

AAU Association of American Universities
APLU Association of Public and Land-grant Universities

April 30, 2012

Office of Management and Budget
725 17th Street, NW
Washington, DC 20025
Attention: Office of Federal Financial Management "Grant Reform"

Dear Mr. Werfel:

We write to provide input in response to the Advanced Notice of Proposed Guidance (ANPG) on "Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act)" that appeared in the *Federal Register* on February 28, 2012 (OMB-2012-0002).

Attached please find a joint response to the ANPG from the Association of American Universities (AAU) and the Association of Public and Land-grant Universities (APLU). Should you have any questions or require more information, please do not hesitate to contact Toby Smith at AAU (202-408-7500, toby_smith@aau.edu) or Howard Gobstein at APLU (202-478-6040, hgobstein@aplu.org).

We also want to thank you for your ongoing willingness to engage on this topic directly since the release of the ANPG. We greatly appreciate the dialogue we have been able to have with you in an effort to advance our mutual interests relating to these matters. We look forward to continuing to work with you to address both federal needs and our shared interests in keeping the our universities and the U.S. research enterprise healthy and vibrant.

Thank you again for your consideration of our recommendations.

With best regards,



Hunter R. Rawlings III
President
Association of American Universities



Peter McPherson
President
Association of Public and Land-grant Universities

AAU-APLU Response to Advanced Notice of Proposed Guidance on OMB Circular A-21
April 30, 2012

The Association of American Universities (AAU) and the Association of Public and Land-grant Universities (APLU) are providing input in response to the Advanced Notice of Proposed Guidance (ANPG) on “Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act)” that appeared in the *Federal Register* on February 28, 2012 (OMB-2012-0002).¹ We also support the recommendations in the separate submission you will receive from the Council on Governmental Relations (COGR).

The February 28, 2012 ANPG proposed revisions to White House Office of Management and Budget (OMB) Circular A-21, which establishes principles for determining allowable direct and indirect costs applicable to all Federal agency awards for research, training, and other work at educational institutions. The ANPG is the most recent step of a process that began in early 2011 and continued through the summer and fall with the work of the interagency A-21 Task Force. AAU, APLU, and COGR met with OMB Controller Daniel Werfel in January 2011, and with Daniel Werfel and then-OMB Director Jack Lew in April 2011. Our associations subsequently worked with OMB and OSTP staff as well as other members of the A-21 Task Force. In response to a June 28, 2011 Request for Information (RFI) from the A-21 Task Force, AAU and APLU provided a joint set of recommendations, and COGR provided a detailed, complementary set of recommendations.² Our belief throughout – informed by our meetings with OMB and other Federal officials – was that the Administration shared our concerns and planned to deliver real reforms.

After this long process, AAU and APLU are disappointed with the ANPG. We believe that the process used to craft the ANPG and the proposals it contains was flawed and failed to represent a good-faith effort to improve the partnership between universities and the Federal government, causing us to question whether the Federal government feels that such a partnership exists at all. Therefore, before providing substantive answers to the four overarching questions in the ANPG, we would like to highlight two overall concerns with the process.

- 1) First, the process reflects an underlying attitude unreflective of the nature of the university-government partnership.*

The ANPG contains a strong indication that the Administration believes the present arbitrary allocation between direct and indirect costs of Federally funded academic research is sacrosanct, and any changes to the Circular must maintain this level, or reduce further the allocation to indirect costs paid by the Federal government. A prime example is the sentence in the ANPG that reads, “OMB is seeking input on how to structure a reform approach in a way that would ensure a reduction in overall indirect costs.” Seeking changes that only reduce indirect cost reimbursement contradicts the idea of universities and the government working as partners to

¹ <http://www.gpo.gov/fdsys/pkg/FR-2012-02-28/pdf/2012-4521.pdf>

² June 28 RFI: <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-11-091.html>;
AAU/APLU Response: http://rbm.nih.gov/aau_response_rfi_a21.pdf;
COGR response: http://rbm.nih.gov/cogr_cost_burden.pdf.

define and support the appropriate costs of research. Moreover, it reflects a view on the part of the Federal government that the administrative costs to our institutions to conduct research on the government's behalf are not "real" costs, or that these costs could be streamlined or reduced. Yet, these costs are indeed real, and are often absolutely necessary to comply with the growing number of Federal regulations that govern our institutions' conduct of research on behalf of the Federal agencies that sponsor it.

