December 4, 2023

Mr. Steven Mackey
Policy Analyst – Office of Federal Financial Management at the OMB
Washington, DC 20006

Re: *COGR Response to Federal Register Notice, 88 FR 69390*
2 CFR Chapter 1, Parts 25, 175, 180, 182, 183; and 2 CFR Chapter 2, Part 200

Submitted Electronically: https://www.regulations.gov/commenton/OMB-2023-0017-0001

Dear Mr. Mackey,

On behalf of the COGR membership, thank you and your colleagues for your transparent and earnest efforts to update and revise 2 CFR Chapters 1 and 2. We write in response to the Federal Register Notice (Document Citation: 88 FR 69390), dated October 5, 2023 – *OMB Guidance for Grants and Agreements*. As was the case earlier in the year regarding the *OMB Request for Information*, we appreciate your consideration of the COGR comments enclosed in this letter.

COGR is an association of over 200 public and private U.S. research universities and 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. COGR's member institutions understand the importance of being good stewards of federal research funds, and they work diligently to ensure full transparency and accountability as to how they use these funds in accordance with the Uniform Grant Guidance and other federal policies.

The ***Table of Contents*** on the next page outlines our response approach to the extensive changes proposed. Our comments are intended to provide OMB with a roadmap to identify areas of agreement; address concerns; and make improvements to the proposed revisions. ***The list of recommendations we have provided constitutes impactful proposals that will be significant and beneficial to the research and grantee community—and to the federal agencies, as well.***

Thank you for the opportunity to comment. Please contact David Kennedy at dkennedy@cogr.edu or Krystal Toups at ktoups@cogr.edu if you have questions.

Sincerely,

Matt Owens, President

COGR Responses to OMB's Proposed Revisions Document Citation: 88 FR 69390

Table of Contents

I. Summary of COGR's High Priority Items

This is a list of impactful proposals that will be helpful to the research and grantee community, and potentially to the federal agencies, as well. We strongly encourage OMB to incorporate the items in this list into the final version of 2 CFR Chapters 1 and 2.

NOTES:

- **Each item, when applicable, includes a cross-link to the corresponding sections (II. through IV.) of this document.**
- **For A., recommendations correspond with a specific section in 2 CFR Part 200.**
- **Each item in B. below shows recommendations that cover the broader implementation process and related matters.**

A. REVISIONS TO 2 CFR CHAPTERS 1 AND 2

1. ***Emphasize (and Restore) Consistency and Fair Share Principles.*** It is a "must-have" for OMB to restore these two key foundations of the Federal Government–Grantee partnership. Unfortunately, they were eliminated/minimized in Section 200.100 (see Section II., 200.100(a) and (c) – Purpose).

2. ***Strengthen OMB's Role as an Advocate for all Stakeholders.*** COGR has been intentional in identifying situations where OMB could provide an active and robust oversight and arbitration role when there are disputes between recipients/subrecipients and federal agencies. We encourage OMB to consider our recommendations, which if implemented, will further grow the Federal Government–Grantee partnership (see Section II., 200.107 – OMB Responsibilities.

3. ***Restore Prior 2 CFR 200 Requirements for Mandatory Disclosures.*** We urge OMB to accept the COGR proposal and restore the original text. The new text proposed by OMB is problematic—it has both changed the original intent of this section and may be inappropriate from a statutory perspective (see Section II., 200.113 – Mandatory Disclosures).

4. ***Continue Efforts to Improve Cost Sharing Guidance, which Further Reduces Administrative Burden.*** We appreciate OMB's ongoing efforts to address the important topic of cost sharing in its proposed revisions. We have provided a deep analysis on applicable sections of the proposed revisions and have provided recommendations, which we believe, will further enhance OMB guidance around how federal agencies implement cost sharing policies (see Section II, 200.306 and Appendix to Part 200 (Cost sharing)).

5. ***Apply Selected Provisions to <u>All</u> Research Entities.*** There are several situations where sections of 2 CFR Part 200 are applicable to institutions of higher education (IHEs), but not explicitly identified to nonprofit research institutions, nonprofit degree-granting research institutions, academic teaching hospitals, medical centers, and other research-oriented organizations. In these situations, in addition to being applicable to IHEs, each should be applicable to all research entities (see Section II., 200.306(k) – Cost Sharing).
6. ***Clarify and Harmonize Expectations/Definitions applicable to "Key Personnel".*** It is

crucial to ensure expectations are clear and consistent across federal agencies and the stakeholder community within the context of both 2 CFR Part 200 and NSPM-33. COGR's recommendations help to affirm this is the case (see Section II, 200.308(f)(2) and Section IV., 200.1 Definitions).

7. ***Confirm that Withholding of Payments is Project-Specific.*** For consistency of intent with the escalating remedies outlined in section 200.339, withholding of payments should be specifically limited to the *project* that is out of compliance (see Section II, 200.339(a)).

8. ***Encourage Timely Establishment of F&A Cost Rates.*** We encourage OMB to accept the COGR proposal to create a mechanism for institutions to establish F&A cost rates (and fringe benefit rates) in a timely manner (see Section II., 200.414(c)(2) – Indirect Costs).

9. ***Continue Efforts to Improve Implementation of F&A Cost Rate Policies.*** We appreciate OMB's ongoing efforts to implement and improve F&A cost rate policies. Continuing these efforts by 1) refining the definition of "facilities" costs, 2) enhancing use of the de minimus cost rate, and 3) limiting the use of indirect cost rate proposals in selected situations will further enhance OMB guidance around F&A cost rate policies (see Section II, 200.414(a), (d), and (f)).

10. ***Eliminate the DS-2 Requirement.*** We appreciate the proposed revision by OMB that eliminates the DS-2 requirement. COGR has provided additional data that supports this proposed revision (see Section II., 200.419 – Cost Accounting Standards (DS-2).

11. ***Restore Prior 2 CFR 200 Requirements for Unused Leave.*** We urge OMB to accept the COGR proposal and restore the original text. The new text proposed by OMB is problematic—it will inappropriately disallow an accounting methodology applicable to unused leave that is acceptable under GAPP and that is used regularly by many institutions (see Section 200.431(b)(1) – Compensation - fringe benefits (Unused leave)).

12. ***Correct Unintended Policy Change Applicable to Pre-award Costs.*** The proposed change to the text on pre-award costs seems to have created an unintended policy change. If this is the case, we suggest a simple restoration of the original text—otherwise we are concerned that this will have significant impact on the treatment of pre-award costs (see Section II., 200.458).

B. ADDITIONAL RECOMMENDATIONS

1. ***Implement Effective Dates to Minimize Burden and Maximize Benefits for All Stakeholders.*** When 2 CFR 200 was released almost one decade ago, OMB established an approach based on significant input from the stakeholder community—this was an effective approach and should be used again. In addition, grantees must not be required to wait to implement changes that are connected to the timing of "a newly re-negotiated [indirect cost] rate"—otherwise, it could be years before an institution is allowed to implement these changes (see Section II., 200.110 – Effective dates).

2. ***Opportunity to Comment on Final Version.*** Our understanding is that OMB will review all comments and will use those comments to inform a Final Version of 2 CFR Chapters

1 and 2 to be released in early 2024. Depending on the extent of OMB revisions, a subsequent review period may be warranted. While we do not expect to develop a response to the Final Version with the same depth of this response, we believe an opportunity for the grantee community to review the Final Version and provide a limited set of comments based on the additional revisions made would be appropriate and make for effective implementation. We encourage OMB to provide the community with a 60-day comment period to provide limited comments on the proposed Final Version.

3. ***Future Technical Corrections.*** Based on prior releases of 2 CFR 200, we expect that technical corrections will be necessary after the final release. While OMB's efforts to create a more user-friendly, plain-language version of 2 CFR 200 is a major improvement, there could be changes that result in an unintended policy change or interpretation. We recommend OMB to clearly state in the Preamble to the Final Version that there will be a grace period in the implementation of selected items when a change results in an unintended policy change or interpretation. Further, OMB should work with all stakeholders to release periodic and timely technical corrections to address unintended policy changes or interpretations.

4. ***Better Presentation of Definitions.*** A user-friendly approach to definitions is key to the final version of 2 CFR Chapters 1 and 2. OMB work to this effect is admirable, and we encourage the following: 1) Consolidate all definitions for Chapters 1 and 2 into a single space. This will ensure consistency and eliminate the need to state that "if definitions are not included in one section, please consult another section." 2) Allow definitions to be regularly updated—updates to definitions can be designated a "technical correction," which could negate the need to have 2 CFR Chapters 1 and 2 be subject to an entire review.

5. ***Personally Identifiable Information (PPI) and Protected Personally Identifiable Information (PPII).*** The inattention to how PII and PPII are implemented in federal systems is concerning. While user-verification is a necessary standard to be embedded into these systems, it must be balanced with a system requirement where the user must enter their PII or PPII. To-date, this balance has not been established at the federal level. We urge OMB to take a leadership role in addressing this growing concern. (see Section 200.1 – Definitions).

6. ***Stay Committed to Robust FAQs.*** The FAQs (dated May 3, 2021) have been a longstanding and helpful resource for all stakeholders. We appreciate OMB's efforts to incorporate many of the FAQs into the proposed revisions. However, there will continue to be value in having robust FAQs as new clarifications, inevitably, will arise. We urge OMB to: 1) work with the stakeholder community to maintain and enhance these FAQs, 2) codify FAQs when appropriate, and 3) include FAQs, by reference and as is currently done, into the annual OMB Compliance Supplement.

II. Proposed COGR Revisions to 2 CFR Part 200 (ordered by section number)

This section includes COGR comments and recommendations to OMB's proposed revisions to 2 CFR 200. In select cases, we determined a detailed explanation is required, which we included as an Appendix. Finally, we suggest that many of COGR's proposals ***are "low-hanging-fruit" opportunities*** and will result in helpful revisions to 2 CFR Chapters 1 and 2—and we encourage OMB to accept these proposed revisions.

NOTE: Underlined red text represents COGR proposals for new/modified text.

SUBPART B – GENERAL PROVISIONS

Subpart B sets the tone for Federal Government–Grantee Partnership. ***Several proposed OMB revisions under Subpart B are of concern and will jeopardize the partnership.*** As we have significant concerns to specific sections under Subpart B, we have included additional insight to our recommendations in Appendix 2. We urge OMB to incorporate the recommendations to Subpart B proposed by COGR—***doing so, will help to ensure the Federal Government–Grantee partnership remains productive and effective for many years to come.***

200.100(a)(1) and (c) – Purpose.

OMB revisions to this section are problematic and if implemented, will reverse decades of important precedent that defines the longstanding and important Federal Government–Grantee partnership (see Appendix 2).

> **COGR RECOMMENDATION:** We urge OMB to 1) restore the original text from 200.100(a)(1) stating that "Federal agencies must not impose additional or inconsistent requirements, except as…", and 2) restore the original text from 200.100(c) stating that "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."

200.101 (b)(1), (4) and (6) – Applicability.

We appreciate the clarification in (b)(1) that the use of "should" or "may" indicates a recommended approach and permits discretion. Additionally, we welcome the expansion of the definition of *fixed amount award* in section 200.1. The expansion of this definition clarifies accountability and is based primarily on performance and results.

> **COGR RECOMMENDATION:** Consequently, sections D and F of Part 200 should be amended to clarify that the use of funds is not restricted provided performance and results are acceptable, and further, that audits of fixed amount awards should likewise be limited to performance and results. These changes

should also be reflected in sections (b) (4) and (6) of this section.

200.102 – Exceptions.

The revised wording in sections section 200.102(a) and 200.102(c) creates an ambiguity around the role of OMB and the role of federal agencies in implementing exceptions (see Appendix 2).

> **COGR RECOMMENDATION:** OMB's proposed revisions to this section should be modified (e.g., restore the original text) to emphasize OMB's primary role as the oversight entity for the implementation of assistance awards by federal agencies. This will help to ensure that exceptions 2 CFR 200 policies are rare and appropriately justified.

200.104 – Supersession.

Our understanding is that when OMB first implemented 2 CFR 200, it was necessary to supersede the eight OMB Circulars in effect at the time. Going forward, our understanding is that OMB need only supersede the previous version of 2 CFR 200. Similar discussions would seem applicable to other OMB memorandums referenced in 2 CFR 200 (such as M-01-06, per 200.306; M-21-28, per 200.319; M-10-11, per 200.438; as well as the FAQs dated May 3, 2021).

> **COGR RECOMMENDATION:** We encourage OMB to provide more clarity (including well-documented cross-references) to section 200.104.

200.105 Effect on Other Issuances.

OMB's role in overseeing the agency implementations of 2 CFR 200 is emphasized in this section. When agency implementation or exceptions (if not subject to OMB approval) are inconsistent either within a single agency or between agencies, section 200.105 alone will not cure the burden or give awardees recourse for correction.

> **COGR RECOMMENDATION:** When there are inconsistencies and/or concerns with agency implementation, we recommend that these be addressed in section 200.107, OMB Responsibilities (see below).

200.107 OMB responsibilities.

Sections 200.105 (see above) and 200.108 (see below) provide the foundation for an active and robust oversight and arbitration role for OMB in disputes between recipients/subrecipients and federal agencies. By being an open and available resource, all stakeholders can be confident that federal grants and contracts administration and oversight works as intended—and that when there are disagreements, OMB can be a trusted and reliable arbiter for the stakeholder community.

> **COGR RECOMMENDATION:** The following revisions would emphasize important OMB responsibilities: "(a) OMB will review Federal agency regulations and implementation of this part. OMB will provide interpretations of policy requirements and assistance to ensure effective, efficient, and consistent

> implementation. Any exceptions will be subject to approval by OMB and only with adequate justification from the Federal agency. In cases where a dispute cannot be resolved between a recipient/subrecipient and a federal entity, OMB will serve as a neutral arbitrator to resolve disputes in a timely manner. (b) OMB will initiate periodic forums for all stakeholders. These will be designed to encourage opportunities to improve the federal grants administration and oversight ecosystem, including opportunities to achieve harmonization across IT systems, reporting, and policy implementation. (Also see 2 CFR Parts 25 and 170)."

