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Letter to National Science Foundation on Uniform Guidance

Author: Costing Policies Committee

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4201 Wilson Boulevard, Suite 1265
Arlington, VA 22230

Subject: Federal Register/ Vol. 79, No. 90/ Friday, May 9, 2014 (p.26779)
Notice and request for comments

Comments to the 2014 DRAFT Proposal and
Awards Policies and Procedures Guide (PAPPG)

Dear Ms. Plimpton,

The Council on Governmental Relations (COGR) is an association of leading universities and research institutions. Member institutions conduct over \$60 billion in research and development activities each year and play a major role in performing basic research on behalf of the federal government. COGR brings a unique perspective to regulatory and cost burden and focuses on the influence of federal regulations, policies, and practices on the performance of research carried out at COGR institutions.

The National Science Foundation (NSF) represents a significant portion of the research portfolio for COGR institutions and we value the longstanding partnership that we share with NSF. The remainder of this letter includes comments on the 2014 DRAFT PAPPG and we hope that these comments are helpful as you craft a final version of the 2014 PAPPG.

PART I of this letter is specific to the Foundation's implementation of 2 CFR § 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). **PART II** addresses other policy changes proposed in the 2014 DRAFT PAPPG.

PART I. COGR COMMENTS ON THE NSF IMPLEMENTATION OF THE UNIFORM GUIDANCE***REQUESTED DEVIATIONS*****1) AAG - Chapter II.D.5 (page II-8) and AAG - Chapter III.E (page III-7): Grant Closeout**

COGR respectfully asks NSF to request a deviation from OMB that the submission date for all financial, performance, and other reports and the liquidation date be set to a new standard of 120-days after the end date of the period of performance. A new 120-day standard would ensure that research performance is not adversely impacted by an artificially short period for closeout. Further, it would enable timely submission of accurate and compliant reports, which do not require revisions and do not jeopardize institutional funds due to hurried reporting. Finally, from the standpoint of lawmakers and other stakeholders who expect timely closeouts, a new 120-day standard can be integrated within the 15 month standard that is established in 2 CFR §200.343 Closeouts, (g), and hence, will not compromise the important expectation of timely and accurate closeouts of federal awards.

The PAPPG states that NSF grantees must liquidate all obligations incurred under their awards not later than 90 calendar days after the award end date, and after 90 days, the award will be removed from the ACM\$ payment screen. COGR is fully committed to the practice of timely closeouts, but recently has identified the established 90-day standard as an obstacle to effective award management. There have been significant process changes at NSF subsequent to May 31, 2013 (i.e., the date COGR submitted responses to OMB-2013-0001, Proposed Uniform Guidance), which necessitate COGR's request for a deviation in the NSF implementation of 2 CFR §200.343 Closeouts, (a) and (b).

Specifically, we request that the submission date for all financial, performance, and other reports and the liquidation date be set to a new standard of 120-days after the end date of the period of performance. Per 2 CFR §200.343 Closeouts, (g), Federal awarding agencies should complete all closeout actions no later than one year after the acceptance of all required final reports. This effectively sets the final closeout clock at 15 months (i.e., 90 days plus one year) after the end date of the award. ***Within that time period, COGR believes that all parties can work in a bi-lateral fashion to ensure an award is closed in the most timely, efficient, and accurate manner possible.*** Under this bi-lateral closeout model, both the federal agency and the grantee recognize each other's system and resource constraints and will work together to provide sufficient flexibility toward achieving the final closeout objective.

The historically productive partnership between NSF and its grantees suggests that this is an opportunity to join forces and address a potentially significant problem that could create new administrative burden associated with new workflow and IT processes, and even more importantly, harm the quality of research. By establishing a new standard of 120-days, NSF will fully remove the risk of unintended impacts on research outcomes – i.e., reduction of performance periods in order to process timely invoices, the selection of subrecipients based on their administrative abilities for timely payments rather than the quality of science, and other practices that inappropriately put administration ahead of science.

2) AAG - Chapter IV.E (page IV-9): Procurement

COGR respectfully asks NSF to request a deviation from OMB that Institutions of Higher Education (IHEs), Nonprofit Research Organizations (NROs), and all research performers be exempted from Procurement Standards Sections 200.317 through 200.326. Procurement Standards under Circular A-110 should be reinstated for research performers.

