

June 2, 2013

Mr. Daniel I. Werfel
Controller, Office of Federal Financial Management
Office of Management and Budget
725 17th Street NW
Washington, DC 20025

Dear Mr. Werfel:

We write to comment on the OMB proposed guidance, "Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act)," which appeared in the Federal Register on February 1, 2013. This proposed guidance aims to consolidate cost principles and administrative requirements for federal research grants and cooperative agreements and would supersede and streamline requirements from several OMB Circulars, including A-21, A-110 and A-133.

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

We would particularly like to thank you, along with the OMB staff and the Council on Financial Assistance Reform (COFAR), for your willingness to engage with us and to take seriously the concerns we raised in response to the February 28, 2012 Advance Notice of Proposed Guidance (ANPG). Although not all of our concerns have been addressed, we appreciate the productive dialogue we have had with you about the ANPG and are pleased that many of our concerns have been addressed in this proposed guidance.

Thank you again for your consideration of our recommendations and for your tremendous effort in advancing these major grant reforms.

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 OMB Proposed Guidance on
“Reform of Federal Policies Relating to Grants and Cooperative Agreements;
Cost Principles and Administrative Requirements”**

June 2, 2013

Together, the Association of American Universities (AAU) and the Association of Public and Land-grant Universities (APLU) represent most of the nation’s large public and private research universities. Research universities strongly support the objectives of accountability and transparency in the expenditure of federal funds, and our member institutions firmly believe that compliance with federal regulations and oversight by the federal government are essential to the conduct of federally supported research.

Given declining state support for public universities, increasing costs of research and education, and the slow rate of economic recovery, research universities face growing fiscal challenges. University leaders agree with the federal government about the need to make our institutions operate as efficiently as possible, and in recent years our universities have cut many millions of dollars from their operations to do so. At the same time, it is important that research universities and the government, acting as partners, agree upon and abide by rules for what proportion and which specific costs involved in federally sponsored research should be borne by the government and which should be paid by our universities. Such an agreement is essential to sustain the university-government partnership that has underpinned the scientific leadership and international competitiveness of the United States since World War II.

Over the past two decades, universities have shouldered an increasing portion of total costs of research due to increasing federal regulatory requirements, increased restrictions on direct and indirect cost reimbursement, and the 26% cap on administrative costs. Since Office of Management and Budget (OMB) and Council on Financial Assistance Reform (COFAR) specifically chose not to reconsider the existing 26% cap on administrative costs, which applies only to universities, we continue to urge you to reexamine this matter in the near future, in accordance with the recommendation made by the Government Accountability Office (GAO) in its September 2010 report, [*University Research: Policies for the Reimbursement of Indirect Costs Need to Be Updated*](#) (GAO-10-937). Having said that, we believe that the OMB and COFAR reform effort has been a productive one, and we are generally pleased with the direction of the most recently proposed guidance. This guidance will play a significant role in defining the nature of the university-government partnership well into the future.

Below we comment on specific proposals contained in the proposed guidance, both those reforms we support and those for which we encourage OMB to make additional modifications. Our associations do not provide extensive line-by-line edits; we instead align ourselves with and fully endorse the more specific edits and extensive recommendations contained in the response provided by the Council on Governmental Relations (COGR).

We have divided our comments into two categories: 1) the three highest-priority items our associations would like OMB and COFAR to address in its final guidance, and 2) feedback on a number of additional items in the proposed guidance.

TOP PRIORITY ISSUES

1) Agency Compliance with OMB Guidance - Subchapter A, Sections .102 & .108 and Subchapter E, Section .502(h)(3)(I) and Subchapter F, Section .616(c)

We appreciate that OMB and COFAR took note of one of our most significant concerns: that federal agencies often deviate from the guidance currently provided in Circular A-21 by placing specific limits or caps on the amount of reimbursement they will allow for facilities and administrative (F&A) costs. We believe, however, that the current recommended solution – increasing the transparency of the processes by which agencies choose to make such deviations – falls considerably short of being acceptable. To address this deficiency, we request that OMB establish specific criteria to guide agencies in determining whether they can make exceptions to the OMB circular. We also urge that those criteria be very limited and tied closely to OMB's costing principles.

In our comments on the ANPG, we noted that a growing number of financial reimbursement policies imposed by federal funding agencies are inconsistent with the OMB requirements delineated in Circular A-21. These deviations from the circular seem to be allowed with minimal scrutiny or review by OMB. This results in significant under-recovery of federal funds by research universities.

