COGR
Council On Governmental Relations
An Association of Research Institutions

NOVEMBER 2021 UPDATE

Research Security & Intellectual Property Management (RSIP)

Research Ethics & Compliance (REC)

Costing & Financial Compliance (CFC)

National Center for Science and Engineering Statistics (NCSES) Update (NEW)
COGR Response to Revised Request for HEERF Reporting (NEW)
Treatment of Procurement and Related Rebates (NEW)
Treatment of Cost Sharing in the F&A Cost Rate Proposal (NEW)
Resolution to NSF OIG Audit Finding: Application of the F&A Cost Rate (NEW)
Challenges with the Payment Management System & the FCTR (ONGOING)
2021 Compliance Supplement (ONGOING)
Costing & Financial Compliance (CFC): Other Issues (UPDATE)

Contracts & Grants Administration (CGA)

White House Vaccine (UPDATE)
NIGMS and NIMH Changes to Guidance for Well-Funded Investigators (UPDATE)
Reducing Administrative Burden Recommendations for OSTP (UPDATE)

Cybersecurity Developments (UPDATE)

DOD Issues Notice of Implementation of CMMC 2.0

On November 4, DOD announced plans to implement Cybersecurity Maturity Model (CMMC) 2.0

The most notable changes are to remove two levels (former CMMC Levels 2 and 4) from the maturity model framework and designate CMMC Level 1 as a self-attestation requirement only. The current CMMC piloting efforts have been suspended, which includes contracts or subcontracts containing the DFARS CMMC requirements (for now, compliance with the DFARS requirements is voluntary). The CMMC Guide has been removed from the CMMC site. DOD also stated that it did "not intend to approve inclusion of a CMMC requirement in any contract prior to completion of the CMMC 2.0 rulemaking process. Once CMMC 2.0 is codified through rulemaking, the Department will require companies to adhere to the revised CMMC framework according to requirements set forth in regulation." The rulemaking process is expected to take 9-24 mos. The announcement notes that DOD received 850 public comments in response to the interim rule establishing CMMC 1.0, many of which focused on the need to reduce CMMC costs. We previously reported that small business contractors in particular had raised cost concerns (see COGR August Update).

The self-attestation requirement for Level 1 presumably will include fundamental research contracts (unless DOD directly addresses them in the 2.0 implementation). The DOD contract with the Accreditation Body (AB, now a 501 (c)(3) organization) may be renegotiated for the new CMMC 2.0 model. The Academic Advisory Council to the AB (see COGR May 2021 Update) was finally established last month, but its status is unclear[1].

A special CMMC Town Hall was held on November 9 to discuss the changes. Key points discussed were DOD's recognition that the original CMMC framework cast too wide and rigid a net; the need for streamlining the requirements to improve compliance; and the need to eliminate CMMC unique practices and processes and limit CMMC compliance to the NIST security requirements to the maximum extent possible. Level 1 (Foundational) is unchanged from CMMC 1.0 Level 1 other than eliminating the third-party assessment requirement and substituting instead an annual self-attestation by a senior contractor official. Level 2 (Advanced) incorporates NIST 800-171 requirements and a mix of third party and self-assessments, depending on the priority of the CUI involved. Level 3 (Expert) is for high priority CUI; assessments will be done by government officials. DOD plans to issue two interim rules: one under 32 CFR to establish the CMMC 2.0 program, and the other under 48 CFR with revised DFARS requirements. There will be a 60-day public comment period. DOD officials praised the increased professionalism of the AB and stated the need for continued partnership. Many of the questions at the

[1] *For additional commentary see https://www.nextgov.com/cybersecurity/2021/11/dod-suspends-cybersecurity-certification-program-pending-major-changes/186639/ and https://www.businesswire.com/news/home/20211104006007/en/CMMC-Accreditation-Body-Endorses-Pentagon.*

Town Hall dealt with training requirements, but time did not permit responses. Another Town Hall is scheduled for November 30.

Legislative Developments

The August Update also mentioned pending legislation that would require "covered entities" to report potential cyber intrusions, among other things. Additional legislation has been introduced, including an amendment to the NDAA (see below) that would require all federal contractors with very limited exceptions to report cyber incidents (Sec. 2230). Reports would be made to a federal security operations center within the DHS Cybersecurity and Infrastructure Security Agency (CISA). Lack of compliance potentially is grounds for suspension or debarment. The NDAA provisions are a compromise between the legislation we previously mentioned and other legislation that had been introduced.

DOE Clarifies DEC Guidance (UPDATE)

The June and August COGR Updates discussed the Determination of Exceptional Circumstances (DEC) recently issued by DOE to strengthen the Bayh-Dole Act domestic manufacturing requirement for DOE-funded inventions. DOE had indicated plans to clarify the DEC guidance in response to questions and concerns raised by COGR and other associations.

On October 1, DOE issued FAQs responding to our request for clarifications. We were most concerned about ambiguous language in the implementing "U.S. Competitiveness Provision" set forth in the DEC for all DOE awards. It required DOE approval of any transfer of rights to subject inventions including license agreements and ownership changes. The FAQ states that "DOE has no intention to routinely review and/or approve exclusive and/or non-exclusive licenses contemplated or executed by Bayh-Dole entities…DOE only intends to review licenses that are (1) part of a compliance review (historically significantly less than 1% of DOE awards), (2) as part of a request for a modification or waiver of the U.S. manufacturing provision, or (3) as part of an approval that may be necessary as a result from a change of control."

Unfortunately, while DOE had stated that DOE will review mergers only in unusual cases, the FAQs do not back off the requirement for DOE approval of changes in control of entities with rights in DOE-funded inventions. They do indicate that "DOE is considering potential modifications to the change of control provision, such as to limit DOE reviews/approvals to those transactions that include critical and emerging technologies and involve a transfer to a sensitive country or country of risk."

We appreciate the clarification of DOD's review of licensing agreements, which appears to be reasonably limited. However, the continued requirement for review and approval of ownership changes including mergers and acquisitions remains concerning. We had requested that DOE review such transactions only in extraordinary circumstances. Without such a limitation this requirement may discourage investments by companies in start-ups with DOE-funded inventions. It inserts the government into this process, which essentially violates a basic tenet of Bayh-Dole. Hopefully, DOE will reconsider and limit the requirement as the FAQs suggest.

These concerns were discussed in an article in the October 14 AIP *Science Policy News* which included interviews with a number of association representatives including COGR.

