



April 17, 2019

Melanie Krizmanich  
Senior Policy Specialist  
National Oversight Division  
National Institute of Food and Agriculture  
2254 Waterfront Centre  
Washington, DC 20024  
Sent via Email: [mkrizmanich@nifa.usda.gov](mailto:mkrizmanich@nifa.usda.gov)

Dear Ms. Krizmanich,

COGR and our membership appreciate your support of the research community. However, we are concerned with implementation guidance published by NIFA as it relates to amendments to Section 1462(c), Treatment of Subgrants, under the National Agriculture Research, Extension, and Teaching Policy Act of 1977. The bipartisan and widespread support for the mission of NIFA ensures research institutions conduct cutting-edge research and related work. While we are fully committed to compliance with the statutory language, NIFA's implementation guidance related to Section 1462(c), along with recent guidance on current funding opportunities, seems inconsistent with the intent of Congress and with the longstanding partnership research institutions have had with NIFA.

Prior to passage of the 2018 Farm Bill, prime and subrecipients each had to calculate whether the NICRA or 30% TFFA yielded lower indirect costs. We were then each obligated to use whichever method resulted in lower indirect costs, *and doing so was manageable*. However, under the new NIFA implementation guidance, this is no longer the case.

As such, we request that NIFA suspend its current guidance (and revert to the pre-Farm Bill approach) until we have the opportunity to meet with you and review the points outlined below:

- 1) **Intent of Section 1462(c).** We have operated for decades managing the NIFA indirect cost limitation, and this has included managing our subrecipients and their implementation of the limitation. *Our view is the new statutory language simply was designed to formalize practices we have implemented for years, rather than creating a changed set of rules and interpretations.* The implementation guidance published by NIFA creates a confusing process for managing the indirect cost limitation.
- 2) **New Burden.** As crafted, the guidance adds new burden, increases challenges with designing effective proposal budgets among collaborators, and appears to negate the important role played by the prime recipient in managing the award and monitoring subrecipients. Previously, many institutions were administering – with NIFA's blessing – the requirement where each collaborating partner was independently responsible for its compliance with the F&A limitation rule. Thus, the prime recipient and each subrecipient made its own calculation on its share of the budget to decide whether it would use the 30% TFFA cap or its own negotiated F&A rate. Assuming that each partner met that test, the compliance standard was met. This allowed prime recipients and subrecipients to operate as efficiently as possible, despite a complex process

requiring calculation of their budget twice to determine whether the TFFA cap or their negotiated rate was the appropriate indirect cost rate.

*We do not believe the intent of Section 1462(c) is to create additional burden for administering an already complex subaward process.* And as we all know, when administrative burden becomes too unmanageable, it creates unintended outcomes. In the case of the new NIFA guidance, it may discourage institutions from partnering with others – ultimately compromising the quality of research we produce.

- 3) **Simplify Implementation.** If there is intent of Congress in Section 1462(c) that we are missing, we should work together to find a solution to produce guidance that is clear and workable. For example, compliance with the indirect cost limitation in the aggregate over the life of the award, which is not prohibited under Section 1462(c), would make management of the limitation much more efficient. Other opportunities to streamline the guidance may be available. One idea that has been suggested is to consider a collaborative award system, like NSF has developed. Rather than using the prime-subrecipient model, there would be “lead” and “non-lead” awardees that each receive a separate award from NIFA (with separate budgets), therefore avoiding this calculation issue. While collaborative submissions might not be appropriate for every funding opportunity, it could be a solution worth exploring.
- 4) **Treatment of the IDC Match under SCRI.** In 2008-2009, COGR engaged with NIFA on this issue. The conclusion was that an IDC Match is allowable, and if used, it would not be used to reduce F&A charged to the award. This is also consistent with Research Terms and Conditions. As this concern was addressed favorably ten years ago, we ask that you confirm the treatment of the IDC Match under SCRI (and all other NIFA programs) to be consistent with the discussion we had in 2008-2009.

Our view on Section 1462(c) is that it provides flexibility to develop implementation guidance that will continue the healthy partnership between NIFA and research institutions. If there are opportunities to amend the Section 1462(c) to eliminate any uncertainties, COGR absolutely is ready to work with you to make this happen. However, until we get to that point, we urge you to retract the current version of NIFA’s implementation guidance so that we can work together to produce guidance that is helpful to all stakeholders.

Thank you for considering our concerns. Please contact Jackie Bendall, Director of Research Compliance & Administration, at (202) 289-6655 x 117 or [jbendall@cogr.edu](mailto:jbendall@cogr.edu) if you have any questions.

Sincerely,



Wendy D. Streit  
President, Council on Governmental Relations

CC: Adriene Woodin ([awoodin@nifa.usda.gov](mailto:awoodin@nifa.usda.gov))  
Susan Bowman ([sbowman@nifa.usda.gov](mailto:sbowman@nifa.usda.gov))  
Cynthia Montgomery ([cmontgomery@nifa.usda.gov](mailto:cmontgomery@nifa.usda.gov))