June 28, 2024

Ms. Deidre Harrison, Deputy Controller
Mr. Steven Mackey, Policy Analyst
Office of Federal Financial Management, OMB
Washington, DC 20006

Re: COGR Proposed Technical Corrections & Other Comments

Dear Ms. Harrison and Mr. Mackey,

Thank you for your invitation to provide comments and proposed technical corrections to address select items in the recently released OMB Guidance for Federal Financial Assistance, April 22, 2024 (Uniform Grant Guidance, or Guidance).

COGR is an association of over 200 public and private U.S. research universities, affiliated academic medical centers, and research institutes. Our membership is diverse and includes the largest research performers in the nation, as well as smaller and emerging research institutions. We focus on the impact of federal regulations, policies, and practices on the performance of research conducted at our member institutions and advocate for sound, efficient, and effective regulation that safeguards research and minimizes administrative and cost burdens. We understand the importance of being good stewards of federal research funds and our member institutions work diligently to ensure full transparency and accountability as to how these funds are used in accordance with federal policies.

We appreciate OMB's transparency over the past two years as you have endeavored to update the Uniform Grants Guidance. As we have shared previously, your efforts have resulted in an impressive and thoughtful body of work. We are grateful for the attentiveness OMB has shown to the grantee community and your commitment to improve the grants administration process for all stakeholders.

The comments and proposed technical corrections presented on the following pages are based on a thorough analysis and careful consideration of changes that will improve the OMB Guidance for Federal Financial Assistance, prior to the effective date of October 1, 2024. Please contact Krystal Toups at ktoups@cogr.edu or David Kennedy at dkennedy@cogr.edu if you have questions. Thank you for the opportunity to comment.

Sincerely,

Matt Owens, President

I. IMPLEMENTATION RECOMMENDATIONS

1) Implement the Changes to the Equipment and Subaward Thresholds

The implementation date for the new OMB Guidance is October 1, 2024. However, many research institutions have F&A cost rate agreements effective for several more years, for example, through June 30, 2028. One interpretation is that institutions will not be allowed to implement the new thresholds until their next F&A cost rate agreements are finalized.[1] A complicating factor is some IHEs are subject to state law or are part of a multi-campus system, which would require them to implement the new equipment threshold on a specified date in order to be GAAP compliant. When the uniform grants guidance was first implemented in 2014, implementation FAQs allowed for timely implementation of all changes – this should be the case for the October 1, 2024 implementation.

All institutions should be allowed to implement the following two thresholds (regardless of the timing of their F&A cost rate cycle) at the earliest date possible, in alignment with each institution's internal policies and procedures. As defined in 200.1 of the OMB Guidance:

> *Equipment* means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or $10,000 …
>
> *Modified Total Direct Cost (MTDC)* means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period of performance of the subawards under the award) …

We recognize the concern of the cognizant agencies for indirect costs[2] that implementation prior to negotiation of a new F&A cost rate could create a real, though immaterial, inequity to the federal government. However, there are ways to account for this (described below) that can eliminate any inequity. We propose that OMB issue the following guidance to ensure that all institutions are provided a pathway to implement the new thresholds as soon as October 1, 2024:

1) ***The new equipment threshold*** should be available for the institution's fiscal year that begins on or after October 1, 2024. For many IHEs, they would be allowed to establish the new equipment threshold for their fiscal year 2026, beginning on July 1, 2025. Upon implementation by an institution, the new threshold should be applicable to the entire equipment inventory of the institution.
2) ***The new MTDC definition (and corresponding subaward threshold),*** should be applicable to all new awards and continuations received on or after October 1, 2024.
3) Each institution adopting one or both of the new thresholds should prepare and submit a cost impact analysis, working in coordination with its cognizant agency for indirect cost, to show

[1] This is the interpretation by at least one cognizant agency for indirect costs. It is important for OMB to clarify that this is not the correct interpretation.

