Below are topics that COGR would like to review during the January 29th meeting with representatives from the COFAR and OMB. We appreciate your hard work and your willingness to work with us to address items that may require further clarification and interpretation.

There are many opportunities for a reduction in administrative burden at research universities. We will share more perspective on these when we respond to your request to define metrics. For the purposes of this document and the January 29th meeting, we have raised points that we believe require further clarification and interpretation.

Subpart B – General Provisions

200.110 Effective/applicability date. How should these dates be applied to the negotiation of an institution’s F&A rate? A clarifying FAQ that specifies, for example, F&A rates negotiated on or after 12/26/14 could be a logical and intuitive approach.

200.112 Conflict of interest. Requires Federal awarding agencies to establish a conflict of interest policy for Federal awards and requires a disclosure to the awarding agency of potential conflicts of interest in accord with that agency’s policy. This was not in Proposed Guidance. We are concerned with new burden based on new agency policies.

Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards

200.206 Standard application requirements. Under the Proposed Guidance, Federal agencies desiring to collect information in addition to that approved by OMB would have been required to submit a justification to OMB. Under the Omni, the agency may inform the recipients they do not need to provide certain information. Does the new language still suggest that agencies should not make requests for additional information?

200.210 Information contained in a Federal award. Section (b) requires the awarding agency to incorporate general terms and conditions either in the award or by reference. While this does not specifically reference the Research Terms and Conditions, it seems to suggest their applicability to awards.

Subpart D – Post Federal Award Requirements Standards for Financial and Program Management

200.301 Performance measurement and 200.328 Monitoring and reporting program performance. The funding agency must require recipient to relate financial data to performance requirements of the federal award and must provide cost information to demonstrate cost effective practices (e.g. unit cost data). This is much stronger language than in the Proposed Guidance, which focused on “whenever practicable." Does section 200.210 effectively make these sections not applicable to discretionary research awards?
“In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy).”

**200.303 Internal controls.** Requires recipients to have internal controls in compliance with guidance in “Standards for Internal Control in the Federal Government” and “Internal Control Integrated Framework” issued by COSO. This was not included in the Proposed Guidance and may create new and unexpected burden.

**200.307 Program income.** The definition of program income now includes license fees and royalties from federally funded patents and inventions. In the case of nonprofit organizations, treatment of such income as “program income” is inconsistent with the Bayh-Dole Act (35 USC 202(c)(7)), which does not authorize funding agencies to negotiate appropriate uses of such income.

**200.313 Equipment.** Section (a) Title to equipment is now a “conditional title” vested to the non-federal entity, and per (d)(1) property records must contain “percentage of Federal participation in the project costs for the Federal award under which the property was acquired”; not the acquisition cost of the equipment. The records must also contain “use” of the equipment. What does conditional title mean? Since the conditions of the title include disposition of the equipment, does that mean full title doesn’t exist until the equipment is disposed of in accordance with the Omni Guidance?

**200.318 General Procurement Standards.** The equipment screening requirements per the Proposed Guidance were removed. However, a prescriptive description of records that must be maintained to document the history of the procurement was not removed. Also, it’s not clear what types of procurement these documentation standards apply to (see 200.320).

**200.319 Competition.** Section (b) prohibits the use of statutorily imposed state or local geographical preferences in the procurement. COGR had pointed out that this could create conflict for public universities having to follow State laws, which may require such considerations. It would seem logical that any exemptions applicable to the States should also be applicable to State universities. And as a logical extension, similar exemptions could be considered for all IHEs.

**200.320 Methods of procurement to be followed.** A prescriptive list of 5 procurement methods are provided. The discussion on the Webcast suggested that in the case of sole sourcing for research, “should” is more relevant than “must”. Also, there is a new category of “micro-purchase” which allows purchases of up to $3,000 without competition. However the implication then is that purchases over $3,000 would have to be competitive in some way. This could have implications on procurement card programs at many IHEs.

**200.330. Subrecipient and contractor determinations.** The Omni Guidance allows Federal agencies to impose documentation for contractor versus subaward classification determinations. Can Federal agencies be encouraged to create a common form (at least for research-related awards)? What role would OMB be willing to play in ensuring that? What
process can be put in place to ensure that Federal agencies don't create their own
definitions that vary from the regulations?

200.331 Requirements for pass-through entities. As these requirements will add new
subrecipient monitoring burden, we hope to engage in conversations that can leverage the
Omni Guidance in a way to find opportunities to reduce burden.

- Should versus Must. We propose that an FAQ be developed, targeted to both the
recipient and the audit communities, which emphasizes the distinction between “must”
(i.e., must) versus “should” (i.e., an effective practice).

- Subrecipient F&A Rates. We would support an FAQ that reinforces that the F&A rate
must be used when the rate already exists, and that pass-through entities do not have
the authority to require or suggest reduced F&A rates when selecting a subrecipient.
Given that subrecipients are required to work through their pass-through entity (and
not directly with the Federal agency), what can subrecipients do to ensure that pass-
through entities treat them according to the new rules.

- Reliance on monitoring already done. OMB intends for pass-through entities to rely, to
some extent, on monitoring already being done by Federal agencies. What was OMB's
vision for how this might take place? It appears that pass-through entities and Federal
agencies all have the same due dates for management decisions, so it isn't clear to us
how pass-through entities can take advantage of monitoring already being performed.