The FAQs indicate that the DEC will be applied to awards only prospectively and only to subject inventions conceived or first actually reduced to practice after the award is modified to include the DEC provisions. This is a helpful clarification. The DEC also includes a helpful discussion of the waiver process, and the factors DOE will consider in reviewing waiver requests. It also states that the DEC "authorizes modification of the U.S. Competitiveness Provision to tailor requirements when doing so will facilitate or promote commercialization. For example, DOE may authorize certain technologies or products be manufactured outside the U.S. in certain quantities, fields of use, or for certain time periods."

COGR would appreciate information from member institutions as to their experiences with receiving and implementing the DEC requirements. Please report these to Bob Hardy at rhardy@cogr.edu.

DOE Plans Revisions to Order 142.3B (UPDATE)

We have updated the COGR membership over the past year on discussions with DOE on the foreign national screening requirements of DOE Order 142.3B. The August Update summarized a meeting in late August with DOE Acting Under Secretary for Science and Energy Kathleen Hogan. She acknowledged that that DOE needs a more transparent and consistent approach to better balance legitimate concerns about research security while ensuring the ability of our institutions to continue to carry out fundamental research. A clarification of DOE's policy was expected soon.

We understand that DOE may be working on a revision to the Order that would limit its applicability for fundamental research information. However, no final draft is available at this time nor is there a clear timetable. We also have no further information as to the status of the revised guidance for DOE financial assistance to universities that was mentioned in the August Update.

DARPA CFIP Raises Concerns (NEW)

On September 17, the Director of DARPA issued a memorandum establishing a new DARPA *Countering Foreign Influence Program* (CFIP). The program requires risk assessments of all proposed Senior/Key Personnel selected for negotiation of a fundamental research grant or cooperative agreement award. It assigns a rating based on information found in the Standard Form (SF) 424, Senior/Key Person Profile (Expanded). CFIP risk ratings range from Low to Very High depending on the amount, type, and timing of foreign associations or affiliations that could constitute a foreign-influenced Conflict of Interest or Conflict of Commitment. DARPA has developed a risk rubric for rating purposes, which includes a broad qualitative rubric related to foreign ties or associations, and more specific indicators having to do with participation in foreign talent programs, affiliation with denied entities, funding from foreign entities of concern, and affiliations with high-risk foreign institutions. For proposals rated as High or Very High risk, proposers will be given an opportunity to address the risk through risk mitigation plans. If an institution does not mitigate the risk, the DARPA Deputy Director must agree to accept the risk and proceed with the award.

DARPA beta tested the requirements with a number of institutions over the summer. While DARPA claimed there was little pushback, that characterization is not fully consistent with the information COGR received from member institutions. DARPA now is beginning to incorporate the CFIP requirements in BAAs.

COGR, AAU, and APLU representatives discussed the CFIP requirements with DARPA representatives on October 27. Notes on the DARPA discussion are provided as Appendix A. DARPA indicated they were willing to make presentations on CFIP to associations and other community stakeholders. DARPA agreed to do so after they issue the next version of the materials.

COGR subsequently had a further discussion with the DOD Basic Research Office (BRO). We agreed that the personal ties (including family and friends) in the Broad Qualitative Metric Column of the DARPA Foreign Influence Risk Rubric are particularly troubling. BRO strongly feels that the column should be deleted (in fairness, in our discussion with DARPA, they also disavowed and apologized for the use of personal ties as risk metrics). The issues of the content of risk mitigation plans and responsibility for final funding decisions also were discussed. BRO recognizes that the DARPA requirements go considerably beyond the NIH and NSF disclosure requirements. The other service agencies all are considering how to assess foreign influence risk; we expressed the hope that the current DARPA Risk Rubric would not be the model.

AAU and APLU are considering arranging for a meeting between a group of SROs and DARPA representatives. Some institutions and researchers may not agree to continue to conduct DARPA-funded research with these requirements. It also is not clear that the CFIP is fully consistent with NSDD-189 and fundamental research. To the extent that required risk mitigation plans impose controls, there also may be export control concerns.

Pending Research Security Legislation Expands (UPDATE)

The August Update included a status report on pending research security legislation. The status of the legislation summarized there remains unchanged.

Attention now is focused on the pending FY'22 National Defense Authorization Act (NDAA). A list of the House research security provisions of interest is available on the AAU website.

The Senate has delayed consideration of their version of the NDAA with no clear indication of when it may be considered. The House passed their version 316 to 113 in September. It is likely that additional research security amendments will be put forth for consideration when the Senate takes up their version of the bill. It is possible that some of the provisions of the USICA and NSF for the Future Act discussed in the Update could migrate to the NDAA, which is viewed as must-pass legislation.

The House Intelligence Authorization Act (H.R. 5412) includes Section 701 on a "Pilot Program for Security Vetting of Certain Individuals." This provision calls for a pilot program to allow DOD to vet individuals engaged in unclassified research. The House version of the Intelligence Authorization Act was passed by voice vote on September 30, separate from the House passage of the NDAA. When DOD released their FY22 legislative proposals in June, the department asked Congress to provide them with the vetting authority to screen individuals

performing unclassified DOD research "who would not otherwise undergo Federal personnel vetting." It should be noted that in DOD terminology, "vetting" involves conduct of background investigations. Should the provision pass, DOD/BRO has stated that it is not clear whether DOD will actually implement it.

PCAST Holds Listening Session on Innovation and Technology Commercialization (NEW)

On September 28, the President's Council of Advisors and Science and Technology (PCAST) met for the first time in this Administration. The focus was on challenges facing U.S. competitiveness in key technology sectors. It featured a panel on barriers to technology commercialization and strategies for spurring regional innovation and domestic manufacturing, responding to a question that the President had posed to Science Advisor Eric Lander.

The importance of regional technology hubs was one focus of the hearing. Another was on the need for a U.S. "industrial policy," and the need for new financing mechanisms for technology investments and technology workforce training. It was suggested that PCAST advise NSF on how best to stand up the new technology directorate authorized by the pending USICA legislation. The role of universities in technology-based economic development also received attention. Finally, there was a discussion of the Bayh-Dole Act. This included claims that increasing assertion of intellectual property rights by universities place faculty at odds with university administration. The empirical basis for these claims is not clear[2].

Additional meetings are planned by the PCAST to address other questions posed by Dr. Lander.

