COUNCIL ON GOVERNMENTAL RELATIONS
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August 17, 2015

TO: COGR Membership

FROM: COGR Staff

SUBJECT: August 2015 Update

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Uniform Guidance: Procurement and Conflict of Interest Grace Period Extension

In a COGR letter to OMB, dated June 30, 2015, we requested that 2 CFR 200.112 (Conflict of interest) and 2 CFR 200.317-326 (Procurement Standards) be suspended immediately and subject to an extended grace period. The extended grace period would make these sections of the Uniform Guidance effective for an institution's fiscal year FY2018. For most universities and research institutions, the effective date currently is July 1, 2017.

Research institutions, as well as other stakeholders, have deemed an extension to the grace period as a "must have". Staff from OMB have been receptive to our request and have recommended to senior leaders at OMB that the request be approved. Unfortunately, we have not received a final confirmation.

As we have shared with OMB and the COFAR, this one issue has the potential for undoing the many positives of the Uniform Guidance implementation. In the June 30 letter, we reiterated our message of past two years: IHEs and NROs should be granted the same opportunity as States to be exempt from these standards. Our current procurement systems are state-of-the-art systems that have resulted in significant cost savings and efficiencies for IHEs, NROs, and the Federal government. The track record of our systems with both the Single Audit and Federal Audit communities is stellar and there has been little evidence of our systems promulgating fraud, waste, or abuse. While our position remains that IHEs and NROs should be granted an exemption and allowed to use our current systems and processes, at a minimum, an extension of

the grace period for all stakeholders will allow the grantee community and its Federal partners to address the full scope of issues and concerns.

We will provide an update to the Membership in as soon as we learn more.

Uniform Guidance: Recommended 4-Step Approach for Responding to Agency Deviations

In the June Meeting Report (dated June 19, 2015), we included a recommended approach for you to follow when your institution is presented with an agency deviation to 2 CFR Part 200 (or for that matter, deviations in general). Below is an example of the 4-step approach in response to an AHRQ funding announcement that did not require cost sharing, but encouraged cost sharing to be included. We expect the 4-step approach to be an email correspondence with the agency; initially, we recommend you work one-on-one with the agency and forward us the correspondence, as appropriate. COGR's engagement can be determined on case-by-case basis, which might include forwarding the situation to OMB.

Identify language in Funding Announcement - *This FOA does not require cost sharing. While there is no cost sharing requirement included in this FOA, AHRQ welcomes applicant institutions, including any collaborating institutions, to devote resources to this effort. An indication of institutional support from the applicant and its collaborators indicates a greater potential of success and sustainability of the project ...*

Provide UG Citation(s) - §200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected …

Appendix I to Part 200—Full Text of Notice of Funding Opportunity
E. Application Review Information
… If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants …

Statement to Agency -

Per 1) and 2) above, *"I have asked COGR, an association of 200 research institutions, to review this language in light of the newly implemented 2 CFR Part 200 that became effective on December 26, 2014. We are concerned that the vague request for cost sharing may inappropriately compel institutions to commit voluntary cost sharing in the budget proposal …"*

1) Request to Agency:

"At your convenience, please provide: a) the basis or justification for the language included in the FOA, and b) a Policy Official point of contact at the agency who is responsible for approving the language. We look forward to working with you and COGR to resolve any discrepancies with 2 CFR Part 200 …"

While we do not expect the 4-step approach to rectify agency deviations, we believe it provides a systematic mechanism to notify the agency of a deviation and make the agency aware that we are paying attention. In addition, we are accumulating these situations and will

document them in an anticipated year-end report on COGR's perspective on the implementation of the Uniform Guidance. Jackie Bendall at jbendall@cogr.edu and/or David Kennedy at dkennedy@cogr.edu are the points of contact for these situations, and will follow up, accordingly.

