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Announcements

COGR Presidential Transition

Dear COGR Colleagues,

I started at COGR on March 20, and I am grateful for the warm welcome by the staff and so many within the COGR community. I am particularly grateful to Wendy Streitz for her leadership example and counsel. We have been meeting regularly since January to pave the way for a smooth transition, and I'm pleased to report it is going as planned.

COGR plays a vital role in the partnership between research institutions and the federal government, and this is top of mind for me as I begin my service. In my first week, I have participated in meetings of three of COGR's standing committees. The committees are critical to the work of the association, and I was particularly struck in the discussions I joined by the shared purpose, deep expertise, and warm collegiality. I look forward to continued engagement with the committees.

I am truly honored to be COGR's new president. I'm eager for the June meeting where I hope to meet and talk with as many of you as possible. Please feel free to reach out to me any time at mowens@cogr.edu. Also, I would be pleased to connect with you on LinkedIn. I will periodically post about COGR's engagement and share other information that I hope will be helpful to you and the important work of the association.

Warm regards,

Matt Owens

Save the Date: COGR's 75th Anniversary in Washington D.C. October 26, 2023

Later this year, COGR will be celebrating its 75th anniversary during its October 26-27, 2023, meeting in Washington, D.C. Originally a standing committee in what is now the National Association of College and University Business Officers (NACUBO), COGR began operating as an independent organization in 1994 and today has a membership of over 200 of the most research-intensive institutions in the U.S. More details to come as we get closer, but for now, save the date!

Interested in Becoming More Involved with COGR? Complete COGR's Volunteer Survey

COGR's advocacy efforts and analysis in matters related to research security, compliance, costing, and administration depend greatly on the work of its standing committees and ad hoc workgroups of individuals with a high level of expertise at many of our member institutions. **If you are interested in volunteering with COGR (whether you are interested in volunteering for a committee, a work group, or in some other capacity), please consider filling out the COGR Volunteer Survey.** The survey should take less than 5 minutes to complete and will be used periodically by COGR staff and

COGR Committee Chairs to help identify volunteers with relevant expertise as needs arise. If you have filled out this survey in the past but would like to update your submission, please contact memberservices@cogr.edu.

NIH Data Management and Sharing Policy: Cross Cutting

NIH Data Management & Sharing Policy Is Now Live (UPDATE)

In the February 2023 Update, we shared various resources related to NIH Data Management and Sharing (DMS), including the NIH Scientific Data Sharing site with FAQs that address budget/costs. NIH recently revised a concerning FAQ (F.3.) related to budgeting DMS costs incurred by subawards. The text initially stated that DMS costs incurred by subawards were to be budgeted as a single line item in the prime's budget. Through engagement with NIH, it has been revised such that DMS costs incurred by subawards are to be included in the subawards Research & Related (R&R) budget as a single line item, a welcome correction.

Cost Impact: NIH Data Management & Sharing Policy Survey (UPDATE)

We are currently doing the data analysis on the responses to COGR's *Cost Impact: NIH Data Management & Sharing Policy Survey*. Thirty-four institutions completed the survey, and we are thankful for your participation! While we are still finalizing our analysis, we can confidently claim that:

- there will be significant administrative and cost impact for pre-award, IT, campus libraries, academic department administration, researchers, PIs, and graduate students;
- the cost burden will exceed $1M per year for many institutions; and
- smaller and emerging research institutions will experience a disproportionate level of administrative and cost impact.

If you have questions on the survey, please reach out to David Kennedy at dkennedy@cogr.edu. We expect to release a final report this spring.

NIH Data Management and Sharing – Committee Reports & Hot Topics (NEW)

COGR continues to follow and bring awareness to priority issues related to budgeting and costing associated with NIH's Final Policy on Data Management and Sharing, as previously shared with the community in prior COGR Updates and Chapter 4 of the COGR NIH DMS Readiness Guide[1]. During

[1] *See also: COGR's Resource Page on NIH Data Management and Sharing: https://www.cogr.edu/nih-data-management-and-sharing*

the Committee Report & Hot Topics session on Friday, March 3rd, COGR surveyed attendees[2] to understand the most critical issues for institutions since the implementation of the new policy on January 25th, through five focused questions:

1. How is NIH DMS going at your institution?
2. What is the most significant issue at your institution related to NIH DMS? (Select your top three challenges)
3. How significant of an issue is the single line-item budget for your institution?
4. How did your institution approach budgeting DMS costs in a single line item for this round of applications?
5. The FDP will soon begin a one-year pilot project, which we understand will include gathering data on how PIs/Institutions manage single line-item budget issues. We hope the pilot will yield helpful outcomes that address concerns about the single line-item budget issue. How would you characterize your hope as to how the pilot addresses the single line-item budget issue?

Regarding how NIH DMS is going at their institution, the majority responded that they are still doing some training activities and fielding questions but expect it to level out as the community becomes more accustomed to the new requirement. The top three significant issues identified as most challenging were: 1) ensuring proposals address and capture DMS costs appropriately, 2) concerns with DMS costs required to preserve and share beyond the award period, and 3) drafting DMS plans. Single line-item budget ranked 5th. However, a majority reported it as a moderate to high issue of concern for their institution. Most responded that the last round of applications included mixed approaches for budgeting DMS costs (single line item and traditional budget practice). Twenty percent (20%) utilized traditional budget practices, with fourteen percent (14%) responding budgeting all costs as a single line item. Eighteen percent (18%) responded that many of their budgets included $0 for DMS costs, which is a point of concern for addressing and capturing the true cost of DMS. While the FDP and NIH have initiated a one-year pilot to identify and address challenges during the implementation of the new DMS policy, the majority responded that they would like to see some solutions sooner (six months or less).

COGR will continue to raise priority issues identified by the community, engage with NIH, and develop resources for the community. If you have feedback related to DMS, contact Krystal Toups (ktoups@cogr.edu) and/or David Kennedy (dkennedy@cogr.edu).

