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EPA Interim Conflict of Interest Policy

Author: Research Compliance and Administration Committee

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COGR

an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

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February 20, 2015

Environmental Protection Agency
Attn: Howard Corcoran, Director
Office of Grants and Debarment

RE: EPA Interim Conflict of Interest Policy

Dear Howard,

On behalf of the Council on Governmental Relations (COGR) and the membership, we'd like to thank you and your colleagues for the opportunity to provide comment on the above subject interim EPA Conflict of Interest Policy. COGR is an association of 190 research universities and their affiliated academic medical centers and research institutes. COGR concerns itself with the influence of federal regulations, policies, and practices on the performance of research conducted at its member institutions.

Our members have had a longstanding and productive relationship with EPA, and we look forward to a continued partnership as our institutions conduct important research on behalf of EPA. At your request, we have provided comments to the EPA Interim Conflict of Interest Policy and we appreciate your willingness to work with us to address these issues.

However, it is important to share our concern that the EPA has implemented this policy without first considering these comments from the grant recipient community. While we recognize EPA has a sense of urgency to implement this policy, the immediate implementation has created an administrative burden for our members. We are hopeful that the changes we have suggested can be incorporated as soon as possible, and as appropriate, we can engage with the EPA and OMB to address the broad principle defined in the Uniform Guidance of reducing administrative burden.

We have addressed our concerns in italics to each section of the EPA policy below.

Primary Concerns

The Interim Policy requires that applicants conduct an inquiry prior to submitting a SF 424 to identify any COI situation relative to 2 CFR 200.318 (c)(1) exists that would require disclosure.

200.318 requires recipient organizations to maintain written standards of conduct for employees engaged in the selection of award and administration of procurement contracts. Nowhere does it require individual project by project disclosures of a COI. COI's of this type are most common with procurement office staff and other institutional officials who have the authority to bind the institution in a procurement action. A conflicted individual in one of these positions would be conflicted regardless of the source of funds and therefore managing the COI on an institutional basis is only reasonable (and what is called for in 200.318). Trying to address the COI on a project by project basis would be redundant, costly and unnecessarily burdensome.

COGR requests that the inquiry requirement be removed and the standards that already exist in 200.318 be recognized..

EPA requires the applicant organization to obtain a disclosure of project personnel, contractors (consultants) and partners (subrecipients) as to whether an EPA employee drafted, reviewed, or commented on the applicants proposal or otherwise provided advice to an applicant on how to write a proposal.

COGR does not agree that this requirement is within the bounds of types of disclosures required in 200.112. In the FAQ's released by OMB FAQ.112-1 states "The conflict of interest policy in 2CFR200.112 refers to conflicts that might arise around how a non-Federal entity expends funds under a Federal award". The Interim Policy requires a new and burdensome disclosure requirement for researchers that 1) is not related to any expenditure of funds, and 2) would be a disclosure of an inappropriate act of an EPA employee.

COGR requests that this inquiry requirement be removed from the policy immediately as EPA should be responsible for the actions of their own employees through their own training and oversight programs without imposing additional burden on recipients.

Other Concerns

3.0 Definitions:

COI Point of Contact: The individual designated by the applicant or recipient to disclose and resolve COI for Federal Financial Assistance awards or subawards. A COI Point of Contact must be an employee or officer of the Non-Federal Entity or another entity (e.g. consultant or attorney) expressly authorized by the Non-Federal Entity to speak on its behalf.

COGR requests that the term Authorized Organizational Official (AOR) or designee be used for reporting purposes as this is a defined and common responsibility among the recipients of Federal funds.

Immediate Family: For the purposes of this COI Policy only, unless otherwise defined in a state, tribal or local government recipient or subrecipient's laws, ordinances, or other legally binding enactments, Immediate family includes a person's husband or wife; natural or adoptive parent; child or sibling;

stepparent, stepchild, stepbrother or stepsister; father-, mother-, daughter-, son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

COGR requests that the definition of immediate family be defined as “spouse and dependent children”. Many of our members are subject to their own state laws, also defined as spouse and dependent children. A change in this definition also aligns with the current HHS regulations.

6.0 Scope of Inquiry

Applicants/recipients must conduct a reasonable COI inquiry to meet their disclosure obligations under Section 5.0 of this policy.

COGR would like to confirm that actions fulfilling the “reasonable” requirement when conducting an inquiry could include (but is not limited to) obtaining self-disclosures at the time the investigators are notified of an award or prior to expenditure of funds whether or not they have a COI, as well as obtaining a similar certification from Subrecipients/contractors.

b) For pre-award COI disclosures addressing the situations described in Sections 4.0(b), (c), and (d), the COI point of contact must make a reasonable inquiry to determine whether any situations requiring disclosure are present prior to the applicant’s submission of its final SF 424.

COGR requests that this step be removed from the policy based on the fact that most applications never result in being awarded; inquiries should be completed at the time of award rather than application to avoid unnecessary and burdensome reviews for proposals that will not be awarded.

Section 7.0 Timing of Disclosure

(a) For awards EPA will make competitively under EPA’s Competition Policy, the COI point of contact for applicants must provide their COI disclosure to EPA within 10 calendar days of receiving notification from the EPA that they have been selected for an award unless EPA grants an extension of time. Should a selected applicant discover a previously undisclosed COI prior to EPA awarding financial assistance, the applicant’s COI point of contact must disclose the COI to EPA no later than 5 calendar days following discovery.

COGR requests that this section be amended to reference disclosures due at the time award notification is received or prior to expenditure of funds. COGR sees no value in collecting the COI information for each and every proposal that it is submitted, especially when the majority of proposals submitted are not funded by an agency.

Section 8.0 Content of Disclosures

(b) In addition to describing the COI, applicants and recipients other than applicants for individual fellowships must provide EPA with any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the COI.

COGR requests that the disclosure requirement be limited to procurement actions that cannot be managed by the institution where the COI exists

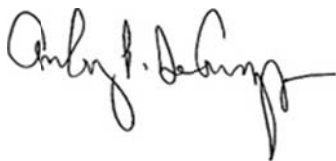
Section 9.0 EPA Actions

(a) EPA will notify applicants of their COI disclosure obligations prior to award and include a term and condition in all awards describing recipients COI disclosure obligations. The notifications and terms and conditions will identify EPA's point of contact for COI disclosures.

COGR believes that EPA notifications are unnecessary if agency policies are in place. Applicants are responsible for following any applicable policies, procedures and regulations of an agency if an award is to be made. Terms and conditions, including COI terms are standard terms included in award documents.

Thank you for your willingness to review COGR's recommendations. Please contact me or Jackie Bendall at (202) 289-6655. We look forward to working with you to address these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony P. DeCrappeo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Anthony P. DeCrappeo
President