200.108 – Inquiries.

It is reasonable for the recipient or sub-recipient to approach the awarding agency, the cognizant agency for indirect costs, the cognizant or oversight agency for audit, or the pass-through entity as a first recourse when there is a dispute. However, if there are still concerns after contacting the relevant agency (or when there is not a timely response), OMB should serve as a neutral arbitrator.

> **COGR RECOMMENDATION:** The issues raised should be emphasized in section 200.107, OMB Responsibilities (see above).

200.109 – Review date.

Revisions to 200.109 propose replacing the current mandate for OMB to review 2 CFR 200 every five years with a requirement for periodic review. Given the rising frequency of changes to regulations for assistance awards, more regular reviews and updates to governing regulations are necessary. This approach allows regulations to keep pace with relevant changes and allows the agencies and awardees to rely on the regulations. More frequent review also enhances compliance and communication between the various communities awarding, receiving, and auditing assistance awards.

> **COGR RECOMMENDATION:** Restore the original schedule for review and state: "OMB will review this part periodically, at least every five years." (Note our preference is that technical corrections would not restart the clock).

200.110 Effective date.

When 2 CFR 200 was implemented almost one decade ago, OMB established an approach based on significant input from the stakeholder community. Comments from the stakeholder community were published in 78 FR 78590.[1]

[1] "The COFAR considered these requests as well as past implementations of OMB guidance and recommended that Federal agencies coordinate under OMB's guidance to issue regulations or OMB-reviewed guidance in unison, which will be effective one year from the publication of this final guidance. As a result, upon implementation, this guidance will be in effect for all Federal awards or funding increments provided after the effective date. Non-Federal entities wishing to implement entity-wide system changes to comply with the guidance after the effective date will not be penalized for doing so. The COFAR further recommended that provisions of Subpart F—Audit Requirements be effective for non-Federal entity fiscal years beginning on or after the effective date of this guidance. … The

> **COGR RECOMMENDATION:** A similar approach to the original publication of 2 CFR Part 200 is necessary. COGR recommends that this section be modified to incorporate the current and future recommendation that Federal agencies coordinate under OMB's guidance to issue regulations or OMB-reviewed guidance in unison, ***which will be effective one year from the publication of final guidance***; and that the revisions to the guidance be in effect for all Federal awards or funding increments provided after the effective date; that non-federal entities wishing to implement entity-wide system changes (such as changing thresholds) to comply with the guidance after the effective date will not be penalized for doing so; and that changes to audit requirements in Subpart F apply be effective for non-federal entity fiscal years beginning on or after the effective date of this guidance. In particular, grantees must not be required to wait to implement changes that are connected to the timing of "a newly re-negotiated [indirect cost] rate." Otherwise, it could be years before an institution is allowed to implement these changes. Since indirect cost rates are based on a "negotiation," and because the negotiation results in an institution receiving a negotiated cost rate that is less than their proposed cost rate, institutions should be allowed to implement these changes as appropriate with internal, institutional policy.

200.112 Conflict of interest.

The inclusion of Conflict of Interest in Subpart B has been a source of confusion in the community about its applicability and implementation since 2014. As pointed out in FAQ 18[2], agency policies around researcher conflict of interest are being regularly created/updated by other parts of the CFR, federal agencies, and the NSPM-33.

> **COGR RECOMMENDATION:** We recommend moving this section (200.112) from Subpart B (General Provisions) to Subpart D in Procurement Standards to reduce confusion in the awardee and audit community and codify the FAQ.

200.113 Mandatory disclosures.

Revisions to this section modify the disclosure timeframe from "in a timely manner" to "promptly disclose" and revise the trigger for a required disclosure (changing the standard from "violation" to "credible evidence of a violation") of Federal criminal law potentially affecting the Federal award. It also expands the recipients of disclosures from the historical standard, SAM, to include written disclosures to the Federal agency, pass-through entity (if applicable), and the agency's

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requirements of Subpart F—Audit Requirements apply to any biennial periods beginning on or after the effective date of this guidance." Furthermore, "Federal agencies must submit draft implementing regulations to OMB no later than six months from the date of publication of this guidance unless different provisions are required by statute or approved by OMB."

[2] FAQ 18 states, "The conflict of interest policy in 2 CFR §200.112 refers to conflicts that might arise around how a non-Federal entity expends funds under a Federal award. These types of decisions include, for example, selection of a subrecipient or procurements as described in 2 CFR §200.318. Federal awarding agencies may however have special policies or regulations specific to investigator financial conflicts of interest, such as the U.S. Department of Health and Human Services' policy at 42 CFR Part 50 Subpart F."

Office of Inspector General. The origin of this section is discussed in 78 FR 78590[3]. This shift in approach (requiring the disclosure of credible evidence of violations) does not adhere to a legal standard and raises concerns of varying interpretations, potential unfair exposure to false allegations, and risk premature access to sensitive information under the Freedom of Information Act. Mandating disclosure to three separate entities, two of which are parts of the same Federal agency and the third of which is not a Federal entity, increases the risk of adverse consequences based on incomplete, inaccurate, or biased information and discrimination[4]. Creating significant concerns about undue infringement of rights and interests underscored by the fact that the entities receiving a disclosure cannot guarantee confidentiality.

> **COGR RECOMMENDATION:** COGR recommends reverting to the original wording and intent of this section.

SUBPART C – PRE-FEDERAL AWARD REQUIREMENTS AND CONTENTS OF FEDERAL AWARDS

200.201 Use of Grants, Cooperative Agreements, Fixed Amount Awards, and Contracts.

1) The use of "Other Transaction Agreements" (OTAs) by funding agencies is intended to expedite negotiations between funding agencies and recipients; however, in practice, they often complicate negotiations and increase the time to award in comparison to other legal instruments (i.e., grant, cooperative agreement, or contract). The increased use of OTA's by awarding agencies creates inconsistent practices as Federal agencies are permitted to include terms that are contrary to the standards established in 2 CFR 200 (e.g., not accepting the recipient's federally negotiated rate agreement, imposing unnecessary publication restriction, imposing intellectual property provisions that conflict with Bayh-Dole). OTAs are not subject to 2 CFR 200 or the FAR, and as such, they lack comprehensive policies, processes, and procedures for proper oversight and accountability[5]. These complexities are defeating their value as an alternate instrument. *2)* Fixed amount awards that require mandatory cost sharing, per (b)(2), should be permitted.

> **COGR RECOMMENDATION:** 1) We recommend that OMB include language

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[3] "Commenters suggested that requirements in procurement regulations for non-Federal entities to disclose in writing any violations of Federal criminal law involving fraud, bribery, or gratuity violations in Title 18 of the United States Code have been effective measures to help prevent or prosecute instances of waste, fraud, and abuse. These commenters recommended that a similar provision be added to this guidance. The COFAR concurred with the recommendation."

[4] Decades of policy development in compliance have demonstrated that it is desirable to encourage victims and witnesses to report allegations or credible evidence early to identify risks, ensure compliance, and strengthen internal controls. It is likely that disclosure of credible allegations that have not been reasonably or fully investigated to a public agency may require result in an agency to take actions related to those allegations rather than waiting for a full investigation or the final determination of whether a criminal violation has occurred. Because The potential for a public agency to take actions may be taken based solely on allegations, the standard of credible evidence would create a chilling effect on reporting – this could have serious, adverse ramifications on institutions trying to collect information of potential misconduct.

[5] NSF Office of Inspector General, *Summary of Federal OIG Findings and Recommendations Related to Other Transaction Agreements*, https://oig.nsf.gov/sites/default/files/reports/2023-03/23-6-001-Other-Transaction-Agreements.pdf

within 200.201(a) referencing OTAs as a type of legal instrument but clarifying that: "OTA instruments should only be used when grant, cooperative agreement, or contract vehicles are not suitable." We also request that OMB works with the federal agencies to identify areas in 2 CFR 200 that can be leveraged to create suitable standards. 2) We strongly recommend that OMB strike 200.201(b)(2). COGR supports permitting fixed amount awards that require mandatory cost sharing. 3) For section 200.201 (b)(6) we ask that OMB please clarify the reference to 200.308, paragraphs 1 through 3, 6, and 10. It is unclear which paragraphs 1, 3, 6, and 10 apply since there are multiple subsections within 200.308 containing these paragraph numbers.

200.204 Notices of funding opportunities.

To develop and prepare high-quality fundable applications and proposals in response to Federal agency Notices of Funding Opportunities (NOFOs), recipients require sufficient time to review and respond to the opportunity. The current 60 day period is too short to adequately respond to the increasingly detailed and complex technical requirements, organizational conflict of interest, other support, foreign support, data management and sharing plans, and other requirements. Additionally, the revised language in this section removes both exigent circumstances and Agency head determination, which will allow anyone in the Federal agency to make the decision to decrease the period of availability below 30 days. This may result in a significant increase in opportunities being open for less than 30 days. As such a tiered approach for open periods where awarding agencies make all funding opportunities available for the maximum period that is practical, and no less than a minimum period of at least 30 days is best. Any reduced time frame should be permissible only with Agency head approval and if exigent circumstances necessitate.

COGR RECOMMENDATION: We recommend that OMB incorporate the definition of exigent circumstances contained in current FAQ #39; and restore the requirement that the Agency head must approve NOFOs open 30 days or less. For 200.204(b) (*Availability period*) we recommend the following language: "The Federal agency should make all funding opportunities available for application for at least 90 calendar days…….However, no funding opportunity should be available for less than 30 calendar days unless ~~the Federal agency determines that~~ exigent circumstances require, as determined and approved on a case by case basis by the Federal awarding agency head or delegate. Exigent circumstances refer to situations requiring unusual or immediate action, usually an emergency situation."

200.216(d) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

In 200.216(d), COGR has concerns about the overreach in applying restrictions to program income and indirect cost recoveries. We concur that these restrictions apply to program income during the period of performance. However, we ask that OMB clarify that the restrictions do not apply to program income beyond the period of performance.

COGR RECOMMENDATION: We ask that the applicability of the prohibitions on covered equipment and services on program income and indirect cost recoveries be clarified in this section. It would be difficult for IHEs (and likely others) to

differentiate within program activities and related income, indirect cost reimbursement calculations, or cost sharing work when primary mission programs are part of a major funding cluster. Consequently, we are concerned about overreach and intent with the proposed change. We also ask that subsection (d) be clarified consistent with the language in current FAQs 61, 62, and 63 regarding the use of de minimis rate and charging prohibited equipment or services through indirect cost rate.

***Appendix I to Part 200—Full Text of Notice of Funding Opportunity* (Cost sharing).**

COGR has included recommendations within Appendix I to Part 200 that are specific to cost sharing. These recommendations are included as part of COGR's recommendations applicable to Section 200.306 – Cost sharing.

SUBPART D – POST FEDERAL AWARD REQUIREMENTS

***200.301(a) – Performance measurement*.**

For 200.301(a) in the research context, the text stating that the "Federal agency should also clearly communicate in the Federal award any expected outcomes...." could be misconstrued to indicate that a certain research conclusion is expected in order to show achievement of program goals.

COGR RECOMMENDATION: Restore the previous text that included after "outcomes" the parenthetic phrase "(such as outputs, or services performance or public impacts of any of these)"—this is clearer that a specific research conclusion is not a criterion for successful performance.

200.302 – Financial management.

1) Section 200.302.(b)(1) indicates that the recipient or subrecipient's financial management system must include "*Federal award year.*" This represents a change from the existing language that merely specifies "year", which is commonly interpreted to mean the date the award was received by the recipient or subrecipient. Federal award year is not a defined term, and it is unclear whether the intent is the date the award is issued by the Federal agency or pass-through entity, or whether it is intended to mean the federal appropriation year. 2) Section 200.302(b)(2) address disclosure of financial results. What's omitted is applicability to fixed amount awards.

COGR RECOMMENDATION: 1) We ask that this term be defined and if the intent is to include the federal appropriation year, such information must be included in the federal award notice to the recipient. 2) Recommend adding to (b)(2) at the beginning of this section, "Except for fixed amount awards or subawards" to make it clear that the financial results of a Federal program are not required under these forms of agreement.

200.303 – Internal controls.

1) Section (a) indicates that the recipient or subrecipient must establish, "document" and maintain internal control over the Federal award …". The word "document" is problematic without clarification because auditors and possibly even pass-through entities will test and challenge what is and what is not documentation. 2) Additionally, section 200.303(a) indicates that "*These internal controls should comply with the guidance in … COSO …"* which is overly prescriptive. 3) In section 200.300(e) we appreciate the intent to make this section clearer, but inclusion of the word "reasonable" prior to cybersecurity and other measures to safeguard information including PII should be retained, as it denotes that a good faith effort is expected.

> **COGR RECOMMENDATION:** 1) We strongly urge OMB to remove the word "document" from 200.300(a), and further, incorporate the text from existing FAQ #67 into this section. Specifically, we ask that the phrase "*While recipients and subrecipients must have effective internal controls, there is no expectation or requirement that the recipient or subrecipient document or evaluate internal controls prescriptively*" be included. 2) In 200.300 (a) and (b), we recommend replacing the word "comply" with "align" to signal that there should be compatibility but there need not be a precise match. 3) In 200.300(e), we recommend keeping the word "reasonable", so that the beginning of this section reads: "Take reasonable cybersecurity and other measures as appropriate to safeguard information …" 4) The text from FAQ #67 should be codified: "While non-Federal entities must have effective internal controls, there is no expectation or requirement that the non-Federal entity document or evaluate internal controls prescriptively …"

200.305 – Federal payment.

