

COGR

an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

One Dupont Circle, N.W., Suite 670
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July 17, 1989

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EXECUTIVE DIRECTOR
MILTON GOLDBERG

Mr. Jonathan Breul
Committee on Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Jon:

I am happy to hear of Senator Glenn's interest in reexamining the proposed common rule dealing with management of grants to both state and local governments and colleges and universities. The university position on the combination of the two grants management circulars is expressed in a series of letters, some of which are enclosed here.

More importantly, further discussion should focus on alternatives or options that ought to be considered in lieu of combining Circular A-102 and Circular A-110 into a single grants management rule. Those options might include:

- A. Revising Circular A-110 to include only new statutory requirements.
- B. Revising Circular A-110 to include statutory requirements and expanded authorities granted by Joe Wright of OMB on May 18, 1988.
- C. Implementing A. or B. above, but with provision for agencies to exclude certain grants from the expanded authorities, only after written justification from the agency Secretary or Director.
- D. Developing A., B., or C. for only colleges and universities.
- E. Including nonprofit organizations under proposed November 4, 1988 common rule, but excluding colleges and universities.

Whether or not these options are codified in a common rule is a choice that should be left to the agencies. We are not certain of the benefits or shortcomings of such codification.

These alternatives or options are not all inclusive nor are they in priority order. They are offered as a point of discussion from which an appropriate revision to the grants management rules for colleges and universities might begin.

Sincerely,

A handwritten signature in black ink, appearing to read "Milton Goldberg". The signature is fluid and cursive, with a large loop at the beginning and a long, thin tail at the end.

Milton Goldberg

Enclosures



DAVID PIERPONT GARDNER
President

OFFICE OF THE PRESIDENT
BERKELEY, CALIFORNIA 94720

RONALD W. BRADY
Senior Vice President—
Administration

December 29, 1988

Mr. Gary Houseknecht
Acting Director
Division of Assistance and Cost Policy
Department of Health and Human Services
A-110 Rulemaking Docket
Room 513D Hubert Humphrey Building
Washington, DC 20201

Dear Mr. Houseknecht:

Review of the proposed common rule for management of grants and cooperative agreements, published in the Federal Register on November 4, 1988, has been demanding. We understand that the Council on Governmental Relations obtained an informal extension of the deadline set originally for January 3, 1989.

The purpose of this letter is to briefly summarize our basic position. We will be sending a second letter which will provide our analysis and specific reasons.

Our initial observations about the proposed rule are that it will have a negative impact on university interests. The following summarizes our concerns:

1. Universities will lose recognition as a distinct recipient group. We agree with the Department of Defense and the National Science Foundation that a separate rule for universities and nonprofit organizations would better reflect the character and purpose of these organizations.
2. The proposed revision is not policy neutral. There are expansions and losses which represent real policy changes from the current Circular A-110. We agree that several improvements could be made to A-110, such as revising the dollar threshold for defining equipment and incorporating debarment and suspension regulations. However, a number of substantive changes are proposed that would increase administrative requirements and be contrary to the goal of simplifying and streamlining university

administration. These include changes in procurement, financial reporting, program income, audits, subgrants administration, and property management. In addition to new and detailed administrative requirements, flexibilities incorporated in the current A-110, such as those regarding budget changes, are eliminated in the proposed common rule.

3. It is immaterial whether the content of A-110 remains in an OMB Circular or is codified, so long as policy developed for universities be profiled to their needs and organizational mission.
4. A common rule combining universities and other recipients will be unduly difficult to change when a proposed change is opposed by one of the recipient groups. A common rule assumes a commonality of interests among universities, states, local governments, and commercial organizations, which is not the case.
5. The policy gains for which universities and agencies have worked twenty years and which finally seem to be achieved in the Federal Demonstration Project (FDP) are likely to be lost by Attachment F being made optional. The choice to agencies should not be to accept or reject all of Attachment F. A middle ground of agency agreement should be made mandatory, with differences beyond that being optional. Further, Attachment F should provide a mechanism for introducing future simplifications resulting from Phase II of the FDP.
6. Uniformity for its own sake at the expense of legitimate diversity is as much an evil as unnecessary diversity. There is currently a fairly high degree of policy uniformity among major agencies regarding grants for research at universities. Diversity emerges as agencies address operational implementation. The proposed rule will not solve the problem of operational diversity. The proposed rule will not achieve uniformity beyond reducing two OMB Circulars to one. It will result in a forced repackaging of agency-originated grant documents that is not likely to be any more effective than the Federal Acquisition Regulation with its numerous agency supplements; or the current A-110 with its numerous agency implementations; or even the DHHS 45 CFR 74 with the different DHHS internal grant manuals and statements.
7. The combination of recipient groups and reference to agency waivers, agency grant terms, agency approvals or disapprovals, and other regulatory documents, creates near overwhelming

complexity in determining the rules that apply specifically to a recipient in a particular case. It is simpler and clearer to have separate rules in separate documents for each recipient group, as is the current case.

