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TO: COGR Membership
FROM: COGR Staff
SUBJECT: April 2017 Current Developments

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GENERAL DEVELOPMENT: Challenge to NIH F&A Reimbursement

[As was reported to the membership](#) in an April 5 message to the COGR Listserve, there have been recent discussions in Congress and the Administration and subsequent press articles about reducing Facilities and Administrative cost payments as a way to achieve a \$6 billion cut to the FY 2018 NIH budget. We continue to work closely with our colleagues in the university association and research community to explain the importance of F&A reimbursement to the research enterprise. The COGR staff has developed three documents that might be helpful on your campus or if you are contacted by policymakers, the press, or legislators - 1) an [F&A Primer](#), 2) [a response](#) to the major issues raised in the Congressional hearing and in the press, and 3) a [one page document](#) that could be used for those just learning about the topic.

COSTING POLICIES:

Procurement Standards: Update by Gil Tran at the February COGR Meeting Still Stands

Gil Tran, from OMB, presented an update at the COGR Meeting on Friday, February 24th. The summary from the [February 2017 COGR Meeting Report](#) still stands and we expect OMB to publish a separate notice in the Federal Register which will extend the grace period for implementing the [Procurement Standards](#) (2 CFR 200.317-326) to FY2019 (July 1, 2018 for most institutions). Also, the long-anticipated Federal Register Notice to provide updates to [2 CFR Part 200](#) (i.e., Uniform Guidance) remains in pending status, with the hope that it will be released later in the spring.

Off-Campus Research Centers in NIH RFAs: A “Special F&A Rate” Solution?

A COGR Workgroup continues its work with NIH to devise a more equitable mechanism for NIH to evaluate proposed costs between on-campus and off-campus research centers. At issue is the treatment of lease costs when a Request for Application (RFA) or policy regarding Investigator initiated proposals limits costs in terms of maximum direct cost. Off-campus research centers are at a competitive disadvantage in these situations; i.e., by including the lease costs against the direct cost maximum, fewer costs can be proposed for research staff and other direct research-related costs.

One solution being considered is for a “Special F&A Rate” to be established for those institutions that have a major off-campus research leased facility where the lease costs regularly are direct charged to NIH awards. In order to exclude the lease cost against the direct cost maximum, the idea would be to capture the direct cost of the lease as a “Sub-component” of the F&A rate. The “Special F&A Rate” would be set as: 26% + the Actual Lease Cost “Sub-component” of the XYZ Off-Campus/Leased Facility. If you have thoughts on this topic, please contact David Kennedy at dkennedy@cogr.edu.

Single Audit Developments and the 2017 Compliance Supplement

The February 2017 COGR Meeting Report provided an excellent summary of hot topics in the area of Single Audit. Mandy Nelson, Partner at KPMG; Ralph DeAcetis, Managing Director at PwC; and Mary Foelster, Director, Governmental Auditing and Accounting at the AICPA, participated in a panel session to discuss topics related to the Single Audit and the Uniform Guidance (UG); specifically, [Subpart F – Audit Requirements](#).

Since the meeting and the March 15 report, there are several developments worth noting:

Single Audit Findings and Reimbursement/Advance Payment Methodology. Recently, several auditors have challenged COGR member institutions by suggesting that grants and cooperative agreements should be subject to a strict interpretation of the reimbursement methodology. Specifically, the auditor position is that prior to billing a federal sponsor for reimbursement, the institution must have evidence that the institution's payment to the vendor has been cleared. The source of this new audit approach seems to have been spurred by the IG community. COGR is working with representatives from DOD and ONR, as well as representatives from KPMG and PwC, to address this issue.

Securing Student Information, Student Financial Aid (SFA) Cluster. This is a new section that has been added to the DRAFT version of the 2017 Compliance Supplement (Section N. Special Tests and Provisions, pages 5-3-52 through 5-3-55). Effectively, if this section were to be included in the final version of the 2017 Compliance Supplement, it would have the potential to wreak havoc on the scope of audit testing and exactly which student financial systems need to be covered.

As a follow up, the National Association of College and University Business Officers (NACUBO), EDUCAUSE, the National Association of Student Financial Aid Administrators (NASFAA), and COGR wrote a letter to OMB, dated March 29, 2017, to reiterate concerns. The [March 29th Letter](#) is posted on the COGR website. OMB has reviewed our concerns and has developed revisions to this section. We will work with our Association partners to review these revisions and will update the COGR Membership on the status.