1) Section (b)(1) adds "subrecipient" as an entity that must be paid in advance if it maintains or demonstrates the willingness to maintain written procedures to minimize the time elapsing between transfer and disbursement. Most subrecipients receive payment from pass-through entities on a reimbursement basis (or upon completion of a milestone). It would not be feasible for many pass-through entities to validate whether their subrecipient is successfully minimizing the time between transfer and disbursement. Further, the pass-through entity may not have adequate cash flow to provide advance payment. 2) Section (b)(2) adds "subrecipient and "pass-through entity" and says "whenever possible, payment requests by the recipient or subrecipient must be consolidated to cover anticipated cash needs for all Federal awards received by the recipient from the Federal agency or pass-through entity." Many pass-through entities do not currently have financial systems that allow for aggregation of payment requests by their subrecipients; while this may be ideal, it should not be required. The "whenever possible" phrase is open to interpretation, and we are hesitant to rely on that as an opt-out. 3) Section (b)(6)(ii) allows for withholding for delinquent debt to the US. While COGR has no objection in principle, it is essential that the recipient be notified in advance and allowed a reasonable opportunity (e.g., 30 days) to correct the deficiency prior to withholding the payment. 4) See the recommendation below regarding Federal payments (reimbursement method). 5) Section (b)(11) (ii) and (12) allows recipients or subrecipients to retain up to $500 per year in interest.

> **COGR RECOMMENDATION:** 1) We recommend that "subrecipient" be

removed from section (b)(1) or the wording be altered to say that recipients and subrecipients may be paid in advance". 2) In section (b)(2), we recommend changing "must be consolidated" to "may be consolidated" to allow for this possibility but clearly indicate that the important element is ensuring timely payment – not the aggregation method used. 3) In section (b)(6), we recommend adding: "(iii) the recipient must be notified in writing by the agency intending to impose the withholding action 30 days before such action will be taken, and that such notice must include the specific agency, amount, and program/award that is deficient". This is necessary because recipients are not currently being offered reasonable notice nor receiving information sufficient to identify and correct the deficiency. 4) Incorporate the new text included in the 2023 Compliance Supplement: "When using the cost reimbursement methodology, request for reimbursement is allowable when the cost has been incurred and allocated to the federal award." 5) Consistent with other thresholds, this threshold should be increased. We recommend a threshold of $1,000.

200.306 – Cost sharing.

1) Section (a) indicates that "cost sharing *may not* be used as a factor during the merit review of applications unless allowed by the Federal agency's regulations and the information is included in the NOFO." 2) We appreciate that section (a) indicates that voluntary committed cost sharing is not expected under Federal research grants. 3) We appreciate the clear statement in the revision to section (k) that Voluntary Uncommitted Cost Sharing (VUCS) does not need to be accounted for and should not be included in the organized research base. Only IHEs, however, are eligible for this relief. This also should be extended to other recipients, including other research organizations (see below).

COGR RECOMMENDATION: 1) We appreciate this statement, but recommend clarifying expectations by changing the wording to "cost sharing must not be used as a factor…" This change will help reinforce expectations and decrease the likelihood of cost sharing being "encouraged if not required." It would also be helpful to confirm that the OMB oversight referenced throughout this letter include situations where agencies do not comply with this requirement. 2) We ask, however, in section (a) that the word "research" be struck as an expectation of voluntary committed cost sharing. The expectation should apply to all Federal grants, not just those for research. This is needed as voluntary committed cost sharing continues to be an unreasonable expectation for non-research federal awards (particularly in the arts and humanities area). When cost-sharing is determined to be essential, it should be imposed in the NOFO through the mechanism of requiring mandatory cost-sharing. This will have a beneficial impact. 3) We recommend in section (k) to remove "For institutions of higher education (IHE)" to state: "Voluntary uncommitted cost sharing should be treated differently from mandatory or voluntary committed cost sharing and should not be included …" In addition, this section defines voluntary uncommitted cost sharing effort as "*faculty-donated additional time above that agreed to as part of the award.*" While this is unquestionably a major part of VUCS, it is not only faculty time– other examples include donated time by non-faculty and other resources provided by the recipient. This sentence should be deleted and instead, the

definition in 200.01 for Voluntary Uncommitted Cost Sharing should be referenced.

200.306(k) – Cost Sharing.

(VUCS, and other applicable sections shown below). There are several situations where sections of 2 CFR Part 200 are applicable to IHEs, but not explicitly identified to nonprofit research institutions, nonprofit degree-granting research institutions, academic teaching hospitals, medical centers, and other research-oriented organizations. Applicability of these situations to these types of research entities is regularly recognized by federal agencies that support the research mission of the federal government. COGR has identified these sections of 2 CFR Part 200.

- 200.306; Voluntary Uncommitted Cost Sharing (VUCS)
- 200.401; Capitation awards
- 200.430(g)(ix); Intermingling of teaching, research, service and administration
- 200.431(j); Allowability of tuition costs
- 200.466; Allowability of costs of scholarships, fellowships, limited to IHEs

COGR RECOMMENDATION: In these situations, in addition to being applicable to IHEs, each should be applicable to all research entities.

***Appendix I to Part 200—Full Text of Notice of Funding Opportunity* (Cost sharing).**

In Appendix I Subsection(b)(2)(ii)(B), regarding cost share, please clarify that cost sharing may be a certain percentage *of total federal funds requested* or other certain amount or in the form of contributions of specified items or activities (for example, provision of equipment). Additionally, please clarify and correct the discrepancy between 200.306 (Cost Share) and Appendix I(b)(6)(ii) and (b)(6)(ii)(A)(4) regarding review criteria to evaluate cost sharing during merit review of applications and how an applicant's proposed cost sharing will be considered in the review process if it is not an eligibility criterion in Section 2b. 200.306 states that cost sharing may not be used as a factor during the merit review of applications or proposals unless allowed by the Federal agency's regulations and information is included in the notice of funding opportunity. Further, it states that voluntary committed cost sharing is not expected under Federal research grants.

Currently, Appendix I subsection (b)(6)(ii)(A)(4) describes how an applicant's proposal cost sharing will be considered in the review process if it is not an eligibility criterion and gives examples of ways to include. It goes further to state that if cost sharing will not be considered in the evaluation, the announcement should state so. Finally, it states to not include statements that cost sharing is encouraged without providing clarity as to what this means. The Appendix I language appears to be contradictory in intent to section .306, which precludes making cost share a factor in merit review as the standard, with only statutorily authorized exceptions.

COGR RECOMMENDATION: COGR recommends that Appendix I be updated to clarify that cost sharing is not to be included in evaluation criteria unless authorized by statute, consistent with section 200.306. Further, COGR recommends that encouragement of voluntary cost sharing be prohibited.

200.307 – Program income.

1) Section (a) indicates that "*Program income must be expended prior to requesting additional Federal funds*." It is unclear in this section what is intended by "requesting additional Federal funds." This could be interpreted in several ways, including submitting a request for new (supplement or renewal) funding, or submitting a continuation award or incremental funding request for funds already expected to be obligated, or a request for payment on already obligated funds. 2) Section (b)(2), *Addition,* indicates that the additive method requires prior approval to be used in the event that no program income method is specified in the award, but section (b) above indicates that the additive method will be used when no method is specified for awards made to IHEs and nonprofit research organizations.

> **COGR RECOMMENDATION:** 1) For section (a) related to program income, we recommend this be clarified, and in the interest of reasonable accounting practices, that this be defined as "prior to requesting funds not previously obligated or planned to be obligated to the recipient." 2) For Section (b)(2) we recommend this be corrected to start, "Except for IHEs and non-profit research organizations, prior approval is required to use the addition method."

200.308 Revision of budget and program plans. 200.308 Revision of budget and program plans.

1) Section (c) requires that the recipient or subrecipient must request prior approvals for budget revisions "using the same format for budget information that was used in their application", but also allows the Federal agency or PTE to "inform the recipient or subrecipient that a letter request is sufficient."

> **COGR RECOMMENDATION:** We recommend modernizing the wording of this section to state: "When requesting approval for budget revisions, the recipient or subrecipient must use the same format for budget information that was used in their application except if the agency has approved an alternative format. Alternative formats may include the use of electronic systems, email, or other agency-approved mechanisms."

2) Section (d) we note that the pass-through entity is added to the 30-day review turnaround for prior approvals. While it is sensible to expect the pass-through entity to initiate action on the request, is not uncommon for prior approval requests from subrecipients to also require federal agency approval. This makes the 30-day period impractical as both entities must take action or notify when a response can be made.

> **COGR RECOMMENDATION:** We recommend either deleting the "pass-through entity" from this expectation or specifying that 60 days is an appropriate period when the approvals of both the PTE and the federal agency are required.

3) Section (f), we note in subsection (2) that prior approval is required when a "*change in key personnel specified in the recipient's or subrecipient's application and included in the Federal award*."

> **COGR RECOMMENDATION:** We recommend modifying this language to instead read that prior approval must be sought when there is "*Change in key personnel named in the Federal award or subaward*." The inclusion of key

personnel named in an application varies from those deemed by the federal agency to be of sufficient importance that they are individually named in the award, and that this latter specification should be the standard to which recipients should be held. For subawards, the individual(s) named by the pass-through entity should be subject to the requirement.

4) Subsection (f)(3) specifies that prior approval is required *"when there is disengagement from a project for more than three months or a 25% reduction in time and effort devoted to the Federal award over the course of the period of performance, by the approved project director or principal investigator."* Although the 25% standard has long been in place, it continues to be a source of confusion as to whether the threshold for requiring prior approval is 25% or MORE than 25%. As written, reductions in effort may only be undertaken without prior approval if they are 24.99% or less. It would be far easier for calculation purposes and to explain requirements to investigators to set this standard to be more than 25%.

COGR RECOMMENDATION: We recommend a change to the wording that reads, "~~The~~ When there is *disengagement from a project for more than three months or* more than *a 25% reduction in time and effort...*"

5) Additionally, for subsection (f)(3), this section should include an explicit statement that "Key personnel are not required during a period of no cost time extension to commit additional effort beyond that which was originally approved in an award notice. "The intention here is to establish consistent expectations across Federal agencies regarding Key personnel effort during the period of a no cost time extension and to ensure Federal agencies do not impose cost sharing requirements in the form of additional effort as a condition of receiving a no-cost extension. This topic is well explained in NSF's existing FAQ on Cost Sharing (see Question 19).

6) For section subsection (f)(6), we appreciate that federal agency approval is not required for a change in subrecipient provided that the subaward activities proposed remain as originally expected under the federal award. This will be particularly helpful when investigators or project staff move from one entity to another but intend to continue their work on the project and no other prior approval requirement is triggered. A subsequent sentence in this paragraph indicates that prior approval would be required if the inclusion of the subrecipient "*was a determining factor in the merit review or eligibility process*." COGR notes that recipients are not today aware of when the inclusion of a particular subrecipient was a determining factor in the merit review or eligibility process.

COGR RECOMMENDATION: We request the following revision: "*was a determining factor in the merit review or eligibility process,* as noted in the agency award*."* This will allow recipients to understand which subrecipient(s) are subject to the prior approval requirement.

7) For section(g)(1), *Pre-award Costs,* we would appreciate an additional sentence being added to this section that specifically states that "Allowable costs incurred prior to the start of the next budget period are not included in the definition of pre-award costs, and that such costs may, unless prohibited by the Federal agency, be undertaken at the recipient or subrecipient's risk and subsequently charged once an award has been made".

8) For section (g)(3) and (h), we appreciate the clear statement that for research awards, the prior approval requirements in (g) will be waived except as otherwise stipulated in the Federal agency's regulations or terms and conditions of the Federal award. Federal agencies should be encouraged, given the recognized variances in the pace of conducting research, to consistently approve the carryforward of unobligated balances from one budget period to another in their regulations or award terms and conditions. We note that recipients are already obligated to notify federal agencies in the event of unusual developments enhancing or impairing progress, and that routine financial reporting already provides agencies with expenditure data, so the need to obtain prior approval for carryforward balances is adding burden without commensurate benefit.

200.311(c) – Real Property (Appraisals).

COGR RECOMMENDATION: Revise to recognize appraisals may not always be required: "When an appraisal is required, appraisals of real property must be conducted …". In addition, it should be recognized that: "The cost of an appraisal is an allowable cost and can be charged to the federal award."

200.313(d)(3) – Management requirements (Loss, Damage, Theft).

COGR RECOMMENDATION: Revise to require reporting only when the loss, damage, or theft is substantial: "Any loss, damage, or theft of equipment must be investigated. If the loss, damage, or theft is substantial (i.e., impacts the ability to conduct the objectives of the federal award and is not recoverable through insurance or other sources), then the loss, damage, or theft must be reported to the Federal agency or pass-through entity."

200.314(a) – Supplies (used / unused supplies). We appreciate the clarification regarding supplies such that (by example) the residual amount of a chemical in an opened container may be considered used. In addition, we suggest the following recommendation.

> **COGR RECOMMENDATION:** In the case of unused supplies, we request that the amount that can be retained by the sale of these be increased to $1,000 or 10 percent—this would provide consistency with the allowance for the sale of equipment.

200.315 – Intangible Property.

Revisions to this section are inconsistent with rights of patent and copyright owners. Per .315(a), the insertion of the new definition of "encumbrance" creates this inconsistency by implying that federal approval would be required for patent and copyright owners to license their works. This conflicts with the Bayh-Dole Act and its implementing regulations at 37 CFR for federally funded inventions. Per 200.315(c), this may attempt to clarify, but the ambiguity remains. Also note, per 200.315(b), the affirmative statement from the previous version of 2 CFR 200, which permits recipients to copyright any works, is now stated in the negative context ("recipients are not

prohibited from asserting any copyright.")

> **COGR RECOMMENDATION:** Restore the original text from 2 CFR 200.

200.316 – Property Trust Relationship.