Technology Transfer Resources (UPDATE)

COGR issued revised versions of two resources on Tech Transfer in October: *A Tutorial on Technology Transfer in U.S. Colleges and Universities* (released October 1, 2021), and *The Bayh-Dole Act: A Guide to the Law and Implementing Regulations* (Version 2.0, released October 15, 2021). These resources have been popular with the COGR membership over the years and have been extensively revised and updated. (Work continues on updating a combined version of the *University Tech Transfer: Myths/21 Questions* documents).

After much discussion, we have decided not to update the COGR *Export Controls and Universities* brochure. This resource filled a considerable need when it was first issued in 2004. However, the value added of a revised COGR publication at this time isn't clear, given resources that have been developed by AUECO and others. These resources did not exist at the time the COGR document was developed. Instead, the RSIP Committee is considering options for related resources that may assist the membership in working through issues such as those associated with negotiating fundamental research contracts.

[2] *For a further summary of the session see https://www.aip.org/fyi/2021/pcast-examines-gaps-us-innovation-ecosystem.*

Research Ethics & Compliance (REC)

Implementation of the Presidential Memorandum on United States Government-Supported Research and Development National Security Policy ("NSPM-33") (UPDATE)

COGR continues to track the progress of and engage with the Office of Science and Technology Policy (OSTP) on its implementation of NSPM-33. On August 10, 2021, OSTP Director Eric Lander announced in a blog post that OSTP would begin working on a plan for implementation of the requirements of NSPM-33 across federal research funding agencies with the stated goals of achieving as much inter-agency consistency as possible, while ensuring that implementation policies do not promote xenophobia or prejudice. As noted in COGR's August 2021 Update, COGR participated with the Association of American Universities (AAU), Association of American Medical Colleges (AAMC), American Council on Education (ACE), and the Association of Public and Land-grant Universities (APLU) in an OSTP-hosted community listening session on NSPM-33 implementation.

Association Letter: Soon after the listening session, COGR joined with these associations in drafting a follow-up letter to OSTP that set forth support for OSTP's efforts to promote a standardized and coordinated cross-agency implementation of NSPM-33 in a manner that recognizes the importance of international collaborations to the United States' scientific enterprise. The letter also requested that OSTP consider the following points in developing its implementation plan:

- Acknowledge the many steps that institutions have already taken to promote a culture of disclosure and transparency and build upon this foundation.
- Promote the acceptance by agencies of a digital modular CV as the means by which senior/key personnel will disclose their activities and research support.
- Discourage agencies from the criminalization of unintentional disclosure violations and fully consider the nature of violations in determining any consequences assessed for nondisclosure.
- Recognize the challenges that institutions face in making certifications regarding faculty members' external activities and fully implement the provisions of the FY 2021 National Defense Authorization Act's Section 223 which limits institutional liability for such certifications, provided the institution makes faculty aware of their obligations.
- Acknowledge the significant additional costs that institutions will face in implementing NSPM-33 and consider piloting implementation programs to fully assess their costs and benefits prior to wide-scale implementation.

Common Electronic CV: As noted above, COGR and its fellow associations have advocated for agencies to permit senior/key research personnel to use a standardized, modular, electronic CV to report their affiliations and research support. COGR has been working with AAU and the Federal Demonstration Project (FDP) to identify appropriate mechanisms for the development and maintenance of such a CV, considering

factors such as consistency, ease of use, information security, the potential for leveraging existing data collection and systems (e.g., existing systems for digital persistent identifiers [DPIs]), and the need for the system to be accessible by institutions of all sizes.

Security Roundtable Discussion: COGR staff heard an update regarding OSTP's NSPM-33 implementation during the October 29th meeting of the National Science, Technology and Security Roundtable. This update was provided by Dr. Michael Lauer, NIH Deputy Director for Extramural Research, and Ms. Linda Lourie, OSTP Assistant Director for Research & Technology Security. Dr. Lauer and Ms. Lourie stated that the implementation guidance would be released in the next few weeks and that a core principle of the plan is to make compliance with agency disclosure requirements as easy as possible. Dr. Lauer further stated that NIH and NSF are very close to achieving a uniform disclosure form. During the question-and-answer portion of the presentation, Dr. Lauer and Ms. Lourie were asked to provide further detail on the requirements for the research security programs specified in NSPM-33. Dr. Lauer advised that NIH was working with NSF on training modules that could be used to fulfill certain of the security program's requirements. Additional significant points that were discussed included:

- The value of maintaining an open research environment;
- The need to consider associated administrative burden; and
- The importance of agencies developing data that can be used to quantify the nature and extent of disclosure violations, particularly violations that include loss of technology or proprietary information in university settings.

COGR invited OSTP staff to further discuss science and security issues, and Dr. Christina Eller, OSTP's Assistant Director of Evidence and Policy agreed to meet with COGR during the first week of December.

General Accounting Office's (GAO) Projects in the Area of Science and Security & Export Controls: During COGR's October membership meeting, Candice Wright, Director of Science Technology Assessment and Analytics, Kim Gianopoulous, Director of International Affairs and Trade, and their colleagues provided a presentation on GAO's recent reports in the area of both science and security and export controls. Ms. Gianopoulous provided an overview of GAO's 2020 report "Export Controls: State and Commerce Should Improve Guidance and Outreach to Address University-Specific Compliance Issues" and advised that in early 2022, GAO would issue Phase II of this report regarding enforcement of deemed export controls at U.S. universities. This 2022 report will examine challenges that agencies face in enforcing deemed export control requirements at universities, including agencies' assessment of the risk of unauthorized deemed exports and coordination of enforcement efforts. Ms. Wright reviewed GAO's recent report regarding federal funding agency action to address foreign influence, including the GAO's characterization of conflict of commitment as a type of conflict of interest and recommendations that:

- The Department of Defense and Department of Energy each develop an agency-wide policy on conflict of interest for grants, to address both financial and non-financial conflicts; and

- NIH, NSF, and NASA include a definition on non-financial conflicts in their agency policies, such as the definition of this term developed by OSTP, and address such non-financial conflicts, both foreign and domestic.

Institutional Actions to Address Funding Agencies' Disclosure Requirements: The October membership meeting also included a presentation by Harvard University, University of Michigan, University of Pittsburgh, and University of Texas Southwestern Medical Center regarding policy and process changes they have implemented to ensure compliance with funding agencies broadened disclosure requirements and focus on foreign activities.