We will keep the Membership updated on of the issues above, and will closely follow the status of the 2017 Compliance Supplement release date.

2017 COGR Survey of F&A Rates: Results Available

The 2017 Survey, which includes the Executive Summary, Appendices, and the Rate and Negotiation reports, is available at www.cogr.edu (see Policy Issues / Financial Management).

Negotiation Experiences (also a COGR Members Only report) are de-identified; each answer to a survey question is presented anonymously. Right now, everyone is opted-in. If one of your peers is reviewing the Negotiation Experiences and asks to contact Respondent # 18, we will provide the contact information. Contact Toni Russo at trusso@cogr.edu to obtain those reports restricted to COGR Members Only.

RESEARCH ADMINISTRATION & COMPLIANCE

Public Access Working Group Meeting

The Public Access Working Group, made up of representatives from COGR, AAU, and APLU, will hold a meeting on April 11-12. The working group will discuss legislative and policy positions and how to engage federal agencies, policy makers, and institutional representatives to identify best practices and develop minimum standards/requirements, through consensus building for both universities and government, to provide public access to both publications and

data resulting from federally sponsored research. For questions or issues in this area please submit to jbendall@cogr.edu.

Government Wide Research Terms and Conditions Released

A Final notice of the [Research Terms and Conditions](#) (RTCs) was released by OMB in the Federal Register effective March 14, 2017 to address and implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ([2 CFR 200](#)).

The RTCs include the release of the following Appendices: Appendix A, Prior Approval Matrix, Appendix B, Subaward Requirements Matrix and Appendix C, the National Policy Matrix. The Agency Specific Terms and Conditions will be released and posted to the [NSF Website](#) through the end of the calendar year in accordance with the [Agency Implementation Statement](#).

Of the nine agencies participating in the RTCs, three (3), the NIH, NSF, and DOE have released their specific agency terms effective April 1, 2017.

COGR has asked for the following clarifications and modifications:

- Article 11: "Appendix III, paragraph C.7 specifies Federal agencies are required to use the negotiated F&A rate that is in effect at the time of the initial award throughout the life of the sponsored agreement. COGR has asked that this be corrected to reflect the negotiated F&A rate agreement in effect at the time of the initial award. This would allow for stepped out-year rates shown in the existing rate agreement in effect at the time of the award and would match 2 CFR 200 Appendix III, Section 7.

NSF has indicated that this will be corrected.

- Article 14: #2, and the statement, a "train, bus or surface carrier may be used in lieu of, or as a supplement to, air travel at the lowest first class rate by the transportation facility used. If such travel, however, could have been performed by air, the allowance will not normally exceed that for jet economy airfare."
 - What is meant by "lowest first class rate"? (Lowest available on the day of booking?)
 - What is meant by "transportation facility"?
 - Is the word "jet" purposeful (as opposed to prop plane?)
 - For trips where planes would be an option, are we expected to document lowest jet economy airfare before charging train/bus/surface carrier costs?

COGR expects to receive an answer to this statement soon.

- The RTC overlay at 200.308(c)(1)(ii) says that prior approval is required for "The disengagement or change of the Principal Investigator/Project Director (PI/PD)." Whereas the Prior Approval Matrix of Appendix A uses the original language of 200.308(c)(1)(ii) to require prior approval for a "Change in a key person specified in the application or Federal award." Which takes precedence? Can this be clarified?

NSF will modify the language to reflect “disengagement” for consistency purposes.

COGR Inquiries to the Department of Defense on Pre & Post Award Issues

During the COGR February meeting, COGR staff met with Lawrence Schuette, Director of the Office of Research at the Office of Naval Research in Arlington VA to apprise Dr. Schuette of a few administrative issues related to pre and post award administration of ONR and DoD grant agreements.

COGR followed up in writing both to Dr. Schuette and Dr. Robin Staffin, Director of Basic Research at the Office of the Assistant Secretary of Defense for Research and Engineering, Department of Defense. [Click here](#) to read COGR's letter to Dr. Staffin.

Also mentioned was COGR's [letter](#) in response to the November 7th DoD Federal Register notice updating the interim implementation for DoD Grants and Cooperative Agreement under the Uniform Guidance. COGR will update the membership on any new developments.

RESEARCH & REGULATORY REFORM

COGR Submits Comments and Questions on NIH sIRB FAQs

COGR submitted [comments](#) and questions to NIH on the document "NIH Single IRB Policy FAQs for Extramural Community." Comments are indicated throughout the document in red italic text. COGR appreciates the assistance of members in identifying areas where greater clarification is needed. NIH representatives have indicated that they are in the process of working through the questions and comments.