COGR has raised a concern in prior letters that the purpose of this section of 2 CFR 200 is unclear. Further, to the extent it applies to intangible property, it again raises issues of consistency with Bayh-Dole in the patent area (see comments above).

> **COGR RECOMMENDATION:** Delete this section from 2 CFR 200—and if not deleted, state definitively that this section does not supersede government-wide regulations in 37 CFR Part 401.

200.317 – Procurement by States and Indian Tribes

COGR RECOMMENDATION: At some public institutions, an IHE may be subject to procurement requirements of the State and these requirements may take precedence. Consequently, update as follows: Except when a recipient or subrecipient is subject to the procurement requirements of the State, all other recipients and subrecipients, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

200.320(a)(1)(v) – Procurement Methods (Approvals).

COGR RECOMMENDATION: The "cognizant agency for indirect cost" (Cost Allocation Services, HHS) has consistently indicated they are not responsible for approving changes to micro-purchase thresholds. This section should be updated to clearly designate the federal entity responsible for these approvals.

200.320(a)(2)(v) – Procurement Methods (Simplified acquisitions).

COGR RECOMMENDATION: The consistent use of the term "simplified acquisitions" (and elimination of the term "small purchases") is helpful. However, regular citation (beyond the definitions in 200.1) of the "FAR at 48 CFR part 2, subpart 2.1" when both the micro- and simplified acquisition thresholds are referred to would be helpful. (***Also note:*** "simplified acquisition threshold" is inconsistently capitalized (not capitalized) throughout the document.)

200.320(c) – Procurement Methods (Noncompetitive procurement).

COGR is appreciative of the important work to minimize administrative burden that has been achieved by OMB over the past decade in the area of procurement requirements. In this most recent version of proposed revisions, additional improvements have been made, including: 1) emphasizing strategic sourcing, shared services, and other similar procurement arrangements will meet the competition requirement (200.318(e)), and 2) elimination of the requirement to negotiate profit with a vendor (200.324(c)). One more addition, which COGR has advocated for years, is to incorporate FAQ #88. This will ensure that research entities can acquire specialized scientific equipment in a timely manner and ease administrative burden.

COGR RECOMMENDATION: Append (6) to 200.320(c): "Noncompetitive procurement actions are permitted to acquire specialized scientific equipment necessary for conducting federally sponsored research activities."

200.328(a) and (c) – Financial reporting.

1) Per (a), COGR appreciates the text stating Federal agencies "must only require OMB-approved government-wide data elements in recipient financial reports." Limiting reporting to approved data elements significantly facilitates the creation and maintenance of recipient and subrecipient financial systems and business processes, resulting in efficient and consistent reporting processes.

2) Per (a), however, this also is an opportunity to address situations where agencies do not (cannot) comply with this requirement. *Per (c),* the new text stating that financial reports submitted quarterly or semiannually must be due "no later than 30 calendar days after the reporting period" needs to be addressed to allow more time for financial month-end close cycles, for cost reconciliation to occur, and for the required reports to be prepared and submitted.

COGR RECOMMENDATION: *For (a),* update to enhance agency compliance: "The Federal awarding agency must only require OMB-approved government-wide data elements on recipient financial information. When an agency requires additional reporting and/or data elements, the agency is required to: 1) provide outreach to recipients and subrecipients to notify of the proposed change, 2) seek approval from OMB and provide justification for its request, and 3) if approved by OMB, work with recipients and subrecipients to determine the least burdensome solution(s)." *For (c),* update the requirement from 30 calendar days to 60 calendar days.

***200.329 – Monitoring and reporting program performance*.**

1) For section *200.329(b) Reporting program performance,* we recognize that unique reporting obligations may exist, however the threshold for imposing non-standard data collection should be high and restricted to those cases where OMB has either made a decision to approve the information collection or when additional reporting obligations is required by statute or regulation.

COGR RECOMMENDATION: For 200.329 (b), *Reporting program performance*, we recommend removing the phrase "as applicable" from the statement "The Federal agency must use OMB-approved common information collections, ~~*as applicable,*~~ when requesting performance information" and replace it with: "The Federal agency must use OMB-approved common information collections when requesting performance information, unless otherwise required by statute or regulation." In reference to the RPPR we also note the removal of the word "will" with "may" when speaking to the performance reporting requirement for discretionary research awards. This is concerning as the RPPR should be the default standard for discretionary research awards. We recommend addressing this by indicating more clearly that the RPPR is the default standard that must be used for discretionary research awards unless a NOFO specifies expanded reporting requirements. This allows prospective recipients to properly estimate what will be required to fulfill the requirements of the program. Additionally, we recommend

deleting the phrase: "*To the extent practicable, the federal agency or PTE should collect performance reports in coordination with financial reports*." This change is needed because the performance reporting cycle is logically different from the financial report cycle; more specifically, performance reports are often submitted in advance of the current budget period end date so that the Federal agency can verify that performance has been sufficient to authorize the next funding increment. The next funding increment needs to arrive by the time the current budget period expires. Financial reporting, however, is necessarily undertaken following the conclusion of the current budget period so that actual costs can be compared to the approved budget for that same budget period. It would therefore be impractical and inefficient to align the reporting cycles for these two different business purposes.

2) The intended purpose of the change in Section (2)(i) from "period" to "reporting period" is not clear.

COGR RECOMMENDATION: The language in this subsection should be changed from "reporting period" to "period specified by the agency" or a definition for "reporting period" should be added so it's clear what period is intended to be covered by our performance report. The wording in section (2) is now more confusing than the original language, as we don't know what "as applicable" is intended to mean, and whether it assures recipients that OMB will review any novel data collections.

200.331 – Subrecipient and contractor determinations.

1) The first paragraph of Section 200.331 states in two places that "*The recipient or subrecipient is responsible for making case-by-case determinations to determine whether the entity receiving the Federal funds is a subrecipient or contractor*" and *"The recipient or subrecipient is responsible for determining the nature of the agreement."* This is a place where precision is needed in terms of assigned roles and responsibilities. To clarify the pass-through entity is the party responsible for ascertaining the form of the agreement, we recommend that the first sentence be modified to read "*The* pass-through entity *is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor*" and to avoid confusion, we recommend deleting the second sentence. This change is consistent with section (e) that was previously included in the requirements and should be retained in some form. The clarified language will function effectively whether it is the recipient making that judgement, or the subrecipient serving in the role of pass-through entity to a second tier subrecipient. Additionally, it avoids a "clash" between the recipient and its own subrecipient as to who has the authority to determine the form of the agreement.

2) The first paragraph of 200.331 also indicates, "*The Federal agency may require the recipient or subrecipient to comply with additional guidance to inform these determinations."* It goes on to remind the reader that the Federal agency does not have a direct legal relationship with subrecipients or contractors at any tier. First, we would note that while the UG has been in effect, we are not aware of any federal agency who has found it necessary to provide additional guidance to recipients about how to classify transactions, or "additional guidance to inform these decisions." This is reinforced by the recognition that it is the pass-through entity's responsibility to apply the provisions of 200.331 successfully. Because it is not needed, we recommend deleting the sentence

"*The Federal agency may require the recipient or subrecipient to comply with additional guidance to inform these determinations."*

3) The wording in subsection (b) (4) has been changed such that an indicator of a contractor relationship is when the entity "*Provides goods or services that are ancillary to the implementation of the Federal program*" rather than "ancillary to the operation of the Federal program". It is uncertain of the intention of this change and suggests that the intended meaning be described more fully for the purpose of clarity, or the wording adjusted to include both, namely, "*Provides goods or services that are ancillary to the operation* or *implementation of the Federal program*.

200.332 – Requirements for pass-through entities.

1) Section (a) of 332 adds new language that a pass-through entity must use SAM to confirm that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds. Requiring use of SAM for this purpose adds a processing step for pass-through entities and eliminates the more efficient mechanism of allowing the subrecipient's authorized signer to self-certify in their subaward that they are not suspended, debarred, or otherwise excluded. Requiring use of SAM adds burden without benefit. While we have no objection to SAM being used as a possible verification method, it should not be prescribed as the sole option.

> **COGR RECOMMENDATION:** We recommend instead using the wording, "A passthrough entity may confirm in SAM.gov, or via other means, that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds."

3) Section (b) of 332 now requires that a pass-through entity "*amend a subaward if additional information becomes available or data elements change*." This represents a fundamental change from the previous version of the guidance, which required that such changes be incorporated only at the time the subaward was next amended. It is not beneficial to require pass-through entities to update a subaward mid-cycle to provide new information about routine data element changes that do not affect the current budget period of the subaward. Examples of such routine changes include but are not limited to updates in the PTE's F&A rate or the specific name of the awarding official, or a subsequent Award date.

> **COGR RECOMMENDATION:** The previous language requiring data elements to be updated in the next subaward amendment should be retained.

4) At the start of section (c), we note new language requiring risk assessments prior to issuing a subaward. The previous language required a risk assessment, but FAQ #77 confirmed that the risk assessment was not required to be performed before issuing the subaward, but only encouraged. This change is significant as it denies the pass-through entity the option of when it wishes to do its risk assessments. This may in some cases delay the start of science. Since pass-through entities remain responsible for undertaking risk assessments, as well as for the effective monitoring and conduct of their subawards, there is no value added by requiring that the risk assessments be done at a prescribed time.

> **COGR RECOMMENDATION:** We recommend reverting to the understanding

in FAQ #77 by removing the words "*Prior to issuing a subaward...*" in section (c).

5) Subsection (3) of this section adds new language that indicates that PTEs should consider whether the "*subrecipient has new personnel or substantially changed systems, policies, or procedures.*" This is an expansion of the previous requirement that only required such a review for new personnel or systems. It is impractical for pass-through entities to be aware of or know when a subrecipient's policies or procedures have been altered, and it is routine for updates to be frequently made to policies and procedures to refine business processes or to meet emerging requirements. In addition, it is unclear when the trigger of "substantial" change might be relevant in the context of policies or procedures. This has been less problematic for systems, which tend to be significant when they occur (e.g., a new financial system.)

> **COGR RECOMMENDATION:** We recommend deleting "*policies, or procedures*" from this section.

6) A new requirement has been added to subsection (d) of .332 that requires the pass-through entity to notify the federal agency of any specific conditions added to one of its subawards. This is an entirely new burden, as it creates new responsibilities for the Federal agencies to receive and presumably react to these notifications and opens the door to confusion as to who decides if specific terms and conditions are appropriate given the risk assessment details. Elsewhere in this section, it is clear that the responsibility for monitoring the subaward rests with the pass-through entity, and it should remain there unless the pass-through entity reaches out to the federal agency for guidance.

> **COGR RECOMMENDATION:** We recommend that the phrase "*and notify the Federal agency of the specific conditions*" be struck from this section.

7) We recommend that the word "on-site reviews" in subsection (h) be changed to mirror a similar change in bullet (2) above so that it simply reads "site reviews."

200.333 – Fixed amount subawards.

COGR appreciates the removal of the simplified acquisition threshold as a ceiling for fixed amount subawards. We anticipate that this change will benefit agencies, recipients, and subrecipients alike.

> **COGR RECOMMENDATION:** We recommend the prior approval requirement for fixed amount subawards be moved into Section 308 as item (g) (4). This would have the impact of allowing federal agencies to include fixed amount subawards in the original approved budget as shown in section (a) of Section 309, as well as waive prior approval on research awards for fixed amount subawards under the same conditions as already exist for other prior approval requirements, as shown in subsection (h).

200.334 – Record retention requirements.

This section eliminated important clarifying language that in the case of subrecipients, they are required to retain records "….for a period of three years from the date of submission of the final

expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or *passthrough entity in the case of a subrecipient*." The current revision would require the subrecipient to retain records for the same period as the pass-through entity. This is problematic as the subrecipient is not privy to when the pass-through entity submits its final documents.

> **COGR RECOMMENDATION:** Include the previous language, as reported to the… "passthrough entity in the case of a subrecipient."

200.334(c) – Record retention requirements.

> **COGR RECOMMENDATION:** Delete the extra "-through" in (c), e*xpiration of right of access.* It currently states, "The Federal agency's or pass-through-*through* entity's rights of access are not limited to the required retention period of this part but last as long as the records are retained."

200.336 – Methods for collection, transmission, and storage of information.

> **COGR RECOMMENDATION:** We suggest replacing "When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award-related information in an open file, non-licensed, and machine-readable formats." with "When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award-related information in accordance with the FAIR (Findable, Accessible, Interoperable, Reusable) principles outlined by the National Library of Medicine."

200.339 – Remedies for noncompliance.

For consistency of intent with the escalating remedies outlined in subsections (a) through (e), 200.339(a) should be specifically limited to the *project* that is out of compliance.

> **COGR RECOMMENDATION:** Modify text to read: (a) "Temporarily withhold payments for the specific project until the recipient or subrecipient takes corrective action."

200.340 – Termination.

While we appreciate the clarification in 3(e) that if a Federal agency determines to not award continuation funding, it does not constitute a termination. The primary concern remains that the recipient or subrecipient may be burdened with shuttering a program and with financial liabilities, with limited notice and no recourse with the federal agency.

> **COGR RECOMMENDATION:** We recommend eliminating the addition of 3(e). If it cannot be eliminated entirely, we suggest including language that the federal agency must notify the recipient or subrecipient no less than 6 months in advance

of the budget end date.

200.344, 200.345, 200.346 – Closeout, Post-closeout, Collections of amounts due.

There are several opportunities to reduce the administrative burden associated with the closeout process—these would be beneficial to grantees, as well as to federal agencies. Both recommendations will eliminate the need to submit revised financial reports in those cases where the cost impact to the federal government is either $0 or a non-material (less than $1,000) amount.

