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Uniform Guidance MTDC Subawards

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COUNCIL ON GOVERNMENTAL RELATIONS

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September 26, 2014

Victoria Collin
Gilbert Tran
Office of Federal Financial Management
White House Office of Management and Budget
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Dear Victoria and Gil,

Thank you for your willingness to engage in a dialogue on the treatment of subrecipients (collaborators) and contractors (vendors) for the purposes of defining Modified Total Direct Costs (MTDC). The Council on Governmental Relations (COGR) is concerned that OMB and the COFAR are considering a significant policy change that will create administrative burden, and at the same time, inappropriately and unfairly impact cost reimbursement.

COGR's position is that a significant change in policy must be addressed as a proposed rule for public comment. Furthermore, we maintain that if the definition of MTDC is opened for discussion, then other elements of the definition where there are potential inequities (e.g., limitation to the first \$25,000 on subrecipient agreements) also must be addressed.

Consequently, we request that the COFAR take the following actions:

- 1) Implement Technical Corrections to the Uniform Guidance.** Doing so will codify the current, longstanding policy and allow for the fair and efficient implementation of the Uniform Guidance. Subcontracts never were intended to incorporate vendor contracts as an MTDC exclusion and F&A rates never have been calculated or negotiated using this methodology. Also note, the suggested technical correction will make consistent the "subaward" terminology. Currently, the Uniform Guidance is inconsistent in its use of terminology between the two sections referenced below.

Subpart A. § 200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards ~~and subcontracts~~ up to the first \$25,000 of each subaward ~~or subcontract~~ (regardless of the period of performance of the subawards ~~and subcontracts~~ under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward ~~and subcontract~~ in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

*COGR Request for a Technical Correction to the Uniform Guidance
Definition of Modified Total Direct Costs (MTDC)*

Appendix III. C.2. The distribution basis.

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subawards ~~subgrants and subcontracts~~ up to the first \$25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.68 Modified Total Direct Cost (MTDC) ...

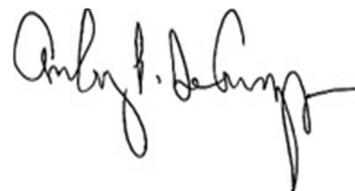
Note: we suggest the Appendices applicable to other non-federal entities be reviewed to determine applicability.

- 2) **Address situations perceived to be inequitable by using existing remedies.** Specifically, § 200.68 already includes this language: *“Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.”* This approach was used by NIH in 2010 to address the perceived inequitable treatment of Genomic Arrays. Agencies have the opportunity to use processes described in the Uniform Guidance to document situations where a serious inequity may exist, and keeping in mind the spirit of partnership that has been established by the COFAR to be the core foundation of Grants Reform, these situations can be addressed in a productive and collaborative manner.
- 3) **Adopt possible changes to the definition of MTDC through roundtables and the official Federal rule-making process.** This discussion should begin with an understanding of the differences between subrecipients (collaborators) and contractors (vendors), and should continue with an assessment of impact on both the science and the administrative activities associated with each. This is a complex and nuanced discussion and all stakeholders should participate and provide perspective. Anything short of this type of collaboration would be inconsistent with how the COFAR has operated. COGR has initiated a policy paper and proposes that we present this to the COFAR sometime in 2015 after the Uniform Guidance has been implemented.

We urge the COFAR to address this issue in the fair and rational manner suggested above. An 11th hour policy change that would result in new and costly administrative process and system changes, coupled with unfair limitations on F&A reimbursement, would be a disheartening set-back to the thoughtful work done, to-date.

Thank you for your consideration. David Kennedy is the point of contact and he can be reached at (202) 289-6655, ext. 112. We look forward to addressing this issue at your earliest convenience.

Sincerely,



Anthony P. DeCrappeo
President

Cc: Karen Lee, Branch Chief, OFFM