[2] In the case of almost all research institutions, the cognizant agency for indirect costs is either Cost Allocation Services (HHS) or the Office of Naval Research (DOD). Other agencies assume the role of cognizant agency for indirect costs depending on the type and volume of federal award activity.

the impact to the federal government due to changing the equipment and/or subaward thresholds.

4) The cumulative over-reimbursement should be included as an adjustment to the new F&A cost rate proposal, or extension request (as applicable).

This approach will allow all institutions to implement the new thresholds in a manner that does not disadvantage the federal government. This approach will also ensure the new thresholds are implemented fairly and are accessible to all institutions, regardless of where they are in their F&A cost rate cycle. We recommend OMB add a new section 200.110(c), shown in **bold red text**, to confirm the effective date for implementing the new thresholds.

> **200.110(c) Effective dates. Recipients and subrecipients can elect to implement the higher threshold for equipment and/or subawards in their fiscal year starting on or after October 1, 2024. When a recipient or subrecipient chooses to do so, but have negotiated rates beyond fiscal year 2024, a cost impact analysis (as applicable) should be prepared in coordination with the cognizant agency for indirect cost and submitted with the next indirect cost rate proposal or extension request.**

2) Do Not Implement Fixed Amount Awards and Subawards Changes: Partner with the Community to Implement Changes at a Future Date

The use of fixed amount awards and subawards offers the entire grantee community – *i.e.*, federal agencies, recipients, and subrecipients – tremendous opportunities to reduce administrative burden without sacrificing oversight of federal funds. In fact, OMB has been a strong advocate for the use of fixed amount instruments since 2014 when the uniform grants guidance was first implemented.

When fixed amount instruments are used, oversight is achieved through review of milestone progress, outcomes, and other performance metrics, rather than review of accounting records. This does not mean oversight is eliminated. Rather, it means that the methods used to assess the appropriateness of an invoice are revised to align with the requirements of section 200.301, Performance measurement: "to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster the adoption of promising practices."

Unfortunately, the revisions to the OMB Guidance have created an over-emphasis on financial oversight, reporting, and administrative requirements, disincentivizing the use of fixed amount instruments.

APPENDIX 1 includes an analysis of the problematic language in the new Guidance. Of great concern is that these changes were incorporated without a formal opportunity for stakeholders to provide public comments. ***This being the case, we recommend that OMB revert to the text currently in use*** (i.e., the 2020 version of the uniform grants guidance), and in turn, partner with the grantee community with the goal of implementing new guidance as a future update.[3] At the same time, and in the spirit of OMB's intent to increase thresholds to reduce burden,[4] the $500,000 threshold for issuing fixed amount subawards should be retained because it is a positive change that is low-risk from an oversight standpoint and it reduces administrative burden. ***Reverting to the 2020 version and including the new***

[3] In the Preamble to the Guidance, OMB indicated several areas targeted for future updates – this could be added.

[4] Uniform Grants Guidance 2024 Revision: Reference Guides

$500,000 threshold, will allow all stakeholders to work toward language that achieves the proper balance between appropriate oversight, achieving performance outcomes, and minimizing administrative burden.

II. TECHNICAL CORRECTIONS

3) Reaffirm the Partnership: Streamlining Regulation and Strengthening U.S. Competitiveness in Global Research and Development

COGR and OMB share the common goals noted above and they are the basis for COGR's Response to Federal Register Notice, 88 FR 69390 (December 4, 2023) ***and our recommendation to explicitly preserve the longstanding "Consistency" and "Fair Share" principles.***

These principles date back to the 1970s when Circular A-21 was introduced, and they remain crucial not only to the Federal Government–Research Institution partnership, but also for promoting compliance, efficiency, and effectiveness in research performance. While OMB has indicated there is no intent to further burden recipients, the unintended consequences will result in inconsistent policy implementation across agencies. These principles provide opportunities to leverage efficiencies across multiple agencies. The research community, in particular, receives funding across multiple academic disciplines and research granting federal agencies, making harmonization even more critical. Emerging Research Institutions (ERIs), including Minority Serving Institutions (MSIs), are disproportionately impacted when these principles are not followed.[5]