[2] *Session slides are available here, and poll results are included in the last slide: https://www.cogr.edu/sites/default/files/Hot%20Topics%20PPT_Update%20Committees_Final_0.pdf*

2 CFR 200 "Uniform Guidance": Cross Cutting Issues

COGR Response to OMB RFI: Revisions to 2 CFR 200, aka "The Uniform Guidance" (NEW)

On February 9th,[3] OMB released a Request for Information (RFI) to inform potential revisions to 2 CFR 200, i.e., "the Uniform Guidance," as well as address considerations applicable to the Universal Identifier and Systems for Award Management (Chapter 1, Part 25) and Reporting Subaward and Executive Compensation Information (Chapter 1, Part 170). OMB expects to publish proposed revisions later in 2023, based on responses to the RFI, which will then include an opportunity for public comment. The original version of the Uniform Guidance was published in December 2014 and the next version, with limited revisions, was published in August 2020.[4]

The COGR Response[5] was submitted on March 13th and addressed a diverse range of topics and proposed revisions (ordered by 2 CFR section number), including:

- Implement active OMB oversight of agency noncompliance with the Administrative Procedures Act (APA) - (200.107).
- Delete all references to conflict of interest (COI) in 2 CFR 200 (as this is an inappropriate source for defining agency policies regarding researcher COI) - (200.112).
- Codify important federal policies associated with voluntary uncommitted cost sharing (VUCS) - (200.306).
- Provide needed flexibility for using fixed amount subawards - (200.333).
- Eliminate the current inappropriate and arbitrary mechanism for award termination - (200.340).
- Clarify allowability of costs normally incurred after award closeout (e.g., publication, data management and sharing) by permitting alternative methodologies to charge these costs - (200.403).
- Eliminate the DS-2 requirement and work with FAR representatives to modify their expectations on the DS-2 (as described in 48 CFR Chapter 99 Subchapter B 9903.202-1) - (200.419).
- Define the telecommunications enterprise as a "facilities" cost and fix the flawed methodology associated with recovering the 1.3 percent (1.3%) utility cost adjustment (UCA) - (Appendix III,

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[3] *COGR first notified the membership of the RFI posted to Public Inspection on February 8th via the COGR News Digest.*
[4] *See COGR Uniform Guidance Readiness Guide, published November 2020: https://www.cogr.edu/sites/default/files/UG%20Readiness%20111720%20Final_0.pdf*
[5] *Comments from all responders to the OMB RFI are available at https://www.regulations.gov/document/OMB-2023-0007-0001/comment*

B.4.a).

- Address the issue of F&A cost rates and fringe benefit rates not being issued in a timely manner - (Appendix III, C.6).

- Address inequities associated with the limitation on reimbursement of administrative costs - (Appendix III, C.8).

- Codify selected FAQs, as published May 3, 2021, on the U.S. Chief Financial Officers (CFO) website (e.g., purchase of scientific equipment through sole-source, per FAQ, Q-88).

COGR will engage OMB, as appropriate, over the next several months and leading up to the publication of proposed revisions later in 2023. We will keep the membership posted on all developments.

COGR's Uniform Guidance Resource Page

COGR has developed a Uniform Guidance Resource Page. This page includes links to past COGR comment letters and other resources applicable to prior correspondences around the Uniform Guidance. In fact, our first engagement with this issue was in 2011, when, under the auspices of an NIH RFI, COGR provided comments to the "A-21 Task Force" to address OMB Circular A-21! Contact Krystal Toups at ktoups@cogr.edu and/or David Kennedy at dkennedy@cogr.edu if you have any questions or comments related to the Uniform Guidance.

Science & Security: Cross Cutting

NSPM-33 and CHIPS & Science Act Research Security Provisions (UPDATES)

OSTP Issuance of Draft Research Security Program Standards (NEW)

OSTP has issued a draft of the long-awaited research security program standards for public comment (88 FR 14187). A joint RSIP and REC workgroup is reviewing the standards to develop comments, which are due on June 5, 2023. The response has a 5-page limit, and COGR has been in discussion with fellow associations about how comments can best be coordinated given this constraint. OSTP has asked that comments provided address the following topics:

- Equity: Areas of the Standards that do not uphold fundamental commitments to equity and non-discrimination.
- Clarity: Extent to which the Standards are clear and facilitate adoption by institutions.
- Feasibility: Aspects of the Standards that may prove difficult for institutions in terms of implementation.
- Burden: Measures that can be incorporated into the Standards to ease the implementation burden for institutions.

- Compliance: Perspectives on the requirement that requires institutions self-certify to the standards one year after they are issued.

COGR appreciates the importance of these standards for research security efforts, and it will focus its comments on ways in which the clarity and feasibility of the standards can be improved to better achieve these goals. The COGR working group has developed a broad outline of themes and points for possible inclusion in the response. This outline will be provided to all committee members as an aid in framing discussions at drop-in meetings that COGR is scheduling to gain additional input on how the standards will impact institutions.

The standards cover overarching program requirements and certification, foreign travel security, research security training, cybersecurity, and export control training. COGR's initial review of the standards noted the following concerns:

> Lack of clarity regarding the extent to which agency standards will harmonize with OSTP standards: As noted in the Federal Register notice, OSTP plans to obtain public input on the standards and then work with OMB to develop an implementation plan. OSTP will provide the standards to research agencies who "should engage with external stakeholders to ensure that program requirements are appropriate to the broad range of organizations that are subject to the requirement." This implementation plan does not adequately delineate the extent to which individual agency standards may/may not differ from OSTP standards, as well as the justification, if any, research agencies must provide in support of any such differences. From the institutional perspective, of course, any interagency inconsistency will make implementation and compliance more difficult and costly.
>
> Standards are not risk-based: The draft standards are not tailored to risks presented by specific types of research or the circumstances of that research. For example, the same standards applied to research on quantum computing also will be applied to research in the humanities. Similarly, the international travel standards apply equally to travel to all countries. The absence of a risk-based approach results in standards that impose the same constraints on minimal-risk activities as those placed on high-risk activities, thus increasing institutional burden without a corresponding research security benefit.
>
> Lack of defined terms and inconsistent use of terms that are defined: In many cases, the standards lack clarity because they either do not employ the defined terms that appear in the Appendix or because the definition for the term used in the standards differs from the definition for that same term that appears in the Appendix. For example, the Appendix defines the term "Covered International Travel" as "international, official business travel that contributes to [*sic*] a substantive, meaningful way to the development or execution of a research and development project proposed to be carried out with a research and development award from a federal research agency." Yet, the standards themselves require institutions to establish international travel policies for individuals "engaged in federally funded R&D who are traveling internationally for organization business, teaching conference attendance, research purposes, or who receive offers

of sponsored travel for research or professional purposes," a much broader category of travel than that encompassed by the defined term.

In addition to gathering internal input, COGR is seeking EDUCAUSE's thoughts on the cybersecurity standards.