> **COGR RECOMMENDATION:** ***1)*** *We recommend revising the language in 200.344(b) as follows,* "When the recipient does not have a final indirect cost rate covering the period of performance, a final financial report must still be submitted to fulfill the requirements of this section. ~~The recipient must submit a revised final financial report when all applicable indirect cost rates have been finalized.~~ After the indirect cost rates have been finalized, a revised report does not need to be filed if the applicable indirect cost rates did not change. ***2) Per 200.346,*** we recommend the following addition: "Any Federal funds paid to the recipient or subrecipient in excess of the amount that the recipient or subrecipient is determined to be entitled to under the Federal award constitutes a debt to the Federal Government. Excess amounts below a materiality threshold of $1,000 per award are not subject to the rest of this part but can be resolved by incorporating the net amount across all awards into the earned interest requirements as set out in 200.305(b)(12)." (***Also note errata: Per 200.344(a),*** "~~When~~ If the recipient or subrecipient fails to complete …". ***Per 200.344(f),*** the following is an awkward/incomplete sentence: "For example, the disallowance of any costs or the deobligation of an unliquidated balance."). ***Per 200.345(a)(2),*** (unless the Federal award ~~in~~ is closed in accordance with …").

200.344 – Closeout.

Section (f) states: "The Federal agency or pass-through entity must make all necessary adjustments to the Federal share of costs after closeout reports are received. For example, the disallowance of any costs or the de-obligation of an unliquidated balance." The way this is worded, the example is an incomplete sentence.

SUBPART E – COST PRINCIPLES

200.400(g) – Policy guide (Profit).

COGR RECOMMENDATION: This section, in conjunction with FAQ #96, should be clarified: "Any residual unexpended balance that remains at the end of a completed fixed amount award is not considered profit, and, therefore, can be retained by the institution."

200.401(a) – Application, General.

COGR RECOMMENDATION: Use of the terms "fixed-price contracts and subcontracts" should be updated to "fixed price awards and subawards." The same update should be made consistently throughout the document.

200.401(b) – Application, Federal Contract.

COGR RECOMMENDATION: 1) Revise for better clarity: "For example, the allowability of costs in CAS-covered costs …" should be revised to "By example, the allowability of costs in CAS-covered contracts is determined …". 2) Consider this revision: "In complying with those requirements, the application of cost accounting practices for estimating, accumulating, and reporting costs ~~for Federal awards and~~ CAS-covered contracts must be consistent, when applicable, with the requirements in 48 CFR." And 3) "The recipient should ~~must~~ retain only one set of accounting records …"—while one set is the norm, in exceptional situations, more than one set of accounting records may be appropriate.

200.403(h) – Factors affecting allowability of costs.

We appreciate the addition of paragraph (h), which confirms the allowability of closeout costs incurred after the period of performance up to the due date of the final report(s). Further precision will enhance accuracy and clarify allowability to be consistent with policies at other federal funding agencies (in particular, NIH[6]).

> **COGR RECOMMENDATION:** Update text to read "Administrative closeout, data management and sharing, and other allowable compliance costs may be incurred until the due date of the final report(s). In the case where costs are prospective and will occur in future years, these costs can be included as an allowable cost.

200.406(a) – Applicable credits.

Update to clarify treatment when a credit cannot be identified to the federal award. This change will both reduce administrative burden when an institution develops its indirect cost rate proposal and will not harm the federal government.

> **COGR RECOMMENDATION:** Append text to section 406(a) "When an applicable credit cannot be identified to a Federal award, the credit may ~~should~~ be treated as an offset to the appropriate indirect cost function."

200.411(d) – Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

This section has a historical context relating to the early 1990s. However, a current issue that is creating a concerning policy position, which is resulting in research institutions having to

[6] See: https://grants.nih.gov/grants/guide/notice-files/NOT-OD-21-015.html

inappropriately adjust their cost rate proposals to establish new cost rates, an update to section 200.411 is required.[7] In recognition of this situation (and similar situations that could develop in the future), a provision for an alternative solution is necessary.

> **COGR RECOMMENDATION:** 1) Rename section 200.411 to "Process for adjusting indirect cost rates containing potentially unallowable costs." 2) Append a new section, 200.411(d): If a finding suggests that there may be unallowable costs included in indirect (F&A) cost rates, the finding must be presented to all affected stakeholders in order to: 1) determine the legitimacy of the finding by working in conjunction with OMB and other oversight entities, 2) if legitimate, establish the least burdensome process to ensure that the federal government recoups those unallowable costs charged to federal awards.

200.413(b) – Direct Costs, Application to Federal Awards.

The change in wording from "goods and services" to "procurement transaction" is likely to create confusion as "procurement transaction" may be interpreted to refer to the form of the procurement (e.g., purchase order, procurement card) rather than the purpose of the transaction.

> **COGR RECOMMENDATION:** Restore original text for better accuracy and clarity: "The association of costs with a Federal award (rather than the nature of the goods and services ~~procurement transaction~~) determines …" Further, we suggest the following for more precision: "Costs charged directly to a Federal Award are typically incurred specifically for that Federal award (including, for example, supplies needed to achieve the award's objectives and the proportion of staff (employee) salary and fringe benefits expended in relation to that specific award)."

200.413(c) – Direct Costs (Unlike circumstances).

COGR RECOMMENDATION: Update for better precision and accuracy: "Direct charging of these costs may be appropriate, where unlike circumstances exist, only if they meet all of the following conditions."

200.414 – Indirect Costs (F&A).

COGR RECOMMENDATION: Restore the parenthetical "(F&A)" to the header and into the body of section 200.414(a) (and other appropriate sections). This is a necessary term for IHEs and should be consistently used throughout 2 CFR 200 Chapters 1 and 2.

200.414(a) – Indirect Costs, Facilities and administration classification.

While OMB has indicated Appendices to 2 CFR 200 will be updated at a future date, naming types of costs and activities that are closely related to "Facilities" is appropriate. There are many new

[7] In response to a June 2022 report by the HHS OIG, *Cost Allocation Services Needs to Update its Indirect Cost Rate Setting Guidance*, research institutions are being required—inappropriately—to adjust administrative salaries in their indirect cost pools. This requirement from Cost Allocation Services and the HHS OIG is in conflict with longstanding HHS policy, HHS legal counsel, and statutory intent.

and exceptional types of costs and activities, not listed in Appendix III, which embody a significant facilities function at IHEs. These activities should be explicitly named in this section.

> **COGR RECOMMENDATION:** Append to section 200.414(a): "For nonprofit organizations, library expenses are included in the "Administration" category; for IHEs, library expenses are included in the "Facilities" category. In addition, for IHEs, the cost of compliance associated with new federal regulations such as those pertaining to human participant and animal protections, research security and export controls, data sharing and management, research computing and telecommunications charges are included in the "Facilities" category.

200.414(b) – Indirect Costs, Diversity of nonprofit organizations.

COGR RECOMMENDATION: Restore original text for better accuracy and clarity: "Identification with a Federal rather than the nature of the goods and services ~~procurement transaction~~) involved …"

200.414(c)(2) – Indirect Costs (Timely Establishment of F&A Cost Rates).

The research community appreciates incorporating stronger language regarding the acceptance of negotiated F&A cost rates by federal agencies. Equally important is for institutions—after their current cost rates have expired—to receive new, negotiated F&A cost rates (and fringe benefit rates) in a timely manner. In a letter dated July 21, 2023[8], COGR shared data with OMB that showed in some cases the wait time has exceeded one year, even approaching two years in some situations. The long waiting period to establish new F&A cost rates is problematic and needs to be resolved immediately. We proposed solutions in a July 23rd letter to OMB (see Appendix 3). We propose these solutions to be included in a new section 200.414(i) and at this section be cross-referenced to the proposed revision to section 200.414(c)(2).

> **COGR RECOMMENDATION:** First, revise the proposed section 200.414(c)(2) as follows: "The Federal agency must notify the OMB Office of Federal Financial Management of any ~~approved~~ proposed deviations. The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate, including disputes related to timely negotiation and/or issuance of negotiated indirect cost (and fringe benefit) rates (see section 200.414(i)). Second, implement COGR's proposed solution from the July 23rd letter to OMB (and shown in Appendix 3).

200.414(d) – Indirect Costs (Acceptance of Rates).

We appreciate the update to this section. However, there are exceptional situations (e.g., large, multi-site clinical trials) where a flat rate has traditionally been used for all collaborating institutions. Using the full rates may limit the overall dollars available. Further, the coordinating site may give preference to institutions with lower F&A rates, thus skewing the diversity of the participant population.

[8] See COGR's July 21, 2023 Letter "2 CFR Chapter 2, Part 200 – Data Driven Evidence Supporting Important Revisions": https://www.cogr.edu/sites/default/files/COGR_OMB_DataRequest_July_21_2023%20final.pdf

> **COGR RECOMMENDATION:** Update section 200.414(d): "Pass-through entities are subject to the requirements in § 200.332(b) and must accept all active federally negotiated indirect costs rates for subrecipients. In exceptional situations (e.g., large, multi-site clinical trials) where flat rates are typically used, this requirement is waived.

200.414(f) – De minimis F&A cost rate.

We appreciate the increase of the de minimis rate from 10 percent to 15 percent. However, the 15 percent still is below what would represent a fair, default rate. Appendix III, section C.9.a, references a default allowance of "24% of modified total direct costs" to recover administrative costs—and as another benchmark, 26% represents the administrative cap application to IHEs.

> **COGR RECOMMENDATION:** Update section 200.414(f): "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~~ 24 percent of modified total direct costs (MTDC)." (***Note:*** the proposed revision states "up to 15 percent"—to be consistent with the de minimis concept in the current version of 2 CFR 200, "up to" should be deleted).

200.414(f) – De minimis F&A cost rate.

Also of concern is the option that allows a recipient or subrecipient to submit an indirect cost proposal in lieu of using the de minimis rate. This should be an exception and rarely used—otherwise, the administrative burden for a prime recipient to review indirect proposals submitted by their subrecipients will be an unwieldy, time consuming task which will unreasonably delay project progress.

> **COGR RECOMMENDATION:** Update section 200.414(f): "Recipients and subrecipients are not required to use the de minimis rate and may submit an indirect cost proposal in accordance with the appropriate Appendix referenced in paragraph (e). However, pass-through entities may, but are not required to, accept these indirect cost rate proposals from subrecipients."

200.415(d) – Required financial certifications (Lobbying).

> **COGR RECOMMENDATION:** Edit (annual is not applicable in all cases): "The recipient must certify that the requirements and standards for lobbying (see § 200.450) have been met when submitting its ~~annual~~ indirect cost rate proposal." (Also note lettering: this section should be (d), not (e).)

200.419 – Cost Accounting Standards (DS-2).

The research community applauds OMB for accepting COGR's recommendation to eliminate the DS-2 requirement. As we have argued for years, the DS-2 is not used by the audit community as a regular tool for oversight. This was confirmed in the results of a COGR survey, which was shared

with OMB in the letter dated July 23, 2023 (see Appendix 4). While some audit entities may appreciate that the DS-2 compiles information in a single document, this is not a compelling argument to maintain this administratively burdensome compliance requirement. When information historically maintained on the DS-2 is requested, institutions have this information readily available and can provide the information to the audit entity upon request.

> **COGR RECOMMENDATION:** Implement 200.419 as written in OMB's proposed revisions. However, as there may be situations when receipt of a CAS-covered contract may trigger a DS-2 requirement, OMB should work with FAR representatives to modify/coordinate DS-2 expectations (as described in 48 CFR, Chapter 99, Subchapter B, 9903.202-1(f)). Further, in recognition that some institutions may continue to submit a DS-2, the following text would be helpful: "When appropriate, IHEs subject to 9903.202-1(f) should continue to submit a DS-2 to their cognizant agency for indirect cost."

200.421 – Advertising and public relations.

COGR RECOMMENDATION: Add text to (b)(1) to clarify scope of allowability: "The recruitment of personnel or project participants required by the recipient or subrecipient for the performance of a Federal award."

200.422 – Advisory councils.

COGR RECOMMENDATION: Clarify the intent of this section/definition. Advisory councils can be internal or external to a recipient, and the definition should confirm whether only one or both are within scope.

200.425 – Audits conducted in accordance with the Single Audit Act.

COGR RECOMMENDATION: Update to recognize all applicable costs are allowable: consider removing "~~A reasonably proportionate share of the~~ and replacing with "The costs of audits required by and performed … are allowable." (Note, in (c)(1), we appreciate OMB clarifying that applicable international attestations are acceptable for agreed-upon-procedure engagements.)

200.430 – Compensation - personal services.

COGR is appreciative of the important work to minimize administrative burden that has been achieved by OMB over the past decade in the area of documenting compensation charges to federal awards. In this most recent version of proposed revisions, we have identified items to be further addressed.

> **COGR RECOMMENDATION:**
>
> (g)(ix)(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation

described in this section, must also be supported by records indicating the total number of hours worked each day. For the purposes of documenting payroll, this requirement should be deleted.

200.430(g)(1)(iii) "Reasonably reflect the total activity for which the employee is compensated by the recipient or subrecipient, not exceeding 100 percent of compensated activities (for IHEs, this is the IBS)." IBS isn't defined until further down in this section and should be defined the first time it's used.

Paragraph (g)(1)(vii)(C) states "The recipient's or subrecipient's system of internal controls includes processes to perform periodic after-the-fact reviews of interim charges made to a Federal award based on budget estimates. All necessary adjustments must be made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated based on actual work performed." Please consider returning this paragraph to the existing text as follows "The recipient's or subrecipient's system of internal controls includes processes to ~~perform periodic~~ review after-the-fact ~~reviews of~~ interim charges made to a Federal award based on budget estimates. All necessary adjustments must be made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated ~~based on actual work performed.~~" This change would continue the requirement for recipients and subrecipients to maintain adequate internal controls for compensation without creating unnecessary burden related to documentation of actual reviews performed.

