFR 200 now under consideration will not focus on Appendix III, we urge OMB to make a timely exception and revise the language in section B.8 pertaining to *library expenses.* ***Until Appendix III is addressed in detail at a later date, we recommend Appendix III.B.8 be amended now to read as follows*** (updates shown in yellow highlight below):

> 8. Library Expenses
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> a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under §200.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. In addition, research data and management sharing, information technology, research compliance, and other costs specific to supporting the research infrastructure of the institution are allowable. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.
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> b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category should be allocated to serviced or benefitted academic functions (e.g., Instruction, Research, Other Sponsored Activity) on the basis of modified total salary costs.
>
> c. Alternatively, the expenses included in this category first should be allocated on the primary categories of users and second to the applicable functions associated with each category of users.

This recommendation for updating the treatment of the library in Appendix III will provide for fairer reimbursement of library costs to research institutions, while also reducing the administrative burden associated with both developing the F&A cost rate proposal and negotiating F&A cost rates.

3. TIMING FOR ESTABLISHING F&A COST RATES

COGR's 2023 Survey of F&A Cost Rates addresses the concern that F&A cost rates (and fringe benefit rates) are not being established in a timely manner. Respondents were asked: *What is your F&A cost rate negotiation status?* Responses indicated one of two scenarios: either "*all is good*" or "*we are concerned*." Most institutions responded "*all is good*" (89.9%), though it should be noted many of these institutions had either recently established their F&A cost rates or were in the middle of a cost rate agreement and concerns about timeliness were not applicable.

[5] See the Association of Research Libraries (ARL) Realities of Academic Data Sharing Initiative for research on library services, expenditures and investments made since the implementation of the 2013 Holdren Memo. https://www.arl.org/realities-of-academic-data-sharing-rads-initiative/

The "*we are concerned*" response was common among institutions that had submitted an F&A cost rate proposal within the past year—**and in some cases, more than two years ago.** In several of these situations, new F&A cost rates had not yet been established, thereby requiring institutions to establish provisional F&A cost rates. Results are shown below.

What is your F&A rate negotiation status?

Total Responses	119	
"We are concerned"	12	(10.1%)

Waiting Periods per submission date of F&A proposal (five longest as of May 2023)

March 27, 2020
December 31, 2020
March 23, 2021
February 23, 2022
April 12, 2022

A waiting period to establish new F&A cost rates of more than one year is far too long, let alone two years or more. Unfortunately, this problem likely will be exacerbated in the next several years as many institutions that were able to extend the term of their F&A cost rates without submitting an F&A cost rate proposal now will be required to submit one.[6] This could lead to a "tsunami" effect of new F&A cost rate proposals, which may be a challenge for the cognizant agencies—CAS-HHS and ONR—to process in a timely manner.[7]

The long waiting period to establish new F&A cost rates is problematic and needs to be resolved immediately. Under current practices, institutions normally are required to submit their F&A cost rate proposal six months before their current cost rates expire (e.g., for F&A cost rates that expire on 6/30/24, the F&A cost rate proposal is due 12/31/23). The expectation that institutions submit their F&A cost rate proposals six months in advance of the expiration date of their current rates suggests that new cost rates should be established within a six-month timeframe.

We recognize the complexity involved in developing and reviewing an F&A cost rate proposal creates challenges both for the institutions and the cognizant agencies to meet strict timelines. As such, the extension of grace periods to both parties is a good business practice when appropriate. However, grace periods should be just that—a limited time period to address complexities—and they should not lead to delays that extend over one year. The proposed sections 200.414(i)(1), (i)(2), and (i)(3), shown in yellow highlight below, could address the concern and allow institutions to conduct institution-wide business with better stewardship of federal funds and more financial predictability.

[6] 2 CFR 200.414(g) allows institutions to apply for up to a 4-year extension of their current F&A cost rates. In addition, under COVID-19 flexibilities defined in OMB Memorandum M-20-17, institutions were permitted to extend their current F&A cost rates for an additional year.

[7] Of note, included in COGR's survey was the question: *In your opinion, was the negotiation conducted in a fair and reasonable manner?* Of the 106 responses, 84 (79.2%) responded "Yes" and 17 responded "Somewhat" (16.0%). These responses strongly indicate that Cost Allocation Services, HHS and the Office of Naval Research are well regarded by research institutions.

> (i)(1) F&A cost rates should be established within six months after the date of submission of an F&A cost rate proposal. If not established within six months, the current F&A cost rates should be extended as predetermined F&A cost rates for one additional year. If new F&A cost rates are not established after the one additional year, F&A cost rates should be established at the institution's proposed F&A cost rates (and as predetermined F&A cost rates) for a minimum of two additional years.
>
> (i)(2) Fringe benefit rates should be established within six months of the date of submission of the proposal. If not established within six months, new fringe benefit rates should be established at the institution's proposed fringe benefit rates for the applicable fiscal year.
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> (i)(3) In those situations when (i)(1) and/or (i)(2) require special consideration, the Office of Management and Budget should serve as an impartial arbiter to work with the institution and the cognizant agency for indirect costs to resolve any differences.

The proposed sections 200.414(i)(1), (2), and (3) would provide a process for more timely establishment of F&A cost and fringe benefit rates. Most importantly, it will eliminate the uncertainty that has become commonplace for many research institutions.

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We appreciate your invitation to submit this analysis, and we look forward to providing responses to any questions you may have. Please contact David Kennedy at dkennedy@cogr.edu or Krystal Toups at ktoups@cogr.edu if you have questions.

Sincerely,

M.M. Owens

Matt Owens
President

cc: Deidre Harrison, Deputy Controller