



March 13, 2023

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 and the federal agencies that administer federal research programs.

Furthermore, 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, additional detail, and/or data upon your request.

Our comments are included in the remainder of 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](mailto:dkennedy@cogr.edu) or Krystal Toups at [ktoups@cogr.edu](mailto:ktoups@cogr.edu) if you have questions.

Sincerely,

Wendy D. Streitz  
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.** Our understanding of this section is that in addition to ensuring agencies implement 2 CFR 200 through the process dictated by the Administrative Procedures Act (APA), it reinforces the important principle that new agency policy and changes to policy be available for public comment in compliance with the APA. We have 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 little opportunity to provide comments and input to the policymaking process.

**COGR RECOMMENDATION:** 2 CFR 200.107 needs strengthened so agencies are compelled to comply with the APA. Included in this text should be remedies for grantees when agencies don’t comply with the APA.

**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 all 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 FAQs Q-18 and Q-19. If appropriate to address COI specific to engaging in procurement actions, we recommend this be addressed in 200.317-327 (Procurement Standards).

**200.306(k) Voluntary Uncommitted Cost Sharing (VUCS), OMB Memoranda 01-06, January 5, 2001.** [OMB M-01-06](#) permits VUCS to be treated as an exception to cost sharing and other reporting requirements. By creating additional resources for science, it has been beneficial to both research institutions and the federal government for over two decades. Rather than referencing the 2001 OMB Memoranda, 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, nor reported on, and further, is not subject to audit.*

**200.333 Fixed amount subawards.** This section permits fixed amount subawards with prior written approval provided the subaward meets requirements in 200.201.

**COGR RECOMMENDATION:** Eliminate the prior written approval requirement, and instead, rely on each agency’s existing policies for approving subawards. Additionally, eliminate the simple acquisition threshold and delete FAQs Q-35 and Q-36. Doing so will enhance IHEs ability to use fixed amount subawards.

**200.340 - Termination.** COGR raised the concern in 2020 that eliminating “for cause” in (a)(2)

is problematic. This permits agencies an inappropriately arbitrary mechanism to terminate an award.

**COGR RECOMMENDATION:** Delete the following language : “... to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities” and replace with: “for cause.” Also, we recommend that grantees be provided an opportunity to appeal and cure concerns and if an award is terminated a 180-day notice is provided.

**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. For example, the [OSTP Public Access Memo](#) requires agencies to establish policies for the sharing of federally funded scientific data and for agencies, in consultation with OMB, to allow researchers to include reasonable associated costs. In order to recognize these costs as allowable and chargeable to federal awards, alternative accounting methodologies are required.

**COGR RECOMMENDATION:** Define criteria for the class of costs that typically occur after project closeout. When a cost meets the criteria, allow for these costs 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 has raised concerns about the administrative burden associated with disclosure statement (DS-2) process for over a decade. [A COGR survey from 2014](#) and a survey we currently are compiling confirm that the DS-2 is not used by the audit or oversight community. Furthermore, IHEs are the only type of grantee subject to this requirement. Note, all policies asked for in the DS-2 are available in official institutional policy documents, making the DS-2 redundant and burdensome. Also, the DS-2 form still refers to OMB Circular A-21, not 2 CFR 200. Finally, Cost Allocation Services (CAS)—the federal entity responsible for reviewing and approving the DS-2—does not have adequate resources to review and approve an institution’s revised DS-2 in a timely manner.

**COGR RECOMMENDATION:** Eliminate the DS-2 requirement for all institutions of higher education (IHEs) and delete FAQs 16 and 17. In those cases where an institution receives a CAS-covered contract, the institution should review the criteria to determine applicability of the DS-2 as described in 48 CFR Chapter 99 Subchapter B 9903.202-1.

