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## **COMPENSATION EFFORT COMMITMENTS AND CERTIFICATION Executive Overview**

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The focus of this document is to address issues related to salary compensation, effort commitments, and certification policies and practices, as well as the federal regulations governing these issues. In light of several significant audit findings resulting in multi-million dollar settlements, discussion on the troublesome issues needs to progress, and the core issues clarified. University and research institution administrators and faculty are committed to addressing these issues, and will continue to carry out the important stewardship responsibilities associated with managing federal funds.

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COUNCIL ON GOVERNMENTAL RELATIONS

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# POLICIES AND PRACTICES

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COMPENSATION, EFFORT COMMITMENTS,  
AND CERTIFICATION

*Executive Overview*

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## A. ABOUT THIS DOCUMENT

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The Council On Governmental Relations (COGR) is an association of leading research institutions. One of COGR's important activities is assisting institutions to develop policies and effective practices that reflect the mutual interests of the research community (research institutions, their representative associations, federal agencies, and other sponsoring entities).

The focus of this document is to address issues related to salary compensation, effort commitments, and certification policies and practices, as well as the federal regulations governing these issues. In light of several significant audit findings resulting in multi-million dollar settlements, discussion on the troublesome issues needs to progress, and the core issues clarified. University and research institution administrators and faculty are committed to addressing these issues, and will continue to carry out the important stewardship responsibilities associated with managing federal funds.

Our objectives in this paper are twofold: 1) To provide the research community with a comprehensive description of federal policies and corresponding institutional practices for managing payroll distribution and effort reporting systems, and 2) To use the detailed discussions in the paper as a springboard to advise decision-makers, leaders, and officials from the research community of the need to restore the balance between accounting oversight requirements and the necessary regulatory flexibility to produce good science.

Policies and practices at research institutions vary, and this document does not attempt to set standards. Rather, when appropriate, this document suggests good management policies and practices that some institutions may find useful. ***The practices and policies in this document are not an exhaustive list of good approaches, and an institution's decision not to adopt them does not, in any way, mean that the institution is failing to meet legal requirements, or even research institution norms. This document also does not provide legal advice. Accordingly, if legal and/or other professional advice is sought, the advice of a lawyer or other professional should be obtained. COGR cannot and does not warrant that the approaches and information discussed in this paper are legally sufficient, and is not suggesting that other approaches are not equally sufficient from a legal or any other perspective.***

The ***Executive Summary*** discusses the current environment, the importance of the partnership between research institutions and the federal government, and addresses several of the more important findings presented later in this publication. It is followed by a discussion on the ***Regulatory Background and Historical Context***. Next, ***Effort Reporting Basics*** are provided to introduce several concepts on effort reporting. The main body of the document, ***Compensation, Effort Commitments, and Certification***, addresses the core topics of salary compensation and effort reporting. Finally, ***Concluding Thoughts*** suggests several ideas that may help an institution begin to evaluate the quality and compliance of its payroll distribution and effort reporting systems. ***Appendices 1 and 2*** allow the reader to have ready reference to the Office of Management and Budget (OMB) Circular A-21, Section J10, and the January 5, 2001 OMB Clarification Memo, both of which contain important federal guidance, and which are referenced throughout this document.

COGR appreciates the contribution of all its members in bringing new challenges, and strategies for addressing them, to the attention of its colleagues across the country. For this document, the COGR Costing Committee, the COGR Board, and volunteers in the research administration community made important contributions. ***Special recognition is given to the authors of and contributors to this paper, as shown on the back page of the publication.***

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## B. EXECUTIVE SUMMARY

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The University – Research Institution – Federal Government partnership has been a successful relationship for over fifty years. According to the National Science Foundation (also see <http://www.nsf.gov/statistics/infbrief/nsf07311/>), science and engineering research and development expenditures at universities and colleges were over \$45 billion in fiscal year 2005, with the federal government share exceeding \$29 billion. These programs fuel economic growth and contribute to the country's position as a technological leader in the world.

Many factors can be attributed to the positive alliance, including a focused and committed national research policy, open communication between research institutions and federal agencies, and strong leadership throughout the research community. In addition, one of the pillars of the successful partnership has been an effective and productive balance between accounting oversight requirements and the necessary regulatory flexibility to produce good science. However, this balance is being threatened.

It is significant to note that approximately two-thirds of direct program expenditures are for salaries, wages, and employee benefit costs applicable to faculty and staff. Accordingly, a major element of demonstrating accounting and oversight responsibility relates to the treatment of these costs. Unfortunately, a combination of *qui tam* suits initiated under the False Claims Act, voluntary disclosure by selected institutions, and findings through federal audits have raised the concern that institutional policies and accounting practices may be inadequate and/or out of compliance. From 2003 to 2006, more than ten institutions have sustained financial settlements related to research administration exceeding \$1 million, and a number of other institutions have experienced disallowances on grant-specific audits. In at least seven of the cases exceeding \$1 million in settlements, salaries charged, effort commitments, and certification of effort (i.e., effort reporting) for individuals paid on federal awards have been at issue.