Uniform Guidance: F&A and Related Issues

We expect to spend significant time in the near future, and beyond, to track F&A related issues within the context of the Uniform Guidance implementation. We are engaged actively and/or tracking the following:

- **Employee Tuition Remission (200.431j).** This section is problematic by potentially disallowing some forms of employee tuition remission. We believe this was an inadvertent error by OMB and the COFAR and we have advocated for a technical correction. We expect OMB to issue several technical corrections this summer, and this could be one of them.

- **DS-2 Approvals.** COGR will continue engaging with OMB for a clarification or FAQ that is crystal clear: "if allowable per the UG, a DS-2 approval is not required." While there are some schools of thought that this already is the OMB expectation, additional cover in the form of a clarification or FAQ would be helpful.

- **UCA and 2.0 research weighting factor.** COGR is developing an analysis, in partnership with a consulting firm, to address the flawed 2.0 factor. The goal is to present the analysis to OMB and the Cognizant Agencies later this Fall and to advocate for an adjustment.

- **UCA up to 1.3%.** We have shared in previous updates that implementation of the UCA has been favorably resolved: 1) For IHE's currently receiving the 1.3% UCA under OMB Circular A-21, for FY2014 and FY2015 F&A rate proposals, they will retain the 1.3% UCA. F&A rate proposals for FY2016 and forward must propose the UCA using the new methodology, and 2) For IHE's not currently receiving the UCA, they may begin proposing the UCA for F&A rate proposals beginning with FY2014, and going forward.

- **NIH Salary over the Cap and F&A Research Base.** COGR expects to work with OMB and the Cognizant Agencies to review various methodologies that will allow for the fair treatment of NIH salaries over the cap and their treatment in the F&A research base. Prior to implementation of the Uniform Guidance, the treatment was never specified in any official OMB or federal policy, and consequently, this has been an unresolved issue. COGR's position is the Uniform Guidance is clear and that NIH salaries over the cap should be excluded from the F&A research base. We believe working with OMB and the Cognizant Agencies in partnership on this issue is the appropriate approach to achieve reasonable solutions.

- **Negotiation Experiences.** We want to hear about the results of your F&A rate negotiations. In addition to the results of the actual rate negotiation, this includes issues that were raised. If your institution has requested the 4-year rate extension, we also are interested in these results. This will allow COGR and the Membership to track issues and new practices that may be introduced by the Cognizant Agencies. This is of particular

interest as we begin to observe the approaches of CAS/HHS and ONR to rate negotiations under 2 CFR Part 200.

Contact David Kennedy at dkennedy@cogr.edu on any of the items listed above. In addition, Cathy Snyder from Vanderbilt University and recently selected to the COGR Board also is a point of contact. Cathy can be contacted at cathy.snyder@vanderbilt.edu.

Uniform Guidance and Conflict of Interest

New agency policies (e.g., EPA, DOJ, Commerce, NEA) being released to address agency compliance with section 200.112 of 2 CFR Part 200 continue to create angst for COGR member institutions. COGR is engaging with agencies and OMB to advocate for either clarifying FAQs to section 200.112 and/or to request that new agency policies be "stayed" until more clarity and consistency is offered. We will provide an update to the Membership later this month. We ask that you continue to notify us if you see agency policies that go beyond the Uniform Guidance requirements.

NIH Subaccounting, 120-day Grant Closeout and the Payment Management System (PMS)

COGR continues to engage with Federal officials on these inter-related issues. The summaries from the June Meeting Report (dated June 19, 2015) are included below, with relevant updates included:

- **NIH Subaccounting and Final Transition starts on October 1, 2015.** The recent NIH Notice Number: NOT-OD-15-105 (May 28, 2015); *Reminder of Timeline for Administrative Changes to NIH Domestic Awards to Transition to Payment Management System Subaccounts*, reinforces the October 1 final transition date and addresses some of the operational procedures that will be in place. Note, the Notice is clear*: Grantees with inadequate systems in place to appropriately manage this transition by October 1, 2015, may be unable to appropriately access PMS accounts and risk losing their ability to draw down funding.*

  NOT-OD-15-105 further defines the role of the "Subaccount Transitional FFR" in facilitating the transition to establishing new subaccounts for each award, as well as clarifying the treatment of carryover balances. While NOT-OD-15-105 does not specifically address carryover balances greater than 25%, COGR's understanding is that these will be permitted without requiring a formal NIH approval process. Finally, NIH is aware that the ability for an institution to maintain its internal institutional account/project codes will be important to some institutions, and consequently, the transition process has been designed where this should be possible. NIH FAQs are available, though we expect these will be updated as additional clarifications are necessary.