Research Security Institution Presentation: Analysis of Poll Data Regarding Institutions' Actions in Preparation for Research Security Program Standards (NEW)

During the February COGR membership meeting, four institutions presented on their activities in preparation for the research security program standards based on overview of program elements set forth in the NSPM-33 Implementation Guidance. This session also included a number of real-time polls of attendees on their institutions' preparations ahead of the standards' issuance, the results of which are available in the COGR member portal[6]. Notable results from these polls are described below:

- International Travel: Per the NSPM-33 Implementation Guidance, institutions will be required to have travel policies that "include an organizational record of covered international travel by faculty and staff and, as appropriate, a disclosure and authorization requirement in advance of international travel, security briefings, assistance with electronic device security (smartphones, laptops, etc.), and preregistration requirements." In polling regarding preparations for these travel requirements, nearly forty percent (40%) of the 186 respondents reported that their institutions already require some type of mandatory pre-registration for international travel, and another thirty-eight percent (38%) reported that they have voluntary pre-registration or require pre-registration for some but not all travelers. In the area of electronic devices, just over fifty percent (50%) of the 160 respondents reported that they already have a voluntary laptop loaner process in place, but nearly seventy percent (70%) of institutions reported that they are still working on the development of processes for tracking all electronic devices (including smart phones and laptops) that may be used for research during international travel.
- Cybersecurity: Institutions with more highly centralized IT systems may have advantages in implementing certain institutional-wide processes and requirements. Nonetheless, nearly equal numbers of 159 poll respondents reported that they expect it will take substantial effort for their institutions to comply with the research security program cybersecurity requirements whether the institution has a primarily decentralized IT network [twenty-nine percent, (29.6%)] or a primarily centralized IT network [(twenty-seven percent, (27.7%)].
- Training: Nearly sixty-three percent (63%) of 151 respondents reported that they plan to use the government-issued research security training modules as a part of their training program. Almost half of 133 respondents reported that they will offer research security training in a hybrid format (in-person and on-line) [(forty-eight percent, (48%)], while the other half stated that training would be providing only on-line [approximately fifty percent, (50.4%)]. In terms of the training

[6] *Log in required. Click here to request access to the COGR Member Portal. All staff at COGR Member Institutions are eligible and encouraged to sign up.*

audience, just under one-half of the 154 respondents [approximately forty-seven percent, (46.8%)] reported that they have not yet decided whether research security training will be required for a broader range of individuals than those specified in the standards. With respect to required export controls training, over fifty percent (53.7%) of the 136 respondents reported that their current export controls training should meet the research security program standards, while approximately forty-six percent (46%) reported that they will modify or add to current export controls training.

Overall, the polls demonstrated that institutions have been actively taking stock of existing processes to identify those that can easily be leveraged to address the research security program standards, as well as areas that will require more substantial work.

Commerce Department's Bureau of Industry and Security (BIS), Office of Technology Evaluation (OTE) Assessment of the U.S. Civil Space Industrial Base (CSIB) (NEW)

A number of COGR members reported receiving the U.S. Civil Space Industrial Base Assessment survey from the U.S. Department of Commerce, Bureau of Industry and Security (BIS), Office of Technology Evaluation. Completion of the survey is mandatory, and BIS prescribed an initial turn-around time of 30 days after receipt for survey completion. Unfortunately, several institutions reported that the survey had been sent to departments or offices that were not aware of the activities being surveyed, resulting in lost time, as the survey was forwarded to appropriate responding units. Institutions also reported that many questions in the survey were directed to commercial and industrial enterprises, and it was extremely difficult to answer them in the context of academic research.

COGR has arranged a call for members to discuss the survey. The call will take place on March 27, 2023, at 12:30 p.m. (ET). The first 30 minutes of the call will include representatives from BIS, who will be available to answer member questions regarding the survey, and the remainder of the call will be limited to member discussion of the assessment. Ahead of the call, **BIS provided the following information that will be helpful to institutions completing the survey**. (Note: This information is quoted directly from an email from Kimberly Kruse, Civil Space Industrial Base Assessment Lead, Office of Technology Evaluation, BIS):

- ***The deadline for universities has been extended to 60 days.***
- *If multiple labs on the same campus and/or multiple departments within the same organizational structure received surveys, they can be consolidated.*
- *After the survey is uploaded, there might be an error message pop-up; regardless, please scroll down and hit "submit."*
- *Some sections can be modified for universities:*
    - *Tab 11 – if the listed standards are not applicable, leave the cell blank. If the institution adheres to other standards, please list them in comment box.*
    - *Tab 13 – only complete Part C and D.*
    - *Tab 15 – We understand that some institutions will not be able to provide all financials; non-profits should complete what is available in their IRS 990 P&L.*

Many of the universities have participated in previous collections, including Rocket Propulsion, Air Force Supply Chain, and DSS (now DCSA) Critical Facility. As in the past, we will work with them to complete this essential collection which is a congressional mandate to NASA.

DOD Proposals and Security Review: ARMY Issues Risk Matrix (NEW)

COGR has been notified about a number of instances where COGR member institutions received notice from the Army Research Office that scientifically recommended proposals had been declined based on a security review. In most cases, proposers were given an opportunity to submit a risk mitigation plan, but little guidance was provided as to the content of such plans (e.g., report research inquiries by "foreign operatives"). COGR understands that all DOD research funding agencies are required to offer an opportunity to submit risk mitigation plans in response to the security review decisions.

Recently, the Army issued a Risk Matrix/Rubric and FAQs, that may be helpful to the community in drafting a response to the DOD agencies and creating risk management plans. The Matrix is part of the Army Risk Assessment Program, which aims to help "identify and mitigate potential risk of Conflicts of Commitment/Conflicts of Interest in Army research grants and cooperative agreements." The Army Risk Matrix Rubric is somewhat similar to the DARPA Matrix released in 2021 (see COGR November 2021 Update), and both matrices categorize certain activities as "high," "moderate," or "low" risk, with the DARPA Matrix also including a "very high" risk category. Unsurprisingly, under the Army Risk Matrix/Rubric, activities that present "high" risk include active participation in foreign talents programs and various affiliations with denied entities. The high-risk category also includes ongoing conflicts of interest or commitment, without any reference to whether the conflict is being managed. "Active" "collaboration with a foreign institution, person, or entity from a strategic competitor" is also categorized as posing "high" risk; however, neither the Army Risk Matrix/Rubric, nor the FAQs, give much in the way of detail about what makes a collaboration concerning. For instance, the FAQ concerning co-authorship and participation on a conference panel states that both activities are "time-honored aspects of our fundamental research ecosystem, but "[e]ither or neither could be an indicator of potential foreign influence depending on the nature of the co-authorship or the conference panel along with consideration of other factors." Member institutions are encouraged to continue to report to COGR these types of situations.

Section 117 Foreign Gift and Contract Reporting (UPDATE)

The February 2023 Update discussed the revised Department of Education (ED) Information Collection Request (ICR) for Section 117 foreign gift and contract reporting. It indicated that a number of associations led by ACE were developing joint comments.