National Counterintelligence and Security Center (NCSC) Fact Sheet on Protecting Emerging Technology (NEW)

In October, the NCSC published a fact sheet "Protecting Critical and Emerging U.S. Technologies from Emerging Threats." Much of the information in the sheet regarding threats posed by strategic competitors of the United States and risk-mitigation steps is similar to what has been previously published by other agencies. The publication is notable, however, for calling out the "bioeconomy" as a one of the primary technology sectors in which NCSC will focus its counterintelligence outreach efforts. This categorization places the bioeconomy (which NCSC broadly defines as "economic activity that is driven by research and innovation in biotechnology") alongside sectors that are more typically thought of being susceptible to security threats, i.e., artificial intelligence, autonomous systems, quantum information science and technology, and semiconductors. The publication calls for considering protection not only for intellectual property, but also for "large bodies of data – such as patient health records or genetic sequence data – [which] represent long-term, unrealized development of products and applications."

Update to Principles for Evaluating Conflict of Commitment Concerns in Academic Research ("COC Framework") (UPDATE)

In September, REC issued an updated version of its paper "Principles for Evaluating Conflict of Commitment Concerns in Academic Research". There has been considerable revision of agency guidance in this area since the first version of this paper was published in February 2020, and a working group was formed to review the document in light of these changes. The paper stresses the importance of establishing an institutional culture of transparency and disclosure, as well as highlighting factors that institutions should consider in developing an administrative process for the review and management of conflicts of commitment. The paper also includes tools that institutions may find helpful as they consider their own conflict of interest policies and processes. REC will continue to update this paper as additional agency guidance in this area is issues.

China's New Personal Information Protection Law (NEW)

REC heard a presentation from attorneys at the law firm of Ropes and Gray regarding China's Personal Information Protection Law (PIPL). Key points regarding PIPL in the presentation included the following:

- **Status of PIPL** –PIPL will go into effect Nov. 1, 2021, but it requires implementing regulations that are still in development. Thus, many specific details about implementation remain to be determined.
- **Extraterritorial Effect** – PIPL will apply to information processors when (a) processing is for providing products/services to persons in China; (b) processing is for analyzing the behavior of individuals located in China; and (c) other circumstances as specified in laws and regulations. In the research context, PIPL will not apply to Chinese national subjects who participate in trials outside of China. However, if there is follow-up with that subject in China, the follow-up information will be covered under PIPL.
- **Coordination with Other Chinese Laws**: PIPL will work in conjunction with other Chinese laws to address national security issues and protect privacy. PIPL will be one of the four pillars of China's National Security Legal Framework along with the following three Chinese laws: (a) Data Security Law; (b) Cybersecurity Law; and (c) Human Genetic Resources Regulation.
- **Processers v. Controllers**: Unlike the European Union's General Data Protection Regulation (GDPR), PIPL does not differentiate between processors and controllers.
- **Personal Information**: The definition of personal information under PIPL is similar to what is seen in other personal information protection laws. Anonymized data is not considered to be personal information, but "key coded" data is not considered anonymized. There is also a separate category for "sensitive personal information" that includes medical records and health information.
- **Processing of Personal Information**: Processing is a very broad concept that includes multiple activities including collection, use, storage, and transmission of information.
- **Consent:** Under PIPL, consent from subjects will be very important for the use of personal information in research because there is no clear alternative legal basis for processing. PIPL does not specify that consent must be in writing, but other laws may require this. Processing of sensitive personal information will require "separate" consent. "Separate" consent is not the same as "explicit" consent, but it cannot be obtained via a "blanket" consent. Under PIPL, it may be difficult to obtain consent for future retrospective studies and other secondary research. Notably, although PIPL covers information associated with biospecimens, it does not cover the specimens themselves. Rather, such specimens may be covered by China's Biosecurity Law.
- **Withdrawal of Consent**: PIPL permits individuals to withdraw consent, but it is not clear if data must be deleted once consent is withdrawn.
- **PIPL Impact Assessment**: Each processor will be responsible for performing this assessment. It must be documented with records retained for three years.

NIH RFI on Clarifying the Reporting Requirements for Departures from the Guide for the Care and Use of Laboratory Animals (NOT-OD-21-161) (UPDATE)

NIH RFI NOT-OD-21-161 sought comments on "clarifications" from NIH as to when an Institutional Animal Care and Use Committee (IACUC) is required to report to the institutional official or NIH Office of Laboratory Animal Welfare (OLAW) deviations from "must," "should," and "may" statements in the Guide. COGR joined with AAMC and the National Association for Biomedical Research (NABR) in submitting a response letter to this RFI that emphasized the importance of agency adherence to the 21st Century Cures Act mandate to reduce unnecessary administrative burden associated with the regulation of laboratory animal research, while ensuring the animals' health, safety and welfare. Per the Guide's own description of its purpose, the response letter urged NIH to re-examine the RFI's treatment of the *Guide for the Care and Use of Laboratory Animals* ("Guide") as a reference tool, instead of as a regulatory document, and in the same vein to consider the Guide's "should" statements as strong recommendations for which an institution might have an alternative compliance strategy.

Notice of Clarification of Institutional Responsibilities Regarding NIH Grant to Protocol Congruence Review (NOT-OD-22-005) (NEW)

In October 2020, REC submitted comments that COGR in response to the RFI that prompted NOT-OD-22-005 (i.e., "Request for Information (RFI) on Clarification of Institutional Responsibilities Regarding Grant to Protocol Congruency," NOT-OD-20-153). NIH received 16 comments in response to the RFI, and all commenters, including COGR, recommended that the requirement for grant to protocol congruency review be eliminated per the Cures Act mandate to reduce unnecessary administrative burden in animal research. As with other RFIs in this area, despite the Cures Act directive and the comments received, OLAW did not make any substantive changes that lessened administrative burden.

NIH Implementation of the Revised Common Rule Provision Regarding Public Health Surveillance Activities Deemed not to be Research (NOT-OD-22-001) (NEW)

NIH issued NOT-OD-22-001 to describe the process for seeking a determination from NIH that NIH-funded research was a public health surveillance activity and advised that NIH will not commonly grant such a determination. Notably, other agencies (e.g., USAID, CDC) may not hold the same view as NIH does regarding this determination, and further, IRB determinations in such matters also must be considered.

Costing & Financial Compliance (CFC)

National Center for Science and Engineering Statistics (NCSES) Update (NEW)

John Jankowski, Director of the Research & Development Statistics Program, and Michael Gibbons, Survey Manager (including the Manager of the annual Higher Education Research & Development (HERD) survey), gave an NCSES update during a Wednesday session at the October COGR meeting. NCSES is one of thirteen principal federal statistical agencies - independent, but still a part of the National Science Foundation. Mr.