- Transition Issues – The Omni will be applicable for funding increments issued on or after
12/26/14. This would imply that new requirements (such as the obligation to use the
subrecipient’s federally negotiated F&A rate or provide the di minimus F&A rate) should
be applicable at that time - but the current federal award was not funded with these
additional costs in mind. One solution would be to allow F&A rates to be governed by
the terms of a subaward that was originally issued on or before 12/26/14, through the
end of the prime award’s existing competitive segment.

200.332 Fixed amount subawards. Fixed price awards by definition sometimes result in a
final accounting that has excess revenue over expense. The Omni indicates [Section 400.(g)]
that the non-Federal entity may not earn or keep any profit resulting from Federal financial
assistance, unless expressly authorized by the terms and conditions of the Federal award.
We believe that clarification is needed that this excess revenue-over-expense is not
intended to be included in the restriction on earning profit.

Also, the Omni Guidance may be inconsistent by directing the pass-through entity to select
the best contracting instrument, but mandating that it can't use the fixed price instrument
absent prior written federal approval and only up to a capped amount. Would OMB permit
Federal agencies to waive prior approval and the capped amount, per the Research Terms
and Conditions? Finally, what is the expectation for fixed price subawards that start under
the Simplified Acquisition Threshold but over time exceed it? Would entities be required to
change instruments mid-lifecycle?
Subpart E – Cost Principles

200.415 Required certifications. Annual and final fiscal reports or vouchers requesting payment must include a certification, signed by an official who is authorized to legally bind the non-Federal entity includes language stating: “I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.” This was not included in the Proposed Guidance and is more harsh than the IRS.

200.419 Cost accounting standards and disclosure statement. After being eliminated in the Proposed Guidance, the Omni Guidance adds back compliance with the four CASB standards and maintenance of a DS-2. The threshold is set at $50 million, rather than the $25 million per Circular A-21. It is not clear as to why a burden reduction opportunity was added back? Also, a proposed change to the DS-2 should be proposed to the Federal cognizant agency for indirect costs six months prior to implementation and must be approved within the six months, unless the cognizant agency specifies additional time is needed to review the proposed change. If the cognizant asks for an extension, this puts the IHE in a state of limbo.

200.430 Compensation - personal services. The elimination of any reference to “certification” may suggest that an effort reporting system is not required and that the institution’s official payroll system should be the basis for confirming payroll charges to federal awards. While this suggests effort reporting is no longer required, additional clarification would be helpful before institutions proceed with making final decisions. In regard to nonexempt employees, Circular A-21 references time cards, whereas the new guidance indicated “wages of nonexempt employee ... must be supported by records indicating the total number of hours worked each day.” Are timecards still acceptable for nonexempt employees? Finally, why is the following not applicable to IHEs?: “(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost.”

200.431 Compensation - fringe benefits. Per section (a)(3)(i): “When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable as indirect costs in the year of payment.” This was not in the Proposed Guidance and would require a significant change in accounting for unused leave.

200.436 Depreciation. Section (c)(3) states that the acquisition cost will exclude: “Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity, or where law or agreement prohibits recovery” – this may be a typographical error as this portion should be allowable. We believe the intent is that the “contributed” funds that are not allowed are funds that were provided by the IHE to satisfy a mandatory cost sharing requirement and where these funds were specifically described in the award notice as not permitted to be recovered in the F&EA rate.
**200.449 Interest.** Several requirements that still are of concern include: limiting reimbursement to that of the least expensive alternative, the 25% equity contribution requirement, and disallowance of interest on fully depreciated assets.

**200.459 Professional service costs.** The costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill are allowable, but are subject to number of factors, which may create administrative challenges to justify the use of these services.

**200.461 Publication and printing costs.** “The non-Federal entity may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.” This is a positive development, though more clarification may be needed as to what constitutes an allowable/estimated charge.

**Subpart F – Audit Requirements**

**200.513 Responsibilities.** Will the names and contact information for the single audit accountable officials be available on an OMB website? Will these officials be active in the audit resolution process, both for single audit and for IG audits? Will there be an opportunity to use the cooperative audit resolution mechanism to address audit quality?

**Appendix III – Indirect (F&A) Costs Identification, and Rate Determination for Institutions of Higher Educations (IHEs)**

**B.4.(c) Operations and maintenance expenses.** The guidance for computing utility adjustment remains confusing – our understanding is that metering and weighting can be used in tandem. Further, weighting of other types of space (e.g., classrooms) that can be supported at a factor of less than 1.0 is not addressed – our understanding is that in these situations a reduced weighting factor would be appropriate.

**C.2. The distribution basis.** The definition of MTDC is included in Subpart A (section 200.68). Participant support costs are listed as an exclusion. In addition, the following MTDC exclusion remains a concern: “the portion of each subaward and subcontract in excess of $25,000.” This is an issue with certain agencies that define vendor agreements as subcontracts (and an MTDC exclusion). It would be helpful to have a clarification that states “subcontract” does not include vendor agreements.

**C.8. Limitation on reimbursement of administrative costs.** Contrary to the Proposed Guidance, IHEs are restricted from changing their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct. We believe this is a lost opportunity for both our institutions and the Federal government to reap the benefits of more efficient responsibility center budgeting models.

**C.11. Negotiation and approval of indirect (F&A) rate.** This one remains a curiosity: Other stakeholders are provided “OMB Assistance” when there is an impasse between the institution and the cognizant agency. It looks like we are the only stakeholder that is not provided that help.