Joint Association Comment Letter on ICR

The joint association comments on ICR were submitted on February 27th. In the comments, we expressed support for the transfer of Section 117 reporting responsibilities from the ED Office of General Counsel to the Federal Student Aid Office (where the responsibilities formerly had resided). We also appreciated the clarification that "money out" contracts are not included in Section 117 reporting. However, we expressed continued concerns about including intermediaries (e.g., university foundations) in the reporting requirements and the requirements to disclose donor identities. We also reiterated issues with the reporting portal, enforcement concerns, confusion about the reporting of tuition paid by foreign sources, and the administrative and cost burdens. We called for ED to establish a single point of contact for Section 117. We also called for ED to engage in formal rulemaking on 117 rather than establishing requirements via ICRs.

Congressional Letter

House Education and Workforce Chairwoman Rep. Foxx (R-NC) and House Oversight Committee Chairman Rep. Comer (R-KY) along with Rep. Banks (R-IN) and Rep. Steele (R-CA) sent a letter to Department of Education Secretary Miguel Cardona asking for the agency to conduct oversight to see if the University of Pennsylvania violated Section 117 related to classified documents held at UPenn's Biden Center. The letter also expresses concern with ED's decision to move oversight of Section 117 from OGC to the Office of Federal Student Aid, noting that "FSA was never designed to handle such serious matters and it does not have the capability or expertise needed" to conduct oversight. The letter requests ED to provide several communications/documents related to UPenn's Section 117 reporting and the decision to move enforcement of Section 117 from OGC to FSA.

Multiple Congressional Hearings Focus on China (NEW)

House Select Committee on Chinese Communist Party (CCP) Hearing

During their first primetime hearing on February 28th, House China Select Committee members previewed their agenda on several issues related to China. Republican members framed their issues with an external focus on China's "ideological, technological, economic, and military threat." Democratic members spoke to a more domestic-focused approach to bolstering U.S. democracy, and boosting government funding for an industrial policy that could thwart China's domestic investments. Universities were mentioned several times.

House Science, Space, and Technology Committee Hearing

Also on February 28th, the full committee of the House Science, Space, and Technology Committee convened for a hearing on "The United States, China, and the Fight for Global Leadership: Building a U.S. National Science and Technology Strategy." Witnesses included former OSTP Director (and former COGR Board member) Kelvin Droegemeier; President and CEO of the Council on Competitiveness Deborah Wince-Smith; Director of the Lawrence Livermore National Laboratory Kim Budil; and Senior Fellow at AEI Klon Kitchen. Related to research security, Rep. Babin (R-TX) asked Dr. Droegemeier

how the U.S. can protect S&T research. In his response, Dr. Droegemeier discussed the risk assessment center called for in the CHIPS and Science Act and the status of NSF's efforts to stand it up. Rep. McCormick (R-GA) and Dr. Droegemeier also had an exchange on foreign students from China and whether we should continue to monitor the "90% of students from China who end up staying in the U.S. after graduation."

Senate Banking Hearing

Also on February 28th, the full committee of the Senate Banking, Housing and Urban Affairs Committee convened for a hearing on "Advancing National Security and Foreign Policy Through Sanctions, Export Controls, and Other Economic Tools." Use of a CFIUS-like process to assure sensitive U.S. technologies are not shared with foreign adversaries was discussed.

House Subcommittee Hearings

On March 8th, the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet held a hearing on "Intellectual Property and Strategic Competition with China: Part I." Thefts of intellectual property by China from universities was a recurrent theme. On March 9th, the House Homeland Security Subcommittee held a Hearing on "Countering Threats from the CCP."

We expect this intense Congressional focus on China will continue. At this point it is not clear what legislation may emerge as a result of these discussions.

Research Security & Intellectual Property (RSIP)

Many Committee activities related to Science & Security are reported above under the Cross Cutting Issues sections of the COGR Update. Other items being followed by RSIP are covered below.

NIH Declines March-In Request (UPDATE)

The COGR March 2022 Update discussed the petition to NIH to "march-in" to require compulsory licensing of the prostate cancer drug Xtandi on the grounds of excessive pricing. It was a resubmission of a petition originally filed and denied by NIH in 2016. COGR has long had the view that exercise of march-in for price control purposes would undermine the Bayh-Dole Act and the ability of institutions to successfully commercialize federally funded technologies.

On March 21st, NIH again rejected the petition. The decision stated "NIH's analyses in response to the petition request have found Xtandi to be widely available to the public on the market. In addition, given the remaining patent life and the lengthy administrative process involved for a march-in proceeding, NIH does not believe that use of the march-in authority would be an effective means of lowering the price of the drug. For these reasons, NIH has determined that initiation of a march-in proceeding is not warranted in this case." The decision letter goes on to note that more than 200,000 patients are estimated to have been treated with Xtandi from 2012 to 2021. This fulfills the Bayh-Dole mandate of bringing the drug to practical application.

Claims that Bayh-Dole march-in should be used for price control purposes have been contentious (the NIH letter cites the diverse views). A Congressional letter to the HHS Secretary last June reiterated this view, although it was not specific to Xtandi. COGR joined other associations in refuting this view (see COGR September 2022 Update). While we agree with the NIH decision, the debates are likely to continue.

HHS and the Department of Commerce (DOC) have announced efforts to pursue a whole-of-government approach to review its march-in authority as laid out in the Bayh-Dole Act. According to the announcement, "the Interagency Working Group for Bayh-Dole will develop a framework for implementation of the march-in provision that clearly articulates guiding criteria and processes for making determinations where different factors, *including price* (emphasis added), may be a consideration in agencies' assessments."

Revised Bayh-Dole Act regulations are due to be published by NIST on March 24th. The previous proposed version included a provision that march-in rights shall not be exercised by an agency exclusively on the basis of business decisions of a contractor regarding the pricing of commercial goods and services arising from the practical application of the invention. The unpublished version of the pending March 24 rule indicates that many comments were received on this provision. It has been removed, and "NIST intends to engage with stakeholders and agencies with the goal of developing a comprehensive framework for agencies considering the use of march-in provisions."

The Xtandi decision has been appealed[7], and COGR will continue to follow and report on developments.

NSF Accelerating Research Translation (ART) Solicitation Raises Questions (NEW)

Last September, NSF issued a solicitation for the new Accelerating Research Translation (ART) Program (NSF 23-558). According to the solicitation, the goal is "to build capacity and infrastructure for translational research at U.S. Institutions of Higher Education (IHEs) and to enhance their role in regional innovation ecosystems. In addition, this program seeks to effectively train graduate students and postdoctoral researchers in translational research, benefiting them across a range of career options."