Jankowski and Mr. Gibbons have been reliable partners of COGR for many years and are very accessible when questions or concerns related to the HERD survey arise. The NCSES presentation is available on the COGR website.

COGR Response to Revised Request for HEERF Reporting (NEW)

COGR responded to the Department of Education Federal Notice requesting public comments on *Agency Information Collection Activities; Higher Education Emergency Relief Fund (HEERF) I, II, III Data Collection Form*. COGR responded to this initial request for comments in August, and the COGR letter dated November 8 is in response to the proposed revised version of the HEERF data collection form.

COGR encourages you to continue accessing the Department of Education HEERF website. There are helpful resources and FAQs around the ongoing topics of allowable charges, treatment of lost revenue and F&A, reporting requirements, audit, and other related topics. Also, the COGR HEERF FAQs provide helpful content. We expect questions and issues around HEERF implementation, compliance, and audit will be hot topics of discussion for at least the next year, and COGR will continue to provide resources to the COGR membership and serve as a liaison (when needed) to the Department of Education. Contact David Kennedy at dkennedy@cogr.edu with questions, concerns, and/or other issues you would like to address.

Treatment of Procurement and Related Rebates (NEW)

This topic was addressed during the Wednesday, October 29 NIH/NSF panel session at the October COGR meeting. Michelle Bulls from NIH responded to an issue recently raised by Cost Allocation Services (CAS), U.S. Department of Health and Human Services (HHS), on the treatment of procurement and related rebates, and how institutions can ensure the federal government is credited for its "fair share" of any rebates. Most likely, this issue was motivated by several federal investigations where rebates credited to the institution's Central Stores were not passed back to the federal agency that issued the award.

Specifically, at issue are the treatment of rebates associated with institutional purchasing cards (procurement cards), bulk vendor purchases, central store acquisitions, and other similar purchases—i.e., rebates that cannot be readily identified to individual federal awards. Importantly, these rebates often are associated with strategic sourcing agreements, established by an institution's Office of Procurement, which ultimately result in cost savings on all federal awards. Based on Michelle Bulls' comments at the October COGR meeting and longstanding policy requirements defined in 2 CFR Part 200.406 – Applicable Credits, COGR suggests the following:

- Institutions should have policies—which in some cases may be disclosed in the institution's DS-2—to identify and credit rebates to federal awards, when rebates can be readily identified to individual federal awards. In these situations, it can be assumed the credit rebate "*can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy*" (see 2 CFR Part 200.413(a) – Direct Costs).

- When rebates cannot be readily identified (with a high degree of accuracy) to a specific federal award, institutions should have policies to ensure an appropriate, lump sum, aggregated portion of rebates are identified to federal awards. There is no requirement for an institution to develop a complex allocation and crediting methodology to identify immaterial amounts, sometimes less than $1, to specific federal awards.

- In the past, CAS allowed these lump sum portions to be applied as an offset to F&A cost pools in the institution's F&A cost rate proposal. Our understanding is CAS will no longer allow this methodology.

- Upon identifying the lump sum portion, institutions can issue a check payable to U.S. Treasury.

- Note, when a federal award has been closed and a credit rebate can be readily identified to that award, it is an open question on how that rebate should be treated—e.g., should that award be reopened in order to issue the credit rebate? In these situations, the institution should contact the program officer to determine the appropriate treatment, including a determination if materiality should be a consideration.

If institutions are uncertain whether their policies are in compliance with CAS expectations, we encourage your institution to contact CAS and/or HHS policy representatives. Also contact David Kennedy at dkennedy@cogr.edu if you want to discuss in more detail.

Treatment of Cost Sharing in the F&A Cost Rate Proposal (NEW)

While not addressed at the October COGR meeting, another issue recently raised by Cost Allocation Services (CAS), U.S. Department of Health and Human Services (HHS) concerns the treatment of cost sharing in the F&A cost rate proposal. COGR suggests the following:

- First, Voluntary Uncommitted Cost Sharing (VUCS) is never to be included in the organized research base. This was clarified two decades ago in OMB Memorandum 01-06 (January 5, 2001)—*Voluntary uncommitted cost sharing should be treated differently from committed effort and should not be included in the organized research base for computing the F&A rate or reflected in any allocation of F&A costs*.

- However, M-01-06 also recognizes that most federal research awards *should have some level of committed faculty (or senior researchers) effort, paid or unpaid by the Federal Government … [and] if a research program research sponsored agreement shows no faculty (or senior researchers) effort, paid or unpaid by the Federal Government, an estimated amount must be computed by the university and included in the organized research base.* Consequently, institutions need to identify these situations.

- Finally, it should be noted the National Science Foundation (NSF) no longer permits voluntary committed cost sharing to be proposed on awards, which has had the impact over the past decade of reducing the total amount of cost sharing applicable to NSF awards. Cost sharing polices by other agencies also will impact the total amount of cost sharing in an institution's organized research base.

The total amount (as a percentage) of cost sharing included in the organized research base will vary from institution to institution, and consequently, a single metric to quantify cost sharing should not be applicable. We encourage institutions to be diligent in capturing all mandatory and committed cost sharing in their organized research base, and to have the corresponding documentation that supports the amount included.

Resolution to NSF OIG Audit Finding: Application of the F&A Cost Rate (NEW)

This topic was addressed during the Wednesday, October 29 NIH/NSF panel session at the October COGR meeting. Jean Feldman from NSF provided an update on an issue COGR raised earlier in the year. On May 14th, COGR wrote a letter to the National Science Foundation (NSF) to address recent NSF Office of Inspector General (OIG) audit findings concerning the application of the F&A cost rate to a new award. Specifically, the NSF OIG cited the following as an audit finding: 1) an F&A cost rate was proposed at 52 percent, 2) at the time of award a new F&A cost rate of 54 percent had been negotiated, and 3) institutional policy allowed the proposed 52 percent F&A cost rate to be used on the award. (*NOTE*: A similar situation could exist in a PI transfer situation when the PI transfers their award(s) to a new institution with a higher negotiated F&A cost rate, and institutional policy allows the original, lower F&A cost rate to be honored.)