This paper does not attempt to argue the facts of these audit findings and settlements. University and research institution administrators are keenly aware of the public trust and stewardship responsibilities associated with managing federal funds. However, the aftermath of these settlements has created a tension in the time-tested research partnership. While research institutions must accept responsibility for infractions driven by substandard management practices, the history and hallmark of the research community has been a commitment to sound financial management, consistent application of good costing principles, and ongoing development of best administrative practices. This obligation is taken seriously.

The underlying theme of this paper is to remind decision-makers, leaders, and officials from the research community of the need to restore the balance between accounting oversight requirements and the necessary regulatory flexibility to produce good science. If federal regulatory and oversight entities see the recent findings and violations as a systematic, industry-wide problem that requires heightened federal supervision and regulation, the partnership will be threatened and the practice of science will suffer.

## A BALANCED APPROACH

The environment that fosters successful research programs within a research institution is markedly different from the environment found with many commercial contractors who provide concrete goods and services to the federal government. The discovery process, so critical to productive research and higher learning, is integrally connected to the teaching and service programs within research institutions. An important discovery or insight might occur to a faculty member at the office, at home, while helping a graduate student learn to do research, or while scrutinizing results in the laboratory. Consequently, any method used to demonstrate accountability must take into account the fluid nature of the environment that creates successful research, rather than trying to force it into an approach consistent with the strict accounting requirements of the commercial service contractor industry.

The Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, is the primary federal guidance on cost principles and requirements applicable to grants, contracts, and other agreements. The language in Circular A-21 has been fine-tuned over its fifty-year history to recognize the unique characteristics and challenges of conducting and accounting for scientific research.

*Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives ... (A-21, A.2.b)*

*In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate. (A-21, J10b(1)(c))*

Regulations, such as Circular A-21, were written to strike balance, and federal funding agencies have supported a tempered approach to implementing strict accounting and oversight models. However, in a climate of audit findings and financial settlements, those federal officials responsible for oversight understandably increase their collective levels of scrutiny. Unfortunately, this has resulted in audits and reviews of academic institutions that have taken on characteristics of the audits and reviews of commercial service contractors, which most agree is not conducive to meeting the nation's research goals and policies.

## ORGANIZATION OF THE COGR PAPER

While the underlying theme of this paper is to emphasize the need to restore the balance, the approach used is to present a comprehensive discussion of the critical issues related to institutional policies on compensation, effort commitments, and certification of effort, as they relate to federal awards.

The Regulatory Background and Historical Context (Section C) and the Effort Reporting Basics (Section D) provide the introductory context of the paper. The main body of the document, Compensation, Effort Commitments, and Certification (Section E), addresses the core issues. Finally, Concluding Thoughts (Section F) suggests several ideas that may help an institution begin to evaluate the quality and compliance of its payroll distribution and effort reporting systems.

Section E is organized into nineteen chapters. At the end of each chapter are two summaries, ***“Hot Buttons and Key Considerations”*** and ***“Policy and Practice Suggestions,”*** which provide reviews of the important discussion points, as well as effective practices. Though the research community strives for

effective practices, the reality is that solutions are not always straightforward, and can be achieved only through active and creative engagement between research institutions and the federal government.

## NEXT STEPS

At a minimum, this paper can be used as a resource for those individuals at the institution responsible for managing the payroll distribution and effort reporting processes. Federal policies and institutional interpretations of those policies, as well as technical considerations related to compensation, effort commitments, and certification of effort have been addressed in significant detail.

Furthermore, several of the issues raised as “Hot Buttons” can be springboards for discussions between decision-makers, leaders, and officials from the research community. The underlying theme of this paper is to remind those industry leaders of the need to restore and maintain the balance between accounting oversight requirements and the necessary regulatory flexibility to produce good science. Recently, the balance has been disrupted. However, if balance can be reestablished, the continuing success of the University – Research Institution – Federal Government partnership is ensured.

COGR has identified the following issues presented in this paper as the most significant. If constructively addressed by leaders and officials in the research community, this could result in reducing institutional and faculty uncertainty, without compromising the public trust and stewardship responsibilities associated with managing federal funds.

