COGR

An Association of Research Institutions

June 30, 2023

Submitted electronically to https://rfi.grants.nih.gov/?s=646e6654a8ba09024f09e852
Xanthia James, Director
Division of Grants Policy, Office of Policy for Extramural Research Admin.
National Institutes of Health (NIH), Rockledge I, Suite 350
Bethesda, MD 20817

RE: Comments Submitted in Response to *Notice to Announce NIH Updated Policy Guidance for Subaward/Consortium Written Agreements* (88 FR 36603)

Dear Director James:

We write to express significant concerns voiced by the research community regarding the *Notice to Announce NIH Updated Policy Guidance for Subaward/Consortium Written Agreement*[1] ("Guidance") requirement that foreign subrecipients provide prime recipients with all lab notebooks, data, and documentation that supports research outcomes described in progress reports. This requirement is so overly broad that it will harm important international research collaborations, and we believe its goal can be more effectively and efficiently met through use of NIH's 2023 NIH Final Policy for Data Management and Sharing[2] ("2023 DMS Policy").

As an association of over 200 public and private U.S. research universities and affiliated academic medical centers and research institutes, COGR is uniquely positioned to comment on the Guidance. COGR focuses on the impact of federal regulations, policies, and practices on the performance of research conducted at our member institutions and advocates for sound, efficient, and effective regulation that safeguards research and minimizes administrative and cost burdens. COGR's member institutions understand the tremendous importance of being good stewards of federal research funds, and they work diligently to ensure full transparency and accountability as to how they use these funds.

[1] 88 FR 36603 (June 5, 2023). We note that the Guidance was originally published on May 19, 2023 as NIH-NOT-OD-133 and then published in the Federal Register on June 5, 2023, and there are differences between these two versions. Our comments are directed to the June 5th version as we presume it supersedes the May 19th version based on the later publication date.
[2] NIH, NOT-OD-21-013 (Oct. 29, 2020) (effective Jan. 25, 2023).

COGR and its members also understand that international collaborations are essential to ensuring that the United States' scientific enterprise has access to top international research talent, crucial data, and research subject populations that are vital to understanding critical issues with global impact. Accordingly, we appreciate the opportunity to submit comments in response to the Guidance, particularly those portions of the Guidance that affect international collaborations.

COGR supports NIH's long-standing requirement for a formal written agreement that details how consortium participants and subrecipients will meet grant requirements. We also support the Guidance's provision that parties sign these written agreements to demonstrate their knowledge of and agreement to these requirements. Clear contract terms ensure that all parties share the same expectations for their roles and responsibilities on the NIH funded project. Thus, we support all modifications to the NIH Grants Policy Statement (GPS) set forth in the Guidance, with the exception of the following requirement ("FS Provision"):

> For foreign subrecipients, a provision requiring the foreign subrecipient to provide copies of all lab notebooks, all data, and all documentation that supports the research outcomes as described in the progress report. These supporting materials must be provided to prime recipient with each scientific update (no less than once every six months, or more frequently based on risks) in line with the timelines outlined in the agreement.

COGR agrees that all subrecipients, *domestic and international*, should be expected to comply with prime recipients' requests to provide appropriate data and documentation that supports research outcomes. COGR also respects the fact that NIH issued the Guidance in response to recommendations from the U.S. Department of Health and Human Services Office of the Inspector General (DHHS OIG) concerning the ability to obtain information from a foreign subrecipient, as described in its report concerning certain activities of the EcoHealth Alliance[3] ("EcoHealth Report"). However, the current FS Provision takes an overly broad approach that will fail to achieve its intended aim in an objective, risk-based manner because it collects vast amounts of non-curated data, much of which is in a raw format that makes it difficult to interpret. Overall, the burden on subrecipients in amassing and providing this data every six months[4] will severely strain international collaborations, while providing negligible benefit to U.S. researchers because of the sheer amount and raw format of much of the data collected.

NIH can more effectively and efficiently accomplish the aims of the FS Provision with far less detrimental impact on international collaborations by utilizing the 2023 DMS Policy to improve access to supporting research data. Notably, the 2023 DMS Policy was not in effect at the time of activities reviewed in the EcoHealth Report, which took place between May 2014 (first grant award) and January 2022 (addition of special award conditions to grants awarded in 2020).

