

Challenges Relating to the 2018 Farm Bill

June 2019 COGR Meeting

Washington Marriott, Washington DC

June 7, 2019

COGR

Council On Governmental Relations

An association of research universities

Issue

2018 Farm Bill ([Agriculture Improvement Act of 2018](#)) and agency guidance created a series of concern including:

- 1) Implementing a matching requirement for some institutions/programs where previously matching was waived.
- 2) Changed the interpretation of the capped F&A rate (30% TFFA or prime's F&A, whichever is lower) as having to be divided among the prime and all subawards (instead of just the prime).
- 3) Limiting both reimbursed and cost shared F&A to 30% of TFFA, rather than having match bear its own F&A.
- 4) Suggesting that new time and effort rules could be promulgated for federal formula funds (e.g. Hatch).

Resulting Award Language

Section 1462(a) and (c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) limits indirect costs for the OVERALL award to 30 percent of Total Federal Funds Awarded (TFFA) under a research, education, or extension grant or the grantee's Federally Negotiated Rate, whichever is less. The cap applies to the prime recipient and all subawardees. Please be aware that when IDC for the recipient and all sub-awardees are totaled, they must not exceed 30% of the TFFA. Be advised that the prime recipient is responsible for ensuring the maximum indirect cost allowed for the award is not exceeded when combining indirect costs for the Federal portion (i.e., prime and subawardee(s)) and any applicable cost-sharing (see 7 CFR 3430.52(b)). Amounts exceeding the maximum allowable indirect cost is considered unallowable.

Discovery Process

RCA and Costing committees met with NIFA: Cynthia Montgomery (Deputy Director, Office of Grants and Fiscal Management) and Melanie Krizmanich (Senior Policy Specialist, Policy and Oversight Division).

We talked about:

- How did these changes come about?*
- Are they legislatively required?*
- What can we do to reduce the resulting administrative and financial burden?*

NIFA Response

- *Several changes occurred because the 2014 Farm Bill had waiver authority that fixed the appropriation language, but the 2018 Farm Bill did not contain such authority so the waivers went away and problematic appropriations language became operative.*
- *Unidentified members of Congress felt that NIFA had been exceeding the 30% TFFA requirement since sub F&A wasn't being excluded.*
 - *The bill was passed in close proximity to the federal shutdown and holiday breaks, so USDA and others were not able to monitor the process to the normal extent.*
- *The Time and Effort language (section 7613) asks USDA to work with OMB to reduce paperwork associated therewith.*

Possible Fixes

Possibilities USDA or COGR raised include:

- *Legislative corrections (won't happen quickly)*
- *Regulatory corrections - USDA lawyers are reviewing options.*
- *Proposing that USDA entertain "linked" or collaborative proposals like NSF*
 - *NIFA can then issue direct awards to each participating entity instead of a prime/sub arrangement*
- *Considering whether limitation on use of F&A for cost sharing, in NIFA general provisions, is necessary.*
- *Seek to harmonize Federal Formula Funds time and effort requirements with existing systems that comply with 2 CFR 200.430(i).*

Follow-Ups

- *USDA states that this has been escalated to the highest levels. Scott Angle, NIFA Director, is involved.*
- *NIFA has stated that the F&A cap compliance will be monitored at the end of each budget period (not on each funding draw.)*
- *APLU and others are looking at legislative options.*
- *Follow up activity will be provided by RCA and Costing committees to encourage USDA to address these problems, and to look for requirements that may have been added pursuant to the farm bill.*