COGR's position in both examples is that if institutional policy allows the lower 52 percent F&A cost rate to be used, proposed direct costs for the PI can be maintained and there is no harm to NSF. ***Ms. Feldman indicated that NSF will be issuing a Management Decision Letter that states the lower F&A cost rate, in fact, can be used.*** In addition, we expect there will be some type of mechanism that allows the original audit finding to be "reversed." We will keep the membership posted on developments.

Challenges with the Payment Management System & the FCTR (ONGOING)

This topic was addressed during the Wednesday, October 29 NIH/NSF panel session at the October COGR meeting. Michelle Bulls touched on a number of items applicable to the Payment Management System (PMS), including the status of the Federal Cash Transactions Report.

Several items COGR has been following applicable to PMS include: 1) new NIH approval process if greater than 120 days are requested for closeout, 2) ongoing "leniency" on the submission of Final Federal Financial Reports (FFRs) due to the problem created by new PMS edit checks, 3) and the longstanding G-account closeout issue. These can be reviewed by accessing COGR's August Update. Of primary interest covered at the October COGR meeting:

- Timing for the promised elimination of the Federal Cash Transactions Report (FCTR). This action will solve the reconciliation issue between the FCTR and the Final FFR by eliminating the edit check barrier for submitting the Final FFR. It also will reduce administrative burden by cancelling the FCTR, which has been redundant and unnecessary ever since HHS/NIH introduced "subaccounts" more than five years ago. Our understanding is that this action will be finalized in January—however, we encourage institutions to pay close attention for instructions and other guidance from NIH.

- Addressing PMS issues applicable to other HHS Operating Divisions. This is an ongoing concern when working with other HHS Operating Divisions that fund research programs at our institutions (e.g., AHRQ, CDC, HRSA, SAMHSA). While Ms. Bulls can provide insights, this is outside the scope of her position at NIH. The best approach when there are any issues with other HHS Operating Divisions is to engage key personal from the Operating Division, from the HHS Grants Policy Office, and to leverage COGR to try and facilitate resolution of the issue.

COGR and the community appreciate the hard work being done by HHS, NIH, and PMS to resolve these challenges. We will keep the membership posted on all developments.

2021 Compliance Supplement (ONGOING)

As we reported in the August Update, the 1,787 page 2021 Compliance Supplement was posted in August on the OMB, Office of Federal Financial Management (OFFM) website. On August 30, COGR submitted a comment letter. As a result of the many new programs created under each of the three major federal relief bills passed during the COVID-19 pandemic (e.g., HEERF), the new audit guidance has not always been clear and in some cases auditor interpretation has not been clear, either. In addition, we expect there will be a 2021 Compliance Supplement Addendum released by OMB, though as of this writing, we are uncertain when this might be.

As a sidenote, COGR reminds the membership of the standing of the UG FAQs (May 3, 2021) within the 2021 Compliance Supplement. As stated on page 3-2 of the Compliance Supplement (page 28 of 1,787 per the PDF): *In addition to the guidance in 2 CFR 200 … OMB provides answers to Frequently Asked Questions (FAQs) that are found on the CFO.gov website. These FAQs are meant to provide additional context, background, and clarification of the policies described in 2 CFR Part 200 and should be considered in the single audit work plan and reviews. The FAQs are informal in nature and in the case of any perceived discrepancy between the FAQs and the guidance itself, the guidance at 2 CFR 200 governs.*

Costing & Financial Compliance (CFC): Other Issues (UPDATE)

The items below are issues that the CFC Committee has either recently reported (see COGR's August Update for additional detail) and/or is continuing to follow:

National Endowment for the Humanities (NEH) and F&A Cost Reimbursement. Several COGR members shared with COGR a term in their awards restricting F&A cost reimbursement in situations where the school has a provisional F&A cost rate established with their cognizant agency for indirect costs. COGR shared this concern with leadership at NEH in August, and after their review, we were informed NEH will be lifting the restriction on all NEH awards, past and present. NEH acted quickly and COGR appreciates the outcome.

NSF OIG: NSF Award Recipient COVID-19 Audits and Capstone Report. This NSF Office of Inspector General (OIG) initiative—*NSF Award Recipient COVID-19 Audits*—was concluded in the summer. The ten audits can be found on NSF OIG Audit Reports (see External Report links). Also, the

NSF OIG released: *Capstone Report (OIG-21-6-003): Observations on the OMB COVID-19 Flexibilities (prepared by Cotton & Company LLP, August 3, 2021)*. On Page 1 of the report (page 6 per the PDF), the NSF OIG summarized "*WHAT WE LEARNED": NSF award recipients used the COVID-19 flexibilities to continue performing essential research and services during the COVID-19 pandemic, as summarized in Appendix II,* ***and were generally prudent in their stewardship of federal resources [COGR emphasis added].***

Facilities and Administrative (F&A) Cost Rates Under COVID-19. In April, COGR released the paper, *F&A Cost Rates and Reimbursement Pressures Under COVID-19: Maintaining a Fair and Reliable System,* and a corresponding Executive Summary. Both are available on the COGR website. For additional information, please contact David Kennedy at dkennedy@cogr.edu and/or Toni Russo at trusso@cogr.edu.

Tracking NSF and HHS OIG Activity and DOJ Settlements. We encourage the membership to stay connected to federal audit activity and settlements. For recent NSF OIG activity, we recommend reviewing both the Audit Reports released by the NSF OIG and the Management Responses to External Audits and Internal Reviews.[3] We encourage you to contact COGR when relevant issues affect your institution.

Uniform Guidance (UG) and FAQ Reminder. Electronic versions of 2 CFR Part 200 (Uniform Guidance) and the corresponding UG FAQs (May 3, 2021) are available and easily accessed on the World Wide Web.

2020 NSF Higher Education Research & Development (HERD) Survey COMING SOON. The 2019 HERD is available and includes the InfoBrief summary and the complete suite of 2019 Data Tables (which includes the popular *Table 21 – Higher education R&D expenditures, ranked by all R&D expenditures, by source of funds: FY 2019*). The 2020 HERD Survey results should be available in December.

Please contact David Kennedy at dkennedy@cogr.edu to further discuss any of these issues above, or other items that have not been covered.