[3] DHHS OIG, The National Institutes for Health and EcoHealth Alliance did not Effectively Monitor Awards and Subawards, Resulting in Missed Opportunities to Oversee Research and Other Deficiencies (A-05-21-00025) (Jan. 2023).
[4] Originally, every three months per NIH NOT-OD-23-133.

By leveraging the data sharing mechanisms established in the 2023 DMS Policy, NIH can evaluate data sharing plans at the proposal stage, determine if additional provisions are needed to address specific risks posed by the research and collaborative arrangements, and monitor adherence to approved data sharing plans on an annual basis. This approach ensures appropriate data access for the prime awardee and aligns with current data sharing and management requirements without creating another, distinct administrative requirement (with significant associated cost) that has the unfortunate, but predictable, effect of casting all international collaborations as high-risk endeavors that are to be feared, as opposed to fostered.

The remainder of this letter outlines *specific* concerns with the FS Provision and our recommendations for improving the Guidance.

Concerns Regarding the FS Provision

- **The FS Provision Institutes an Unnecessary Additional Requirement that Imposes Significant Administrative Burdens and Costs to Achieve a Goal that is More Appropriately Addressed via the 2023 DMS Policy**:

The 2023 DMS Policy requires grant applicants to submit at the time of proposal a Data Management and Sharing Plan ("DMS Plan") that outlines how "scientific data and any accompanying metadata will be managed and shared, taking into account any potential restrictions or limitations."[5] The DMS Plan must be reviewed and approved by NIH, and NIH may "request additional or specific information to be included within the Plan in order to meet expectations for data management and data sharing in support of programmatic priorities or to expand the utility of the scientific data generated from the research."[6] Additionally, the DMS Plan is monitored annually "during the funding period [for] compliance" by NIH as part of the Research Performance Progress Reports (RPPR) and updated accordingly.[7] The purpose and intent of the 2023 DMS Policy squarely encompasses the FS Provision's requirement to provide data and documentation "that supports the research outcomes as described in the progress report." Thus, the imposition of a separate requirement in this area seems unnecessary, particularly because the 2023 DMS Policy provides NIH with the option to request additional information, as the situation requires.[8]

In comparing the 2023 DMS Policy requirements with those of the FS Provision, the key difference concerns the definition of "Scientific Data" subject to the Policy. The 2023 DMS Policy defines Scientific Data as follows:

[5] 2023 DMS Policy at Section V.
[6] *Id.*
[7] *Id.* at Section VIII.
[8] We note that NIH GPS Section 8.4.2 also provides NIH with a "right of access to any documents, papers, or other records of [a] non-Federal entity which are pertinent to the NIH award, to make audits, examinations, excerpts, and transcripts," for the applicable record retention period and any time after that for which the records are retained.

> **Scientific Data:** The recorded factual material commonly accepted in the scientific community as of sufficient quality to validate and replicate research findings, regardless of whether the data are used to support scholarly publications. Scientific data ***do not include*** laboratory notebooks, preliminary analyses, completed case report forms, drafts of scientific papers, plans for future research, peer reviews, communications with colleagues, or physical objects, such as laboratory specimens. [***Emphasis added***].

Inexplicably, the FS Provision does not use the definition for Scientific Data found in either the 2023 DMS Policy or the current NIH Grants Policy Statement's definitions section. Rather, the FS Provision explicitly requires "copies of ***all lab notebooks, all data, and all documentation*** that supports the research outcomes as described in the progress report." [***Emphasis added***.] This requirement is perplexing given NIH's implicit recognition in the 2023 DMS Policy that requiring data in its rawest form, such as that found in lab notebooks and preliminary analyses, are not of "sufficient quality to validate and replicate research findings." It is worth noting that this broad definition was not required by the DHHS OIG Report which recommended simply that NIH "implement enhanced monitoring, documentation, and reporting requirements for recipients with foreign subrecipients."[9]

Additionally, the 2023 DMS Policy includes provisions to account for well-recognized limitations on data sharing, such as limits on sharing proprietary information prior to publication, as well as legal protections for human subject research data and other sensitive data. The FS Provision does not contain these limitations. This omission poses concerns for collaborators in other countries that may be seeking to protect their own intellectual property in accordance with their nations' legal requirements. It is also particularly problematic in the context of international privacy and confidentiality regulations for human research subjects' data, which are frequently much stricter than comparable U.S. federal regulatory requirements.[10]

For example, the European Union (EU) General Data Protection Regulation (GDPR) restricts the flow of even pseudonymized clinical research data, let alone raw identifiable data, from the EU to the United States because the EU does not recognize the U.S. as having a system of laws that provides adequate protection of personal data.[11] Further complications arise from the EU's detailed requirements for consent,[12] additional data subject rights,[13] prohibitions on the use of U.S. based cloud servers,"[14] and EU court rulings prohibiting the transfer of data to U.S. federal

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[9] EcoHealth Report at p. 30.