Agency Hearings

House Research and Technology Subcommittee Hearings on NSF

The House Committee on Science, Space and Technology recently held two hearings of interest, [Research and Technology Subcommittee Hearing - National Science Foundation Part 1: Overview and Oversight](#) and [Research and Technology Subcommittee Hearing- National Science Foundation Part II: Future Opportunities and Challenges for Science](#). The first hearing included testimony from Dr. France Cordova, NSF Director, and Allison Lerner, NSF OIG. Areas for discussion highlighted by Allison Lerner included NSF's Intergovernmental Personnel Act program and research misconduct. Ms. Lerner noted that NSF has taken steps to reduce the cost of the IPA program and that the agency takes research misconduct seriously and has been responsive to recommendations made by the OIG. Dr. Cordova indicated that NSF and universities take research misconduct very seriously, noting that she meets with the OIG once per month or more to discuss these and other issues and that NSF works closely with the universities with respect to misconduct.

The second hearing included testimony from Dr. Joan Ferrini-Mundy, Acting Chief Operating Officer, NSF; Dr. Maria Zuber Chair, National Science Board; Dr. Jeffrey Spies, Co-Founder and Chief Technology Officer, Center for Open Science, University of Virginia; and, Dr. Keith Yamamoto Vice Chancellor for Science Policy and Strategy, University of California, San Francisco. Ranking member Lipinski, in his comments, asked for unanimous consent to submit a document for the record regarding NSF IG Allison Lerner's March 9 testimony. Ms. Lerner had indicated in the March 9 hearing that there were 175 cases of research misconduct reported in the

OIG semiannual reports over the last 4 years and that there was an increase in the number of substantial cases of research misconduct over the last 12 years. The number of research misconduct cases was actually 75 over that time period. The data indicates that over the last 12 years there is no clear trend with respect to significant cases of research misconduct, and no indication that there is a significant increase.

HHS Appropriations Hearing

Secretary of Health and Human Services, Tom Price, testified at a House Appropriations Committee budget [hearing](#) for the Department of Health and Human Services on March 29. Members of the subcommittee on *Labor, Health and Human Services, Education, and Related Agencies* expressed their dismay with the President's preliminary budget for HHS. The Chair of the subcommittee suggested that the committee would be very hesitant to make proposed cuts to the CDC and NIH and the ranking member that there was nothing complimentary about the proposed budget and that she hoped it would be dead on arrival.

During the course of the hearing Secretary Price suggested that with respect to NIH funding the department would seek greater efficiencies, noting that 30% of grant funding is used for indirect expenses. As indicated in a message to members from COGR President Tony DeCrappeo on April 5, COGR is working closely with the university association and research community to explain the importance of F&A reimbursement to members of Congress and the executive branch. Three [documents](#) are available on the COGR website to assist with these efforts.

AAAS Science and Technology (S&T) Policy Forum

The American Association for the Advancement of Science S&T Policy Forum was held March 27-28. No members of the Trump administration participated in the forum despite requests and precedent; however, there was extensive discussion on the administrations 2018 "[skinny budget](#)" and budget proposals for FY17 which would deeply cut funding for NIH and other science agencies and offices. The government is currently operating under a continuing resolution that ends April 28. Lawmakers have suggested that they don't anticipate challenges with respect to funding the remainder of FY17, nor cuts to the NIH budget. With respect to FY18 and beyond, lawmakers have noted strong bipartisan support for sustaining and increasing NIH funding. There has been less discussion regarding proposed cuts to other science agencies and offices.

NIH Director Francis Collins and NSF Director France Cordova spoke at the forum about their respective agency priorities. Dr. Collins mentioned that the full launch of the Precision Medicine Initiative, also referred to as "All of Us" will occur in September 2017 and that more than half of participants were expected to be drawn from underrepresented groups. More information can be found [here](#). Dr. Cordova mentioned that NSF was pleased with the American Innovation and Competitiveness Act, signed into law in January, which was supportive of all NSF directorates and the merit review process.

NSF National Center for Science and Engineering Statistics (NCSES) Info Brief

NCSES published the Info Brief [Total Federal Research and Development Funding Down 1% in FY 2015, but Funding for Research Up 1%](#) on March 22. The brief notes that "funding for research increased 1% to \$63.6 billion while development funding fell 4% to \$64.9 billion" and

R&D plant funding increased by 27%. Federal obligations for R&D were projected to increase for FY16 and FY17. The data is broken down by type of R&D, agency, field and state.