**Part 200 Appendix III. B.4.a. - Operations and Maintenance.** This section—written in 1991—defines examples of operations and maintenance (i.e., facilities) costs typically incurred by IHEs. The examples are not meant to be exhaustive, but several important examples are excluded, such as all forms of data transmission, related network infrastructure, management of the data, research computing, research security, and other information technologies. Effectively, the activity of operating and maintaining the telecommunications enterprise in 2023 (over two decades since this section was written) is effectively a new institutional activity and is more closely associated with a facilities/utilities function than an administrative function.

**COGR RECOMMENDATION:** The examples listed above should be included in the

definition of operations and maintenance, and those 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 “no more than annually nor less that 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:** Determining the correct REUI—which is then used to determine the UCA—is a complex exercise that requires OMB to update this factor every five years. Permitting institutions to elect a baseline UCA of 1.3% will reduce administrative burden both for grantees and the federal government. An alternative approach is to allow institutions the option of electing a baseline UCA of 1.3% or using a more accurate REUI, which would result in some institutions exceeding the baseline UCA of 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 completing 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 completed in a timely manner.

**COGR RECOMMENDATION:** Appendix III requires additional language that provides remedies for grantees when rate agreements are not completed in a timely manner. For example, a default “provisional” rate puts the institution at audit risk. Instead, 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 an amendment 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 dysfunctional and 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](#), NIH 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:** We recommend OMB consider solutions that will promote equity and fairness across all stakeholders. In April 2019, COGR published [Excellence in Research](#)—a manual on how the F&A cost reimbursement system works. Chapter 9 described alternative methodologies for F&A cost reimbursement, and included a narrative on how an “uncapped compliance cost pool” could be an effective solution.

While the most fair and equitable solution is the elimination of the administrative limitation for IHEs, an uncapped compliance cost pool would allow unfunded and expensive federally mandated compliance costs to be recovered through the uncapped compliance cost pool. Many good ideas and analyses have been shared across the community over the past decade—many of these data-driven—and we encourage OMB to implement data-driven solutions that will be beneficial to 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](#)—and select, authoritative OMB Memoranda—be codified into 2 CFR Part 200.

**200.1 - Equipment.** The definition should be clarified in conjunction with Q-81. At issue is the treatment of software. A more appropriate definition is: “Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000. In the case of Software, it should be treated either as equipment or as an expense in accordance with institutional polices 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 be beneficial for the scientists doing the research in the lab.

**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.

**200.414(c) - Federal Agency Acceptance of Negotiated Indirect Cost Rates.** Several FAQs (e.g., Q-119, Q-132, Q-133, Q-134) address the “honoring” and the “waiving” of indirect costs. The FAQs are helpful and selected elements of these FAQs should be codified.

**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. Priority Items, the items that follow are “low-risk, high-reward” revisions that will be beneficial for all stakeholders.*

**200.1 Definitions.** Other Transaction Authority provides an additional legal instrument of financial assistance between a federal awarding agency and a recipient. We recommend defining OTA in 2 CFR 200.1. Also, we recommend that OMB establish criteria for when/how an OTA can and cannot be used by agencies (for cases where 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, (b)(2), should be permitted. Additionally eliminate (b)(3), the requirement 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).

**200.305(b) - Federal payments.** Align new language that has been proposed in the 2023 Compliance Supplement 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) *“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 indirect costs has indicated they are not the entity to approve requests for a higher threshold. This section should be clarified accordingly.

**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 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 rate. 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 more clear that OMB is the designated point of contact to remedy these situations.

**200.414(f) - De minimus F&A cost rate.** The de minimus 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—hence, a de minimus rate of 24% would be more appropriate.

**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, which may create 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 for the modified total direct (MTDC) requires modification 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, it should be applicable on an annual basis and applicable to each budget period (see FAQ Q-117). 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.** Increase threshold for completing a “Simplified” F&A cost rate proposal from \$10 million to \$50 million.

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**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 to the extent OMB is interested in reviewing these responses, COGR can provide additional detail, upon request.