[10] *See, e.g.,* International Association of Privacy Professionals (IAPP), Global Comprehensive Privacy Law Mapping Chart which notes that although some states within the U.S. have comprehensive privacy laws, such a regulatory regime does not exist at the federal level.

[11] *See*, H. Bentzen, et. al., "Remove obstacles to sharing health data with researchers outside of the European Union," 27 *Nature Medicine* 1329-33 (Aug. 2, 2021) (overview of GDPR requirements preventing the transfer of health research data from the EU to the U.S. and discussion of delay/suspension of NIH funded research collaborations because of the inability to legally transfer data).

[12] *See*, EU GDPR webpage, "GDPR consent must be actively given by the data subject" (accessed Jun. 28, 2023).

[13] EU GDPR, Chapt. 3 (Art. 12-23).

[14] H. Bentzen, *et. al.*, "Maximizing the GDPR potential for data transfers: first in Europe," 27 *Lancet Regional Health - Europe* 100600 (Apr. 27, 2023).

agencies such as the NIH and FDA because they hold sovereign immunity.[15] Although the U.S. and EU governments are currently working to resolve data transfer issues, and researchers and their attorneys are striving to develop legal mechanisms to allow U.S. access to EU data (e.g., permitting U.S. researchers to "visit" data housed in the EU or on cloud servers that meet EU standards[16]), the regulatory complexity and limitations cannot be overstated. Overall, the FS Provision, as it currently stands, is unlikely to satisfy any of the GDPR's specified legal bases for transfer to the U.S. of the broad scope of data requested, especially given the lack of any context for how NIH expects this information will be used.

The FS Provision specifies that "supporting information must be provided no less than every six months." This seems arbitrary and overly burdensome. Alternatively, the 2023 DMS Policy specifies that data is shared by the earlier of two time points: "the time of the associated publication" or "the end of the performance period."[17] The sole fact that a subrecipient is "foreign," does not justify inconsistency in NIH reporting requirements between domestic and international subrecipients that conduct fundamental unclassified, non-export controlled research. Further, as part of monitoring functions under the 2023 DMS Policy, additional data sharing to support outcomes may be requested.

Finally, the additional administrative burden and costs associated with the FS Provision should not be underestimated. Further, as is the case with similar burdens, there will be a disproportionate impact on smaller and emerging research institutions and research institutions in less-resourced nations. Research institutions have spent considerable time, effort, and money to review, understand, implement, and train researchers on DMS requirements.[18] The burdens and costs associated with the FS Provision (e.g., segregating project specific data, collection and storage of data, personnel time, translation, compliance monitoring, etc.) will be significant, yet it will result in the collection of just a few additional types of data, which, notably, were omitted from the DMS definition of "Scientific Data" because they have such limited value.

In short, the FS Provision imposes an incredibly burdensome requirement on prime awardees and subrecipients to collect data that NIH acknowledges may not be of sufficient quality to validate research findings. Moreover, the new requirement fails to consider international intellectual property and privacy/confidentiality standards. Consequently, NIH should eliminate the FS Provision and instead rely solely on the 2023 DMS Policy to address access to supporting data. This would avoid adding new burdens and at the same time increase adherence to data sharing requirements by ensuring consistent treatment of research that presents the same level of risk.

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[15] *Id*.
[16] *Supra*, n. 9; *see, also,* Bernier, A., *et. al.,* "Reconciling the biomedical data commons and the GDPR: three lessons from the EUCAN ELSI collaboratory," *European J. of Human Genetics* (Jun. 15, 20223).
[17] *See*, NIH FAQ B.2. for the 2023 DMS Policy.
[18] *See,* COGR, Data Management and Sharing and the Cost of Compliance, Results from the COGR Survey on the Costs of Complying with the New NIH DMS Policy (May 11, 2023)

- **The FS Provision is Not Risk Based and will Chill International Collaborations**

NIH imposes the FS Provision merely because a subrecipient is "foreign," and not because of any specific risk regarding the research or researchers involved. The foreword to the NSPM-33 Implementation Guidance[19] specifically states that the guidance is designed:

> [T]o protect America's security and openness, to be clear so that well-intentioned researchers can easily and properly comply, and to ensure that policies do not fuel xenophobia or prejudice.