The PAPPG states that NSF grantees shall adhere to the requirements of 2 CFR §200.317-326, which prescribes standards for use by recipients in establishing procedures for procurement. COGR has documented that implementation of 2 CFR §200.317-326 will: 1) create increased cost and administrative burden via expensive process-workflow and IT system changes, 2) require a long lead time to implement, which cannot effectively be accomplished by December 26th, and 3) result in risk to program performance – for example, critical research tools and supplies that normally would be acquired in one-day could take at least one-week to acquire. By securing the deviation requested above, NSF can help ensure the continuity of current and effective procurement practices in place at IHEs and NROs, without any sacrifice to institutional accountability and stewardship of federal funds.

OTHER OBSERVATIONS AND REQUESTS**3) GPG - Chapter II.C.2.g.(vi)(d), (page II-17): Computer Services**

We appreciate that NSF has acknowledged that computing devices below an institution's equipment threshold are allowable. However, per Chapter II.C.2.g.(vi)(d), the reference to "computer equipment" may create confusion in the community by suggesting that computing devices are unallowable. Per this section: "*As noted in Chapter II.C.2.g.(iii) above, general purpose (such as word processing, spreadsheets, communication) computer equipment should not be requested.*" We request that you consider deleting this reference, since most such devices do not rise to the level of equipment. Or, alternatively, reinforcement that computing devices below an institution's equipment threshold are allowable would be a helpful footnote to include and would be an important reminder to auditors of the differentiation between supplies and equipment.

4) GPG - Chapter II.C.2.g.(viii), (page II-18), AAG - Chapter V.D.1(i), (page V-4), and GPG - Chapter II.C.2.g.(vi)(e), (page II-17): Indirect Cost Recovery

The first two sections referenced above state: "*Foreign grantees that have never had a negotiated indirect cost rate, are limited to an indirect cost rate recovery of 10% of modified total direct costs. Foreign grantees that have a negotiated rate agreement with a U.S. federal agency may recover indirect costs at the current negotiated rate.*" This seems to suggest that this rule would not be applicable to domestic grantees; we request that this section be clarified to state these rules apply to all grantees. The third reference above states: "*Foreign subrecipients are not eligible for indirect cost recovery unless the subrecipient has a previously negotiated rate agreement with a U.S. Federal agency that has a practice of negotiating rates with foreign entities.*" This seems to be inconsistent with the previously referenced sections and the Uniform Guidance; we request that this section be updated, accordingly.

5) AAG - Chapter V.D.1(ii)(a), (page V-5): Fixed Rates for Life of the Award

This section states: “*Federal Awards may not be adjusted in future years as a result of changes in negotiated rates.*” We understand that this text is included in the Uniform Guidance, but urge the NSF to work with OMB and other federal agencies to provide clarification that would allow non-profit research organizations the opportunity to continue to have their total-cost for existing award commitments reconsidered where circumstances warrant. This option has been in place with agencies, such as the NIH, since 1997. It is important that this remain a viable option for non-profit organizations that would be affected by the language in this section of the PAPPG.

PART II. COGR COMMENTS ON OTHER POLICY CHANGES TO THE NSF PAPPG**6) GPG - Chapter I.F.2 - Deadline Dates (page I-6): Inclement Weather Policy**

We appreciate the modification to clarify that the Special Exceptions to NSF’s Deadline Date Policy includes events that effect NSF’s ability to operate including “inclement weather or other reasons.” We encourage NSF to add additional clarification and modification to this section that reflect more accurately the challenges faced in natural and/or anthropogenic events. The ability of a potential applicant to request prior approval for natural or anthropogenic events can be severely affected by the very event that prevents timely submission.

We request that NSF modify this section to include a provision for: 1) notification by the potential applicant as soon as possible but no later than five (5) days after the event and, based on that notification; 2) a determination and authorization, as appropriate, by the program officer for a late submission. NSF could alleviate the anxiety associated with unanticipated institutional closings by providing a standard exception for situations of short duration. Campuses can be closed for a variety of reasons including natural or anthropogenic events, which can require several days to return to normal operations. The recommendation above can help address that situation. Recently, however, campuses have been closed for a day for “man-made” events including sightings of armed assailants and other health and safety issues. We ask NSF to consider a standard exception of one day (next business day) for applicants whose campus is closed for an unanticipated event. The application could be submitted with documentation from the authorized institutional official or the official’s designee.