Going into this process, our belief was that the Administration understood our concerns about the financial challenges facing research universities. However, the ANPG leads us to question whether the Administration fully appreciates our situation. University leaders agree with Federal officials about the need to make our institutions operate as efficiently as possible, and we have cut millions of dollars from our operations to do so. A working university-government partnership is critical to sustain the international competitiveness of our institutions. A true partnership must recognize that – over the past two decades – universities have shouldered an increasing portion of total costs of research due to increased regulatory requirements, increased restrictions on direct and indirect cost reimbursement, and the 26% cap on administrative costs. We seek an full discussion of these concerns in a spirit of partnership.

2) Second, the process lacks transparency and raises many unanswered questions.

It is difficult to understand the role of the A-21 Task Force, or how our responses to the Task Force RFI, have been used. Given that transparency has been a hallmark of this administration, we continue to request that OMB make public the recommendations provided to it by the interagency A-21 Task Force. Making these comments public would help the university community better understand how and if our previous input was taken into account by OMB in the current ANPG.

- Contrary to the assertion in the ANPG that public comments from the RFI are available online, only the AAU/APLU and COGR comments, plus a summary of other comments made primarily by universities, were made available.
- The A-21 Task Force is not mentioned by name in the ANPG.
- The final report of the A-21 Task Force has not been made publicly available.
- The reform ideas presented in the ANPG are attributed to the Council on Financial Assistance Reform (COFAR), but it is not clear what the relationship of the A-21 Task Force is to COFAR. The COFAR group was created in October, 2011 and did not meet until November, 2011. Universities were never provided with an opportunity to interact with or comment directly to COFAR, despite the fact that, according to the Federal register notice, it appears to be the body that ultimately worked with OMB to craft the language in the ANPG. It is also not clear that the members of the A-21 Task Force ever met with or formally presented their findings to the members of COFAR before the ANPG was issued.
- The ANPG represents the first opportunity for the research university community to interact with COFAR and is also the first public statement that this group is guiding the reform process.

Our responses to the four overarching questions in the ANPG follow:

1. Which of these reform ideas would result in reduced or increased administrative burden to you or your organization?

AAU and APLU support the proposal to clarify the circumstances under which institutions of higher education, and other entities where appropriate, may charge directly allocable administrative support (including project-specific activities such as managing substances/chemicals, data and image management, complex project management, and security) as a direct cost and urge its immediate implementation.

This reform would allow Principal Investigators to employ appropriate human resources in the most effective manner to achieve research goals. It would also make these costs more transparent and allow faculty to spend more time on research and teaching, rather than on administrative duties associated with existing and future compliance and reporting requirements.

AAU and APLU support including the cost of certain computing devices as allowable direct cost supplies, as proposed in the ANPG.

AAU and APLU endorse this reform idea, which would involve explicitly including the cost of computing devices not otherwise subject to inventory controls (i.e., that cost less than the organization's equipment threshold) as allowable direct cost supplies. Computing devices not otherwise subject to inventory controls have become essential research tools. This reform would slightly reduce Principal Investigator administrative burdens and university administrative costs.

AAU and APLU support expanding the application of the Utility Cost Adjustment (UCA) for research to more higher education institutions, as proposed in the ANPG. However, it is important that those institutions that qualify under the expansion receive the same level of relief as those currently receiving the UCA. As the ANPG states, this expansion would achieve equity while encouraging energy use reductions.