Relying solely on the Guidance, it is difficult to ascertain how imposing a restriction on subrecipients for no reason other than the fact they are "foreign" will create anything other than an impression of xenophobia in the international community and throughout the U.S. This restriction will damage long-standing international collaborations, developed, and nurtured by U.S. research institutions, that help our nation retain its global scientific competitiveness. Also, these collaborations provide access to data and subject populations that are not available in the U.S., but which bear on public and global health issues.

COGR has collected data from researchers at its member institutions concerning the anticipated impact of the FS Provision. This data is summarized in the appendix to this letter. It could be argued that any chilling effect could be more effectively evaluated by data collected after the FS Provision is implemented. However, there is a strong possibility that once international collaborations with U.S. researchers end, they are unlikely to return given the availability of non-U.S. research collaborators and funding opportunities. Consequently, the "wait and see approach" may result in irreversible negative consequences.

Applying standards equally to all countries, regardless of the risk they pose, is not in the best interest of our nation. Rather, it results in the blanket application of the most restrictive standards to researchers in nations that share the same values regarding scientific integrity as the United States. On its website, NIH proudly proclaims that "[t]he biomedical research workforce continues to be greatly enriched and strengthened by scientists working together from many parts of the world" and acknowledges that "the overwhelming majority of researchers participating in NIH grants, both in the U.S. and in other countries, are honest contributors to the advancement of knowledge that benefits us all."[20] The FS Provision contradicts this proclamation. Instead of applying stricter controls to international collaborations in countries that pose greater risk to research integrity and security, the FS Provision holds all countries – including our allies – to standards we would not agree to if requested by a foreign collaborator. Overall, the FS Provision treats all international collaborators as less trustworthy and reliable simply because they are not in

[19] National Science and Technology Council, Guidance for Implementing National Security Presidential Memorandum 33 (NSPM 33) on National Security Strategy for the United States Government-Supported Research and Development (Jan. 2022).
[20] NIH, Grants & Funding, Foreign Interference website (last updated July 12, 2022).

the U.S. This approach undermines international research collaborations that NIH recognizes as positively contributing to U.S. scientific endeavors.

Recommended Approach

There is a clear and much more straightforward path to address the concerns raised by the DHHS OIG:

> **Eliminate the FS Provision, and instead, modify the 2023 DMS Policy to give NIH the authority to require that DMS Plans include additional data and supporting documentation beyond the DMS Policy definition of "Scientific Data" when there is both a specific risk posed by the type of research (e.g. gain-of-function) or proposed collaborators and the research is located in a Country of Concern as defined in the CHIPS & Science Act of 2022.**

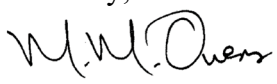
This approach allows the prime recipient and NIH to ensure that they have access to the information they need without unnecessarily imposing the most stringent requirements on all international research with foreign subrecipients.

Conclusion

COGR recognizes the need to ensure the integrity of research and protect the U.S. research enterprise from exploitation by countries that may not share our values. Equally important is the need to preserve international collaborations that are vital to the success of the U.S. and global scientific enterprise. These international collaborations have led to new ways to prevent, diagnose, and treat illness and have improved the health of our nation and the world. While we understand the intent of the FS Provision, we caution against the use of a "blanket" policy approach in response to a single, or very small number, of adverse events because it will stunt U.S. and global health research. Instead, these concerns are better addressed through the robust 2023 DMS Policy and by ensuring compliance with established procedures in the NIH Grant Policy Statement and corresponding regulations.

We appreciate the opportunity to offer comments. Please direct any questions about this response to Kristin West, Director, Research Ethics and Compliance at kwest@cogr.edu or Krystal Toups, Director, Contracts and Grants Administration at ktoups@cogr.edu.

Sincerely,



Matt Owens
President

cc: Dr. Lawrence Tabak
Dr. Michael Lauer

APPENDIX I: *Faculty Statements and Policy Impact*

Below we present statements from faculty members at COGR member institutions who reviewed NIH Policy NOT-OD-133 and were asked to comment on how it would impact their research. In total, 15 statements were collected and grouped into seven categories (A. thru G. below).