In paragraph (g)(1)(ix) the phrase "not always feasible, nor is it expected" was removed, but the replacement text of "not required" is not as effective to serve as supporting justification for recipient costing decisions during an audit review. Please consider adjusting this paragraph as follows - "It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. Therefore, a precise assessment of factors contributing to costs is not ~~required~~ feasible or expected, therefore, it is not required when IHEs record salaries and wages are charged to Federal awards."

200.431(b)(1) – Compensation - fringe benefits (Unused leave).

In the proposed revisions to this section, OMB, has added new text ***(bold, italicized)*** stating: "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. These costs may be included in fringe benefit rates with the approval of the cognizant agency for indirect.***" A similar proposal was made by OMB prior to the original release of 2 CFR Part 200 almost one decade ago. COGR met with leadership from OMB and presented data that emphasized the following: 1) the methodology to charge unused leave based on how an employee currently is being paid is used by many institutions; 2) in some cases, the unused leave will be charged entirely to institutional funds, in some cases to federal funds, and in some cases it will be prorated across multiple funding sources; 3) over time, this methodology is equitable and results in a fair proration between institutional, federal, and other funding sources; and 4) in those cases where charging the unused leave results in a serious inequity to the federal agency, institutions will work with the agency to determine a fair proration (or in some cases, the institution will absorb

the entire amount). Some institutions have established fringe benefit rates, which include unused leave. However, for those that have not done so, the mandate to allocate unused leave as a general administrative cost is inappropriate and inequitable—i.e., the 26 percent administrative cap will make these costs unrecoverable. More important, the methodology to charge unused leave based on how an employee currently is being paid: 1) is accepted under GAPP, 2) is accepted by external auditors, and 3) is a fair and reasonable methodology that institutions and the federal government bear their "fair share" of the cost of doing research.

> **COGR RECOMMENDATION:** Restore the original text: "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.~~ These costs may be treated according to acceptable institutional accounting practices or may be included in fringe benefit rates established with ~~the approval of~~ the cognizant agency for indirect cost.

200.431(g) and (h) – Compensation - fringe benefits (Pension plans and Post-retirement health plans).

COGR RECOMMENDATION: OMB has made significant changes to these two sections. For example, new terms such as "current pension costs" and "current health benefit costs" have been introduced without corresponding definitions included in section 200.1. Other commenters who specialize in managing these types of benefit plans—including the complex actuarial considerations that are necessary to effectively manage these types of plans—have provided comments to OMB. We encourage OMB to leverage the recently established Council on Federal Financial Assistance (COFFA) as a forum to seek additional comments from experts at the State and local government level, IHEs, and other stakeholder entities before finalizing these sections of 2 CFR Part 200. By taking this approach, OMB will ensure there are no unintended consequences that will inappropriately penalize the stakeholder community.

200.434(g)(2) – Contributions and donations.

200.434(g)(1) states: "Donated personal property and use of space may be furnished to a recipient or subrecipient. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost." Consistent with the items above, please combine (g)(1) and (g)(2) or modify the language in (g)(2).

> **COGR RECOMMENDATION:** Modify text to read: "The value of the donations of personal property and use of space may be used to meet cost sharing

200.438(b) – Entertainment and Prizes.

COGR RECOMMENDATION: Rather than referencing "OMB guidance in M–10–11, Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor," OMB should codify the relevant information from that memo. Further "its successor" is ambiguous and further supports the need to codify the relevant information from that memo.

200.445(b) – Goods or services for personal use.

COGR RECOMMENDATION: Modify to address confusing text: "Housing costs (for example, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses are not allowable as an indirect cost, whether they are reported as taxable income to employees. For these costs to be allowable as a direct cost, they must be approved in advance by a federal agency."

200.447 – Insurance and Indemnification.

COGR RECOMMENDATION: Modify for better accuracy: Per (a) "Costs of insurance or a program of self-insurance required or approved and maintained …". Per (b) "Costs of other insurance or a program of self-insurance in connection with the general conduct …". Per (b)(6) "Medical liability insurance is an allowable cost of a Federal research program … Medical liability insurance for other institutional purposes, such as occupational medicine or student/employee health centers, may be treated as an indirect cost." Per (d) Contributions to a reserve for a self-insurance program, including workers' compensation, unemployment compensation, general liability, and severance pay, are allowable subject to the following requirements:" Per the title for this section, rename as "Insurance, Reserves, and Indemnification."

200.456 – Participant support costs.

We appreciate the elimination of prior approval for these costs. Recipients and subrecipients are required to develop written policies and procedures and including examples of typical participant support costs will be helpful.

> **COGR RECOMMENDATION:** 1) Append the following text: "Examples of participant include (but are not limited to) students, scholars, scientists from other institutions, representatives of private sector companies, teachers, and state or local government agency personnel". 2) Better alignment of the definition in 200.1 Definitions with the text in this section will be helpful.

200.458 – Pre-award Costs.

The proposed change seems to have created an unintended policy change to how pre-award costs are treated. The revised text adds no value, but does introduce a potential concern regarding timing of actions and communications between the Federal agency and the recipient. Recipients incurring pre-award costs assume the associated financial risk, knowing an award may not be issued. Requiring prior written confirmation from a Federal agency related to an award that has not yet been issued—nor has had a Federal agency employee assigned as an administrative representative to manage the award—*before* any costs can be incurred will create impossible barriers to otherwise allowable pre-award costs.

> **COGR RECOMMENDATION:** Restore the original text, otherwise OMB will create an unintended policy change to the treatment of pre-award costs.

200.464(b)(5) – Relocation costs of employees.

COGR RECOMMENDATION: Correct error: "Other necessary and reasonable expenses normally incident to relocation, such as canceling an unexpired lease, …

200.465 – Rental costs of real property and equipment.

COGR RECOMMENDATION: We recommend adding the following text to paragraph (d) as follows – "Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under GAAP are allowable […]" As GASB authoritative standards are also GAAP, this simplified text improves clarity.

We also recommend adding the highlighted text to paragraph (e) as follows – "Rental or lease payments are allowable under lease contracts where the recipient or subrecipient is required to recognize an intangible right-to-use lease asset under GASB standards or right-of-use operating lease workspace asset under GAAP for purposes of financial reporting in accordance with GAAP." As GASB authoritative standards are also GAAP, this simplified text improves clarity.

200.466 – Scholarships and student aid costs.

COGR RECOMMENDATION: Clarify by dividing paragraph (a) and creating a new paragraph (b) as follows: a) Costs of scholarships, fellowships, and student aid programs at IHEs are allowable only when the purpose of the Federal award is to provide training to participants, and the Federal agency approves the cost. b) Tuition remission and other forms of compensation paid as, or instead of, wages to students performing necessary work are allowable provided that … (***note:*** the existing paragraph (b) would become (c)). For additional clarity, modify the sections header to: Scholarships, student aid costs, and tuition remission.

200.468 – Specialized service facilities.

COGR RECOMMENDATION: Consider adding the highlighted text to paragraph (a) – "The costs of services, including the acquisition cost of necessary equipment, provided by highly complex or specialized facilities…" to clarify the allowability of all costs required to create and operate specialized service facilities.

Consider adding the highlighted text to paragraph (a) – "These costs include charges for facilities such as computing facilities, specialized facilities for data management services, wind tunnels, and reactors." to maintain consistency with the addition of paragraph (c) of 200.455 that confirms the allowability of data management costs.

Additionally, this section still doesn't address service facilities other than specialized service facilities. It would be helpful if other service centers were addressed. Some items for consideration would include the definition of a service center, core, departmental recharge center; determining user rates (for example, academic users, internal users, and external users); appropriate methods to determine measurable units; how to handle instances where services cannot be calculated on an

actual basis; volume discounts; no show appointments; time-of-day ("prime time") rate structures; federal support (for example, P30 grants); and application of indirect rates.

200.470 – Taxes (including Value Added Tax).

Update (b)(1) – "Taxes that the recipient or subrecipient is required to pay and which are paid or accrued in accordance with GAAP, are generally allowable. These costs include payments made by tax exempt institutions to local governments to offset loss of taxes and that are commensurate with the local government services received."

200.472 – Termination and standard closeout costs.

Update paragraph (a) – "Termination of a Federal award prior to its stated expiration date generally gives rise to the incurrence of costs…"

Update (b) – "Administrative costs associated with the normal closeout activities of a Federal award are allowable. The recipient or subrecipient may charge the Federal award during the closeout for the necessary administrative or compliance costs of that Federal award (for example, salaries of personnel preparing final reports, publication and printing costs, data management and sharing, and the costs associated with the disposition of equipment and property)."

200.475(c) – Travel.

COGR RECOMMENDATION: Provide a subtitle for this subsection: c) Dependents.

SUBPART F – AUDIT REQUIREMENTS

200.501(a),(b) – Audit Requirements (Single audit threshold).

COGR is *not* requesting a change—rather, we recognize this a net positive for the grantee community. However, we do note that raising the threshold to $1,000,000 will increase administrative burden for passthrough grantees associated with monitoring responsibilities for small entities as subrecipients.

> **COGR RECOMMENDATION:** We encourage OMB to continue pursuing policies that reduce administrative burden on recipients and subrecipients—this is good policy, and even in the exceptional cases where one type of grantee may be disadvantaged, efforts that result in the net reduction in administrative burden for the grantee community, generally, will be beneficial and should be pursued.

200.501(i) – Audit Requirements (For-profit subrecipient).

Some for-profit entities will not allow audits by the PTE, only the federal government. This being the case, we propose that a new type of audit—to be called an "Assist Audit" and led by a federal

entity—be established.

> **COGR RECOMMENDATION:** Modify this section to read: "Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring throughout the performance of the subaward, and post-award audits. Such audits may be performed by, among other options, the pass-through entity, an independent auditor, or as an Assist Audit." Further, define the new term "Assist Audit" in 200.201 Definitions as "A program specific audit of a for-profit entity conducted by the federal awarding agency audit division at the request of the PTE."

200.502(a)(5) – Basis for determining Federal Awards expended (Program income).

COGR RECOMMENDATION: To avoid program income being included on the SEFA pursuant to §§510 as "expended" twice, we recommend the following clarification: "(5) The receipt or use of program income as appropriate for the program income accounting basis for the specific award."

200.503(d) – Relation to other audit requirements (Federal agency to pay for additional audits).

COGR RECOMMENDATION: To clarify that the agency does not pay the cost to respond to an additional audit, we suggest that this be revised to: "A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of performing such additional audits and should consider the auditee's cost in responding when it considers the necessity of such an audit." In addition, please clarify if the requirement to fully fund the costs of performing additional audits includes additional audits required to satisfy the terms of the FAR based contract and FAR requirements, including, but not limited to, the CAS, Truth in Negotiations Act (TINA), contractor business systems, incurred costs, and indirect costs/overhead rates.

200.503(e) – Relation to other audit requirements (Request for a program to be audited as a major program).

COGR RECOMMENDATION: To clarify that the agency does not pay the cost to respond to an additional major program, we suggest that this be revised to: "… and the Federal agency agrees to pay the full incremental costs of performing such additional major program and should consider the auditee's cost in responding when it considers the necessity of such an audit."

200.509(a) – Auditor selection (Audit procurement).

COGR RECOMMENDATION: Because the government does not directly pay for the single audit, we suggest the following language: "Auditor procurement. When procuring audit services, the auditee must follow either its organizational procurement policy or the procurement standards in §§ 200.317 through 200.327 of subpart D or the FAR (48 CFR part 42), as applicable."

200.510(b)(2) – Financial statements (Multiple recipients).

COGR RECOMMENDATION: Please use an extensional or stipulative definition in this section versus the currently provided definition by list in order to ensure consistent interpretation by all users of the regulations, such as awarding agencies, recipients, and auditors. This definition should also confirm that the SEFA is not required to provide details at a level lower than a UEI level, such as departments or colleges within a IHE campus. Please confirm if the SEFA should disclose the total awards expended for each recipient, or just disclose the recipients associated with the award. Assuming the former, we suggest the following the language: "(2) For audits covering multiple recipients with distinct UEIs (see §§25.100), for each federal awards disclosed in (1), disclose the total by recipient of the Federal award.

200.512(a)(2) – Report submission.

COGR RECOMMENDATION: To reduce duplicate burden, we request the removal of the sentence: "The auditee must make copies available for public inspection unless restricted by Federal statute or regulation." 200.512(g) already requires the FAC to make audits publicly available, providing the desired transparency in an efficient and not redundant method.

200.513(a),(b),(c) – Responsibilities (Federal Agencies).

COGR RECOMMENDATION: This section provides that Federal agencies will work with OMB on various tasks related to the Compliance Supplement. However, it does not have a section that assigns to OMB the responsibility of timely issuing the Compliance Supplement, and the appropriate remedies when there are delays.

200.513(a),(b),(c) – Responsibilities (Federal Agencies).

COGR RECOMMENDATION: All of these sections assign the responsibility for "Provide technical advice and assistance to auditees and auditors" to the various federal roles (Cognizant agency for audit responsibilities, Oversight agency for audit responsibilities, and Awarding Federal agency responsibilities). Since we continue to experience single audit implementation issues, it would be helpful to further clarify these roles. ***First,*** it would be helpful to clarify what type of technical advice and assistance we should expect to receive from each of the three identified federal roles (e.g., program specific advice from the Awarding Federal agency and general Single Audit approach advice from the Cognizant or Oversight agency for audit responsibilities or Oversight agency for audit responsibilities, as applicable for the auditee). ***In addition,*** the guidance is subject to interpretation that creates disagreements between the auditor and auditee. It is in the interest of all stakeholders to strike the proper balance between audit risk and audit burden, and when there are disagreements in interpretation, text that states: "OMB, as the Compliance Supplement author, should be designated as the point of contact to resolve any differences in interpretation" would be helpful.

200.513(a)(4)(viii) and 200.514 (c)(6)(vi) – Scope of audit.

COGR RECOMMENDATION: Because cross-cutting and systemic findings might not affect all awards we suggest changing "affects all Federal awards" to "may affect a large proportion of all Federal awards." Suggest making "cross-cutting" a defined term to ensure it is consistent in all

sections.