8. A common rule which is a "one size fits all" document for all recipient groups will unavoidably result in the highest level of regulation to meet the lowest perceived level of organizational competence. The result is a degree of federal direction that may be needed for some recipients but not for all. To the extent a recipient does not need the federal direction, the direction is excessive and burdensome.

For the foregoing reasons, we oppose the "one size fits all" common rule because one size does not fit all. Judging from our experiences in dealing with federal agencies and our observations of federal reform initiatives over the years, the common rule is not likely to create uniformity. This is especially so given that many federal agencies have expressed in their preambles to the common rule reservations about the common rule approach itself. The likely result will be the mere appearance of uniformity at the expense of directness and simplicity. There are real policy losses for universities.

Our opposition to the proposed common rule is not opposition to change as such. Our issue is with the form, the means, and the timing.

For the first time in decades, federal agency policy officials are working together with universities on policy issues of common interest under the Federal Demonstration Project. This unique opportunity is the result of twenty years of studies, recommendations, and experiments. More positive improvement has taken place in the past year under the leadership of Bill Raub and the NAS-sponsored Government-University-Industry Research Roundtable than we have seen previously. Policy and operational matters that could be considered agency diversity are being openly discussed.

We have seen major agencies revise their grant policies in ways which have positively improved relations with universities. We have seen a willingness by universities to consider and make changes as well.

Our view is that the best means of achieving effective and appropriate regulations for universities and their federally-supported activities

December 29, 1988

Page 4

is through open dialogue and working together under the Federal Demonstration Project model rather than by imposition of structural change via a common rule.

Sincerely,

David Mears

David F. Mears
University Contracts
and Grants Coordinator

cc: Jonathan Breul, OMB
Contract and Grant Officers
COGR



Vice President for Research
and Graduate Studies

MR

208 Bricker Hall
190 North Oval Mall
Columbus, OH 43210-1321
Phone 614-292-1582

RECEIVED

'89 MAY -4 P12:18

April 28, 1989

MAY 1 1989

Mr. Gary Houseknecht
Division of Assistance and Cost Policy
Department of Health and Human Services
A-110 Rulemaking Docket
Hubert H. Humphrey Building, Room 513D
Washington, D.C. 20201

Subject: Proposed Common Rule to Replace OMB Circular A-110

Dear Mr. Houseknecht:

On behalf of The Ohio State University, I am pleased to submit comments, suggestions, and concerns regarding the Proposed Common Rule to Replace OMB Circular A-110. We endorse the revision and update of the administrative requirements for grants and contracts for colleges and universities. Ohio State strongly supports the recommendation of the Council on Governmental Relations (COGR) that separate Circular/Common Rules should be maintained for college and universities distinct from those for state and local governments.

Colleges and universities are a unique constituency among federal grantees. The teaching and research functions of the colleges and universities are a critical element in our nation's efforts to improve its competitive position. To impose the same administrative-fiscal requirements on these important efforts as are placed on the equally important but fundamentally dissimilar efforts of the state and local government to provide transportation systems, water and sewer systems, and other items involved in the governance and protection of its citizens is unrealistic.

New and innovative programs are underway to improve the working relationships between the federal government and research universities. The Federal Demonstration Project (FDP) will provide opportunities to reduce administrative burdens and increase research productivity. A separate Circular/Common Rule will ensure timely implementation of the improvements which result from the FDP and other similar experiments.

