

# COGR

an organization of research universities

## COUNCIL ON GOVERNMENTAL RELATIONS

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April 8, 2016

Mr. James McCaffery  
Deputy Director  
Office of Acquisition and Property Management  
Department of the Interior  
1849 C Street N.W.  
Mail Stop 4262 MIB  
Washington, DC 20240

Reference: RIN 1090-AB08  
Subject: Financial Assistance Interior Regulation (FAIR)

Dear Mr. McCaffery,

The Council on Governmental Relations (COGR) is an association of 190 research universities, their affiliated academic medical centers, and independent research institutes. COGR concerns itself with the influence of federal regulations, policies, and practices on the performance of research conducted at its member institutions.

We appreciate the opportunity to comment on the referenced regulation to consolidate the Department's financial assistance regulations and policies derived from regulations promulgated at 2 CFR 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).

In accordance with 2 CFR 200 we wish to specifically comment on §1403.112 of the Department's Financial Assistance Interior Regulation.

In a recent letter to the Office of Management and Budget, COGR emphasized the importance of consistency with longstanding and effective conflict of interest policy and practice at research institutions, as required by some federal agencies. The institutional obligations include: (1) the establishment of conflict of interest policies; (2) the identification of actual conflicts of interest; and (3) management or elimination of such conflicts of interests. We have asked OMB to ensure that 200.112 is consistent with the way federal agencies and the research community have historically managed conflict of interest by emphasizing that grantees disclose conflicts that have been identified, rather than disclosing potential conflicts under financial assistance agreements.

We address below two areas of significant concern with DOI's proposed regulations: (1) responsibility for COI review and reporting; and (2) regulatory definitions.

## **1. COI Review and Reporting**

The Department of Interior's proposed Conflict of Interest Policy for Financial Assistance requires that the Grants Officer and the servicing Ethics Counselor determine if a conflict of interest exists, and if so, the Grants Officer will determine whether a mitigation plan is warranted. This approach is inconsistent with other federal conflict of interest policies in place since 1995, which hold the institution responsible for determining whether a particular relationship or set of circumstances constitutes a conflict of interest and if so, whether the conflict can be managed. Institutions routinely conduct such reviews, make such assessments, and impose conflict management plans. DOI's approach departs from this longstanding and effective practice, assigning these responsibilities to the DOI Grants Officer and the servicing Ethics Counselor, and removing it from the recipient institution. This requirement places an important responsibility in the hands of individuals who are likely not to have access to critical information needed to review and manage any particular conflict, including, e.g., the unique characteristics of the recipient institution, and individual's role therein; the impact of the potential conflict of interest; existing mitigating factors that may reduce the risks; and options for how to manage the conflict. Although it is entirely appropriate for DOI to review conflicts for its own staff, DOI simply will not have the required information to do so for its recipients' employees, nor would this be appropriate for DOI to do. In addition, DOI's approach completely contradicts the long-standing existing conflict of interest policies from federal agencies (PHS and NSF), which recognize the expertise, the infrastructure, the experience, and the skills recipient institutions have in addressing the conflict of interest issues of their employees. We strongly recommend revising the proposed regulation to require recipient institutions to report identified conflicts with a mitigation plan to manage them. Upon receipt, and for consistency with other federal agency policies, DOI may then determine whether or not the plan is sufficient to manage the conflict.

## **2. Definitions**

We have a number of concerns about the definitions included in the proposed regulations. First, COGR believes that section 1403.111's definition of "conflict of interest" is overly broad. Based on many discussions with representatives from OMB and the COFAR, our understanding is the intent of section 200.112 of the Uniform Guidance was meant to address conflicts specific to procurement actions and not scientific conflicts of interest. DOI's regulation should make this clear. We further recommend narrowing the definition of a "conflict of interest" in the Department's policy to only those relationships and interests that could significantly and directly bias decisions made in relation to the acquisition of goods and services under contracts and not subrecipients pertaining to financial assistance agreements. We have recently requested to OMB that FAQ 112.1 of the Uniform Guidance be modified to make this clear as well.

Second, there is no need to further modify the definition in 1403.111 with the words "personal" and "organizational" as occurs in the proposed term and condition. Such additional modifications to a defined term create ambiguity regarding what is intended. Furthermore, Organizational Conflict of Interest is terminology presently included in Subpart 9.5 of the Federal Acquisition Regulation (FAR) for contracts designed to avoid bias when a bidder is involved in the development of a work statement or specifications that can lead to an unfair competitive advantage. We believe that language referencing organizational conflicts of interest should remain in the FAR where it appropriately fits and that any remaining "actual" conflict of interest identified

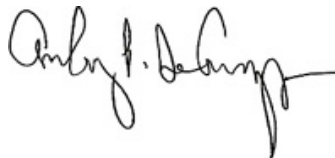
during the life of a financial assistance award be disclosed pursuant to an Institution's policy. Making such an important distinction between two types of agreements (i.e., contracts vs. financial assistance) is essential to achieve the intent of the regulations.

Third, we note that many subsections of 1403.111 and .112 intermingle definitions and obligations applicable to Proposal Evaluators and Advisors, Grant Officers with those applicable to non-federal entities. To the extent the Department intends for the provisions to be apply equally to both groups, they should be revised to make this clear. For example, currently the definition of "Personal relationship" in paragraph 1403.111(d) appears to apply only to Proposal Evaluators, Advisors and Grants Officers. To the extent that is not the intent, the definition should be revised.

Fourth, assuming that the definitions in 1403.111 and .112 are intended to apply to non-Federal entities, there should be consistency between the two sections and with other federal regulations in this area. For this reason, the definition of "Personal Relationship" in paragraph 1403.111(d) should be limited to an individual's spouse and/or dependent children. This definition of Personal Relationship should apply in the term and condition set forth in 1403.112(f). The definition of "close personal relationship" in paragraph 1403.111(d)(8) is confusing, unnecessary, and overly broad – it could even be read to include childhood friends - and deviates significantly from what is generally required by other federal agencies. While it is reasonable and prudent to obtain certain information regarding conflicts with an investigator and their immediate family members, going beyond this requirement adds significant administrative burden to both the grantee and the investigator. Accordingly, the definition of "close personal relationship" should be stricken.

We believe that these important revisions to your final policy will be instrumental in reducing burden on both parties without compromising the intent of what the regulation is designed to achieve. Please contact [jbendall@cogr.edu](mailto:jbendall@cogr.edu) should you have further questions. Thank you for your time and consideration.

Sincerely,



Anthony P. DeCrappeo  
President