  COGR leaders, who also are involved in the FDP, are tracking additional developments and will remain active in providing updates to the COGR membership and the broader community. Institutions should be focused on understanding what needs to be done to prepare for October 1st, and, as applicable, revamping systems and business processes to make for a smooth transition. Additionally, institutions should be considering how to support the additional work and financial risk associated with NIH subaccounting.

- **Grant Closeout and 120-day Closeout Model.** Under NIH subaccounting, award-by-award financial management and closeout is the new standard. In the 2015 NIH Grants Policy Statement, section 8.6 CLOSEOUT states: *Recipients must submit a final FFR, final progress report, and Final Invention Statement and Certification within 120 calendar days of the end of the period of performance (project period). The reports become overdue the day after the 120 calendar day period ends.* While we are thankful for the new NIH 120-day closeout model, NIH-specific operational issues, as well as internal institutional management issues will provide unique challenges. Further note, the 120-day closeout model transcends NIH; as other funding agencies consider implementing similar models, institutions must be aware of those challenges created by potential inconsistencies across agencies.

- **PMS Consistency with the 120-day Closeout Model.** Consistency in the configuration and functionality of PMS with the NIH 120-day closeout model is integral to successful implementation. PMS is managed by the Division of Payment Management Services (DPM), which organizationally falls under the Program Support Center (PSC) and the Department of Health and Human Services (HHS).

  In order for PMS to be consistent with the 120-day Closeout Model, the PMS "*Expired Grants Functionality*" needed to be modified from 90 days to 120 days. NIH issued a Guide Notice, dated August 4, announcing **that "the deadlines for submitting final financial reports and drawing funds from the PMS are now in synch**. Recipients may request payments from PMS up to 120 days past the period of performance end date for NIH awards with a project end date on or after October 1, 2014. PMS will no longer require NIH approval of each payment request submitted between 90 and 120 days after the period of performance end date."

  The Guide Notice is available at:
  http://grants.nih.gov/grants/guide/notice-files/NOT-OD-15-135.html

COGR also has requested that NIH, in conjunction with PMS leaders, be available to provide additional and unanticipated operational support, as needed. Ongoing communications will educate PMS users on changes that have been made to PMS, as well as provide end-user assistance and troubleshooting to support PMS users with the new 120-day functionality. For example, potential reconciliation and timing issues between the FFR and the FCTR, most likely, will need to be addressed.

COGR and the community appreciate the hard work and commitment that have been made by NIH, DPM, and HHS. All of this change creates a significant challenge at the institutional and the Federal levels. However, it represents a good example of productive partnership where the goals of reducing burden, while maintaining effective stewardship of Federal funds, are achieved. COGR will continue to work with the FDP and NIH to address potential issues associated with the final transition to subaccounting and we will engage actively with PMS administrators and NIH to confirm that open issues associated with PMS and the 120-day grant closeout model are being addressed. We will keep the Membership posted on all developments.

COGR Guide to Compensation and Documentation

Compensation and Documentation requirements from the Uniform Guidance (2 CFR 200.430) have been addressed in detail in recent COGR Updates and Meeting Reports. We expect this to be an ongoing discussion topic as institutions implement new approaches and systems in compliance with section 200.430 of the Uniform Guidance. COGR has developed the *COGR Guide to 2 CFR 200.430*, which is intended to serve as a resource to assist member institutions as they assess the alignment of their written policies and procedures and internal controls with this section of the OMB Uniform Guidance. The Guide should be viewed as a *first assessment*, which is based on our initial understanding of this section. As we learn more with regard to auditor perspective and interpretation from Federal and Higher Education leaders, this could inform updates. Version 1 of the Guide was distributed in a July 1, 2015 email to the COGR ListServe. If you have questions, contact Lisa Nichols at lnichols@cogr.edu.