Prior to July 1, 1998, many institutions performed special studies to allocate utility costs, since research buildings consume power at a much greater rate than non-research buildings. These studies were often a matter of contention during F&A rate negotiations with Federal agencies and were disallowed in the 1998 revisions to Circular A-21. The special studies were replaced by a Utility Cost Adjustment (UCA), which was granted at that time only to those 65 institutions that had completed a utility cost study in their most recently negotiated F&A rate proposals. The 1998 revisions stated that, in 2002, OMB would consider allowing additional universities to use the UCA, but OMB has never taken any further action on this matter or provided guidance on how other institutions might apply to receive the UCA. As a result, hundreds of universities are unable to recover the very real, higher utility costs associated with research buildings. In its September 2010 report on university F&A costs, the GAO recommended that "The Director of OMB...clarify the roles and responsibilities of Federal agencies (including DOD, HHS, and OMB) in accepting applications and reevaluating the eligibility of schools to receive the utility

cost adjustment.”³ We concur with the GAO report that the option to receive the UCA should be extended to all universities and are encouraged by the direction taken by the ANPG on this matter. We feel strongly, however, that if the UCA is expanded, the same level of relief must be provided to universities under the expansion as is provided now, even as the number of universities receiving the UCA will increase.

2. Which of these reform ideas would be the most or least valuable to you or your organization?

There are two areas mentioned in the ANPG where reforms could help to significantly reduce burden, but the ANPG does not go far enough or moves in the wrong direction. These two areas are: 1) time and effort reporting, and 2) alteration of the A-133 audit or subrecipient monitoring requirements.

The ANPG proposal is vague and does not go far enough with regard to the issues of time and effort reporting; effort reporting should be replaced by institutionally-designed, compliance-based approaches that meet accountability standards for “Payroll Distribution” systems and are outcomes-based.

This ANPG reform idea would involve working with the Federal grant and Inspector General (IG) communities to identify risks associated with justifications for salaries and wages and to identify possible alternative mechanisms for addressing those risks beyond current time-and-effort reporting requirements. This would include consideration of the ideas described “in existing pilots or development of new pilots to accountably document the allowability and allocability of salaries and wages charged to Federal awards as direct costs.”

It is difficult to understand why the ANPG is proposing "consideration of the ideas described in existing pilots or development of new pilots" at this late date. There is considerable evidence that the A-21 Task Force was performing this function based partly on the Federal Demonstration Partnership Pilot Study of payroll certification that has been underway for quite some time, as well as comments in response to the RFI.⁴ The vague wording of this section implies that the pilot study was found lacking in some significant manner. If so, it would be valuable to the higher education community to have a careful explanation of the shortcomings.

Given the inherent and widely recognized uncertainties associated with effort reporting, AAU and APLU believe that Federal research agencies should focus on ensuring that the work required by a specific grant is performed and that payments made for the work are appropriate. Attention should not be focused, as is currently the case with effort reporting, on ensuring that a certain level of effort is devoted to a specific grant and is distinguishable from time faculty spend on other activities and responsibilities for which they are also being paid. We believe that current effort reporting requirements can be eliminated, or replaced with an outcomes-based alternative, without any detriment to the accountability or oversight of the research enterprise. Payroll certification is an example of such an approach. Significant demonstration projects have already been conducted on payroll certification by the FDP, and another demonstration project is not

³ <http://www.gao.gov/products/GAO-10-937>

⁴ http://sites.nationalacademies.org/PGA/fdp/PGA_055834

needed to demonstrate the effectiveness of this approach.

While the ANPG calls for work “to identify risks associated with justifications for salaries and wages and to identify possible alternative mechanisms for addressing those risks beyond current time-and-effort reporting requirements” and mentions the Federal Demonstration Partnership pilot, it raises the possibility of requiring the development of new pilots, and does not specify how it will evaluate the FDP pilot or implement it as an alternative to current requirements. The language of the ANPG is vague; it is not clear what steps are being proposed and we view it as maintaining the status quo.

The ANPG does not alter the A-133 audit or subrecipient monitoring requirements in ways that would reduce burden on our institutions; if anything, the requirements for subrecipient monitoring would be increased.

The ANPG proposes to reduce the Single Audit burden of entities that expend less than \$3 million in Federal awards. No AAU or APLU institution would be affected by this change in terms of its own Single Audit. However, the reduced Single Audit requirements for smaller entities puts more burden on larger institutions for auditing and monitoring smaller subrecipients. Our recommendation in response to the RFI was that the government should cease requiring monitoring of subrecipient institutions that are already subject to direct monitoring as a consequence of receiving Federal funds. By reducing the amount of direct monitoring the government does on smaller entities, the ANPG actually increases the burden on our institutions, which is contrary to the spirit of our recommendation.