For decades, U.S. research institutions have leveraged this language when working with their research faculty, community members, and federal and state representatives. This language serves as confirmation that federal cost and regulatory policy requirements are designed to ensure "fair share" cost recovery[6] and "consistency" in imposing regulatory and researcher burden – ultimately, helping to minimize the operational cost of compliance with federal regulations. They allow grantees to better educate researchers on the Federal Government–Research Institution partnership, promote and model the widely shared goal of ethical and transparent collaboration, and result in more efficient shared compliance.

We urge OMB to restore the previously deleted text (shown below in **bold red text**) from sections 200.100(a)(1) and 200.100(c), and delete the new section 200.102(c). These technical corrections will demonstrate a reaffirmation of the partnership, while further aligning our shared goals of streamlining regulation and strengthening U.S. competitiveness in global research and development.

[5] According to the 2021 NSF HERD Survey, 88% of HBCUs (47 of 48) and HSIs (81 of 97) reported having less than $50 million in federal R&D Expenditures. Institutions that report less than $50 million have to invest an average of 34% of their institutional resources towards R&D compared to institutions with more than $260 million in federal R&D expenditures at 22%. This is due to lack of resources and investments needed to cover the fixed and growing costs necessary to accept federal funding and the inability to recover their "fair share" caused by the administrative cap placed on IHEs. There are economies of scale associated with federal regulatory compliance – however, ERIs HSIs, and HBCUs continue to be at a disadvantage from realizing these. This stresses the importance of the "fair share" and "consistency" principles and why these need to be specified in the Guidance.

[6] See the most recent NSF Higher Education Research and Development (HERD) survey. Over the past two decades, the Federal contribution has continued to decrease in proportion to the Institutional contribution.

200.100(a)(1) Purpose. This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards. Federal agencies must not impose additional **or inconsistent** requirements, except as allowed in §§ 200.102, 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

200.100(c) Cost principles. Subpart E establishes principles for determining allowable costs incurred by recipients and subrecipients under Federal awards. These principles are for the purpose of cost determination. They do not address the circumstances nor dictate the extent of Federal Government funding of a particular program or project. **The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.**

~~**200.102(c) Federal agency exceptions. Federal agencies may allow exceptions to requirements of this part on a case-by-case basis for individual Federal awards, recipients, or subrecipients, except when the exceptions are prohibited by law or other approval is expressly required by this part.**~~

4) Voluntary Uncommitted Cost Sharing (VUCS): Aligning the Preamble with 200.306(k)

We appreciate OMB's commitment to address the previously vague and unclear VUCS language included in the 2020 version of the Uniform Guidance. We have two requests that would improve VUCS guidance and should qualify as technical corrections.

First, it is logical and fair to extend VUCS flexibilities to all research entities, not IHEs only.

Second, the Preamble is clear in stating: *OMB also agrees with commenters that voluntary uncommitted cost sharing consists of more than just faculty donated time and clarified the section to indicate that it includes, but is not limited to, faculty donated time*. Further, our suggested correction would eliminate the need to reference an almost 20-year old, outdated memorandum. We suggest the following technical corrections (in the **bold red text**) be made to section 200.306(k).

200.306(k). For IHEs, see also institutions of higher education (IHE), **and other research organizations,** voluntary uncommitted cost sharing should be treated differently from mandatory or voluntary committed cost sharing. Voluntary uncommitted cost sharing should not be included in the organized research base for computing the indirect cost rate or reflected in any allocation of indirect costs. Voluntary uncommitted cost sharing includes**, but is not limited to,** faculty-donated additional time above that agreed to as part of the award. ~~**See OMB memorandum M--01--06, dated January 5, 2001, Clarification of OMB A--21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.**~~ [7]

In addition, the following definition could either be added to section 200.1 or included as part of section 200.306(k). The proposed definition is consistent with definitions used by both DOD and NSF, and would establish uniformity across all federal agencies (also see **APPENDIX 2**).