The COGR Proposal for the text of a Common Rule would provide a framework for achieving the widely shared goals of

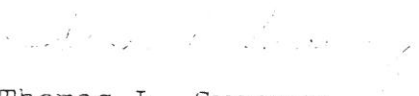
reducing administrative burdens, increasing research productivity, and helping to improve our nation's scientific and technological enterprise. Aspects of the COGR Proposed Common Rule that are among the most beneficial are:

1. It would lead to a more uniform management of federal grants. Specifically, elimination of the potential multiple agency audits (Subpart C, Section 20 (b)) would reduce administrative costs and confusion for the federal government and for colleges and universities. Additionally, the COGR proposed changes to Subpart A, Section 6 and OMB Subpart C, Section 20 (b) 5, COGR Section 20 (a)(5), would streamline administrative functions for both colleges and universities and the federal government.
2. The inclusion of the prior approval delegations and improvements derived from the Florida Demonstration Project (OMB Subpart F, COGR Subpart C, Section 30) would increase research productivity which would be beneficial to the nation.
3. The changes proposed by COGR in regards to subpart C, Section 36 are superior to those proposed by OMB. They would eliminate unnecessary governmental involvement in the details of procurement practices at colleges and universities.

We appreciate the opportunity to provide our comments and suggestions. We trust that OMB will seriously consider these comments as part of the rulemaking process.

If you have any questions, please call Dr. Mary Ellen Sheridan at (614) 292-6776.

Very truly yours,


Thomas L. Sweeney
Associate Vice President for
Research Administration

cc: Jonathan Breul

COUNCIL ON GOVERNMENTAL RELATIONS

One Dupont Circle, Suite 670 Washington, D.C. 20036 (202) 861-2595

May 23, 1989

Mr. Robert Coakley
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Bob:

I write to let you know that the colleges and universities in the United States object to the combination of grants management rules for colleges and universities with those of state and local governments and I seek your advice on how to prevent such combination. The universities have three fundamental concerns with the government proposal.

1. Our university members tell us that contrary to the Office of Management and Budget's intent to streamline grants management, the new proposal is unduly lengthy, complicated and confusing.
2. Blending rules designed for use by universities with rules designed for grants to states, increases the potential for greater state control over the management of university grants, irrespective of the different nature and function of these recipients.
3. There will be little concern for the governance of university grants once the rules are combined. When compared to states which are awarded large grants by agencies like HUD and DOT, universities are small performers and will have no influence in the grants management process.

I write to you because I know of your deep interest in the Federal Demonstration Project and I recall your satisfaction at the April 1988 hearing held by Mr. Chiles in Florida. At that hearing, university faculty members reported favorably on the flexibility afforded them by virtue of the Florida Demonstration Project. All those gains in rationalizing grants management processes are in danger of being eliminated by the proposal to combine Circulars A-110 and A-102 into a single common rule.

Opposition to the common rule is coming also from major research agencies. DOD, NSF, DOE and NASA are all on record in opposition to the combination of the two circulars.

It is puzzling that OMB continues with development of the common rule, after both the regulated public and four major agencies publicly announced their opposition. It defies common sense for the government to announce an effort to reduce administrative burden and related costs for grant recipients and then engage in rulemaking that complicates the grants management process and makes it more expensive. When government practice varies so widely from government intent, the public becomes increasingly cynical about the objectivity of the

rulemaking process. I count myself among the public and ask for your assistance to secure a satisfactory outcome regarding retention of OMB Circular A-110.

Sincerely,

A handwritten signature in black ink that reads "Milton Goldberg". The signature is written in a cursive style with a large, prominent "M" and "G".

Milton Goldberg

cc: Linda Wilson, University of Michigan
Donald Phillips, GUIR Roundtable
Grant and Contract Policies Committee
Executive Committee
Robert Rosenzweig, AAU
Robert Clodius, NASULGC

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an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

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April 11, 1989

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EXECUTIVE DIRECTOR

MILTON GOLDBERG

Dr. Robert Rosenzweig
President
Association of American Universities
One Dupont Circle, N.W.
Suite 730
Washington, D.C. 20036

Dear Bob:

The Office of Management and Budget is engaged in revising and combining the rules that govern the management of federal grants. Presently, grants management rules that apply to colleges and universities, hospitals and other nonprofit organizations are contained in OMB Circular A-110. Rules applicable to state and local governments are contained in OMB Circular A-102. OMB seeks to combine these circulars into one common rule applicable to all performers and recipients of federal grants.

We have two fundamental concerns with the OMB effort. First, blending rules designed for use by universities with rules designed for grants to states increases the potential for greater state control over the management of university grants. State projects for highways, sewer systems and family services are very different from grants for instruction and research. It is not realistic to impose the same administrative requirements on these two vastly different types of programs. Second, contrary to OMB's promise to streamline grants management, the new proposal is unduly cumbersome, lengthy, complicated and confusing to our college and university members. These concerns are known to the OMB officials who deal with grants management issues, but we have not yet secured from them a commitment to alter their course.