We believe deviations by federal agencies from OMB's rules should not be allowed unless each deviation is approved by OMB after specific circumstances are presented that justify such a variation. While we appreciate that the revisions contained in the proposed guidance would require that agency variations from OMB guidance be transparent and receive approval from agency directors, we have little faith that such transparency would prevent agencies from ignoring OMB guidance much as they do now. In fact, we know of past instances in which agency directors were clearly aware of such a deviations and supported them anyhow, not because they were justifiable based upon OMB's costing principles, but rather because they allowed the agency to stretch its limited federal dollars by shifting additional costs to our institutions.

We urge OMB to hold agencies accountable for complying with this OMB Circular so as not to undermine its fundamental purposes. We fully expect the OMB to uniformly hold federal agencies accountable for their compliance with OMB guidance in the same way universities are held accountable for complying with these requirements. To do anything less raises serious

questions about the integrity and authority of OMB to effectively perform its management function across federal agencies. Every additional federal agency deviation from the guidance further erodes the governing principle that OMB will ensure uniformity and fairness in the treatment of research costs across all federal agencies.

We agree with COGR and support language it has recommended in Subchapter A, Section .108 that would put in place a process to allow the affected community to comment on or appeal to OMB those decisions or actions by agencies that deviate from OMB's Final Guidance or for which the affected community might wish to engage with both OMB and the agency to suggest an alternate approach. We also support language that COGR has provided regarding this matter in Subchapter F, Section .616 (c).

Our associations appreciate the new requirement included in Subchapter E, .502(h)(3)(I) that *"No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB."* We request, however, that OMB also establish and publish clear and transparent criteria by which it would allow agencies to deviate from its specified guidance.

In our view, providing additional transparency without also providing an opportunity for the affected community to engage and have an opportunity to alter the final outcome, in a way that may prove beneficial to both the government and the affected party, represents ineffective government practice. Moreover, it does little to address one of the most significant concerns raised by the university community regarding existing OMB federal agency oversight.

2) Streamlining and Simplifying Subrecipient Monitoring - Subchapter E, Section .501(c)

AAU and APLU continue to maintain that the government should cease requiring additional monitoring of subrecipient institutions that are already subject to a Single Audit as a consequence of receiving federal funds. As noted in our comments on the ANPG, when a subrecipient is already subject to an A-133 single audit, the responsibility of the prime recipient should be to ensure the quality and integrity of the science being conducted by the subrecipient. Any required follow-up financial monitoring by the pass-through entity should be triggered only when there are A-133 findings that include questioned costs on the subgrant or subcontract issued by the prime.

Our associations support and align ourselves with changes proposed by COGR in Subchapter E, Section .501(c) of the proposed guidance. These recommendations, if implemented, would reduce unnecessary and duplicative reporting requirements and provide a more reasonable and less burdensome approach to subrecipient monitoring.

We are particularly concerned about new and more burdensome requirements contained in section .501(c)(5)(A) which call for the “*analyses of financial and programmatic reports submitted by subrecipients to identify patterns and trends of program activity.*” We view these additional requirements as problematic for our institutions. We do not think they are necessary given the existing monitoring requirements to which subrecipients are subject and therefore encourage OMB to revise this language in accordance with the recommendations provided by COGR.

We would also like to endorse language provided by COGR to create “safe harbors” which would remove certain monitoring requirements associated with low-risk subawardees. The “safe harbor” provision proposed by COGR would allow the pass-through entity to rely on any corrective action plan already in place in which subrecipients’ A-133 audits are on file and corrective action plans are in place and already being monitored by that entity’s auditor. This would eliminate the need for the institution to undertake a duplicative review/assessment process in such instances.

3) Elimination of time-and-effort reporting requirements currently imposed upon faculty and institutions - Subchapter F, Section .621, C-10, (8) and (9)

We appreciate the language included in “Subchapter F, Section .621 Selected Items of Cost, item C-10 Compensation—Personal Services” which attempts to provide additional flexibility for entities to meet current reporting requirements for validating the costs of salaries and wages in the way most appropriate to their particular organizations. We believe, however, that the language in this section remains overly complex and prescriptive in ways that would force our institutions to maintain their current effort reporting certification practices.