### FACULTY WORKLOAD AND COMPENSATION

- Strict interpretations of full workload and institutional base salary result in little flexibility for faculty members to volunteer time or engage in other institutional or academic activities. Under the strict interpretations, any institutional activity in which a faculty member engages would have to be accounted for, and institutional funding provided. This situation creates a tension where faculty members feel the institution “owns” them 24 hours a day, including weekends. **(See Chapter 1a, Defining Full Workload and the Institutional Base Salary)**
- Several institutions have begun to struggle with the situation where full-time, non-tenured faculty, working solely on sponsored awards, lose grant support. These institutions may not have institutional funding available to replace the lost support. If the base salary (and base rate of pay) is subsequently reduced, a question arises as to what salary base should be used to propose future salary support. If a reduced rate is used, it becomes difficult to restore salary to the original base level when the new funding comes in. This results in a disincentive to the full-time, non-tenured faculty to continue to pursue careers in research. **(See Chapter 1a, Defining Full Workload and the Institutional Base Salary)**
- Regulations governing the allowability of supplemental pay are clear in some situations, and not so in others. An institution must have uniform and consistently applied policies in place to support supplemental compensation. These policies include: a definition of full workload that sufficiently enumerates full workload requirements (such that it is obvious when full workload is exceeded), and the amount paid as the revised base salary must be calculated and paid in accordance with salary policies of the institution and be commensurate with the devoted effort. In the past, inconsistencies in interpretation by various federal agencies and officials have created uncertainty as to when supplemental pay is allowable. **(See Chapter 1c, Special Care for Supplemental Compensation)**
- The NSF, through a number of its directorates, has historically funded research with the expectation that an individual conduct his/her research in the summer months, and that

2/9ths of his/her salary be charged during the same summer period. In reality, individuals funded in these situations provide significant effort during the academic year. However, in the summer months, NSF expectations seem to indicate that in order to have salary charged solely to the NSF award(s), the individual can be engaged only in NSF-related activity. If promised commitments are provided, and in many cases exceeded, over the course of the academic year and summer months, it would be beneficial to the research community to establish NSF-endorsed solutions. This could include “applying credit” to the summer months for effort contributed during the academic year, or even standardizing payment of academic year salaries. **(See Chapter 2b, Faculty Effort, Special Circumstances)**

- Because many proposal submissions are not funded, it is accepted practice for a faculty member to have “potential commitments” that exceed 100% of full time effort (based on the institutional definition of full workload). However, auditors may view this situation negatively, even though institutions and the awarding agencies have procedures in place to implement and approve downward adjustments to committed effort on awarded projects. **(See Chapter 2d, Proposal Commitments and Overcommitments)**

#### **THE INTENT OF OMB CIRCULAR A-21**

- Criteria for the timing and what constitutes an “*independent internal evaluation*” of an effort reporting system, the definition of who has “*suitable means of verification*” of an effort report, and the requirements for “timeliness” (how long after the effort reporting period should the report be completed) are all examples of where Circular A-21 is either silent, or is not specific in its guidance. Without specific guidance, the institution must define criteria based both on its interpretation of A-21, and generally understood practices used throughout the research community. **(See Chapters 2a, 3d, and 3e)**
- If the institution has developed reasonable policies in those situations where specific criteria in Circular A-21 are not provided, these policies should be acceptable. In such situations, Circular A-21 was written to allow the institution to develop internal standards and apply those standards in a consistent manner. If the institution's internal standards are reasonable and being followed, an audit finding may be inappropriate. **(See Chapters 2a, 3d, and 3e)**
- The “level of precision” discussion embodies much of the confusion that surrounds effort reporting. Where accounting requirements are clearly defined, research institutions are responsible for following the guidelines and demonstrating compliance. Where Circular A-21 allows for reasonable estimates, federal guidance clearly allows institutions to implement corresponding policies and practices. Furthermore, practices such as the 5 percent reporting variance threshold (i.e., establishment of a reasonableness range) should be formally recognized by appropriate federal officials so that institutions can confidently implement like practices. **(See Chapter 2c, Level of Precision)**

#### **INTER-RELATED PROJECTS AND COST TRANSFERS**

- Within a given principal investigator’s laboratory, projects are often closely related, and differentiating effort between closely related projects can be difficult. Though borrowing funds from one project to support charges on a second project is unallowable, the research community could be well-served by expanding the definition on the “inter-relatedness of research,” and applying a more realistic standard as it relates to effort

reporting and cost transfer requirements **(see Chapter 2f, Cost Transfers and Confirmations of Effort Distribution)**.

- Corrections necessary because reported effort is different from the estimated payroll distribution represent legitimate transactions to finalize provisional charges. Because excessive cost transfers are sometimes synonymous with poor internal controls, it would be more appropriate to characterize these transactions as “confirmations of effort distribution,” rather than “cost transfers” **(see Chapter 2f, Cost Transfers and Confirmations of Effort Distribution)**.

COGR and its member institutions are committed to implementing and supporting institutional policies and practices that will meet and exceed federal expectations related to accounting and oversight requirements. However, when federal interpretation of these requirements potentially affects the quality of science, it is important for COGR and other leaders in the research community to respond and initiate communications with the appropriate officials. This paper addresses the important issues of compensation, effort commitments, and certification of effort as they relate to federal awards, and sets the stage for further dialogue on these topics.



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