The purpose of this letter is to make you and the AAU presidents aware of our concerns and ask if AAU support would be available to help secure a sensible grants management rule. Such support would entail an expression of concern from the university presidents' to the Director of OMB or to his deputy.

This is a classic example of well-intended government "simplification" being more onerous than existing administrative systems. This OMB exercise is likely to create the same sort of needless bureaucratic rules which some of the same OMB officials sought to overcome in the Florida Demonstration Project. In fact this revision was to be the vehicle for institutionalizing the good features of the Florida Demonstration Project, however, OMB was not able to persuade the agencies to accept these provisions uniformly.

Several major research funding agencies are also opposed to OMB's effort to combine the rules. DOD, NASA, NSF and DOE are notable objectors. DHHS (not supported by NIH) is a powerful OMB ally. DOD and NSF are reluctant to buck OMB without first knowing that the university presidents would devote some political capital to this effort if that were necessary.

In summary, the COGR membership believes that university influence in the management of university grants will decrease and may be subsumed by needless state government regulations and that the proposed replacement rules are cumbersome, confusing and overly complex. We believe that university presidential concern, appropriately displayed, would be helpful in securing a reasonable rule. I will be happy to answer questions. May I hear from you soon?

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Goldberg', enclosed within a hand-drawn oval.

Milton Goldberg

cc: Board of Management
Grant and Contract Policies Committee
Task Force on OMB Circular A-110 Revision



RECEIVED

'89 MAY 22 P2:24

George H. Dummer
Director, Office of Sponsored Programs
Massachusetts Institute of Technology

77 Massachusetts Ave, Room 4-110
Cambridge, Mass. 02139
Telephone (617) 253-2825

May 18, 1989

Mr. Gary Houseknecht
Division of Assistance and Cost Policy
Department of Health and Human Services
A-110 Rulemaking Docket
Room 513-D, Hubert H. Humphrey Building
Washington, D. C. 20201

Dear Mr. Houseknecht,

The purpose of this letter is to express my deep concern over the proposed common rule published in the November 4, 1988 Federal Register, which would combine the grants management requirements for colleges and universities, hospitals and other nonprofit organizations (Circular A-110) with the corresponding requirements for state and local governments (Circular A-102). Although the period for comment is past, my failure to respond was, in retrospect, a singular omission which I feel compelled to remedy. There are two points I wish to make.

Merging Circulars A-110 and A-102: I am convinced that there should be a separate circular and common rule covering colleges and universities and that these should not be combined with those applicable to state and local governments. Such a circular and common rule might well cover the nonprofits and hospitals which are also part of the present A-110 constituency. While this strikes me as advantageous to them and to the government, it is not my role to comment on their behalf.

Technical changes to the common rule: I have reviewed and wish to strongly endorse the technical changes recommended by the Council on Governmental Relations in response to the proposed common rule. The COGR Task Force devoted a tremendous amount of energy and time to developing positions which are in my view in the best interests of both the government and the university community. I have listed in Attachment 1 those having particular relevance from my own perspective.

You are undoubtedly familiar with the arguments that have been advanced on behalf of the college and university community with respect to both points above. Nonetheless, I would like to share with you at least a few of the concerns I have, based on my experience in sponsored program administration at MIT for over thirty years.

Preserving the research grant as a viable funding mechanism

My experience goes back to those years in which ASPR Part VII provided a mandatory body of DOD regulations applicable to university research contracts, and to a period when ONR was able to exert an enlightened influence over much of the federal contracting for university research. Since then (apart from valiant efforts such as the short form research contract) the contracting relationship between the government and the universities has been transformed into a procurement process which is, in most substantive respects, blind to the essential differences between universities and other classes of "vendors." One indication of this, for example, is the fact that no significant deviations to the FAR's or DAR's requested by the universities have yet been approved.

I also recall a time when grants at least appeared to be a simpler mechanism than at present and, more recently, the brief period when "assistance" seemed to offer an opportunity for faculty to conduct their research without the administrative burdens and complexities that "procurement" implied. It is difficult, however, to look at the various public laws, executive orders, and other directives which are implemented by federal grants and still think of those grants as uncomplicated. (For example, Attachment 2 is a listing of the laws, orders and directives cited in the latest (1983) edition of the NSF Grant Policy Manual). Each of these requirements serves in some manner to regulate the conduct of research; achieve a social or economic purpose through the leverage of Federal funding; inhibit fraud, waste, abuse, conflict of interest, or scientific misconduct; define or limit allowable costs; establish administrative procedures, etc.