Next, the faculty statements were assessed to determine the impact the NIH policy would have on their areas of research. Three "Impact Icons" were defined to describe the impact of the NIH policy. These are shown below. The "Count" column represents the number of occurrences of each Impact Icon (note that for each faculty statement, more than one impact icon can be identified with the statement).

Impact Icon	Impact of the NIH Policy	Count of Concern
🌎	Chilling Effect on International Collaborations	**11**
$	Costs & Additional Administrative Burden	**9**
⚖	International Privacy and Confidentiality Regulations	**5**

For each of the seven categories that follow (A. thru G.), the applicable Impact Icons are shown. For example, in the case of A. Health Care Policy, the new NIH policy would both compromise international privacy and confidentiality regulations AND would create new and significant cost and administrative burden. Below each category are summaries of the actual statements made by the faculty member; identifying information has been removed.

A. Health Care Policy ⚖ $

Our work is on the comparative outcomes of treatment across countries with different advanced healthcare systems (e.g., isolating the effect of different health systems approaches from other social investments that might impact health outcomes). The work [involves] international subs primarily using existing data sources. This initiative uses patient level data from Canada, UK, Netherlands, Israel, Taiwan, and Australia to determine different health outcomes based on health systems care by analyzing on a granular level, specific diagnoses and treatments.

"If we were really talking about all countries giving us "primary" and "patient level" data, the volume of the data would be truly massive."

As such, no new data is generated but rather results and findings come from analyses of existing datasets (i.e., secondary studies). The data sources used by foreign sites include a country's sensitive health data and the foreign site performs the analysis at their sites and then shares de-identified summary results to the entire research team. Obtaining the raw sensitive health data would likely not be possible (or advisable) due to various local restrictions (DUA requirements/GDPR). The other issue is the standardization of certain interim data and project materials across international sites may not be possible and, at a minimum, would be cost prohibitive.

B. Systems Biology

As a theoretical systems biologist with an NIH R01 proposal that includes a subaward to a collaborator in Europe for experimental work. I believe that [the] requirement for the European subrecipient to provide copies of all documentation, especially lab notebooks, will make the collaboration potentially impossible. Lab notebooks often contain information on multiple projects, some of which may be unrelated to the award in question and separately funded. Providing a copy of the full notebook would breach confidentiality on these other projects or otherwise circulate information that other collaborators may not wish to share. Separating the projects would be incredibly burdensome and require a dedicated project FTE. If a separate notebook is maintained for a specific project, it will destroy the continuity of recording how ideas are developed. This is a crucial feature of what a notebook provides, especially when the work spans different projects that are separately funded, as above. This continuity can become really important if a notebook has to be subsequently consulted when issues of priority are raised or questions arise about the reproducibility of the work."

"If a foreign funding agency demanded my lab's notebooks, I would refuse to participate in the project. I would expect the same from my international colleagues."

C. Translational Laboratory

Statement #1

I have worked extensively with international labs. I could not ask them to enter into an agreement where I had to receive notebook[s] and raw data. The collaborations would have to terminate in that case. The problem is not that it is physically infeasible to actually transfer the data – you can usually find a way – but simply that the request would not be received well from a collaborator and would indicate a distrust of my partner that would discourage partnership. A subrecipient must have a level of autonomy over their labs and results, and decide when they share data and how. While many labs may agree to do it, my opinion is that they would generally not be the best and strongest groups. The people we want to work with would just find others, from outside

the US. I would similarly never hand over our own notebooks to other countries should they ask us. This rule goes deeply against public interest and can have serious health implications. Someone is playing a reckless game with tax payers' money and the health of the American people.

"Some years ago, France had a rule that all conferences held in France had to be held in French [due to political pressure], but the only effect was that all big conferences were can cancelled, and French science was strangled. This strikes me as equally political. There is no trade-off here – this is purely negative."

Statement #2 

I think the [policy] would be very problematic for the project we are working on would have data protection issues. For clinical data from human subjects, we would not be allowed access to the raw information. There are significant barriers to sending even deidentified patient data from Europe to the US. Data protection laws in Europe differ significantly from those in the US. We do not have a method of receiving and storing this data. The patient clinical records cannot be released to us. We have set up a system so that the deidentified clinical data from the European centers is shared between the clinicians responsible for analysis of the data. A "Box" system based at one of the European centers with restricted access is being used. This took a lot of effort to set up and meet the European and clinical center data protection regulations. For us to recruit sufficient patients for the rare disease we are studying international collaborators were important. For development of components for one aspect of our translational gene therapy international collaborators were important. I do not think that it would be possible to meet these requirements for the clinical based aspects of the current project. For the laboratory-based aspects of the project the collection of lab books etc. would be an onerous task.