Our organizations continue to assert that the measurement of effort expended—while it may be easily auditable—in fact does little to provide real accountability. We believe that time-and-effort reporting is an unnecessary and ineffective tool for confirming appropriate use of government funds. At the same time, it is tremendously costly and burdensome to both our institutions and our faculty researchers. We wholeheartedly concur with the [Federal Demonstration Partnership \(FDP\)](#) which stated in [January 2011](#) that “...effort reporting is based on effort which is difficult to measure, provides limited internal control value, is expensive, lacks timeliness, does not focus specifically on supporting direct charges, and is confusing when all forms of remuneration are considered.”

AAU and APLU urge that the final guidance incorporate changes proposed by COGR to this section to provide: 1) more streamlined language with a more intuitive and logical presentation of payroll and compensation considerations, and 2) an alternative to the proposed standards of

documentation that would eliminate the need for effort reporting while still supporting a standard to ensure that appropriate salaries have been charged to federal awards.

Over the years, universities have spent millions of dollars to ensure that adequate time-and-effort reporting systems are in place. At the same time, university faculty have devoted excessive time to ensuring that they correctly monitor, report and certify their time-and-effort. This money and time has been spent despite the fact that our institutions have other institutional controls in place which are based upon sound accounting principles to ensure that appropriate payroll charges are made to federal awards. We believe that the official records produced by our existing payroll systems, combined with a process that confirms the reasonableness of charges to federal grants – but which does not require time-and effort reporting – should be used as the primary means to ensure the financial accountability of our institutions. We therefore urge OMB and COFAR to further modify this section in its final guidance. Though the audit community endorses time-and-effort reporting requirements because they are easily measurable, the fact is that there are less burdensome and equally effective ways to ensure that taxpayer dollars are being well spent on scientific research.

ADDITIONAL COMMENTS

Submission Deadlines for Agency Solicitation - Subchapter B, Section .204

AAU and APLU have concerns regarding Subchapter B, section .204(a)(G), which would permit agencies to allow a 30-day submission deadline from the initial time of the solicitation to the application solicitation deadline. With successful proposals requiring increasingly significant collaboration both within and across institutions, we do not believe that the 30-day submission window is sufficient. A 90-day submission period would allow sufficient time to coordinate proposals using the types of collaboration that agencies often request. We therefore encourage OMB, in its final guidance, to extend the period that agencies must allow from the time of their initial proposal solicitation to their final submission deadline.

Required Use of the Subrecipient's Negotiated F&A or De Minimis Rate – Subchapter E, Section .501(c)(1)(D)

Our associations fully support the language included in this section, which would require pass-through entities to honor subrecipients' full negotiated F&A rates. We are aware that this has not always been the case with some state institutions whose funding must first pass through the state. We further support COGR's recommendation of the use of a *de minimis* rate of 15% MTDC or a 10% TDC rate if no such F&A rate exists for the subrecipient.

Linkage between Performance and Financial Reports is Inappropriate – Subchapter E, Sections .502(a) & .502(c)(4) and .505(d)(2)(B)(i).

We are concerned that sections .502(a), .502(c)(4), and .505(d)(2)(B)(i) require reporting of linkages between financial expenditures and project performance that often do not exist for research grants. Research projects frequently require significant upfront expenditures for equipment and supplies. In addition, expenditures for many research projects may accelerate at certain times of the year (e.g., the summer months) when research faculty have reduced teaching loads.

Ultimately, we believe that financial expenditure data are of little value as a performance measure during the course of research projects. What is more important is whether the proposed work is performed within the overall time frames delimited by the proposal. We therefore urge that OMB not include language that would require institutions to correlate financial expenditure data for research grants to project performance.

The provision of such financial information as a measure for grant performance also contradicts past OMB and Federal Demonstration Partnership (FDP) efforts to encourage the utilization of standardized Grants Reporting Forms. We align ourselves with COGR on this matter and agree with its recommendation that already-developed standardized reports such as the SF-425 and the Research Performance Progress Report (RPPR) be utilized. In applicable situations, OMB should require agencies to use Government Wide Standard Grants Reporting Formats.

Voluntary Committed Cost Sharing – Subchapter E, Section .502(f)

Our associations deeply appreciate the new requirement established by OMB that Voluntary Cost Sharing not be used or expected as a factor in the review of applications or proposals. In our comments on the ANPG, we noted that the practice of voluntary cost sharing leads to an uneven playing field where institutions with the most resources have an unfair advantage. This leads to unhealthy gamesmanship and a degradation of the peer-based merit review system. We appreciate that OMB has directly addressed this issue in the proposed guidance. We endorse COGR's recommendation that OMB's February 5, 2001 [Memoranda 01-06](#) on the *Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs* be incorporated into and fully reflected in the final guidance. We also support COGR's recommendation that all institutional cost sharing that is not required by or committed in the original grant proposal/application be excluded from the F&A research base.