Voluntary Uncommitted Cost Sharing (VUCS) **means voluntary cost sharing that does not meet the definition of voluntary committed cost sharing. Specifically, VUCS are project**

[7] `We also suggest deleting the reference to OMB M-01-06 and OMB Circular A-21 as it is questionable to the authority that these two citations carry.

costs contributed by a recipient or subrecipient that are not specifically pledged as a cost share commitment and, therefore, are not approved in the budget of the award.

5) Sole Source Procurement is Appropriate for Specialized Scientific Items: 200.320(c)

As OMB plans to retire the FAQs, dated May 3, 2021, and replace them with a more targeted version applicable to the new OMB Guidance, we request FAQ #88, which permits specialized scientific items to be acquired under a sole source procurement action, be incorporated as a technical correction. By doing so, OMB will not need to readdress this issue in a future FAQ. We propose the following technical correction (shown in **bold red text**).

> 200.320(c) Noncompetitive procurement … The noncompetitive procurement method may only be used if one or more of the following circumstances applies:
>
> (2) The procurement transaction can only be fulfilled by a single source, **which includes the procurement of specialized scientific equipment and other specialized items necessary for fulfilling the goals of the federal award.**

6) Implementation of Indirect (F&A) Cost Rates in a Timely Manner: 200.414(c)(2)

We appreciate OMB's commitment to address delays and related issues with implementing federally negotiated indirect cost rates. The Preamble provides additional context to OMB's approach to addressing delays and related issues. While the Preamble and the text in 200.414(c)(2) are clearly not naming OMB as an arbiter, the text in 200.414(c)(2) should be improved to name situations where it is appropriate to notify OMB.

We suggest that the following technical correction (in **bold red text**) be made to section 200.414(c)(2).

> **200.414(c)(2).** The Federal agency must notify OMB of any approved deviations. The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application**, acceptance, negotiation, establishment, or any related implementation** of a federally negotiated indirect cost rate. **Requests for OMB assistance should be submitted to the OMB Office of Federal Financial Management.**

7) Retract the New Text Applicable to Unused Leave: 200.431(b)(3)(i)

While we appreciate the significant work that went into releasing the new Guidance, we respectfully suggest that the new text associated with unused leave was made without a complete assessment of how research institutions diligently manage and account for this item of cost. Further, we believe a technical correction is merited because unused leave – by definition and application, see 200.413(a)[8] – is a direct cost item, and redefining it as an indirect cost (i.e., general administrative) is a violation of the cost principles defined in the Guidance.

[8] Per 200.413(a) General. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

Consequently, we suggest that a technical correction, as suggested below, should be made to this section.

IHEs and nonprofit research institutions have a longstanding history of effective management of unused leave and working with their funding agencies to address all potential concerns. We believe the new requirement needs to be retracted because:

1) Current accounting practices where the cash basis is used to account for unused leave are allowable according to Generally Accepted Accounting Principles (GAAP). The proposed change is prescriptive and will force institutions to make costly and burdensome accounting and system changes or forfeit reimbursement of allowable costs. IHEs are the only recipient type that is subject to an administrative cap, and since almost every IHE is above the cap, a requirement to treat these costs as a general administrative expense grossly penalizes IHEs by making unused leave an unrecoverable cost. ***Consequently, IHEs that use the cash basis would no longer be able to recover unused leave costs.***
2) Institutions have internal controls in place to ensure that federal awards are not disproportionately charged for unused leave.
3) When the cash basis of accounting is used, the federal projects benefiting from the project work are not charged for the unused leave at the time it is earned. It is reasonable and equitable for federal projects to pay a fair share at the time the unused leave is paid – it should not be disproportionately paid for by other institutional sources (e.g., tuition) or other restricted funds.
4) Finally, for institutions that already use (or plan to convert to) the accrual basis, it should be made clear that they are not subject to section 200.431(b)(3)(i). While we strongly object to the new requirement as it applies to IHEs that use the cash basis, ***those that use (or plan to convert to) the accrual basis need to be explicitly exempted*** from section 200.431(b)(3)(i). Further, those that are on the cash basis should have the option to move to an accrual basis.