In the last year alone, university faculty and administrators have had to address a variety of new or additional grant/contract requirements relating to such matters as suspension and debarment, anti-kickback certifications, the drug free workplace and workforce, animal care regulations, hazardous waste and materials, the NSF salary ceiling, increased HHS audit initiatives, restrictions on foreign nationals, scientific fraud and misconduct, interest on advanced funds, uniform pricing procedures, indirect cost recovery limitations, and revisions to A-88.

These requirements, most of them having a laudable purpose which we would endorse without hesitation, add a variety of administrative burdens to which the universities have accommodated. But university research administrators and some of their federal counterparts have harbored the hope that there might still be some areas of grants management and administration in which we could turn back the tide and lighten the administrative burdens on university researchers, and perhaps on us.

In recent years, increased efforts to slow what the National Academy of Sciences has referred to as "bureaucratic accretion" have begun to show results. Examples include the elimination of the OPAS by NSF, the simplification of grant continuations by NSF, the liberalization of the IPAS by NIH, the increasing use of grants by DOE and ONR, the Florida Demonstration Project, and the expanded grants authority under which a number of federal agencies have adopted four of the most successful features of that Project for all their grantees. These and similar developments have raised the hope that increased management flexibility and simplification can actually be achieved.

It appeared, in its early stages, that the revision of Circular A-110, even its merger with A-102, would be yet another positive development. Now, however, it seems more likely to have the opposite effect, primarily for the reasons which follow.

The College and University Constituency

Universities and colleges, whether public or private, are a unique constituency among federal grantees. Their basic functions of teaching and research separate them from state and local governments, which exist principally to provide governance and infrastructure and to ensure a healthy and safe environment for its citizens, and which use federal funds in programs which are production and service oriented and carry a high degree of predictability.

University administrators try to maintain the administrative environment in which faculty and their research teams can tackle unpredictable, state-of-the-art research on superconductivity, fusion energy, fiber optics, advanced micro-electronics, ceramics, etc. State and municipal administrators, on the other hand, are administering federal grants for family services, transportation systems, sewer systems, water systems, etc.

Despite the unique needs of colleges and universities, the November 4 common rule would subject them to a set of regulations reflecting the micromanagement of expenditures which is typical of cities and other sub-state divisions. I notice, for example, that the proposed common rule coverage given to procurement is substantially greater than in the existing A-110 and, however suitable for municipal supply and service contracts, would inhibit the progress of research beyond any possible cost savings. Similarly, the rebudgeting of state and local programs has nowhere near the urgency that rebudgeting does for time-sensitive research. Additionally, colleges and universities which receive federal funds via the states could be forced to administer subawards differently from their prime awards (and differently from each other where multiple states are involved).

Delegation of authority to universities

During the past eight years, the relationships between the federal government and state governments has changed significantly under the impetus of a new "Federalism," which provides the states with broad discretion in administering funds without the intrusion of federal regulations. Changes in the interface between the federal government and the research universities, however, are currently being formulated and tested in studies and experiments such as the Federal Demonstration Project, an outgrowth of the Florida Demonstration Project. A common rule applicable only to universities will assure the most effective implementation of the improvements which result from these efforts.

The successful simplifications realized by the Florida Demonstration Project have found strong support, but they have not been uniformly adopted and implemented by the Federal agencies in Phase II. The process, therefore, has a way to go and needs support and encouragement which it is unlikely to get if A-110 is merged with A-102.

In particular, it is difficult for me to see how the FDP can be successfully implemented as part of Subpart F, which is encased in a common rule dominated by the more restrictive requirements appropriate to state and local governments, and which will survive only to the extent that the federal agencies choose to adopt its optional features. Perhaps I should not look back, but my fear is that, in a few years, Subpart F will be as dead as ASPR Part VII, the gains derived from the FDP will be lost, and the universities will be left with little hope of more enlightened management regulations.

Even if one disagrees on the need to delegate new management authority to universities, as reflected in the FDP, it seems totally unreasonable to turn the clock back and to subject colleges and universities to administrative requirements more restrictive than the present Circular A-110.

Conclusion

University researchers have been asked to make a significant contribution to a variety of national needs, of which "competitiveness" is only one. It is difficult to see how they can make that contribution unless university research programs have a viable and appropriately designed funding mechanism which recognizes their unique requirements. In my view, Federal research grants are unlikely to provide such a mechanism if A-110 is merged with A-102.