Contracts & Grants Administration (CGA)

Reducing Administrative Burden Recommendations for OSTP (UPDATE)

In a conversation between COGR President Wendy Streitz and OSTP Director Eric Lander, Dr. Lander expressed OSTP's continued interest in reducing administrative burden associated with research and invited COGR's

[3] *For recent HHS OIG activity, go to https://oig.hhs.gov/reports-and-publications/oas/index.asp and then click on National Institutes of Health (or other HHS divisions of interest). Also note, you can access DOJ settlements here: https://www.justice.gov/news.*

additional input on specific actions that OSTP might take[4]. COGR's CGA Committee is taking the lead, in collaboration with other COGR Committees, to develop a prioritized list of recommended actions that would apply across federal agencies. We anticipate providing these recommendations to Dr. Lander in the near future and share the final document with our members. For more information, please contact Jackie Bendall at jbendall@cogr.edu.

NIGMS and NIMH Changes to Guidance for Well-Funded Investigators (UPDATE)

On July 2, 2021, the National Institute of General Medical Sciences (NIGMS) posted updated guidance on NIGMS Funding for Investigators with Substantial Research Support. NIGMS considers a Program Director/Principal Investigator (PD/PI) to be well funded if annual research totals from all sources exceed $1,500,000 in ***total costs***, rather than direct costs. These changes have been in effect for new and renewal applications since September 2021. Subsequently, and troublingly, the National Institute of Mental Health (NIMH) has followed suit with guidance issued on October 22 via NOT-MH-22-030, "Modifications to the NIMH Special Council Review Procedures." The previous NIMH notice NOT-OD-12-140 required that NIH Institute and Center (IC) Advisory Councils perform additional reviews of grant and cooperative agreement applications from PDs/PIs who receive $1.0 million per year in ***direct costs*** from active NIH awards. While we don't know precisely what caused these two institutes to make these changes, it certainly creates a playing field that is not level, disadvantaging institutions with higher indirect cost rates.

On August 10, 2021, the Association of Independent Research Institutes (AIRI) wrote to strongly object to NIGMS' decision to begin using total costs, rather than direct costs, as the criterion for determining which proposals should undergo Council review for investigators with substantial research support (NOT-GM-21-053). AIRI's letter states, "that direct costs are the best reflection of the dollars used to support the impactful biomedical research supported by NIGMS and direct costs should continue to be used to measure the research support of well-funded investigators. The new policy will inadvertently make some of these investigators appear as if they receive more research funding than they actually do. This is unacceptable." AIRI urges NIGMS to reverse its decision to use total costs as the criterion for determining which proposals should undergo additional Council review. Unfortunately to date, we have seen no positive changes in this regard. Stay tuned for further updates.

White House Vaccine Mandate (NEW)

On September 9, President Biden signed Executive Order 14042, requiring executive agencies to include a clause in certain federal contracts and contract-like instruments requiring employees of contractors (and subcontractors at any tier) to be vaccinated. Contractors are also required to comply with COVID-19 safety measures as set forth by the Safer Federal Workforce Taskforce. On September 24, the Taskforce issued COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (hereafter referred to as the

[4] *COGR previously submitted a letter to the Biden Administration (OSTP copied) on "11 Opportunities for Increasing the Impact of Federal Research Dollars" on February 4, 2021, which included several recommendations on ways to reduce administrative burden.*

"Guidance") on broad vaccine requirements for faculty, staff, and students working on 'covered contracts' as defined in the Guidance. The Guidance (updated on November 10, 2021) includes a lengthy and growing list of FAQs. One issue that remains unclear is the treatment of cooperative agreements. While Sec. 5 (b) of the E.O. clearly excludes grants from the vaccine mandate, it does not directly address cooperative agreements. The E.O. indicates that "contract or contract-like instrument" has the meaning set forth in DOL's proposed rule, "Increasing the Minimum Wage for Federal Contractors," 86 Fed. Reg. 38,816, 38,887 (July 22, 2021), which specifically includes cooperative agreements. Further, 9/24 Task Force guidance specifically referenced cooperative agreements as included within the definition of contract or contract-like instruments [5]. Some institutions have reasoned that the DOL definition will not apply until the proposed rule becomes final. Others interpret the Guidance to mean that the DOL definition applies now, meaning that cooperative agreements do in fact fall under the mandate. In any case, the Taskforce has made it clear the Guidance is meant to apply broadly and strongly encourages agencies to apply the requirements to contracts not covered or directly addressed by the EO[6], including those under the Simplified Acquisition Threshold of $250K. We recommend that institutions carefully read the terms and conditions of awards, including flow down requirements to subcontractors at all tiers.

Separate from EO 14042, on November 5 DOL's Occupational Safety and Health Administration (OSHA) and the Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) issued Emergency Temporary Standards (ETS) effective immediately along with Interim Final Rules[7] (IFR) for public comment. OSHA has indicated the ETS has been issued to protect unvaccinated employees of employers with 100 or more employees from the risk of contracting COVID-19. The CMS proposed rule is intended to do much the same in order to protect workers at health care facilities participating in Medicare or Medicaid services. The OSHA and CMS proposed rules do not apply to workplaces covered under the Guidance for Federal Contractors and Subcontractors discussed above, where the stricter EO 14042 applies instead[8].

---

[5] *See pg. 3, Definitions*

[6] *On October 22, NSF issued a notification indicating the NSF Cooperative Agreement Financial and Administrative Terms and Conditions (CA-FATC) had been updated to implement EO 14042, and specifically noted the revised CA-FATC would apply to all new NSF cooperative agreements and funding amendments to existing cooperative agreements made on or after October 25, 2021. In addition, NSF sent out a follow up notification on November 17 that the updated Safer Federal Workforce FAQs issued on November 10 applied to recipients of NSF Cooperative Agreements. Also of note, we have been informed that DoD Grants Policy Office appears to be taking a different approach, in which they have indicated they'll continue to recommend that grants and cooperative agreements be managed as they were prior to EO 14042.*

[7] *CMS Interim Final Rule: https://www.federalregister.gov/documents/2021/11/05/2021-23831/medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-vaccination, OSHA ETS Interim Final Rule: https://www.federalregister.gov/documents/2021/11/05/2021-23643/covid-19-vaccination-and-testing-emergency-temporary-standard.*

[8] *OSHA's FAQs on the ETS state the ETS does not apply to covered workplaces because "covered contractor employees are already covered by the protections in those guidelines [and] OSHA determined that complying with the ETS in addition to the federal contractor guidelines is not necessary to protect employees at workplaces covered by those guidelines from a grave danger posed by COVID-19." (FAQ 2.G.)*

Finally, to be compliant with the effective date under the ETS[9], CMS, and federal contractor rules, employees must be fully vaccinated by January 18, 2022, which means they will need to have their final vaccination dose – either their second dose of Pfizer or Moderna, or single dose of Johnson & Johnson -- by January 4, 2022, unless granted a medical or religious accommodation. OSHA anticipates that the ETS will be in effect for six months; however, it will continue to evaluate the situation and determine when the ETS will expire. Of note, on November 12, the U.S. Court of Appeals for the Fifth Circuit ordered a continuation of the Fifth Circuit's stay on the ETS.[10] Subsequently, OSHA posted a statement online indicating "while OSHA remains confident in its authority to protect workers in emergencies, OSHA has suspended activities related to the implementation and enforcement of the ETS pending future developments and litigation."