We urge OMB to delete the new text (shown in **bold red text**). The new text proposed by OMB is problematic and will inappropriately disallow an accounting methodology applicable to unused leave that is acceptable under GAAP and that is used regularly by many institutions.

> (i) When a recipient or subrecipient uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. **When the cash basis of accounting is used,** payments for unused leave when an employee retires or terminates employment are allowable in the year of payment. ~~**and must be allocated as a general administrative expense to all activities.**~~ **If an institution that uses the cash basis converts to the accrual basis of accounting for unused leave, this is an allowable accounting change. Institutions that use the accrual basis of accounting are exempt from the requirements of this section.**

POLICY CONCERNS

8) Retract the New Requirement for Agency Approval of a Subaward Condition: 200.332(d)

We appreciate OMB's intention to reduce administrative burden. However, the new requirement for a pass-through entity to notify the federal agency if the pass-through entity implements a specific subaward condition creates new burden without any corresponding benefit to oversight of federal funds. In fact, the notification language may discourage a pass-through entity from implementing

specific (and appropriate) subaward conditions since doing so will require an extra administrative step. We urge OMB to delete the new text (shown in **bold red text**).

> (d) If appropriate, consider implementing specific subaward conditions upon a subrecipient if appropriate in a subaward as described in § 200.208. ~~**and notify the Federal agency of the specific conditions.**~~

9) Eliminate the Expectation for the Prime Recipient to Negotiate Indirect Cost Rates with a Subrecipient: 200.414(f)

Again, we appreciate OMB's intentional focus on reducing administrative burden. The 15 percent de minimis rate was specifically designed to accomplish this, and it is supported by recipients and subrecipients. However, the expectation for the prime recipient to accept an indirect cost rate proposal from a subrecipient – and subsequently, negotiate a unique indirect cost rate with the subrecipient – creates a significant administrative burden that is in direct opposition to the spirit of the new Guidance. This burden would be especially difficult for institutions with smaller research portfolios or administrative resources and could impact the ability of some institutions to collaborate with subrecipients. While it is uncommon for a subrecipient to insist on negotiating a unique indirect cost rate with a recipient, it should be made clear that the subrecipient does not have the right to expect a unique indirect cost rate be negotiated by the recipient. We urge OMB to delete the new text (shown in **bold red text**).

> (f) *De minimis rate.* Recipients and subrecipients that do not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs (MTDC). The recipient or subrecipient is authorized to determine the appropriate rate up to this limit. Federal agencies and pass-through entities may not require recipients and subrecipients to use a de minimis rate lower than the negotiated indirect cost rate or the rate elected pursuant to this subsection unless required by Federal statute or regulation. The de minimis rate must not be applied to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. ~~**Recipients and subrecipients are not required to use the de minimis rate.**~~ When applying the de minimis rate, costs must be consistently charged as either direct or indirect costs and may not be double charged or inconsistently charged as both. The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, the recipient or subrecipient must use the de minimis rate for all Federal awards until the recipient or subrecipient chooses to receive a negotiated rate.

APPENDIX 1: FIXED AMOUNT AWARDS & SUBAWARDS

The significant changes in the requirements for fixed amount subawards included in the final version of the Guidance are of great concern and we urge OMB to accept our recommendation to pause and address these changes in a future update to the Guidance. This will allow all stakeholders to use the formal public comment period to ensure the best possible outcome is achieved.

These changes eliminate the previous progress of OMB to not only allow, but encourage an efficient, effective and performance driven U.S. research enterprise, specifically the movement toward "performance-based accountability" from "paperwork-based compliance". Because these changes were not included for public comment, we are requesting technical corrections to reverse all revisions that were not available for review and public comment while providing a forum to discuss any oversight concerns related to these award mechanisms. Fixed amount awards and subawards have very useful and practical applications because although the cost principles are used to estimate the cost, they are not needed to account for the appropriate use of funds and performance outcomes.