We urge that a separate regulation be retained for university recipients of federal funds. We understand that this view has been expressed by the Department of Defense and the National Science Foundation. MIT strongly supports it.

Sincerely,



George H. Dummer
Director

cc: Jonathan Breul, OMB
Tom Dolan, ONR
William Kirby, NSF
OGR
Little 11

Subpart & Section* Purpose of COGR Revision to Proposed Common Rule, Nov. 4 FedReg

- A - Sec 6: Limits agency imposition of additional requirements, facilitates agency waiver or delegation of certain requirements, and limits agency exceptions to the common rule to those approved by OMB
- C - Sec 20(a)(5) Limits allowable costs to OMB cost principles and the terms of grant awards. Drops reference to "agency program regulations"
- C - Sec 30 Provides a mechanism for incorporating existing agency prior approval delegations and improvements resulting from the Florida Demonstration Project
- C - Sec 36 Revises procurement standards to be responsive to the unique needs of research programs and to avoid the level of micromanagement adopted in the proposed language

- C - Sec 20(b) Limits review of financial management system to cognizant agency
- C - Sec 21(c) Makes advance funding available except to high risk recipients
- C - Sec 21(g)(ii) Includes OMB A-129 to define when grantee delinquent on debt
- C - Sec 24(d)(1) Clarifies language re third party in-kind cost-sharing contributions
- C - Sec 25 Revises priority order for program income handling options
- C - Sec 25(c) Clarifies handling of royalty income and treatment as program income
- C - Sec 26(a) Clarifies language re A-128 and 133 audits and limits grantee obligations re subgrantee audits
- C - Sec 37 Limits the responsibility of grantees in connection with subawards

* Section references as they appear in the COGR recommendations

COGR

an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

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December 21, 1988

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Mr. Gary Houseknecht
Acting Director, Division of Assistance
and Cost Policy
Department of Health and Human Services
200 Independence Avenue, S.W.
Room 513D
Washington, D.C. 20201

Dear Mr. Houseknecht:

With this letter the Council on Governmental Relations submits initial comments on the proposed common rule for the management of grants and cooperative agreements, published in the November 4, 1988 Federal Register. In view of the short time period allowed for public comment, COGR asked for an extension and was assured that detailed comments would be accepted after the stated deadline of January 3, 1989. The following paragraphs provide our basic position regarding the proposed common rule. Specific and detailed technical comments will follow later.

The proposed rule undermines fundamental principles essential to the universities' conduct of research. COGR opposes the proposed common rule because it undermines several fundamental principles which research universities have found to be essential to their ability to conduct research effectively and efficiently. These principles were enumerated in our letter of February 19, 1988 in response to your invitation to assist the federal task forces that were revising Circular A-110. First among those was the principle that colleges and universities be governed by one set of administrative requirements applicable uniformly to all agencies. In our letter we provided detailed explanations why this principle and others are important to the continued successful conduct of research at universities. Yet, we find that neither the proposed common rule, nor the accompanying discussion acknowledges these principles or explains why they have not been recognized in this proposed rule. This failure to address the important concerns raised by the research universities is disconcerting in view of increasing national concern over the research establishments ability to maintain its lead in the face of foreign competition.

The universities unique role must be recognized. Universities and colleges, whether public or private, must continue to be recognized as a unique constituency among federal grantees. Clearly the educational institutions'

basic functions of teaching and research separate them from state and local governments which use federal money in programs that are production and service oriented and carry a high degree of predictability. For such programs, for example, the need to rebudget speedily is usually not central to program success. In research, however, a bureaucratic delay in rebudgeting could result in the loss of months of work while the researcher waits for authorization to conduct a time-sensitive experiment or procedure which could not have been foreseen when the research project was begun.

Despite their special needs, universities would be lumped into a common rule characterized by micromanagement of expenditures typical of cities and other sub-state divisions. For example, the November 4 Notice requires agencies to obtain annual credit reports from university grantees. To equate universities with local governments is not only inappropriate for the reasons given above, it is also unwarranted. Extensive experience under the existing Circular A-110 shows that universities have put systems in place and implemented procedures which have resulted in good stewardship of federal funds. This experience shows that universities should be treated as a separate, less regulated class of recipients, comparable to states rather than local governments.

The simplest way to accomplish this goal is to promulgate a separate rule, appropriate to the unique needs of universities, or to continue the present grouping of universities with nonprofits and hospitals. For these reasons, COGR strongly supports the Department of Defense and the National Science Foundation in their views that a separate regulation should be retained for university recipients of federal funds.