200.513(c)(4) – Scope of Audit.

COGR RECOMMENDATION: "Federal agencies are encouraged to engage with external audit stakeholders..." Given this is applicable for an agency's annual update to the compliance supplement, we would recommend you change "encouraged" to "required".

200.521(c) – Management Decisions.

COGR RECOMMENDATION: To associate the requirement for management decisions correlate with the responsibility for resolution, we request the addition of "except where the findings are of a cross-cutting or systemic nature such that they will be resolved by the cognizant agency." The reference in this section should be to 200.332(e) not (d).

III. Proposed COGR Revisions to Acronyms & Definitions (2 CFR Part 200.0-200.1)

This section includes all proposed revisions (and additions) to the definitions for 2 CFR Part 200.0 & 200.1. Proposed revisions (and additions) to definitions in 2 CFR Parts 1, 25, 170, 175, 180, 182, 183 are included in Section IV.

NOTE: Underlined red text represents COGR proposals for new/modified text.

200.0 Acronyms.

CPARS - Contractor Performance Assessment Reporting System. Request this acronym be added as FAPIIS was removed from this section (and replaced in multiple sections by CPARS).

200.1 Definitions.

Advisory council is only defined in 200.422; we request that the definition be included in 200.1

Bad debt is only defined in 200.426; we request that the definition be included in 200.1, simplifying 200.426 to one sentence.

Conditional Title is only defined in 200.313 ("means a clear title is withheld by the Federal agency until conditions and requirements specified in the terms and conditions of a Federal award have been fulfilled."). We request that the definition be included in 200.1.

Conference is only defined in 200.432; we request that the definition be included in 200.1, allowing for consistent understanding across the multiple sections where the term is used.

Contingency provisions/costs are only defined in 200.433; we request that the definition be included in 200.1 and revised as shown in the underline red text – "Contingency costs for major project scope changes, unforeseen risks, or extraordinary events ~~are not allowable~~ may be allowable with Federal agency's approval."

Conviction is defined in 200.435(a)(1), but the definition in that section is inconsistent with the definitions of conviction in 180.920 nor 182.615; we request the definitions be harmonized and included in 200.1.

Cost of Idle Facilities is only defined in 200.446(a)(4)); we request that the definition be included.

Data Management and Sharing Costs are not defined but is described in 200.455– "Costs required to gather, store, track, manage, analyze, disaggregate, secure, share, publish, or otherwise use and maintain data to perform a Federal award, such as data systems, personnel, data dashboards, cyber security, and related items." Considering the growing field as direct costs we request that a definition is included in 200.1 consider adding a definition such as the following to 200.1 for this growing field of direct costs.

Depreciation is only defined in 200.436(a); we request that the definition be included in 200.1,

allowing for consistent understanding across the multiple sections where the term is used.

Encumbrance is defined in 200.311 and 200.313, and 200.315 ("a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted"). We request that the definition be included in 200.1.

Fraud is only defined in 200.435(a)(3); we request that the definition be included in 200.1, allowing for consistent understanding across the multiple sections where the term is used.

Facilities is only defined in 200.446(a)(1); we request that the definition be included in 200.1, allowing for consistent understanding across the multiple sections where the term is used.

Indirect (Facilities & Administrative (F&A)) cost and Indirect (Facilities & Administrative (F&A)) cost rate proposal. Add sentence at the end stating: "Indirect and "F&A" sometimes are used interchangeably, with IHEs primarily using the term "F&A."

Idle Facilities is only defined in 200.446(a)(2); we request that the definition be included in 200.1.

Idle Capacity is only defined in 200.446(a)(3); we request that the definition be included in 200.1.

Initial Equity Contribution is defined in 200.449(C)(7); we request that the definition be included in 200.1.

Institutional Base Salary (IBS) is included as an acronym in 200.0 but is not defined in 200.1. It is first referenced in 200.430(g)(1)(iii) but is not defined until 200.430(i)(2) in the subsection specific to Institutions of Higher Education. We request that the definition be included in 200.1, and be expanded as indicated in the underlined red text – "the annual compensation paid by an IHE or nonprofit degree-granting research institution for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE or nonprofit degree-granting research institution."

Improper Influence is defined in 200.450(b)); we request that the definition be included in 200.1.

Key Personnel – 200.1 includes a new definition for Key Personnel. We strongly recommend that OMB align this definition with the NSPM33 definition ("*Covered individual or Senior/key personnel – an individual who (a) contributes in a substantive, meaningful way to the scientific development or execution of a research and development project proposed to be carried out with a research and development award from a Federal research agency; and (b) is designated as a covered individual by the Federal research agency concerned. Consistent with NSPM-33, this means principal investigators (PIs) and other senior/key personnel seeking or receiving Federal research and development funding (i.e., extramural funding) and researchers at Federal agency laboratories and facilities (i.e., intramural researchers, whether or not federally employed), including Government-owned, contractor-operated laboratories and facilities*." Also note, a cross-reference for "Covered individual" also would be appropriate.

Less-Than-Arm's-Length Lease defined in 200.465(c); we request that the definition be included in 200.1.

Participant has been created and added; we request the definition be adjusted as shown in the red underline text – "Participant generally means an individual who is not a recipient or subrecipient staff member, project personnel or consultant, or an individual who is developing, committing effort on, or leading the implementation of the Federal award; but rather attending, benefitting from, or is otherwise playing a role in the overall program activities. Examples include, community members participating in a community outreach program, members of the public whose perspectives or input are sought as part of a program, exchange students, or conference attendees."

Personally Identifiable Information (PPI) and Protected Personally Identifiable Information (PPII).

It is helpful that definitions for PPI and PPII have been included in section 200.1. However, the lack of attention to how PII and PPII are implemented in federal systems is concerning. While user-verification is a necessary standard to be embedded into these systems, it must be balanced with a system requirement where the user must enter their PII or PPII. To-date, this balance has not been established (e.g., access to Treasury's Automated System Payment Application (ASAP) requires PII and/or PPII to be entered for system access). This is an unregulated and concerning trend with no controls or oversight provisions available to recipients and subrecipients.

> **COGR RECOMMENDATION:** Clearly state throughout 2 CFR Chapters 1 and 2 that federal requirements for an end-user to enter PPI or PPII must include a process to: 1) provide agency outreach to recipients and subrecipients of the potential need for a federal system user to enter their PPI or PPII, 2) seek approval from OMB and agency provide justification for the need to require PPI or PPII, 3) if justified, establish an implementation plan that appropriately balances the need for user verification with the need for PII or PPII to be the basis for verification, and 4) if concerns remain for the end user, develop alternative solutions.

Post-Retirement Health Plan (PHRP) is only defined in 200.431(h); we request that the definition be included in 200.1, removing the need to rely on 200.431(g) as part of the definition.

Temporary Dependent Care Costs is defined in 200.475(c)(1) states); we request that the definition be included in 200.1.

Total Cost of a Federal Award is only defined in 200.402; we request that the definition be included in 200.1.

Voluntary Uncommitted Cost Sharing (VUCS) This definition means "IHE resources are costs that are available, necessary, or contributed toward a project that are not specifically pledged as a commitment of cost share by an IHE in the proposal's budget or budget justification." As noted in our comments for Section 306(k), this definition should apply to all recipients, and therefore request the removal of the designation "IHE" from the start of this definition.

IV. Proposed COGR Revisions to 2 CFR Parts 1, 25, 170, 175, 180, 182, 183 (ordered by section number)

This section includes all proposed revisions to 2 CFR Parts 1, 25, 175, 170, 175, 180, 182, 183. High-priority items from Sections I. are highlighted.

PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A

1.205 Applicability to Federal Financial Assistance.

Section 1.205(b) seems to suggest that the procurement contracts issued by a recipient using Federal financial assistance must follow the cost principles in subpart E of part 200, which is not consistent with the applicability of the cost principles as established in Section 200.101(b)(5). Recipients of Federal financial assistance do not flow down the cost principles to their vendors when issuing procurement contracts. In addition, this section fails to mention Cooperative Agreements as being subject to the cost principles.

> **COGR RECOMMENDATION:** COGR recommends that OMB modify Section 1.205(b) to state that "Cost principles in subpart E of part 200 of this subtitle apply to grants, cooperative agreements; and certain procurement contracts issued under ~~a Federal award, as well as to Federal financial assistance.~~ the Federal Acquisition Regulations."

1.220 Federal agency implementation of this subtitle.

This section would benefit from a declarative statement about when recipients of Federal financial assistance would see the effect of Federal agencies' implementation of this Part, particularly in instances where Part 200 is not incorporated in a Federal agency's terms and conditions.

> **COGR RECOMMENDATION:** COGR recommends that OMB clarify in Section 1.220 that Part 200 applies to Federal financial assistance unless explicitly specified otherwise.

PART 25—UNIQUE ENTITY IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

25.105 Applicability, 25.110 Exceptions to this part, and 25.300 Requirement for recipients to ensure subrecipients have a unique entity identifier.

Federal agencies may exempt recipients from the requirement to obtain a UEI when any of the three conditions in Sec. 25.110(a)(2)(i-iii) apply, but there is no similar discretion for subrecipients. That is to say. *all* subrecipients must obtain a UEI even if, for example, a Federal agency were to determine that requiring a UEI is not "in the national security or foreign policy interests of the United States".

> **COGR RECOMMENDATION:** We recommend that OMB grant Federal agencies the authority to exempt subrecipients from the requirement to obtain a UEI.

***25.110 Exceptions to this part*.**

Part as written applies to both recipients and awards.

> **COGR RECOMMENDATION:** Change "25.110(a)(2)(ii)(A)*(5)"* to "25.110(a)(2)(ii)(A)*(4)."*

25.200(b)(2) – Requirements for notice of funding opportunities, regulations, and application instructions and Appendix A to Part 25 – Award Term - I(a)(1) Requirement for System for Award Management.

There is an opportunity to reduce administrative burden by decreasing how frequently applicants who meet the criteria for low-risk auditees as defined in Section 200.520 must review and update their SAM registration. The annual renewal process can often be overly burdensome for both non-federal entities and the federal government, sometimes resulting in award delays for administrative annual verifications. As this process sometimes takes months to clear, the annual requirement increasingly becomes a renewal done every 9-11 months.

> **COGR RECOMMENDATION:** Require that low-risk auditees (as defined in section 200.520) update their SAM registrations no more frequently than once every three (3) years, instead of annually, unless there is a material change that causes the auditee's SAM registration to no longer be current, accurate, or complete.

25.200(c) Requirements for Notice of Funding Opportunities, Regulations, and Application Instructions. The first sentence of Sec. 25.200(c)(1) is a sentence fragment, and the intended meaning is unclear. The second sentence, is clear, however.

> **COGR RECOMMENDATION:** We recommend that OMB delete the first sentence of Sec. 25.200(c) and strike "For example" from the second sentence.

25.300 Requirement for Recipients To Ensure Subrecipients Have a Unique Entity Identifier.

The requirement that recipients must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient obtains and provides a UEI to the recipient is unnecessary given the requirements of Sec. 25.300(a) and Appendix A, Sec. I(b)(1)(ii)). The requirement has no impact on whether a subrecipient will have obtained a UEI and provided it to the recipient prior to issuing a subaward, which is the outcome of interest. To that extent, Sec. 25.300(b) and Appendix A, Sec. I(b)(1)(i) also impose unnecessary administrative burden on recipients, who must record and monitor compliance with a requirement that adds no value. The burden is also unnecessarily increased by requiring recipients to notify *potential* subrecipients when the number of *actual* subrecipients from whom recipients must ultimately obtain a UEI is far smaller.

> **COGR RECOMMENDATION:** We recommend that OMB delete *Sec. 25.300(b)* and Appendix A, Sec. I(b)(1)(i).

25.400 Definitions. For the definition of *Federal financial assistance* (*x), "any other financial assistance transaction that authorizes the entity's expenditure of Federal funds,"* seems to imply that Other Transaction Agreements are a form of Federal financial assistance.

> **COGR RECOMMENDATION:** COGR recommends that OMB explicitly state whether Section 25.400 applies to Other Transaction Agreements and if this is not the case provide clarification.

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

***170.105 Applicability*.** Section *25.110(a)(2)(ii)(A)* of *General exceptions* appears misnumbered.

> **COGR RECOMMENDATION:** Replace "This part applies to all recipients *and* Federal awards who meet" with "This part applies to all recipients *of* Federal awards who meet."

170.300 Definitions. The Code of Federal Regulations reference to the Securities Exchange Commission in the definition for "Total Compensation" is incorrect.

> **COGR RECOMMENDATION:** Change "17 CFR 29.402(c)(2)" to "17 CFR 229.402(c)(2)."

Appendix A to Part 170 – Award Term.

1) Part 170 (a)(1), *Applicability,* requires reporting of first-tier subrecipients' executive total compensation unless the subrecipient is exempt as provided in paragraph (d), i.e., the subrecipient's gross income, from all sources, in the previous tax year was under $300,000. This exemption is not necessary because a higher threshold is established elsewhere in this section– namely, recipients are only required to report the total compensation of subrecipient executives if the subrecipient, amongst other conditions, received $25,000,000 or more in gross Federal revenues subject to the Transparency Act in the subrecipient's preceding fiscal year. 2) Additionally, Section I(d), *Exemptions*, addresses the reader directly (i.e., "You"), which is inconsistent with Sections (b-c) being applicable to both recipients and subrecipients.

> **COGR RECOMMENDATION:** 1) OMB should either strike the following phrase from the first sentence of Award Term, Sec. I(c)(1): "Unless a first-tier subrecipient is exempt as provided in paragraph (d) of this award term," or replace "a first-tier subrecipient is" with the original language, "you are." 2) Additionally for section I(d), *Exemptions,* we recommend that OMB, if it continues to apply the exemption in Section (d) to subrecipients, modify the language in Section (d) to make it clear that this section applies to both recipients and first-tier subrecipients.