If these unexpected changes remain, they will 1) create situations where issuing Fixed Amount Awards will be a higher-risk mechanism that would negatively impact collaborations with international partners and smaller community partners, Tribal Nations, and some ERIs, HBCUs, and MSIs; and 2) severely limit the ability to engage in community type projects, unit pricing based programs, and service/event programs.

While we suggest the best approach is to address fixed award instruments in a future update, if this is not possible, the following changes have been identified as the most critical:

The revised language to 200.201(b)(4), specifically 'and that all expenditures were incurred in accordance with 200.403' significantly handicaps the ability of recipients to utilize fixed amount awards and undermines the spirit of performance accountability. The cost principles apply to development of the proposal budget; and invoicing is based upon performance milestones, not a detailed invoice of expenditures. OMB has stated publicly that the addition of this language was not intended to require a review of expenditures, however, that is exactly what this added language would require to be in compliance. Because this additional language was not available for public comment, we request it be removed and the original language be reinstated "Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award."

It should be noted that the original language did not absolve the pass-through entity of record retention requirements; it only stated there is no governmental review of actual costs incurred.

We are also concerned about a new requirement that was added: 200.308(f)(6) that requires prior approval for 'Subaward activities not proposed in the application and approved in the Federal award.' It is unclear what 'activities' would need to be submitted for prior approval. 200.308(f)(6) should be deleted in its entirety as 200.308(f)(1) requires prior approval for a change of scope of work.

APPENDIX 2: VUCS DEFINITIONS

CFR (DoD): § 1108.405 Voluntary (committed or uncommitted) cost sharing

*(3) Voluntary cost sharing means cost sharing that an entity **pledges voluntarily** in its application (i.e., not due to a stated cost-sharing requirement in the notice of funding opportunity to which the entity's application responds).*

*(b) Voluntary committed cost sharing means voluntary cost sharing that a DoD Component accepts **through inclusion in the approved budget** for the project or program **and** as a binding requirement of the terms and conditions of the award made to the entity in response to its application.*

(c) Voluntary uncommitted cost sharing means voluntary cost sharing that does not meet the criteria in paragraph (b) of this section.

Other Current Guidance Language

- ***Cost Sharing or Matching** (200.1 – Definitions) = Cost sharing or matching means the portion of project costs not paid by Federal funds or contributions (unless otherwise authorized by Federal statute). See also § 200.306.*
- ***Project Cost** (200–1 - Definitions) = means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.*
- ***Voluntary Committed Cost Sharing** (200–1 - Definitions) = means cost sharing specifically pledged on a voluntary basis in the proposal's budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.*
- ***Cost Sharing or Matching** (200.306): "only cost sharing specifically committed in the project budget must be included in the Organized Research Base for computing F&A".*

NSF PAPPG: *"While not required by NSF, proposing organizations may, at their own discretion, continue to contribute voluntary uncommitted cost sharing to NSF-sponsored projects. These resources are not auditable by NSF and should not be included in the proposal budget or budget justification."*

As stipulated in 2 CFR § 200.9", "Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award." As such, to be considered voluntary committed cost sharing, the amount must appear on the NSF proposal budget and be specifically identified in the approved NSF budget.[26] Unless required by NSF (see the section on Mandatory Cost Sharing below), inclusion of voluntary committed cost sharing is prohibited and Line M on the proposal budget will not be available for use by the proposer.

NSF FAQ: ***Organizational resources that are necessary for and available to a project that are not included in the budget or budget justification are considered voluntary uncommitted cost sharing and are not subject to audit**. Such information must be described in the Facilities, Equipment and Other Resources section of the proposal. While not required by NSF, grantees may, at their own discretion, contribute voluntary uncommitted cost sharing to NSF-sponsored projects.*