The program is in furtherance of Division B of the CHIPS and Science Act and will be run out of the NSF Technology Innovation and Partnership (TIP) established by the Act to support translational research. Section 10391(a) of that Act authorizes funding for institutions of higher education (IHEs) and affiliated nonprofit organizations to build capacity for technology commercialization (see COGR September 2022 Update; AUTM heavily advocated for this provision).

The solicitation has attracted wide visibility and interest among COGR members. However, there is uncertainty about the types of institutions NSF plans to fund under the program. The solicitation states "The ART program provides funding to build institutional capacity and the infrastructure needed to

[7] *See: Bloomberg Law: NIH Decision on Licensing of Cancer Drug Xtandi Appealed: https://news.bloomberglaw.com/pharma-and-life-sciences/nih-decision-on-licensing-of-cancer-drug-xtandi-appealed?context=search&index=0*

conduct translational research activities. The programmatic intent of ART is to support IHEs where the fundamental research activity is high, but the level of *translational research* activity is relatively low." It is not fully clear what institutions might meet these criteria, and how the criteria might reflect on existing technology transfer operations. The solicitation discusses traditional research translation and entrepreneurship metrics (e.g., number of invention disclosures, patents issued, start-ups, licenses/options, revenue from royalties, etc.) that can reflect the current capacity and the status of an infrastructure for translational research activities at an IHE. However, it states "these metrics do not necessarily provide a complete picture. As a result, for this solicitation, each submitting IHE must provide data to justify their current capacity and infrastructure for *translational* research activities." Section 10391 states as a purpose "advancing novel approaches and reducing barriers to technology transfer," but does not specifically address translational research.

The TIP Directorate has held a number of webinars and meetings with groups to help clarify the uncertainty over what NSF is seeking in the ART program, and how it relates to more traditional technology transfer activities. These include webinars on February 21st and March 16th as well as a session with the NSF Assistant Director for TIP at the recent COGR meeting. The solicitation indicates "A range of metrics can be used to measure the scale of translational research activities or evaluate their economic or societal impact. It is up to the proposing institution to use any of the metrics to determine a baseline and then set goals for accelerating the pace and scale for making discoveries, supporting industry needs, and contributing to the innovation-driven economy for the region." From the various webinars and discussion, it appears more definitive guidance will not be forthcoming. Institutions will need to define for themselves the metrics and propose translational activities that meet the goals of the program. Partnering with other institutions is also strongly encouraged. The solicitation states "The ART program strongly encourages, but does not require, the lead institution (with a high volume of fundamental research but low translational activity) to partner with another institution with an established infrastructure and expertise in transitioning fundamental research into practice to create economic and/or societal impact."

The ART Program will fund 10 awards of up to $6M and a 4-year duration in the first round of competition. Annual rounds at this level are expected but will depend on future funding. Proposals will require an institutional commitment. Proposals are due May 9th.

Possible Tightening of Domestic Manufacturing Waiver Requirements (UPDATE)

Recent COGR Updates have discussed efforts to further tighten the existing Bayh-Dole Act domestic manufacturing waiver requirements (see February 2023 Update). This includes the "Invent Here, Make Here Act" that was passed as part of the 2023 NDAA, co-sponsored by Sens. Baldwin (D-WI) and Portman (R-OH). That Act applied only to DHS programs, but Sen. Baldwin has indicated an intent to apply it to all agencies.

Unlike Bayh-Dole, which applies only to U.S. product sales under *exclusive* licenses, the Baldwin legislation applies to worldwide sales regardless of the type of license, including non-exclusive. This would increase the burden on US universities who will need to be more mindful of these requirements

and it could limit their licensee pool. It should be noted that the DOE requirements (see COGR March 2022 Update) apply to all DOE-funded products regardless of the type of license or sale location.

COGR continues to hear rumors of a pending Executive Order on U.S. manufacturing, but it is unclear whether it might affect existing Bayh-Dole requirements. AUTM has surveyed Tech Transfer Office Directors as to their use of waivers under Bayh-Dole. Preliminary results indicate that waivers are infrequently requested, but when they are agency responses often are not forthcoming. In cases where a waiver is necessary and withheld or subsequently ignored, commercialization of federally-funded research products may not occur.

Notice of Proposed Rulemaking (NPRM) on Non-Compete Agreements (NEW)

On January 5th, the Federal Trade Commission (FTC) issued an NPRM (RIN 3084-AB74; FTC-2023-0007-0001) that would ban most non-compete agreements (NCAs). The NPRM seeks to address overbroad use of NCAs, potentially hampering some low-wage workers in industries such as hospitality and services. However, there are concerns the impact may be too broad, affecting knowledge workers and enabling an easy flow of trade secrets to foreign competitors, while disincentivizing investment in American innovation and workforce. If workers can easily leave and take critical knowledge to competitors, firms will be disincentivized to pursue new ideas and entrepreneurs may be deterred from beginning new businesses. NCAs protect trade secrets by preventing workers from taking vital information to competitors immediately after ending their employment.

The CSIS Renewing American Innovation Project is coordinating comments on the NPRM. The draft summary states: "A complete ban of NCAs will impair the U.S. innovation ecosystem. It would weaken the intellectual property of owners, thereby reducing the willingness of firms to invest and create new technologies in the United States. It would discourage desperately needed investment in the U.S. workforce, who are essential to innovation and meeting the national security objectives of increasing domestic manufacturing of critical technologies. It would facilitate the transfer of valuable IP from U.S firms to foreign competitors…and weaken the American innovation system."

COGR has been approached about joining in the comments. While we agree with the concerns about the potential impact on innovation, these issues are somewhat removed from COGR's primary focus on regulations and policies affecting research at its member institutions. We are not planning to join the comments but are continuing to discuss the issues with CSIS and other associations.

New Tax Provision Raises Concerns for SBIR/STTR (NEW)

The 2017 Tax Cuts and Jobs Act (TCJA) included a provision (Section 174) requiring taxpayers to capitalize a broad definition of "Research and Experimentation" (R&E) expenditures and depreciate them over five years, starting with the 2022 tax year. Small businesses developing scientific innovations will incur tax bills on 2022 income that previously would have been offset by their R&E expenditures. Companies will have to pay taxes on ninety percent (90%) of the funds used to support their "R&E" (similar to "R&D") expenses in 2022.

SBIR/STRR awardees, in particular, could be impacted as they will be forced to pay taxes on federal grants received. For example, a typical Phase I SBIR/STTR grant for $250,000 prior to 2022 would have had no tax liability since the income of $250,000 would be offset by the $250,000 of R&E expenses. However, our understanding is that in the 2022 tax year, a business can only deduct ten percent (10%) of the R&E costs (for the first year, only ten percent (10%) depreciation is allowed), so they will have to pay taxes on ninety percent (90%) of the grant income, or $225,000.