This continues to be a fluid situation, and COGR will keep its membership apprised of any significant developments through our listserv and dedicated webpage on the mandate guidance. Please contact Jackie Bendall at jbendall@cogr.edu for questions.

---

[9] *For employers who choose to adopt a mandatory COVID-19 vaccination policy. The ETS also provides an exception for "employers that instead establish, implement, and enforce a policy allowing employees who are not fully vaccinated to elect to undergo weekly COVID-19 testing and war a face covering at the workplace." https://www.osha.gov/sites/default/files/publications/OSHA4162.pdf*

[10] *Fifth Circuit's Opinion can be viewed here: https://www.ca5.uscourts.gov/opinions/pub/21/21-60845-CV0.pdf*

COGR would like to thank COGR Board Chair David Norton (University of Florida) 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.

Contracts & Grants Administration (CGA)

Walter Goldschmidts (Chair)	Cold Spring Harbor Laboratory
Stephanie Endy	Brown University
Jeffrey Friedland	University of Delaware
Stephanie Gray	University of Florida
Charles Greer	University of California Riverside
Jennifer Lassner	University of Iowa
Steven Martin	Indiana University
Bruce Morgan	University of California Irvine
Lisa Mosley	Yale University
Twila Reighley	Michigan State University
Craig Reynolds	University of Michigan
Jennifer Rodis	University of Wisconsin-Madison
Pamela Webb	University of Minnesota
Jackie Bendall	Director, COGR

Costing & Financial Compliance (CFC)

Jeffrey Silber (Chair)	Cornell University
Sarah Axelrod	Harvard University
Jeremy Forsberg	University of Texas Arlington
Joseph Gindhart	Washington University - St. Louis
Vivian Holmes	Boston University
Cynthia Hope	Georgia Institute of Technology
Michael Legrand	University of California, Davis
Nate Martinez-Wayman	Duke University
Gerald Mauck	University of Denver
Jennifer Mitchell	Northwestern University
Julie Schwindt	University of South Alabama
Marcia Smith	University of California, Los Angeles
Renotta Young	Columbia University
David Kennedy	Director, COGR

Research Ethics & Compliance (REC)

Naomi Schrag (Chair)	Columbia University
Lynette Arias	University of Washington
Lois Brako	University of Michigan
Theresa Colecchia	Johns Hopkins University
Keri Godin	Brown University
Grace Fisher-Adams	California Institute of Technology
Karen Hartman	Mayo Clinic
J.R. Haywood	Michigan State University
Mary Mitchell	Mass General Brigham
Deborah Motton	University of California
Kerry Peluso	Florida State University
Brian Smith	University of California - San Francisco
Geeta Swamy	Duke University
Ara Tahmassian	Harvard University
Debra Thurley	Pennsylvania State University
Kristin West	Director, COGR

Research Security and Intellectual Property Management (RSIP)

Elizabeth Peloso (Chair)	University of Pennsylvania
Alexandra Albinak	Johns Hopkins University
Allen DiPalma	University of Pittsburgh
Cindy Kiel	Stanford University
Sophia Herbert-Peterson	Georgia Institute of Technology
Michael Moore	Augusta University
Dan Nordquist	Washington State University
Jennifer Ponting	University of Chicago
Kenneth Porter	University of Maryland
John Ritter	Princeton University
Fred Reinhart	University of Massachusetts
Janna Tom	University of California
Robert Hardy	Director, COGR

APPENDIX A – COGR NOVEMBER 2021 UPDATE

Notes from Association Meeting with DARPA October 27, 2021

Associations Represented: AAU, APLU, and COGR

DARPA Representatives Present: David "Wes" Bennett, Kevin Flaherty, Kristy Kuhlman

Wes and Kevin presented a slide show for the group on DARPA's Countering Foreign Influence Program (CFIP) Memorandum and Risk Rubric and then took some questions from the group. The DARPA representative advised that their slides are not yet cleared for wider distribution, but that they will share them when that happens. Some key points from the presentation are noted below:

- Timeline: DARPA has been working on these materials since 2019. They were developed in response to the 2019 NDAA and the March 2019 Research and Engineering Memorandum "Actions for the Protection of Intellectual Property, Controlled Information, Key Personnel and Critical Technologies."
- NSPM-33: The materials do not specifically address NSPM-33 and may be modified after OSTP guidance comes out. DARPA believed that it needed to take action before NSPM-33 guidance came out.
- Consistency with Other Agencies: DARPA has discussed the CFIP and rubric with other agencies. It believes that its actions parallel what other agencies, including NIH and NSF, have done in this area.
- Transparency: DARPA stated that it wanted to be very transparent with universities about what factors they consider as presenting risk.
- "Family and Friends" Wording: DARPA will be reviewing its use of the "family and friends" wording in the rubric and plans on working to clarify that it is considering only professional associations.
- Risk Mitigation: DARPA's first concern is that institutions are aware of their researchers' activities and are given an opportunity to mitigate any risk those activities may pose. DARPA did not provide details on specific risk mitigation steps that institutions could take.
- Definitions: DARPA stated that the definitions of many terms that appear in the CFIP memo and risk rubric are included in the Broad Agency Announcement.
- Vetting: DARPA stated that it was not vetting individuals (i.e., DARPA is not doing background checks). They are looking at information provided by researchers on the SF424 forms and, in some cases, spot checking it against information that is available publicly (e.g., via publications and websites).
- Time Period of Concern: DARPA stated that they are focusing on researcher activities in the past four years.
- Fundamental Research: DARPA does not believe that the rubric and CFIP memo pose any issues with fundamental research.
- Changes: DARPA is willing to consider input and expects to make changes to the rubric and memorandum, although they do not have a specific timetable for doing so.
- Additional Presentations: DARPA representatives said that they will consider making presentations to associations and other in the community. COGR has invited Wes and Kevin to present to COGR's Committees.