A special "Thank You" to the Workgroup that worked on Version 1 of the Guide; the Workgroup included a combination of COGR Board members, Committee members, and other volunteers. COGR appreciates the significant contributions of the following individuals (presented alphabetically by institution):

Naomi Schrag (Columbia)	Sara Bible (Stanford),
Jim Luther (Duke)	Elizabeth Piga (Research Foundation of SUNY)
Kerry Peluso (Emory)	Ron Maples (Tennessee)
Jennifer Mitchell (Northwestern)	Joe Gindhart (Wash U in St. Louis)
Mike Daniels (Northwestern)	Kim Moreland (Wisconsin)

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2015 A-133 Compliance Supplement Finalized

The 2015 A-133 Compliance Supplement has been finalized and posted. Note, next year this document most likely will be referred to as the 2016 Single Audit Compliance Supplement as Subpart F, Audit Requirements, of the Uniform Guidance will supersede Circular A-133.

As we reported previously, Part 3, Compliance Requirements, and Part 5, Clusters of Programs, Research & Development may be of special interest. Page 3-1 describes the implementation of the 2015 CS as a "Transition Supplement" and page 3-3 includes a cross-reference to the FAQs from the Uniform Guidance. Also, pages 5-2-1 through 5-2-6 (Part 5, Research and Development Programs) incorporate selected revisions proposed by COGR. For example, pages 5-2-2 and 5-2-3 describe the audit procedures applicable to reviewing Compensation and include provisions for institutions that have transitioned to 2 CFR part 200 and those that have not. This seems to confirm COGR's position that institutions should work with their auditors to determine an institution-defined transition date for implementing section 200.430, Compensation - personal services.

The 2016 Single Audit Compliance Supplement may require even closer review as Subpart F, Audit Requirements, of the Uniform Guidance become applicable for the first time. COGR expects to have the opportunity to review draft versions as early as January 2016 and we will solicit volunteers from the COGR Membership to help review these draft versions.

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Affordable Care Act (ACA) Compliance and Research Assistants

COGR has been contacted by the American Council on Education (ACE) and the College and University Professional Association for Human Resources (CUPA-HR) to help them craft policy proposals concerning the management of graduate student employees consistent with the ACA's employer mandate. Specifically, ACE and CUPA-HR have inquired about Research Assistants (RAs) and sought COGR's help formulating a method – or "safe harbor" – schools could safely use to monitor the effort of RAs without specifically tracking their hours, which would give the IRS and the Department of Treasury assurance that universities are complying with the ACA's employer mandate.

According to Treasury, under the ACA, student employees including RA's working on campus, except under a government work study program, for 30 or more hours per week would be entitled to an offer of a university's employer health insurance coverage. Since the vast majority of RA appointments are less than 30 hours, ACA mandated coverage would not be required. However, at issue is the following: since RA hours are not tracked, how does a university demonstrate that an RA has not worked 30 hours per week?

This brings us to the potential "safe harbor" for RAs, which ACE and CUPA-HR have been discussing with COGR. In specific, we have suggested that language from 2 CFR 200.430(i)(x) could be helpful in developing the safe harbor: "*It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting.*" In effect, by confirming that an RA has completed his/her work, whether the confirmation is made through an effort report, a payroll report, or some other mechanism, the need to document hours is not applicable nor required under the 2 CFR 200.430. The "*inextricably intermingled*" principle is real and unique to the academic setting and to rely on hours as a tracking mechanism is not feasible. Instead, the idea is to propose a "safe harbor" to Treasury/IRS that universities can rely on the appointment of the RA (e.g., 19 hours) in combination with the effort report, payroll report, or other mechanism to demonstrate that the 30 hour threshold mandating ACA coverage has not been triggered. Hence, there is no need for any type of hours tracking or reporting. Of course, if the RA appointment is 30 hours or more, then ACA mandated coverage is applicable.