A common rule should preserve and promote administrative efficiency. COGR agrees that uniformity in agency regulations of federally-funded university programs would be desirable, if it could lead to more efficient and effective use of funds. Clearly, if universities are required to deal with inconsistent regulations by twenty-seven federal agencies, they waste precious resources which could be put to more productive use. We do not believe that the proposed common rule achieves the desired goal of uniformity. Inefficiency also results when universities are required to deal with unnecessarily complex regulations. Thus, COGR can support a common rule only if it is truly uniform and eliminates unnecessary paperwork.

The diversity of federal agency positions on the proposed rule shows that it is anything but common. Some agencies intend to follow the common rule but will also allow waivers from its positions. This is the case with DHHS, which acknowledges that the section on budget changes is restrictive in a way that has been found to be ineffective to achieve the stated purposes of exercising stewardship over federal funds. While DHHS is willing to codify percentage limitations for budgeting in the main body of the common rule, it proposes to waive these provisions "in the case of most HHS grants". This means that universities would have to follow two sets of regulations. At the same time, COGR has learned that ADAMHA, NIH and PHS have taken different positions from their parent organization and intend to issue policy statements accordingly. This approach of discretionary waivers will quickly result in a hodgepodge of potentially arbitrary agency

decisions, leaving universities with even less uniformity than they have now for complying with federal regulations.

Delegation of authority to universities should be encouraged. In an attempt to achieve at least partial agency uniformity, the common rule would adopt the more stringent limitations on fiscal and programmatic changes promoted by those agencies which have the smallest research programs. For example, the common rule reinstates a lower percentage for rebudgeting without prior federal approval than the larger research agencies have found necessary. These restrictions would undo the encouraging results of the Florida Demonstration Project or at the very least seriously jeopardize its continuing progress. We urge OMB to introduce the four successful features of the FDP into the common rule on a permanent basis, rather than leave them on an optional basis in Subpart F.

The successful simplifications realized by the FDP have found strong support by the Task Force on Regulatory Relief, chaired by President-elect Bush. Yet, in spite of this and OMB's endorsement, several agencies are hesitant about adopting these simplifications into their programs. This presents a dilemma and creates an impasse at this point. Although FDP Phase II is not yet complete, it is apparent that the FDP is beneficial to the research enterprise and ought to be encouraged. For this reason it seems unwise to codify regulations, which are likely to be replaced as the FDP features find general acceptance, especially as the common rule is unduly restrictive and the optional nature of Subpart F leaves the universities without assurance of more enlightened management regulations. If truly uniform regulations cannot be achieved, it would be best to leave the existing Circular A-110 in place.

The common rule imposes unwarranted restrictions on research universities. Reasonable people might disagree on the need to delegate new management authority to universities, such as the FDP. But it seems totally unreasonable to turn the clock back in areas where universities have performed well, and to subject them to administrative requirements more restrictive than the present Circular A-110.

Claiming that Circulars A-102 and A-110 have been "virtually identical" OMB would subject universities to micromanagement procedures which will stifle our research capability. We believe that in making the above statement OMB has confused "common standards" with "common procedures". Standards of accountability certainly apply equally to all recipients of federal grants. This does not mean that common procedures have any virtue.

Years of experience with Circular A-110 indicate that established Circular A-110 procedures are more than adequate to assure effective stewardship of federal funds. In fact, the relaxation of budget control which preceded the FDP would have been impossible without extensive DHHS studies which proved that universities can be relied upon to manage their own projects.

An example of unwarranted restrictions in the proposed common rule is the section on procurement. Far from enjoying simplified procedures, universities and colleges would be faced with three times as much regulatory text as under Circular A-110. Specific procedures will be required which

are useless in university procurement, such as the perusal of prequalified bidders lists, which are inappropriate for the special scientific equipment university researchers need. As proposed, procurement would be predicated on consolidation of individual purchase orders or the breaking out of procurement in order to obtain a more economical purchase. Such measures may be effective at best in supply and service contracts. If such requirements were imposed on research, the resulting time delays would hinder progress of research to an extent disproportionate with any possible cost savings.

We believe the proposed procurement methods will cause problems. We urge that universities be allowed to base decisions for purchases on comparative bids or quotations from an adequate number of qualified sources, which is the present Circular A-110 policy. One of the COGR member universities indicates that the average time required by local agencies in its state for completing a procurement process is fifty-two days, while the university has an average of ten days. These figures speak louder than words.