The risk-based approach taken by the ANPG treats larger entities as higher risk simply because there are more dollars at stake. Are large research institutions really more risky than smaller entities simply because they receive more Federal dollars? The risk addressed in the ANPG does not equate to actual risk.

The increased subrecipient monitoring burden could be partially offset if OMB issues revised guidance on Circular A-133 that results in the reduction of monitoring responsibilities by the prime recipient on subawards made to entities subject to the single audit. The essence of the revision should be that when a subrecipient is subject to the A-133 single audit, the primary responsibility of the prime recipient is to ensure the quality and integrity of the science that is being conducted, and that any required follow-up/monitoring should be triggered only when there are A-133 findings that include questioned costs on the subgrant or subcontract issued by the prime.

OMB also should consider extending a “safe harbor” to research institutions that subcontract with small institutions that have less than \$3 million in Federal awards. The “safe harbor” would be designed to replicate the audit relief that OMB has proposed for both institutions with less than \$1 million and institutions with less than \$3 million of Federal awards. While research institutions would conduct reasonable due diligence before subcontracting with these smaller institutions, the “safe harbor” would eliminate any expectation of conducting site visits and other expensive, time consuming activities associated with these small entities and would further

protect research institutions from any audit disallowances and unfavorable audit findings related specifically to the subrecipient's actions.

3. Are there any of these reform ideas that you would prefer that OMB not implement?

We would like to highlight two: 1) a flat rate for facilities and administrative costs, and 2) the consolidation of circulars.

The ANPG introduces proposals to use flat rates instead of, or as an alternative to, negotiated rates for facilities and administrative costs. This idea did not originate with universities and is deeply flawed. Moreover, universities do not see moving to a flat rate as substantially reducing their administrative burdens or costs as the ANPG claims.

In each of the proposals presented in this section of the ANPG, the flat rate is a *discounted* rate. Presumably, the discount would be linked to OMB's perception of the administrative cost-savings to the universities. These proposals do not appear to recognize that most universities' indirect costs are, on average, significantly greater than the present reimbursement allowed under the 26 percent cap, due largely to Federal regulatory requirements that are not addressed in the ANPG.

No indication is given about how the flat rate might be adjusted when universities construct new research facilities or perform major renovations of older ones. Without a modification, the apparent expectation is that universities would bear the full cost of these endeavors. Similarly, there is no indication of how the rate might be adjusted when existing research facilities are fully depreciated. In the absence of rate modifications, we may anticipate significant hesitancy on the part of universities to modernize their research capabilities in this era of highly constrained resources. This would in turn decrease universities' ability to perform, and educate students in the performance of, forefront research upon which the nation depends so greatly. Indeed, it was similar considerations which led OMB to drop its benchmarking proposal in the late 1990s.

Beyond this, many aspects of the flat rate proposals are unclear, and it is difficult to comment in detail on such notional proposals.

The ANPG claims that "establishing either a mandatory or optional flat indirect cost rate could reduce administrative burdens on recipients associated with documenting, justifying, negotiating, and maintaining support for a negotiated rate" and suggests that the burden associated with the current rate setting process can "...be substantial depending on the extent to which an entity analyzes, documents, and negotiates a rate or group of rates." The ANPG even suggests that, by eliminating this administrative burden, it could "reduce indirect-costs expense incurred by Federal agencies."

The ANPG makes this claim despite the fact that none of the major university associations or their members suggested in their comments to the A-21 Task Force that there were significant administrative burdens associated with the actual negotiation of indirect rates. We also did not suggest that significant burdens or costs could be saved by instituting a flat rate. In fact, it is unclear where this notion came from. The A-21 Task Force received more than 150 comments in

response to the June 28, 2011 RFI. These comments are not publicly available online, but a summary of comments posted November 29, 2011 does not mention the flat rate.⁵

What the university associations and universities said in their comments to the A-21 Task Force was that increasing Federal regulatory requirements have added tremendously to university administrative burdens and costs. Yet this concern goes totally unaddressed in the ANPG. It is instead replaced with the idea that somehow such burdens will be reduced by instituting a flat rate on indirect costs. We not only respectfully disagree with this assertion but view the move to a flat rate – either optional or mandatory – as a means that the government plans to further reduce the amount of funds the Federal government has to pay for legitimate costs associated with the conduct of Federal research at universities.