Note, Treasury accepted other safe harbors proposed by ACE and CUPA-HR for other groups of employees; including, Adjunct Professors and Work-study Students. We are hopeful that a similar safe harbor would be approved for Research Assistants.

On another note, we have been made aware of a separate ACA issue, also being monitored by ACE, which would detrimentally affect a number of graduate students. For a number of years preceding the ACA, many colleges and universities, particularly Tier 1 research universities, have provided graduate students with student health insurance plan (SHIP) coverage at greatly reduced or no cost as part of their graduate package. Apparently, the IRS recently provided informal guidance that this practice may not be permitted under the ACA's employer mandate and that institutions could face annual fines of $36,500 per impacted individual ($100 per day). Unfortunately, this interpretation is causing great concern and uncertainty at a number of institutions, causing some schools to consider ending graduate student SHIP subsidies. Apparently, the IRS is basing this opinion on regulatory guidance issued in 2013, which was intended to prevent employers from eluding the employer mandate by providing funds to

employees through such tax preferred mechanisms as Health Reimbursement Arrangements to cover the cost of individual health insurance coverage purchased on the individual market. ACE is seeking a clarification from Treasury that would permit schools to continue providing SHIP subsidies to graduate students, or, at a minimum, provide schools with permission to continue this practice during the 2015-16 academic year while Treasury further examines the issue.

January 2016 is an important marker for universities to demonstrate full compliance with the ACA's employer mandate, so we expect there to be significant activity around these issues throughout the remainder of the year. We will keep you posted on all developments.

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The National Academies Committee on Federal Research Regulations and Reporting Requirements Fifth Meeting

The National Academies Committee on Federal Research regulations and Reporting Requirements held its fifth meeting in Washington, DC on July 21 and 22**.** Brett Sweet of Vanderbilt University and Tejus Kothari of the Boston Consulting Group presented data from their evaluation of the cost of federal regulatory compliance. This data was included in a report issued in February by the Task Force on Federal Regulation of Higher Education, a complimentary effort to the current Academies effort that focused on higher education regulations. They noted that of $148 million dollars in annual estimated compliance costs, $117 million was specific to research compliance. Committee members suggested that for some institutions this might represent a significant underestimate.

Sally Rockey, Deputy Director of Extramural Research at NIH, presented on NIH reform efforts. Report language in FY14 and FY15 appropriations bills directed NIH to charter a workgroup to develop a plan to reduce administrative burden on NIH grantees. NIH has chosen instead to contract with the National Academies Committee to include a review and recommendations specific to NIH. Sally suggested that the Public Health Service (PHS) conflict of interest (COI) regulations were an area for possible reform, potentially in the form of technical corrections to the regulations. In particular, disclosures for travel reporting and just-in-time submission of financial disclosures. AAMC, COGR and AAU data indicate that travel disclosures do not identify COI to manage. COGR and AAU staff met with the Deputy Secretary of the Department of Health and Human Services (HHS), Mary Wakefield, on July 20 to discuss the PHS FCOI regulations and other areas under HHS in need of reform. COGR and AAU also recently spoke with a Nature reporter on the revised PHS FCOI regulations. Nature is preparing an article on the topic and it is expected to be published soon.

Gil Tran and Danny Werfel presented on behalf of OMB. There was a lot of discussion with Committee members on how OMB and other agencies can solicit input from research universities and other stakeholders. Danny Werfel suggested that interactions with stakeholders during the recovery act process allowed for greater transparency and resulted in a better product. He suggested that stakeholders need to organize themselves. Gil Tran presented on aspects of the Uniform Guidance that affect research universities most, including the potential for fixed awards and outcome based measures and the Utility Cost Factor. There were also presentations by the human and animal research accrediting agencies, AAALAC and AAHRPP; the HHS OIG on OIG audits; the U.S. Department of Commerce on export controls; and a patient research advocacy group.