If this analysis is correct, the effect could be devastating for SBIR/STTR awardees. It could disincentivize future innovative companies and entrepreneurs from applying for these funds. Many other businesses receiving other federal grants and investments from private foundations and VC funds may also be adversely affected by the new IRS definition of R&E.

A letter with over 500 co-signers has been sent to the relevant Congressional committee chairs requesting that they immediately defer the Internal Revenue Code section 174 amortization requirement of research and experimental expenditures to prevent imposition of this tax. The matter is urgent given the business tax deadlines in March and April. The American Institute of CPAs also has requested a deferral.

COGR typically does not join in Congressional letters, so we will not be co-signing. The letter was prepared by private consultants, and we cannot necessarily verify the analysis is correct. However, we understand that the IRS has issued two Revenue Procedures (2023-8 and 11) generally confirming this understanding. Given that many university startups receive SBIR funding, the impact on university technology transfer could be substantial.

The American Innovation & Jobs Act re-introduced by Sens. Maggie Hassan (D-NH) and Todd Young (R-IN) on March 17, contains a provision changing Section 174 of the 2017 law. However, the prospects for this legislation are uncertain.

Research Ethics & Compliance (REC)

Select Committee activities related to Science & Security are reported above under the Cross Cutting Issues section of the COGR Update. Other items being followed by REC are covered below.

FDA Draft Guidance for Industry: Electronic Systems, Electronic Records, and Electronic Signatures in Clinical Investigations: Questions and Answers (March 2023) (NEW)

The FDA issued draft guidance that provides additional direction in question and answer format regarding the application of FDA's Part 11 requirements, as well as expectations for electronic records associated with clinical investigations of FDA-regulated items. Of note, the guidance recommends that when clinical investigators maintain "a copy of an electronic record required for the clinical investigation in place of an original paper or original electronic record," the copy should be a "certified copy," and that associated metadata should be included with certified electronic records (or paper copies of those records). The guidance also provides recommendations with respect to electronic systems that are used

to produce records required for clinical investigations, and documentation that must be kept with respect to those systems. Finally, the guidance specifies what constitutes a proper electronic signature.

Research Ethics & Compliance (REC) Meeting with Incoming ORI Director Sheila Garrity (NEW)

REC met with Sheila Garrity before she assumes her new role as Director of the Office of Research Integrity (ORI) at the end of March 2023. Ms. Garrity advised REC members that ORI was actively working on reviewing the comments that were received in response to its RFI on the 2005 Public Health Services Policies [87 FR 53750] to which COGR and ARIO submitted a joint response. REC members discussed with Ms. Garrity ways in which COGR can work in partnership with ORI, and noted the following issues of concern:

- Appropriate use of artificial intelligence in science and scholarly publications
- Processes to facilitate inquiries and investigations involving multiple institutions, including those outside of the U.S.
- Working with journals in the areas of research misconduct and research security
- Handling allegations from Pub Peer
- Ensuring that institutions can appropriately close cases when all reasonable leads are pursued.

Ms. Garrity is unable to attend the June COGR meeting, but she indicated that she would try to attend the October meeting.

Revision of COGR Conflict of Interest Publication (NEW)

REC has nearly completed its revision of COGR 2002 publication "Recognizing and Managing Personal Financial Conflicts of Interest." The new publication – "Analyzing Personal Financial and Other Conflicts of Interest in Research Contexts" – considers conflicts of interests and related conflicts in light of agency concerns regarding inappropriate foreign influence. The document includes an overview of key issues that institutions should consider in developing associated processes, as well as an appendix containing case studies that can be used to facilitate training in this area.

NASA: Conflict of Interest and Conflict of Commitment Policy for Recipients of NASA Financial Assistance Awards RFI (UPDATE)

On March 8th, COGR, AAU, and APLU submitted joint comments in response to this RFI. This response noted that inconsistency between the NASA proposed policy and current NSF and NIH policies will cause unnecessary burden to institutions because they will not be able to utilize current, well-developed processes and systems in place to address the long-standing NSF and NIH conflict of interest (COI) requirements. The response also emphasized that conflict of commitment (COC) and COI concerns are handled under very different grantee processes, and conflating these concepts was confusing and collected information that duplicated that obtained through revised current and pending/other support disclosure requirements. The response letter urged NASA to reconsider the policy as a whole, and instead adopt a financial COI policy patterned after NIH or NSF, leaving COC concerns to be addressed

via research support disclosures. Barring this approach, the letter provided comments on modifications to defined terms and other provisions of the proposed policy that would provide needed additional clarity.

Animal Research

Request for Information (RFI) on Update to NOT-OD-05-034 Guidance on Prompt Reporting of Noncompliance to OLAW (NOT-OD-23-063) (UPDATE)

The Office of Laboratory Animal Welfare (OLAW) issued an RFI (NOT-OD-23-063) to solicit public comments on minor changes to the requirements for NIH grantees to report non-compliance with the Public Health Service (PHS) Policy on the Humane Care and Use of Laboratory Animals. REC has a working group that is meeting to develop the response.

USDA APHIS ANPRM "Wild and Exotic Animal Handling, Training of Personnel Involved With Public Handling of Wild and Exotic Animals, and Environmental Enrichment for Species" (86 FR 1151) (UPDATE)

COGR submitted a response to this Advanced Notice of Proposed Rulemaking (ANPRM, 86 FR 1151) that focused on the proposed rule's provisions requiring registrants to provide written enrichment plans for all animal covered under the Animal Welfare Act (AWA). The response emphasized that all enrichment standards should be based on robust scientific evidence and afford sufficient latitude to Institutional Animal Care and Use Committees (IACUCs) to make exceptions necessary for scientific purposes, or to address the welfare of specific animals. The letter also advocated for structuring any enrichment requirements as performance standards that provide institutional animal care and use programs with sufficient flexibility in implementation. Importantly, the response noted that institutions will incur significant additional direct and indirect costs in implementing such enrichment standards, and that USDA should consider these costs when determining its schedule for issuing standards and effective compliance dates.

Final USDA Rule on Birds in Research (UPDATE)

At the end of February, the USDA issued its final standards for birds not bred for use in research. COGR submitted comments in response to the proposed rule. In response to numerous comments regarding the scope of the rule (including comments made by COGR), USDA did amend the definition of "bred for use in research" to clarify that it applies to birds bred in captivity and actually used for research, teaching, testing or experimentation. The final rule also incorporated changes to make it easier for facilities to develop and implement housing, ventilation, temperature, and other standards using "professionally accepted standards in consultation with the attending veterinarian." Current AWA licensees and registrants must comply with the rule by August 31, 2023, while new licensees and registrants need not comply until February 21, 2024.