Despite the relatively minor burden and costs associated with the actual rate negotiation process, this process still represents an effective way to ensure fairness and equity in the reimbursement of indirect costs. We believe that the fundamental principle currently set forth in Circular A-21 that the Federal Government ought to “...bear its fair share of total costs, determined in accordance with generally accepted accounting principles” would be lost if the government were to move to a system by which it set arbitrary flat rates as opposed to negotiating rates on an institution-by-institution basis.

The ANPG proposes consolidating cost principles (Circulars A–21, A–87, and A–122, and the Cost Principles for Hospitals) into a single document, with limited variations by type of entity. We believe consolidation provides no benefits and introduces potential difficulties in interpretation.

AAU and APLU believe that the process of consolidating circulars is fraught with potential problems and should not be undertaken without a clear benefit; in this case, it is not clear what such a benefit would be. Moreover, a single circular would be confusing and difficult to interpret unless the same cost reimbursement policies were applied to all the organizations involved. There is, however, no indication in the ANPG that this is to be the case. In particular, universities are currently subject to limits on cost reimbursement that no other entities face. If this practice is to be continued, the publication of a separate Circular A-21 should be maintained. Alternatively and preferably, universities should be subject to the same cost reimbursement policies as those that are applied to other organizations and non-profit institutions.

4. Are there any reform ideas, beyond those included in this notice, that OMB should consider as a way to relieve administrative burden?

We would like to highlight four: 1) OMB should fully enforce existing cost-reimbursement policies; 2) OMB should ensure that rate setting practices by government negotiators are consistent and fair across all institutions; 3) OMB should address our recommendations on cost sharing; and 4) OMB should implement other recommendations made by AAU and APLU in response to the A-21 Task Force RFI that would relieve administrative burden on research universities.

⁵ http://rbm.nih.gov/a21_comment_summary.doc

The ANPG does not recognize or even acknowledge the top concern expressed by AAU and APLU in our response to the A-21 Task Force RFI: that OMB should fully enforce existing cost-reimbursement rules and prohibit Federal agencies from practices and/or policies inconsistent with the Federal cost principles currently outlined by Circular A-21.

A number of financial reimbursement policies imposed by Federal funding agencies are inconsistent with the official OMB requirements delineated in Circular A-21. This, in turn, results in significant under-recovery of Federal funds to research universities, and exacerbates a problem that already exists due to the 26 percent cap on administrative costs and the ever-increasing burdens of Federal regulatory compliance for which universities are not reimbursed. Earlier work by AAU estimated that the annual total in unreimbursed indirect costs being paid for with institutional funds by universities to conduct research on behalf of the Federal government ranges between \$2.1 billion and \$3.8 billion.⁶ This is consistent with the recent figure of \$4.7 billion of unrecovered indirect costs on sponsored projects reported by universities in a recent NSF survey.⁷ Unfortunately, despite this being the top concerns expressed by AAU, APLU, and COGR, the issue goes unaddressed in the ANPG. We urge OMB to enforce its existing policies and to seriously address this significant concern.

COGR compiles instances of Federal agencies and/or programs for which arbitrary agency policy results in institutions further subsidizing Federally funded research programs. A list of examples can be found in COGR's November 2010 paper entitled "Federal Funding Agency Limitations on Cost Reimbursement: A Request for Consistency in the Application of Federal Guidelines."⁸ Since publication, COGR has continued to add more than several new instances of these unilateral agency limitations every year.