Senator Lamar Alexander spoke before the committee. He requested that the Committee submit an interim report to Congress in September with 10-12 specific recommendations that should be put into law (via legislation or changes to HHS or OMB regulations) that would simplify requirements and reduce costs for institutions conducting federally funded research. The Chair of the Academies committee indicated that he thinks they will be in a position to submit an interim report in the timeframe Senator Alexander suggested. Presentations can be found on the National Academies website.

Government Accountability Office Study on Regulations and Reporting Requirements Imposed on Research Universities

In October 2012, Representative Mo Brooks, former Chairman of the House Science, Space and Technology Committee's Subcommittee on Research Education, sent a letter to the GAO comptroller requesting GAO review the current regulations and reporting requirements imposed on research universities; in particular effort reporting, subrecipient monitoring and the paper record maintenance required for contractors under FAR. COGR met with GAO in April. As we understand it, the GAO study is likely to focus on finances, personnel, effort reporting, subawards, data sharing, and conflict of interest.

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DATA Implementation and Pilot

The implementation of the Digital Accountability and Transparency Act is underway and the section 5 pilot was initiated in May. OMB is seeking to create standard definitions for data elements used across the federal government. A number of data elements and their proposed definitions are currently open for comment. *Institutions are encouraged to review the definitions and comment as appropriate before the pending* ***deadlines (August 17, 21 and 28)***.

OMB is also partnering with HHS in an effort to reduce administrative burden in the grants community. On August 3, representatives from AAU, COGR, APLU and FASEB met with OMB staff to discuss the National Dialogue. Section 5 of the DATA Act stipulates that the OMB Director, in consultation with relevant Federal agencies, recipients of Federal awards, including State and local governments, and institutions of higher education, review the information required to be reported by recipients to identify common reporting elements across the Federal Government; unnecessary duplication in financial reporting; and unnecessarily burdensome reporting requirements. It requires the OMB Director to establish a pilot program to meet these goals.

The Dialogue is a means to facilitate communication with recipients of federal grants and contracts to identify and reduce duplication and burden. Among the ideas we put forth during our meeting with OMB staff, in response to a broad question on reporting burden, were reducing the number of federal payment management systems; reducing the frequency of financial reporting; piloting/implementing collaborative awards as an alternative to subrecipient monitoring; raising the micropurchase threshold from $3,000 to $10,000; and piloting aspects of the Uniform Guidance that have the potential to reduce administrative work associated with federal awards as part of the data collection activities included in the pilot. These include, awards of similar

purpose or blended funding (200.430); fixed amount awards (200.45; 200.201); and outcome-based reporting (200.430).

In follow-up to our meeting OMB released a blog post by Howard Shelanski, Administrator of the Office of Information and Regulatory Affairs, OMB; David Mader, Acting Deputy Director for Management, OMB and Controller of the Office of Federal Financial Management; and, Anne Rung, Administrator, Office of Federal Procurement Policy, OMB. The blog post promotes the Federal Government's partnership with the Nation's colleges and universities in conducting federally funded research, noting that it is strong, but perhaps not as efficient and beneficial to taxpayers as it could be. It invites institutions to share their ideas on how to reduce unnecessary duplication and burdensome reporting requirements as part of the administration's ongoing efforts to reduce burden on federal contractors and grant recipients. Following our meeting with OMB, new questions have been added to the Dialogue web page.

OMB will seek comments over the next 4-6 weeks and review feedback in mid-October. AAU, COGR, APLU and FASEB will provide feedback via the National Dialogue and we will make additional information on this effort available to members over the next few days. Institutions, and their administrative staff and PIs, are encouraged to respond to some or all of the questions posed and to comment on existing ideas, including those submitted by the associations (AAU, COGR, APLU and FASEB) and other stakeholders.

The Government Accountability Office is conducting multiple audits on the federal government's implementation of the DATA Act. Gene Dodaro, Comptroller General of the United States, recently testified before the Subcommittees on Information Technology and Government Operations, House Committee on Oversight and Government Reform. GAO has published its findings to date on the status of the implementation as well as highlights of the findings.

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