D. Data Science 

I have managed subcontracts that involve European participants. International collaboration is always hard to fund but is becoming ever more important in science as the topics become harder and the technologies more complex. I have two immediate concerns about the changes envisioned. The first and most obvious is that the proposed solutions are completely unworkable. I cannot image a process by which all notebooks and research records - particularly those that involve complex data sets - could be provided by subrecipients and then reviewed by the prime for forwarding on to the NIH. A requirement with a much narrower scope would seem sufficient to me - namely the provision of reports in a pre-agreed upon template (e.g. a slide deck) that could be retained by the prime and then provided to NIH as needed. I also believe that reporting should conform to emerging standards for data deposition and stewardship and not create a new, unnecessary requirement.

My second - closely related concern - is that this policy will almost certainly shut down all international collaboration funded by the NIH. It is written in such a prescriptive and legalistic manner that I for one, would not be comfortable having foreign subcontractor on a grant for which I was the prime.

There is not [a] doubt in my mind that such a change would impoverish American science, slow clinical translation, complicate the NIH mission, and great international tension for no good reason.

E. Global Health

Statement #1

I am a global health researcher, with studies in India and Brazil.

This blanket policy will damage and stunt global health research, and is punishing everyone because of the wrong-doing of a few.

The amount of data generated by studies is voluminous, and financial support to support researchers in implementing this policy is unlikely; as with other requirements, the time and money will come out of the work of researchers and the research grants themselves--again, making us do more with less. Moreover, the data that will be created will require huge amounts of computing space, another cost. Lastly, there is no clear indication of who will be reviewing all of this data - and if the past is any indication, it will not be reviewed--thus costing and wasting money, time, collaborations, knowledge and health. I am strongly opposed to this blanket policy and believe that it should be targeted toward high-risk projects and high-risk areas.

Statement #2

I think the negative impact on international collaborations could be expanded with respect to compromising trust among collaborators, but also its effect with the one-sided transfer of data on the autonomy of our collaborators (they may have country specific regulations that prohibit such transfers especially of PHI) and principles of fairness and equity. The point on administrative burden also includes several facets, one of the most important is the inherent inequity in research administrative support provided where foreign subrecipients receive 8% IDC compared with >40% for US institutions. Our foreign collaborators are already challenged in providing administrative support under current regulations, and the new regulations will be seen as punitive given the current support model.

I would pose using these new regulations as an opportunity to reevaluate the IDC policy for foreign subawardees since compliance with new regulations is dependent on this issue. There is an additional issue on whether the new policy will be effective and efficient or represents intrusive managerial control.

Will NIH have the capacity to provide the intended oversight, or are they generating massive amount of work for foreign subrecipients and the US collaborators which will be rarely [acted] upon?

Statement #3 

Reading about this new NIH requirement and I am sure it will drive away foreign partners. The perception will surely be bigger than the reality, but we cannot control that. Perception, mainly. I do understand the logic of requesting data when the US is paying for research (so that it can be made publicly available), but our foreign collaborators never receive money from our federal funds (in fact, they provide in-kind contribution to our project). Requesting all data to be turned over for reporting is something that is likely to frustrate them.

F. Clinical and Translational Science

Statement #1 

With respect to lab notebooks, [it] is very concerning and unrealistic to expect in some ways in the resource constrained setting I work in. For our clinical studies, we actually take on full-time staff in Uganda for activities that directly interface with human subjects, patient assessment, sample collection and follow-up. It is seldom feasible for any project to do this with laboratory assessments because:

a) Most studies like mine end up collaborating with established labs – whether at universities or governmental organizations. The point staff – one of whom usually serves as co-investigator, engages in our study as one of several primary duties. In fact, our study is seldom their primary work focus. Most of these folks are supervising existing staff to do the analyses based on an agreed/established protocol.
b) Even when an established protocol exists we are often actively resolving logistic issues on multiple levels – assay stock out, supply chain disruption, limited availability of the senior immunologist, staffing changes, that this expectation is simply over the top.
c) We are able to comply with aspects of this request that is related to staff 100% within the control of the research project – participant recruitment, response to questionnaires and tasks not requiring analysis of blood or other biospecimen.
d) We could technically be better able to accommodate this on biomarker data that are shipped to the United States for analyses. Unfortunately, this is an area where we run

afoul of in country rules that prohibit shipment of samples for analyses that can be done in-country. It is also an approach that adds dramatic cost depending on the specific biomarkers being shipped for analysis in the US.