The NIH policy on Genomic Arrays, announced in May 2010, is an example where NIH identified large volume-expensive supply items (i.e., Genomic Arrays) and determined that these items generated disproportionately large F&A payments. Even though OMB Circular A-21 premises that the entire F&A rate determination process be based on an "averaging" concept (i.e., some items generate more F&A, others generate less), the NIH policy disregarded this concept in the case of the Genomic Arrays policy. Similarly, NSF's Innovation Core Program (I-Corps) limits indirect cost recovery to \$5,000.⁹

We urge OMB to enforce Circular A-21 and to work with Federal funding agencies to ensure that their policies and practices comply with the official Federal requirements contained in OMB Circular A-21 and the subsequent 2003 OMB Policy Directive. The Negotiated F&A Rate, unless statutorily prohibited, should be accepted by all Federal funding agencies on all Federally-sponsored research, service, and educational programs. As stated in section G.11.b of Circular A-21: "The negotiated rates shall be accepted by all Federal agencies."

⁶ www.aau.edu/WorkArea/DownloadAsset.aspx?id=11702

⁷ <http://www.nsf.gov/statistics/infbrief/nsf12313/>

⁸ See COGR's paper here: <http://www.cogr.edu/viewDoc.cfm?DocID=151789> and the Appendix here: <http://www.cogr.edu/viewDoc.cfm?DocID=151790>.

⁹ <http://www.nsf.gov/pubs/2011/nsf11560/nsf11560.htm>

OMB should address the issue of arbitrary agency F&A caps and policies that vary from OMB Circular A-21 via a new ANPG and/or an OMB Directive. This unchecked and growing agency practice is a primary concern of our community. Although we appreciate that pressure on budgets may not allow aggressive reversals, we must not allow these unilateral agency actions to continue to undermine the credibility of OMB rules and A-21, nor continue to add to the university subsidy for Federally funded research. We propose an approach, such as the one suggested below, to restore discipline and fairness to the process.

- Awards for research always should incur the full negotiated F&A rate – in the case of the two largest agencies that fund research, NIH and NSF, the full negotiated F&A rate often is the rate that is utilized;
- Awards for programs that do not meet the definition of organized research can be eligible for an “Other Sponsored Activities” (OSA) rate or another appropriate rate as defined in the institution’s F&A Rate Agreement – the OSA rate normally is lower than the F&A rate for research and is appropriate in selected situations;
- When an agency deviates from OMB policy, a written justification by the agency, subject to approval from OMB, is required. We would expect that such exceptions will be rare, and all documentation applicable to these situations must be made publicly available. We are willing to assist OMB in developing acceptable criteria for agency deviations from OMB policy.
- All new programs should be subject to this approach. Existing programs where the financial implications are significant should be transitioned over time.
- Institutions will be allowed to document and quantify all examples where agencies have restricted F&A reimbursement. In the institution's next F&A rate proposal, a reasonable adjustment can be made to the research base to account for those costs where F&A would have been allowed, but was restricted by agency policies.

OMB should address the issue of ensuring consistency in F&A rate negotiation via a new ANPG and/or an OMB Directive.

Many responses to the A-21 Task Force RFI suggested reform of the F&A negotiation process and model. In particular, we recommended that OMB ensure that rate setting practices by government negotiators are consistent and fair across all institutions. Yet the issue of the rate setting negotiation process, which was raised by university associations and many universities, is unaddressed and unacknowledged by the ANPG.

The Government Accountability Office (GAO), in a 2010 report entitled “University Research: Policies for the Reimbursement of Indirect Costs Need to be Updated” (GAO-10-937), recommended that OMB “identify methods to ensure that the rate-setting process is applied consistently at all schools, regardless of which agency has rate cognizance. This would include identifying ways to ensure that differences in cognizant rate-setting agencies’ approaches, goals, policies, and practices do not lead to unintended differences in schools’ rate reductions for

indirect costs.”¹⁰ In support of GAO’s recommendation, COGR made a more detailed set of recommendations in its May 2011 paper entitled “Improving the F&A Rate-Setting Process with the Federal Government.”¹¹

The COGR Response to the initial June 28, 2011 NIH RFI suggested that important principles should be endorsed and enforced by OMB. Acting on this will be an important signal to research institutions that the F&A process is transparent and consistently implemented across agencies.