Prohibition of State Requirements under Procurement Actions – Subchapter E, Section .504(c)(2)

We are concerned that this requirement is at odds with state laws that require public institutions to give preference to in-state bids over bids received from outside the state. For this reason, we support COGR's recommendation that this entire section be eliminated. If it is not eliminated, it should be clarified so as not to put public institutions in a conflicted position between federal guidance and state law.

Overly Prescriptive Procurement Requirements – Subchapter E, Section .504(d)

We concur with COGR that the procurement methods outlined in this section are overly prescriptive, and we support replacing this language in the proposed guidance with existing language contained in section C43 of OMB Circular A-110.

Guidance Should Recognize Dual Role of Students – Subchapter F, Section .601

We encourage OMB to revise this section to include specific language already included in OMB Circular A-21 that recognizes the dual role played by students in support of sponsored research being conducted at colleges and universities.

Treatment of Salaries of Administrative and Clerical Staff – Subchapter F, Section .615(d)

We greatly appreciate the inclusion of this language in the proposed guidance. This reform would allow principal investigators to have more flexibility to employ appropriate human resources to achieve research goals in the most efficient manner. It would also allow faculty to spend more time on research and teaching rather than on administrative duties associated with compliance and reporting requirements.

Option to Extend Negotiated F&A Rates – Subchapter F, Section .616(e)

We greatly appreciate that the proposed guidance no longer contemplates imposing mandatory or voluntary flat F&A rates as contained in the ANPG. We fully support, however, the language now included in Section .616 which provides all entities, including universities, the option to extend negotiated rates for up to four years subject to approval of the cognizant agency. We believe that this would avoid unnecessary expenses, time, and administrative burden that would be incurred as a part of the otherwise required rate review process.

Allowance of Computing Expenses to be Accounted for as Direct Costs – Subchapter F, Subtitle IV, C-31

AAU and APLU fully endorse this language permitting computing devices and associated support costs to be treated as allowable direct cost supplies. This reform reflects the fact that computing devices have become essential research tools and therefore should be considered a cost directly associated with the research project in many instances.

Treatment of Utility Costs – Subchapter H, Appendix IV, B.4(c)

We appreciate OMB’s recognition of our past requests that the 1.3% Utility Cost Adjustment (UCA) allowance currently provided to many research universities be extended to all higher education institutions. The alternative cost-based approach that has been suggested in the proposed guidance appears to us to be a fair and reasonable alternative. This approach would allow universities to meter their utility usage at the sub-building level instead of by building. In addition, universities would be permitted to add a multiplier to their square footage used for research to calculate “effective” square footage for purposes of utility cost calculation.

While we generally support this reform, we align ourselves with and support COGR’s recommended revisions to this section to encourage additional flexibility in the allocation methodology that may be used to account for variations in the nature of utility costs across institutions. We also endorse COGR’s recommendation that the final guidance grandfather institutions that currently employ the 1.3% UCA rate by allowing them to keep that rate instead forcing them to take additional steps to switch to an alternative utility allocation methodology.

Cognizant Agency Documentation – Subchapter H, Appendix IV, C.10(g)

The Government Accountability Office (GAO), in the aforementioned 2010 report *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.”

We believe that requiring the cognizant agency to provide institutions with the documentation specified in this section would help ensure the transparent and fair negotiation of F&A rates, thus taking an important step forward in addressing GAO’s recommendation above – but only if the cognizant agency provided this documentation to the institution prior to F&A rate negotiation. We therefore support language provided by COGR to address this particular concern.

OMB Role in Settling Rate Negotiation Disputes – Subchapter H, Appendix IV, C.10(h)

We agree with comments submitted by COGR that there may be situations where OMB could help to settle rate negotiation disputes between an institution and its cognizant agency. It seems to us that OMB should be willing to engage in a dispute when it specifically involves a difference in the interpretation of this OMB guidance. We encourage OMB to provide for such dispute resolution assistance in its final guidance for universities, just as it does for State and Local entities per Appendix VI, G.7. OMB engagement in such instances could prevent universities from having to undertake a burdensome and costly appeals process.