e) Electronic data management system allows us to respond to some aspects because we actually don't go back to our collaborators for this… we will look into our database/server and extract the required data and applicable codebooks. On the US side, this requirement implies that for almost every study, we will need to have budgeted support for a post-doc or other individual with the skillsets to facilitate compliance. Otherwise, the PI could easily have most of their project implementation time devoted to organizing this information.

f) If we have to rely on our foreign collaborators to add this onerous task to their already crucial tasks of recruitment, participant evaluation, tracking and sample collection roles, it would be neither manageable nor reliable – even if they complied well.

g) It will be very unreasonable for me to ask our project field team who are in hospitals to organize lab notebooks from various labs. Even if they complied, the value of gathered info to me would be suspect.

h) We just don't have the kind of support – financial, technical and appropriately credentialed human resources needed to have more control of laboratory processes, notebooks and emerging data in the international setting we work in. Kindly note that the kind of resources needed will vary based on type of biomarker data, so the undertaking to comply in this area requires scope of capacity building often beyond the scope of individual studies.

i) More onerous biomarker compliance for certain data – especially biomarker, will be very difficult for our team and frustrating to our international partners. Currently, our collaborators spend a lot of time working with labs to resolve logistic issues around availability of assays, storage, accounting for stored specimen. An additional highly burdensome layer that includes detailed and technical lab processes will be chilling in its effect.

For our studies, a foreign collaborator is essential as it is the only way we have [a] sufficient number of impacted persons to address the question we are asking.

Statement #2

My comments are based on over two decades of experience as an investigator with international collaborations. In particular, I drew from my experience with collaborations in Low to Middle Income Countries (DR Congo, South Africa, Philippines), some funded by the NIH.

The proposed new requirement will create additional constraints on our collaborators that we cannot justify to them from a scientific perspective. The requirement will create an impression

of mistrust that will negatively impact our relationship with our current collaborators while simultaneously making it much more difficult to establish new collaborations. In the LMIC where we work (SubSaharan Africa), there is significant competition from other countries to establish collaborations to build unique datasets. The culture of trust that we have spent over a decade building is the foundation of this work - and the only way we are able to make old things work and new things happen.

Our culture of trust made it possible to transition from infectious disease work to human genomics, and now onto facial recognition and AI as new people joined my lab with different skills and expertise. The benefits have been reciprocal and improved science at home and abroad.

This new requirement will increase the likelihood of local researchers and clinicians finding new preferred partners. The requirement creates a double standard: it applies to foreign collaborators but not to domestic ones. This will be offensive and raise the specter of neocolonialism.

The requirement creates significant additional work for our collaborators who do not have the resources (personnel, infrastructure, time) to fulfill them. The barebones nature of research in LMIC is likely unfathomable to most westerners. As former NIH director Francis Collins said in his remote keynote at the International Congress of Human Genetics in Cape Town this year, "You have to work in one of these spaces to know what it's actually like. I tell my trainees to go work in an African lab to learn how it really is." Life is different over there. Everyone is already doing multiple jobs - giving them another, while not asking it of US-based folks is a surefire way to build resentment and destroy our collaborations. If the standard is applied equally to US labs, to US collaborations, to high-income countries, etc., there will be a cultural willingness to participate. But without funding to support this reporting, it will be impossible to hire people to organize a report out of data as described.

If our collaborators manage to provide the extra requirement of regular raw data requirements at great effort, the process of reviewing the requested data is unclear. If it falls on an NIH staff member, how will the review be performed meaningfully with little to no knowledge of the complexities of the studies? If the intent is that the required data be reviewed by the PI, this creates a sense of policing our own collaborators for unwanted and unnecessary requirements, as well as additional constraints on the PI. If the intent is to convene an advisory council-like structure, this will be further unpaid work asked by NIH of the scientific community.

These are likely to be highly identifiable data. Their movement is likely to trigger certain laws (i.e. GDPR) which require reasonable protection of data. How will this be ensured? Secondarily, these data constitute intellectual property and often result in new discovery. They must be protected to prevent 'scooping' and ensure that careers can be built, and discoveries can be shared when they are complete.