- Establishing F&A rates at each university should be guided by transparent documentation related to: a) the proposed F&A rate (as included in the “standard format” of the F&A rate proposal), and b) the potential F&A rate adjustments (provided by the cognizant agency);
- Rate increases should not be artificially limited;
- F&A rates should be negotiated within six months after the submission of the F&A rate proposal;
- A Central office and/or OMB-designee should be available to resolve exceptional situations – if the Central office cannot settle an unresolved negotiation, an appeals process should be clearly defined and understood by all parties.
- OMB should convene an annual meeting between representatives from DCA, ONR, OMB, other applicable Federal entities, and Research Universities and institutions to review current trends, rate development methodologies, and other issues specific to F&A rate negotiations.

OMB should create a mandatory cost sharing exemption for research universities, and should prohibit voluntary committed cost sharing on all Federally-sponsored research and educational programs.

Mandatory cost sharing requirements, while appropriate in selected situations, generally are inappropriate for Federally-sponsored research and educational programs. A recommendation by the National Science Board encourages mandatory cost sharing requirements only for a small subset of National Science Foundation (NSF) programs – specifically, programs for which it has been determined that an institutional commitment is critical to long-term program success, as well as programs built on partnerships with industry and state and local governments.¹² The Department of Energy has a long history of requiring a mandatory cost share commitment with its industry partners, and unfortunately, has regularly imposed similar requirements on research institutions. The President’s Council of Advisors on Science and Technology, in a 2010 report, recommended that universities be exempted from cost-sharing requirements.¹³ While it may be an appropriate expectation of for-profit industry enterprises, to require the same commitment

¹⁰ <http://www.gao.gov/products/GAO-10-937>

¹¹ <http://www.cogr.edu/viewDoc.cfm?DocID=151828>

¹² http://www.nsf.gov/pubs/2009/nsb0920/nsb0920_1.pdf

¹³ <http://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast-energy-tech-report.pdf>

from university partners ignores both the public policy role and the non-profit status of research universities.

Program officials often “encourage” institutions to pledge voluntary cost sharing commitments (or waive F&A costs as an alternative measure). This can be done either in a formal program announcement, or off-line, during a negotiation of the award budget. This practice leads to an uneven playing field where institutions with the most resources have an unfair advantage. Ultimately, this practice results in the draining of institutional resources, an environment of unhealthy gamesmanship, and a degradation of the peer-based merit review system. OMB addressed this issue in 2003 – OMB Policy Directive on Financial Assistance Program Announcements, June 23, 2003. NSF went further by implementing a new policy in January 2011 that prohibits voluntary cost sharing on all NSF programs, based on a recommendation by the National Science Board. We believe that OMB should reinforce the 2003 Policy Directive, and that all agencies should adopt the NSF policy. OMB should utilize an ongoing “Collaborative Grants Policy Forum” to establish a workgroup that includes representatives from OMB, the research funding agencies, research institutions, and appropriate representatives from the research community to develop the plan to implement the NSF model, government-wide.

AAU, APLU, and COGR made a variety of other recommendations in response to the A-21 Task Force’s RFI that are not reflected in the ANPG. These recommendations would help universities better cope with regulatory compliance issues.

In our response to the RFI, we made a number of recommendations to help universities and the government work more efficiently together on cost reimbursement and regulatory compliance issues. Many of these ideas were not in the ANPG, but we reiterate them here because they would be helpful steps toward ensuring that accountability and transparency are effectively balanced with cost-effectiveness and efficiency.

a) As a part of its ongoing review of Federal regulations called for by President Obama in Executive Order 13563, we urge OMB’s Office of Information and Regulatory Affairs (OIRA) to give additional attention to regulations and reporting requirements affecting research universities and their faculty.

The existing 26 percent cap on administrative reimbursements to universities makes universities unique in that they are the only performers of Federally funded research and development (R&D) that are restricted in how much they can be reimbursed by the Federal government for Federally mandated compliance requirements. Other research organizations, including not-for-profit research laboratories and private industry, have no such limitations on their ability to recoup such compliance costs associated with the conduct of government sponsored R&D.