NSF OIG Audits

The NSF OIG recently published three audit reports on incurred costs at three research universities. In the [first](#), the OIG audited approximately \$197 million in costs claimed to NSF on 708 awards over a three year period ending March 31, 2015. The auditors questioned \$283,801 of costs claimed, including participant support costs, indirect costs and visa immigration fees. The institution did not agree with \$233,053 of the questioned costs.

A [second](#) OIG report audited \$110 million in costs claimed to 291 NSF awards over a three year period. Auditors questioned \$111,516 in costs claimed. The institution did not agree with \$99,903 in questioned costs related to purchases made near award expiration and participant costs.

In a [third report](#) the OIG also questioned purchases near award expiration including \$91,281 in costs on 892 awards over a three year period; the institution disagreed with the findings. It is notable that none of the three reports included questioned costs for senior personnel salary charges exceeding two months.

CONTRACTS & INTELLECTUAL PROPERTY

Ed. Delays Effective Date of Open Licensing Requirement

The Department of Education (Ed.) [announced on March 21](#) that the effective date of the open licensing requirement will be delayed two months until May 22 to allow the Department an opportunity for further review of the final regulations. The requirement was to go into effect on March 21.

As discussed in the COGR [February Meeting Report](#), on February 15 COGR together with AAU, APLU and AUTM wrote to the new Secretary of Education requesting reconsideration of the rule. We do not know if our letter may have been a factor in the delay. According to the Federal Register notice, Ed. will consider comments only on the delayed effective date, and will not consider further comments on the final regulations. Ed. recently requested a meeting with the associations to discuss our concerns about the open licensing requirement.

NIH Threatens Suspension of Funding for Invention Reporting Non-Compliance

For some time we have been reporting on issues and concerns with agency invention reporting requirements (e.g. see [June 2016 Meeting Report](#)). NIH has issued a series of reminders on Bayh-Dole Act invention reporting requirements.

We understand that a COGR member institution recently was informed by NIH that **all future NIH funding would be suspended until full compliance was achieved**. Fortunately the institution believes they now are in full compliance. However, given the increasingly high visibility of invention disclosure and reporting issues especially as related to drug pricing concerns, we expect other institutions may receive similar warnings. Both COGR and AUTM are very concerned about the need for institutions to assure compliance.

COGR Comments on DHS CUI Safeguarding Requirements

On March 13 COGR together with AAU, APLU and EDUCAUSE [submitted comments](#) to DHS on the proposed HSAR clause on safeguarding controlled unclassified information (CUI). The [February Meeting Report](#) discussed our concerns about the proposed HSAR rule.

Our comments expressed concerns about the inconsistencies between the proposed HSAR clause and the NARA CUI requirements. We also expressed concerns that the rule appears to confuse the distinction between FISMA requirements applicable to contractor information systems operated on behalf of agencies, and the NARA NIST SP 800-171 requirements for safeguarding CUI information residing on contractor systems. We requested that DHS clarify the scope of the rule and revise it to be consistent with the NARA requirements.

COGR Meets with Commerce ETRAC

On March 23 COGR representatives met with the Department of Commerce Emerging Technology and Research Advisory Committee (ETRAC), at the Committee's request. We summarized our views of the export control reform initiative. We noted that the final Commerce EAR changes are mostly positive but the ITAR changes remain unfinished. We also discussed concerns about CUI, noting particularly that the export control description in the CUI Registry does not match the regulatory definition. Interestingly company representatives expressed concerns about CUI similar to universities. ETRAC requested that Commerce/BIS follow up on these issues. (We understand that the State Defense Trade Advisory Group also plans to discuss CUI at an upcoming meeting).

Congressional Democrats Urge President to Use March-In to Address Drug Pricing

We mentioned in the [February Meeting Report](#) a planned Congressional letter to the President urging him to direct NIH to issued guidelines for the use of government march-in rights under the Bayh-Dole Act to address drug pricing concerns. On April 4 51 Democratic members of Congress, led by Rep. Doggett (D-TX), [sent a letter](#) to the President urging him to invoke "taxpayer protection rights" allegedly provided by the march-in authority.

The associations are considering sending a letter to the President pointing out the adverse effects on drug innovation if NIH uses march-in rights incorrectly as a price control mechanism. The letter would not respond directly to the Doggett letter, but would cite the benefits of the Bayh-Dole Act for public health and job creation, and the need for certainty in the rights provided for private sector investment in new drug development.