The vast size of these data (ie photos of lab notebooks, intermediate results) will require timely deletion. How will you prevent backlogs so that data aren't merely collected and deleted, but also meaningfully reviewed by your newly-hired subject matter experts?

Statement #3

We work together on the NIH- (and other)-funded research in Blantyre, Malawi. Our positions are perhaps unusual in that we are integrally involved in all of the data collection in Malawi. It is not 'outsourced' to our collaborators --- we are working 'hand in hand' with them in terms of collecting the data. [However], it does seem odd to single out 'international collaborators', to be honest, and as the "decolonizing global health' wave washes over us, it would be tricky to argue that the data from international collaborators should be subjected to more scrutiny than data from "remote" domestic collaborators. [And] because we study malaria (the parasite, the infection, the disease), and because malaria is not a problem in the US, our work, by definition, involves international collaborators. Without them, it wouldn't happen.

Statement #4

I have major concerns with the proposed NIH requirements for foreign institutions that perform NIH-funded research.

Basically, I think many foreign institutions will stop conducting research with the NIH.

In my experience of conducting NIH-funded research in about ~6 foreign institutions (Europe and Australia) over the past ~10 years, many institutions are unhappy that they receive only 8% FNA and with the burdens that the NIH already places on their research projects. In addition, foreign institutions don't understand most of the NIH rules related to grant funding (i.e., are not experts on NIH rules). In addition, their ability to understand English (especially government rules) is limited. Most foreign institutions are uncertain about who in their institution is supposed to sign all the NIH forms. All in all, I think the proposed NIH rules will be too burdensome on many foreign institutions and that international collaborations will dwindle.

G. Additional Specific Comments:

"I also think that the government way overestimates the value of interim research materials like lab notebooks and reagents. They are mostly recordings of failed experiments that would be very difficult for anyone else to make sense or use of."

"If this goes through, we would effectively be eliminating all foreign subs/consortiums in the long run, as no one would be able to manage the burden of the requirements nor want to assume the potential risks. And that would be really detrimental to science."

"I have a current collaboration and have had another in the past. Both would be totally impossible to execute under the new requirement. I cannot imagine many academic collaborations working under such conditions. It would be tremendously harmful."

APPENDIX II: *Implementation Questions*

Below are questions about the implementation of the Guidance received from researchers at COGR-member institutions who reviewed the Guidance.

- Need additional clarification on what is considered "primary data" for purpose of supporting research outcomes. Can it be deidentified or modified to meet local requirements for data transfer?
- What are the expectations on the prime with respect to reviewing and checking the data received? The purpose of a sub is to bring in different expertise.
- Will additional costs required for compliance be allowable direct costs? Additional storage costs? Translation costs?
- We don't have the necessary staff to collect and review the information being requested and it's unclear how we would pay for them. Specific questions/concerns around these reviews include -
    - Data Storage - where should it be stored? How? What are the retention and destruction timelines? Who should be able to access the data in storage?
    - For labs that don't keep electronic notebooks, what are the export requirements?
    - Also for labs that don't have the funding to support electronic lab books - this would leave groups either duplicating effort at the subsite, or relinquishing their data on a quarterly basis - this is a real equity issue in that prime institutions may feel it's not worth the hassle of engaging with less well-funded partners, which is a loss for science.
- Even if we could work out the logistics of reviewing the requested information, there's not enough guidance for us to know if we're being compliant in our reviews. Specific issues that were raised here included -
    - Translation needs
    - Concerns of how liable the prime is if something in the notebook is missed in our review but deemed important at a later date
- Questions around why this is necessary in light of the Data Management Sharing Plans, which are already ensuring all data is going to an open source database
- Why is it all foreign sub recipients as opposed to only foreign countries of concern?
- What is the point of the guidance? Are institutions supposed to just gather the data and store it? For how long? Is there an expectation that institutions will review it? Will there be template language that institutions are supposed to use?

- Will lab notebooks need to be translated into English?
- With the intersections of GDPR and other international privacy requirements, how will obligations to provide these records be managed?
- Applicability of the new requirement
    - New subawards dated 10/1/23 onwards?
    - New grants dated 10/1/23 onwards?
    - Grant applications (continuations) dated 10/1/23 onwards?
- How is this not xenophobic and discriminatory?
- Who is liable for incomplete data?
- Who will ensure its timely analysis and deletion?