The 26 percent cap on administrative reimbursements has forced an increased level of financial efficiency on universities with respect to administrative expenditures. With respect to compliance with Federal regulations, however, these regulations limit the ability of universities to save on costs, even when universities believe such regulation is unnecessary or excessive. In many instances, universities expend their own institutional funds to finance the costs required to comply with Federal regulatory and reporting requirements. This makes it all the more important

that the government, and specifically OIRA, do everything possible to ensure that regulations and reporting requirements applied to our universities and their research faculty are as efficient and streamlined as possible. Specifically, we encourage OIRA to: 1) work with the university community to develop reasonable compliance cost elements that can be used to help evaluate the specific cost of regulations and help assess their benefits compared to their actual costs, and 2) work with the National Science and Technology Council (NSTC) Research Business Models (RBM) Subcommittee and all Federal research agencies to conduct a careful examination of research regulations and reporting requirements in an effort to:

- Eliminate unnecessary or duplicative regulations outright, or exempt universities and other Federal funded researchers from them;
- Harmonize regulation across Federal research agencies to avoid unnecessary duplication and redundancy;
- Tier the regulation to levels of risk rather than assuming that one size fits all;
- Refocus regulations on performance-based goals rather than on process as appropriate; and
- Adjust certain regulations to better fit the academic research environment.

b) Designate a high-level official within OMB's OIRA to serve as a Federal Ombudsman, responsible for addressing university regulatory concerns and for seeking ways to increase regulatory efficiency.

This official should be empowered with broad responsibilities to manage and minimize regulatory burdens applicable to research universities and institutions. The Ombudsman would assist in harmonizing and streamlining Federal regulations and would also have responsibility for reviewing specific "simplification requests." The Ombudsman, along with a designated representative from the White House Office of Science and Technology Policy (OSTP), should lead an interagency group charged with regularly reviewing regulations affecting research universities. The Ombudsman will be a critical point of contact to ensure frequent and effective contact between the Federal government and the research university community.

c) The National Science and Technology Council (NSTC) RBM Subcommittee should report directly to the NSTC Committee on Science. The RBM Subcommittee and the OMB Ombudsman should review university regulatory concerns and A-21 issues on an ongoing basis.

The RBM Subcommittee has served as an effective mechanism for addressing research universities' concerns and issues relating to how research across all academic disciplines is managed and administered. Recently, this Subcommittee was moved within NSTC from directly reporting to the NSTC Committee on Science to reporting to the NSTC Subcommittee on Social, Behavioral, and Economic Research, which in turn reports to the Committee on Science.

This new placement does not reflect RBM's mission, which ultimately should address the development of successful and effective business models for the management of scientific research across all disciplinary fields. The RBM subcommittee should not be stove-piped under a subcommittee within a specific research discipline. We therefore urge that RBM be moved back to reporting directly to the Committee on Science.

Further, RBM is an ideal forum to manage an interagency group charged with ongoing review of A-21 issues and research regulations and reporting requirements. The Ombudsman recommended above will be a critical part of this process. Through an application process, research universities or university associations could submit proposals to “fix” or eliminate rules that either add no value or promote inefficiency and excessive regulatory burdens. This ongoing dialogue should be mutually beneficial and help ensure efficient use of Federal funds.

d) Through the use of executive branch authority, provide targeted exemptions for research universities similar to protections provided for small entities under the Regulatory Flexibility Act (RFA).

The RFA requires agencies to prepare and publish a regulatory flexibility analysis describing the impact of a proposed rule on small entities. In addition, agencies are encouraged to facilitate participation of the affected entities by holding conferences and public hearings on the proposed rule. The RFA encourages tiering of government regulations or the identification of “significant alternatives” designed to make proposed rules less burdensome. Through an Executive Order or the use of other executive branch authority, we urge the administration to extend RFA requirements to include organizations engaged in conducting Federally sponsored research. For example, the Chemical Facilities and Anti-Terrorism Standards (CFATS) capture universities in the same class with chemical manufacturers and industrial agricultural corporations, requiring identical policy and procedure implementation and reporting despite the fact that these requirements do not adequately address specific security risks unique to the university campus and laboratory settings.

e) Establish protocols to address statutorily-mandated regulatory concerns.

When statutorily-mandated requirements create unintended regulatory burdens for universities, a fast-track approach to amending the law would be a useful tool that could help to minimize burdensome regulations.