Appendix A to Part 170 – Award Term - I(c)(2) Reporting Requirements.

A lack of clarity about the amount of time recipients are afforded to report a subrecipient's compensation information to the FSRS (i.e., "no later than the end of the month following the month in which *the subaward was made*") causes many recipients to issue unsigned subawards. Given that recipients cannot control how long it may take a subrecipient to return a signed subaward, this strategy enables recipients to control when the subaward is fully executed (or "made") and thereby ensure they can meet the FSRS reporting deadline. In short, the lack of clarity about the reporting deadline requires recipients to add an additional processing step to every subaward and slows the start of funded science.

> **COGR RECOMMENDATION:** COGR recommends that OMB either (i) increase the time for recipients to report subrecipient executive compensation information to "no later than the end of the *third* month following the month in which the subaward was made," or (ii) clarify that "the month in which the subaward was "made" means the "the month in which the pass through entity receives the fully executed subaward from the subrecipient."

PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS

175.105 Statutory requirement.

1) Regarding section (b)(2), *annual certification,* we note that 22 U.S.C. 7104(g) does not require *annual* certification of compliance and therefore should not be included as such in the section of the regulation on statutory requirements. Administrative burden could be reduced by allowing recipients to certify compliance less frequently. 2)Additionally, we find that section (b)(5), *Minimum requirements of the compliance plan*, to be exclusively applicable to contractors. Per 22 USC §7104a(d), "The President... shall establish minimum requirements for *contractor* plans and procedures to be implemented pursuant to this section."

> **COGR RECOMMENDATION:** 1)We recommend for (b)(2) that OMB modify this section to allow low-risk auditees to certify compliance with 22 U.S.C. 7104(g) every three (3) years, consistent with COGR's recommended changes to 25.200(b)(2). 2) Additionally, we recommend that OMB delete 175.105(b)(5) or clarify that Sec. 175.105(b)(5) is only applicable to contracts.

Appendix 1: Statement of Appreciation to OMB

COGR appreciates the hard work and commitment OMB has made to revising 2 CFR Chapters 1 and 2. This is not a small task and this effort by OMB will serve the research community (and other stakeholder communities) for many years to come. The list of revisions that will be helpful to our community is a long list, indeed! Throughout our letter we have tried to indicate those revisions that are most significant and will benefit the community. While our comments of appreciation do not cover every instance, your work comprises an impressive and thoughtful body of work. Further, it demonstrates the attentiveness OMB has made to the grantee community and its commitment to improve the grants administration process for all stakeholders.

We are hopeful, in the spirit in which OMB has approached the revisions to date, that the additional recommendations we have made in this letter can incorporated into the final version of 2 CFR Chapters 1 and 2. Thank you, again, for your work on this important project.

On behalf of our COGR Member Institutions,

Thank you!

Appendix 2: Subpart B – General Provisions

Subpart B sets the tone for the Federal Government–Grantee Partnership. Several proposed OMB revisions under Subpart B are of concern and will jeopardize the partnership (in some cases, stronger language will provide important emphasis to further improve the partnership). As we have significant concerns with specific sections under Subpart B, we have included additional insight for our recommendations in section II. into this Appendix. We urge OMB to incorporate the recommendations for Subpart B proposed by COGR—***doing so, will help to ensure the Federal Government–Grantee partnership remains productive and effective for many years to come.***

200.100(a)(1) and (c) – Purpose. First, the current revision proposed for section (a) (1) removes the requirement that Federal agencies **must not impose inconsistent requirements,** except as allowed for in 2 CFR 200 or specifically required by Federal statute, regulation, or executive order. The imposition of inconsistent requirements creates undue burden on recipients of assistance funds and subpart B should continue to include the requirement that Federal agencies must not impose inconsistent requirements.

Second, the current revision proposed for section (c) removes the statement of purpose that "cost principles are designed to provide that Federal awards bear their **fair share** of cost under these principles except where restricted or prohibited by statute." This declaration of purpose has long been critical to the successful partnership of institutions of higher education with the federal government. Before the consolidation of OMB's circulars into 2 CFR 200, Circular A-21 on the cost principles for educational institutions included in its purpose that, "The principles are designed to provide that the Federal Government bear its fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law."

Further, this section stated that "*Agencies are not expected to place additional restrictions on individual items of cost*." Unreimbursed costs continue to increase with each increase in compliance requirements related to federal awards, particularly for IHEs as their reimbursement of administrative costs is artificially capped. Federal agencies and OMB should partner with the research community to identify opportunities for more equitable reimbursement, with the goal of the Federal Government bearing its fair share of total costs. As this is critical for the American research enterprise to maintain its quality and productivity, a firm statement of this intention is requested.

200.102 – Exceptions. The revised wording OMB has proposed in section 200.102(a) gives OMB added flexibility to not only make exceptions based on classes of awards but also to make exceptions or deviations for classes of recipients, subrecipients, or both. The new definition of deviations in this section ("*Deviation means applying more or less restrictive requirements to a class of Federal awards, recipients, or subrecipients*") underscores the role of OMB to serve as an arbiter and final decider of what is or is not allowed when not otherwise proscribed by law or statute. However, expanding the scope to agency exceptions, without OMB approval, directly contradicts this OMB role and allows agencies discretion on a case-by-case basis without any internal control for reason, fairness, history, burden, or cost and renders the remainder of the section moot.

Further, section 200.208, Specific Conditions (under Subpart C) provides agencies opportunity to address agency-specific exceptions in the pre-award stage of the grants cycle—this section alone is adequate to address agency-specific exceptions.

It is crucial for OMB to maintain its role as an internal control and active participant in the Federal assistance award ecosystem. This includes ensuring that exceptions and deviations reinforce the maximum possible uniformity across agencies, where not prohibited by law or statute, in order to streamline efficiency at the awardee level and enhance effective compliance. This role first was raised by commenters during the consolidation of the OMB circulars into 2 CFR 200 almost a decade ago, and the need in the awardee community still remains.

200.107 – OMB Responsibilities. Under the 2016 Cures Act, OMB was directed to establish a Research Policy Board (RPB). For a variety of reasons, the RPB was never established. Our understanding is that the RPB could have served as a forum to bring all stakeholders together, on a regular basis, to seek opportunities to improve the federal grants administration and oversight process. Further, the RPB would underscore the role of OMB in reviewing agency regulations and implementations of 2 CFR 200, providing policy interpretations, and assistance to ensure effective, efficient, and consistent implementation.

While the RPB has yet to be established, 2 CFR 200 has the potential to provide a baseline for harmonization of grant administration across all agencies. Robust OMB oversight, available to all stakeholders, will be helpful to leverage 2 CFR 200, including the ongoing goal to achieve harmonization across IT systems, reporting, and policy implementation. Similar efforts should be direct to 2 CFR Parts 25 and 170 so that any implementation of new data elements, identifiers, reporting requirements, or other related actions are assessed for consistency and efficiency or other impacts on agencies or awardees in comparison to the value of any benefits to the implementing agency.

Other opportunities for improving the federal grants administration and oversight process include stronger oversight to ensure all agencies are complying with the Administrative Procedures Act (APA), which requires agencies to post all potential policy and rule changes in the Federal Register –and to seek comments from the stakeholder community. In addition, the recently established Council on Federal Financial Assistance (COFFA) could serve as a forum for grantees and federal agencies to address concerns—and work, collaboratively, toward solutions.

Appendix 3: Excerpt from July 21, 2023 Letter to OMB[9]

TIMING FOR ESTABLISHING F&A COST RATES

COGR's 2023 Survey of F&A Cost Rates addresses the concern that F&A cost rates (and fringe benefit rates) are not being established in a timely manner. Respondents were asked: *What is your F&A cost rate negotiation status?* Responses indicated one of two scenarios: either "*all is good*" or "*we are concerned*." Most institutions responded "*all is good*" (89.9%), though it should be noted many of these institutions had either recently established their F&A cost rates or were in the middle of a cost rate agreement and concerns about timeliness were not applicable.

The "*we are concerned*" response was common among institutions that had submitted an F&A cost rate proposal within the past year—***and in some cases, more than two years ago.*** In several of these situations, new F&A cost rates had not yet been established, thereby requiring institutions to establish provisional F&A cost rates. Results are shown below.

What is your F&A rate negotiation status?

Total Responses	119	
"We are concerned"	12	(10.1%)

Waiting Periods per submission date of F&A proposal (five longest as of May 2023)

March 27, 2020
December 31, 2020
March 23, 2021
February 23, 2022
April 12, 2022

A waiting period to establish new F&A cost rates of more than one year is far too long, let alone two years or more. Unfortunately, this problem likely will be exacerbated in the next several years as many institutions that were able to extend the term of their F&A cost rates without submitting an F&A cost rate proposal now will be required to submit one.[10] This could lead to a "tsunami" effect of new F&A cost rate proposals, which may be a challenge for the cognizant agencies—CAS, HHS and ONR—to process in a timely manner.[11]

The long waiting period to establish new F&A cost rates is problematic and needs to be resolved immediately. Under current practices, institutions normally are required to submit their F&A cost rate proposal six months before their current cost rates expire (e.g., for F&A cost rates that expire

[9] See: https://www.cogr.edu/sites/default/files/COGR_OMB_DataRequest_July_21_2023%20final.pdf

[10] 2 CFR 200.414(g) allows institutions to apply for up to a 4-year extension of their current F&A cost rates. In addition, under COVID-19 flexibilities defined in OMB Memorandum M-20-17, institutions were permitted to extend their current F&A cost rates for an additional year.

[11] Of note, included in COGR's survey was the question: *In your opinion, was the negotiation conducted in a fair and reasonable manner?* Of the 106 responses, 84 (79.2%) responded "Yes" and 17 responded "Somewhat" (16.0%). These responses strongly indicate that Cost Allocation Services, HHS and the Office of Naval Research are well regarded by research institutions.

on 6/30/24, the F&A cost rate proposal is due 12/31/23). The expectation that institutions submit their F&A cost rate proposals six months in advance of the expiration date of their current rates suggests that new cost rates should be established within a six-month timeframe.

We recognize the complexity involved in developing and reviewing an F&A cost rate proposal creates challenges both for the institutions and the cognizant agencies to meet strict timelines. As such, the extension of grace periods to both parties is a good business practice when appropriate. However, grace periods should be just that—a limited time period to address complexities—and they should not lead to delays that extend over one year. The proposed sections 200.414(i)(1), (i)(2), and (i)(3), shown in yellow highlight below, could address the concern and allow institutions to conduct institution-wide business with better stewardship of federal funds and more financial predictability.

> (i)(1) F&A cost rates should be established within six months after the date of submission of an F&A cost rate proposal. If not established within six months, the current F&A cost rates should be extended as predetermined F&A cost rates for one additional year. If new F&A cost rates are not established after the one additional year, F&A cost rates should be established at the institution's proposed F&A cost rates (and as predetermined F&A cost rates) for a minimum of two additional years.
>
> (i)(2) Fringe benefit rates should be established within six months of the date of submission of the proposal. If not established within six months, new fringe benefit rates should be established at the institution's proposed fringe benefit rates for the applicable fiscal year.
>
> (i)(3) In those situations when (i)(1) and/or (i)(2) require special consideration, the Office of Management and Budget should serve as an impartial arbiter to work with the institution and the cognizant agency for indirect costs to resolve any differences.

The proposed sections 200.414(i)(1), (2), and (3) would provide a process for more timely establishment of F&A cost and fringe benefit rates. Most importantly, it will eliminate the uncertainty that has become commonplace for many research institutions.

Appendix 4: Excerpt from July 21, 2023 Letter to OMB

ELIMINATE THE DISCLOSURE STATEMENT (DS-2)

The DS-2 is an archaic and outdated document, which still references OMB Circular A-21. It is not used as regular tool by the audit or oversight community to enhance compliance or oversight. This finding is based on the following survey question from COGR's 2023 Survey of F&A Cost Rates: *Has your DS-2 been requested to be reviewed by an auditor, federal official, cognizant agency, or any other entity within the past five years?*

Has your DS-2 been requested to be reviewed by an auditor, federal official, cognizant agency, or any other entity within the past five years?

Total Responses:	97	
"No" (other than cognizant agency requirement)	72	(74.2%)
"Qualified"(external/single auditor check-box)	17	(17.5%)
"Yes" (awarding agency, federal auditor, other)	8	(8.3%)

Almost three-fourths (74.2%) of the survey respondents indicated that other than providing the DS-2 to their cognizant agency (i.e., CAS-HHS, ONR) in the regular course of business, their DS-2 has not been requested by a federal funding agency, audit agency, or any other oversight agency. In addition, 17.5% of the survey respondents provided a qualified response by indicating that their external auditors requested the DS-2 be provided as a "check-box" requirement—not integral to the single audit. ***Consequently, survey responses from over 90 percent of the respondents support the finding that the DS-2 is not an actively used document and can be eliminated.***[12]

Over the past decade, COGR has regularly advocated: 1) the DS-2 adds no value to government oversight, 2) information contained in the DS-2 is readily available in numerous policy portals at research universities, and 3) the DS-2 creates unnecessary administrative and cost burden to research universities as well as to the agencies required to keep them on file. As COGR responded in its March 13, 2023 letter to OMB (page 4), we recommend that OMB eliminate the DS-2 requirement for IHEs and delete OMB FAQs 16 and 17. Further, OMB should work with FAR representatives to modify and coordinate DS-2 expectations (as described in 48 CFR Chapter 99 Subchapter B 9903.202-1) when an institution receives a CAS-covered contract.

[12] In less than 10% of the responses, the DS-2 was requested by an awarding agency, federal auditor, or for some other purpose. Even in these cases, the information provided in the DS-2 is readily available through other official institutional policy documents at the institution.