Contracts & Grants Administration (CGA)

Select CGA Committee activities related to NIH Data Management and Sharing are reported above under the Cross-Cutting Issues section of the COGR Update. Other issues followed by CGA are covered below.

NIH Seeks Comments on Request for Information on the NIH Plan to Enhance Public Access to the Results of NIH-Supported Research (NEW)

On February 21, 2023, the Office of The Director at NIH released an RFI (NIH Notice NOT-OD-23-091), "Request for Information on the NIH Plan to Enhance Public Access to the Results of NIH-Supported Research." The notice outlines NIH's plan and proposed approach to address the Office of Science and Technology Policy (OSTP) memorandum Ensuring Free, Immediate, and Equitable Access to Federally Funded Research, which established new guidelines for public access to scholarly publications and data resulting from federally supported research. NIH presented on this topic at the COGR meeting on March 2, 2023, and slides are posted on COGR's website.

Comments to the RFI are due Monday, April 24th, and should be submitted at https://osp.od.nih.gov/nih-plan-to-enhance-public-access-to-the-results-of-nih-supported-research. NIH is also hosting a "virtual listening session" to hear community feedback on April 12th, and information on the agenda, webcast link, and how to sign up to make comments can be found here.

COGR will establish a working group to review the RFI for comment. Please contact Krystal Toups at ktoups@cogr.edu for questions or to provide input.

NIH Seeks Comments on Request for Information for Re-envisioning U.S. Postdoctoral Research Training and Career Progression within the Biomedical Research Enterprise (NEW)

On February 14, 2023, the Office of The Director at NIH released an RFI (NIH Notice NOT-OD-23-084), "Request for Information (RFI): Re-envisioning U.S. Postdoctoral Research Training and Career Progression within the Biomedical Research Enterprise." NIH seeks comments from the community to inform the development of recommendations by the NIH Advisory Committee to the Director (ACD). ACD recently hosted a series of community listening sessions (recording).

COGR received input at the February COGR meeting that there may be some interest from the membership to develop comments. We will engage through our committees and welcome any comments the community may have on the topic.

Comments to the RFI are due Monday, April 14th at 11:59:59 pm (ET) and are to be submitted electronically on the submission website. Please contact Krystal Toups at ktoups@cogr.edu for questions or to provide input.

Contracts & Grants Administration: Other Issues (NEW & ONGOING)

The items below are issues that the CGA Committee has recently reported and issues that we continue to follow:

NIH Modular Grant Application. COGR submitted a letter to Dr. Tabak, Acting Director at the National Institutes of Health. In the letter, COGR presented to NIH support and analysis for raising the current modular cap ($250,000) or eliminating the direct costs cap altogether, and to eliminate the need for detailed budgets at the proposal stage. Justification included accounting for 24 years of inflation and the significantly decreased percent of applications covered by modular budgets [ninety percent (90%) in 1998 compared to twenty nine percent (29%) in 2021]. COGR recently followed up with NIH on their response. NIH shared that for some time now, they have deliberated on the topic of modular applications through various discussions within NIH, and COGR's letter is timely to stimulate the conversation again. However, there are no indications that NIH is inclined to make significant modifications or changes in the modular application process at this time. COGR will continue to bring this issue to light through engagement with NIH and will keep the membership updated on any developments.

NSF Safe and Inclusive Working Environments for Off-Campus or Off-Site Research Plans. NSF PAPPG 23-1 Chapter II.E.9 describes the new requirement for the AOR to certify that an organization has a plan in place for safe and inclusive research for any proposals that propose to conduct off-campus or off-site research. A joint workgroup is looking at the issue and expects to have more on this topic for COGR members. The workgroup may expand its efforts to review new and ongoing policy efforts related to diversity, equity, and inclusion at local and federal levels as it relates to federally funded research.

OSTP Open Access. As previously reported, OSTP published a memo on August 2022 on "Ensuring Free, Immediate, and Equitable Access to Federally Funded Research." COGR hosted guest speakers for two panels at the February meeting, the publisher's panel on March 2, 2023 to provide their perspective on the topic. Visit COGR's website to view available slides and recording.

If you have questions, comments, or concerns on the above topics, please contact Krystal Toups at ktoups@cogr.edu.

Costing and Financial Compliance (CFC)

Select CFC activities related to NIH Data Management & Sharing and the Uniform Guidance are reported above under the Cross Cutting Issues section of the COGR Update. Other issues followed by CFC are covered below.

COGR Launches F&A Cost Rate Survey (NEW)

The Costing and Financial Compliance (CFC) Committee released the 2023 F&A Cost Rate Survey to the COGR membership in February. Information on the survey and the survey form are available now. The last survey was conducted in 2016-2017.[8] We encourage all institutions to complete the survey, and to coordinate internally to submit one response per institution. Survey submissions are due March 31st. The results provide both a resource for the membership to benchmark key metrics, and also assist COGR in advocacy efforts around F&A issues. Note, all survey results are kept in the COGR Member Portal, and any results that are made public are in aggregate only and de-identify all institutions. We expect to present preliminary findings from the survey at the June COGR Meeting. Please direct all questions to FA_Survey@cogr.edu.

Timeliness of F&A Cost Rate Negotiations and COGR Advocacy (NEW)

We continue to follow the status of institutions that negotiate F&A cost rates (and fringe benefit rates) with Cost Allocation Services (CAS). The ongoing concern has focused on the inability to complete timely negotiations and receive final cost rate agreements. In December, COGR sent a letter to Mak Karim, the National Director for Cost Allocation Services at the U.S. Department of Health and Human Services, to address the concern and request assistance to facilitate improvements in the speed of the review and approval process associated with F&A cost and fringe benefit rates.

In the COGR response to OMB's RFI (see earlier section; 2 CFR 200, Uniform Guidance: Cross Cutting Issues), we addressed this concern through the following recommendation to OMB:

> *Provide remedies for grantees when rate agreements are not issue in a timely manner. For example, a default "provisional" rate puts the institution at audit risk. When the cognizant agency cannot respond in a timely manner, the existing rate should be extended as a "predetermined rate."*

Also note, in the COGR F&A Cost Rate Survey (see previous section), we have posed survey questions around the "timeliness" issue and we encourage institutions to respond to those questions in the survey. COGR will continue to pursue this issue and we will keep the membership updated on any progress.