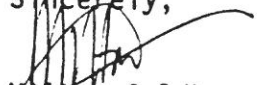
Federalism destroys the common rule. The Administration has advocated the principle of Federalism which maintains that states should have maximum discretion in administering their funds without intrusive federal regulations. Under the proposed common rule, this concept would be imposed on colleges and universities as subrecipients of federal funds distributed by states.

If approved this change would have significant impact on the universities and further undo the "common" character of the proposed rule. Universities and colleges may find themselves in the predicament of having to administer their prime award differently from their subawards and in addition, may have to acquaint themselves with a number of potentially different state regulations which would become effective should universities enter into agreements with colleagues in a different state. We strongly object to this aspect of the common rule. It obviates the uniformity which OMB claims as its primary goal. It is likely to adversely affect the accuracy of audits, not to mention the increase in audit costs. As EPA pointed out in its preamble, the flow through requirements for state subgrants will require a variety of new audit expertise from federal auditors.

In summary, we question whether there is a genuine need at this time to eliminate rather than simply update OMB Circular A-110. If uniformity can be achieved, a common rule may be a desirable regulatory instrument. COGR will support the common rule if it is in the form of a separate rule for universities, nonprofits and hospitals, is based on the principles outlined above and is uniformly implemented by the federal agencies.

Thank you for the opportunity to comment.

Sincerely,


Milton Goldberg

cc: Jonathan Breul

COUNCIL ON GOVERNMENTAL RELATIONS

One Dupont Circle, Suite 670 Washington, D.C. 20036 (202) 861-2595

June 28, 1989

Mr. Robert Coakley
U. S. Senate
Committee on Governmental Affairs
Hart Office Building, Room 326
Washington D.C. 20510

Dear Bob:

Pursuant to your request, a side-by-side listing of current Circular A-110 language and the proposed common rule is enclosed. The common rule is neither clear, easily applicable, nor cost effective; these characteristics are the basic requirements for good rulemaking. In addition, the common rule increases the potential for state control over the management of university grants. Further, there is little concern for the burden likely to be placed on colleges and universities which will be asked to manage their grants in the same manner as states are asked to manage their's. Complex rules designed to manage grants for highways, sewer systems and family services will not effectively serve the university community which is interested in reducing unnecessarily burdensome rules applied to grants for research and related activities.

Experience with both the Florida Demonstration Project and now the Federal Demonstration Project is instructive. That experience tells us that states are not terribly interested in reducing unnecessary administrative burdens, because they view those burdens as necessary controls even if those controls extend to federal funds. Likewise, agencies that are interested in sewer treatment plants and subway systems are not interested in understanding why the conduct of research and related activities requires rules different from those that apply to their daily operations. Their disinterest manifests itself in unnecessarily complex and restrictive rules. Future changes that might spring from the FDP would likely be stifled.

If I can help further please let me know.

Sincerely,

Milton Goldberg

Enclosure

March 22, 1989

Selected Reasons Stated by Representatives of COGR Universities for Maintaining Separate Circulars/Common Rules for Colleges and Universities Distinct from State and Local Governments

- A single circular and common rule written to cover the different entities now covered separately by Circular A-110 and Circular A-102 will be unduly cumbersome, lengthy, complicated and confusing to both agency and grantee users. It is not clear when a provision applies to a college and university; to a state and local government; or to both.
- The teaching and research functions performed by colleges and universities clearly distinguish them from state and local governments which exist principally to provide governance, infrastructure and to ensure a healthy and safe environment for its citizens. Colleges and universities are, and should continue to be recognized as, a unique constituency among federal grantees.
- The broad discretion extended by the federal government to states (Federalism) is peculiar to the federal/state government interface and is not applicable to the federal government/university interface.
- Programs/projects conducted by state and local governments with federal funding (family services, transportation systems, sewer systems, water systems, etc.) are entirely different from the research and training programs conducted with federal assistance by colleges and universities. It is not realistic to impose the same administrative/fiscal requirements on the two vastly different types of programs.
- A common rule applicable to both universities and state and local governments will be unduly difficult and cumbersome to change because the effect of a given change on the quite different types of entities will be quite different.
- The wave of changes in relationships between the federal government and state governments (Federalism) has been pretty much completed during the past eight years. Conversely, many changes in the federal government/research university interface are currently being formulated in the Florida Demonstration Project, the Federal Demonstration Project and other studies/experiments. A common rule applicable only to universities will assure prompt implementation of improvements as they are defined.