Similarly, we suggest that NSF consider a standard provision for late submission in those cases where NSF is unable to operate because of natural, anthropogenic, and weather related or other events. Such a provision could set a specific number of days after the event for a new submission deadline. For example, in the case of closures because of inclement weather, the deadline could be set as the day following reopening of federal offices. Any deviations from this standard could be announced on the NSF website.

7) GPG - Chapter II.D.3 - Special Guidelines (page II-24): Ideas Lab

We believe the Ideas Lab concept will provide an extraordinary opportunity to build research teams to tackle compelling and seemingly intractable problems in the sciences, mathematics and engineering. A smooth implementation and collaboration with the participants’ home institutions will ensure programmatic success. We have some questions associated with the launch of the Ideas Lab mechanism.

It is not clear what the nature and extent of support from NSF will be for participants in Stage 3 of the Ideas Lab. If a participant is expected to travel and/or contribute substantial portions of their time – substantial enough to re-allocate their institutional responsibilities – we believe the institution should be a party to any agreement to participate. If, as indicated, the Stage 2 selection process uses the preliminary proposal format in Fastlane with the required submission through the Sponsored Program Office, our concerns about notification are alleviated. If there are costs associated with participation that will be provided by NSF, we assume that participant support would be allocated as a grant through the institution with the usual budgetary considerations related to participant support.

Because of the collaborative nature of the Ideas Lab, we assume any Stage 4 invited full proposals will be submitted according to the Special Guidelines described at GPG Ch. II d. 5. This approach raises some questions concerning the submission process and we encourage NSF to clarify the submission process either in the Funding Opportunity Announcement or in the PAPPG.

Will the participating institutions have the option to submit either a single proposal or simultaneous proposals from all participating organizations?

Will renewal proposals require a preliminary proposal or submission of a full proposal within a regular funding cycle?

8) GPG - Chapter II.D.9 (page II-31) and AAG - Chapter VI. B.5 (page VI-6): Dual Use Research of Concern

We appreciate that the provisions for meeting the *US Government Policy for Oversight of Life Sciences Dual Use Research of Concern* and the proposed *US Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern* have been described as contingent on the publication of the final *US Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern*.

However, we understand that these are two separate but linked policies and that the agencies are expected to meet the requirements of the *US Government Policy for Oversight of Life Sciences Dual Use Research of Concern*. We agree with the observation at AAG Ch. VI B 5 b. that it is unlikely that NSF sponsored research will fall under these policy requirements. Nonetheless, it may be helpful to offer more direction at GPG Ch. II D. 9 to the grantee concerning the implementation of the policy for agencies. An indication of how NSF will engage in the development of plans with grantee organizations to mitigate the risks associated with DURC may be helpful. Such a statement or provision could outline the path for communications with NSF as in the AAG and the process for reporting by the PI/PD described in the agency policy.

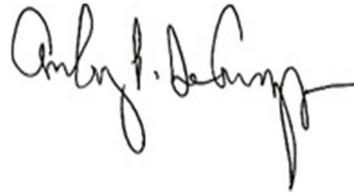
9) GPG - Chapter III.F (page III-5): Use of the term “Proposer”

We encourage NSF to standardize the language throughout this section with the terms used throughout the PAPPG. The use of the term “proposer” has created some confusion in the community particularly at grantee institutions with multiple investigators. We request that “proposer” be replaced with “grantee” because we understand that all new grantee institutions may be evaluated under the Risk Management Framework.

July 1, 2014

Thank you for your consideration of the recommendations and requests we have made in this letter. We appreciate the significant and helpful role that NSF continues to play as the research community works toward implementation of the Uniform Guidance. If you have any questions, please contact David Kennedy at dkennedy@cogr.edu or at 202-289-6655, ext. 112 with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony P. DeCrappeo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Anthony P. DeCrappeo
President