[8] *The 2016-17 Survey results can be found on COGR's website at: https://www.cogr.edu/cogr-2016-17-fa-survey-results*

NSF Higher Education Research & Development (HERD) Survey and Analysis (NEW)

At the COGR Meeting on Wednesday, March 1st, a session on Costing Hot Topics[9] was led by Sarah Axelrod (Harvard University), Gerald Mauck (University of Denver), Jeremy Forsberg (University of Texas, Arlington), and COGR's Krystal Toups and David Kennedy. In addition to covering the COGR F&A Cost Rate Survey and the COGR response to OMB (Uniform Guidance), a presentation on the HERD was led by Jeremy Forsberg. In his analysis, Jeremy used data from the 2021 HERD to explore questions, including:

- What does the federal government's increased reliance on research institutions to finance R&D mean to America's global R&D competitiveness?
- How does the increased reliance on research institution subsidization impact smaller and emerging research institutions—especially when they are disproportionality impacted by cost burden?
- What is the impact on institutions and researchers that are underrepresented in the research ecosystem?
- How can the community address the issue of new and complex "unfunded federal mandates" in the context of inadequate resources to cover these costs?

As Jeremy summarized, the path to solutions includes robust data (e.g., the COGR F&A Survey and regulatory cost/burden surveys), revisions to the Uniform Guidance (specifically, addressing the administrative cap on F&A cost recovery), and rethinking the cost/benefit impact of new regulatory requirements, as well as how the oversight process balances "performance" versus "accountability."

For those interested in looking at the 2021 HERD Survey results, the InfoBrief provides a good summary. Also available is the complete suite of 2021 data tables (which includes the popular *Table 22 – Higher education R&D expenditures, ranked by all R&D expenditures, by source of funds: FY 2021*). Also of interest is *Table 17 – Higher education R&D expenditures, by type of cost, highest degree granted, and institutional control: FYs 2010-21.* Table 17 includes data on recovered and unrecovered indirect costs, in aggregate, for all institutions; for FY2021, the total recovered indirect costs were $14.7B (rounded) and the total unrecovered indirect costs were $5.9B (rounded).

We encourage institutions to be attentive to the questions raised during this COGR session. As COGR continues its advocacy around administrative and cost burden, the results of the HERD Survey are a helpful resource to advance issues around the cost of research.

[9] *Session recording available here: https://cogr.member365.org/sharingnetwork/workspace/view/27 (login required)*

HHS-OIG Audit of the NIH Grant Closeout Process (ONGOING)

We reported on this development in the COGR February Update. This new audit initiative was announced by the Office of the Inspector General, U.S. Department of Health and Human Services (HHS-OIG) in November and is aimed at the NIH's management of the grant closeout process. In that announcement, the HHS-OIG indicated: "*We will determine whether NIH closed its grants in accordance with Federal requirements and departmental guidance. We will also determine which actions NIH took to address noncompliance with closeout requirements*." Key federal requirements include both compliance with the 2016 GONE Act and compliance with 2 CFR 200.344(b) Closeout: "*a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance*." While the HHS-OIG audit is focused on NIH management practices, findings from the audit could have repercussions for the grantee community. We will keep the COGR membership posted on developments.

OMB & Office of Federal Financial Management (OFFM) Staffing Update (ONGOING)

COGR's long-time colleague and friend, Gil Tran, retired from OMB at the end of 2022. Gil was a key "go-to" resource in OMB's Office of Federal Financial Management. Since Gil's retirement, COGR staff and leaders from CFC have had the opportunity to connect with new staff at OMB and OFFM. The Acting OMB Controller is Deidre Harrison and key staff at OFFM include Steven Mackey and Andrew Reisig (both will be significantly engaged in revisions to the Unform Guidance), and Mitzi Mayer (lead role in releasing the 2023 Compliance Supplement, see below). COGR looks forward to developing productive relationships with the new staff at OMB and OFFM.

2023 Compliance Supplement, COGR Review of Draft Version (UPDATE)

As shared above, Mitzi Mayer from OMB is the new point person for the Compliance Supplement. COGR has engaged with Ms. Mayer to address changes to the Cash Management section (see page 3-C-3)—specifically Audit Objective 4. We are encouraged that the changes may be consistent with what COGR addressed in a June 30, 2022, comment letter to OMB concerning the 2022 Compliance Supplement. In that letter, COGR reiterated its longstanding concern with an audit position related to the appropriate timing for requesting cash reimbursements from federal agencies. We are not sure on the exact timing for the release of the 2023 Compliance Supplement, but we will keep the membership updated on all developments.

Costing & Financial Compliance: Other Issues (NEW & ONGOING)

The items below are issues that the CFC Committee has recently reported and/or issues that we continue to follow:

> ***Federal Audit Clearinghouse to be moved to GSA in October 2023.*** A Federal Register Notice, dated December 22, 2022, announced the movement of the Federal Audit Clearinghouse (FAC) from U.S. Census Bureau, to GSA, effective in October 2023. COGR submitted a Comment

Letter to GSA on February 21st. Also note, a FAC Transition webpage has been established that can be checked for updates on the transition.

ARPA-H and Indirect Cost. The FY23 Omnibus Appropriations Bill, passed in December, included the authorization of ARPA-H. COGR followed negotiations on the Hill last year around the language applicable to indirect costs, which was problematic. The final language reads as follows: "*awards grants and cooperative agreements, which shall include requirements to publicly report indirect facilities and administrative costs, broken out by fixed capital costs, administrative overhead, and labor costs*." While this is not the ideal language, and definitely raises questions, we will engage with NIH and ARPA-H as appropriate to ensure that this language does not create unintended and unnecessary administrative burden.

GAO Issues and Seeks Comments on Draft Updates to "Yellow Book," the Preeminent Standards for Government Auditing (GAO-23-106303). The GAO is requesting comments (due no later than April 28th) on this draft from federal, state, and local government officials; managers and auditors at all levels of government; the public accounting profession; academia; professional organizations; public interest groups; and other interested parties. To assist in developing comments, specific questions are presented in enclosure II of the 2023 exposure draft. All comments received from the public will be considered a matter of public record and will be posted on the GAO website. COGR does not expect to respond, but it you have concerns, please contact us.

Federal Office of Inspectors General (IG) and Single Audit Developments. We encourage COGR members to follow the HHS OIG Workplan (see previous section, HHS-OIG Audit of the NIH Grant Closeout Process) and the NSF OIG Reports & Publications page. Further, the NSF Management Responses to an External Audits is a helpful resource for reviewing NSF OIG audit resolutions. COGR members are welcome to contact COGR when audit issues arise, and when appropriate, we can connect institutions and/or provide feedback that may be relevant to the issue at hand.

Please contact David Kennedy at dkennedy@cogr.edu to discuss any of these issues above, or other items that you would like to address.

COGR would like to thank COGR Board Chair Jeffrey Silber (Cornell University) and the COGR Committee members for their time, dedication, and expertise, without which the efforts and activities conveyed in these updates would not be possible.

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