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April 30, 2012

Mr. Danny Werfel
Controller, Office of Federal Financial Management
Office of Management and Budget
725 17th Street NW
Washington, DC 20025

**Subject: Grant Reform: Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost principles and Administrative Requirements (including Single Audit Act)
Advanced Notice of Proposed Guidance (ANPG)
Federal Register, Vol. 77, No. 39 - Tuesday, February 28, 2012 (11778)**

Dear Mr. Werfel:

On behalf of Duke University, we are writing to express both appreciation for the consideration of potential grant reform initiatives and for your willingness to solicit input and informed recommendations from front line recipients of federal funds. As you know, research universities have mobilized considerable effort to encourage researchers, senior leadership and others dedicated to facilitating research while managing compliance to generate thoughtful and well considered recommendations for grant management reform. We hope that this dialog continues. We feel strongly that there is opportunity for a mutually advantageous partnership where appropriate stewardship of federal investment and the empowerment of researchers to push the boundary of new discovery are achieved.

As the fifth-largest research university in the nation with \$983 million in research, Duke University feels that we can provide important insight into the barriers and opportunities in addressing the major changes that provides for continued growth and contribution mentioned in the Federal Register Notice.

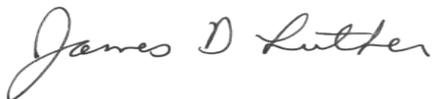
Duke University previously responded to a June 28, 2011, *National Institutes of Health NOT-OD-11-091 – RFI: Input on Reduction of Cost and Burden Associated with Federal Cost Principles for Educational Institutions (OMB Circular A-21)*. At that time we offered thoughtful commentary on a broad spectrum of issues. We continue to support all of our original recommendations. Further, we endorse COGR's position as represented in their July 2011 response as well as their more recent discussions/communications regarding this ANPG.

During the development, execution, and communication of any policy and guidance changes related to this ANPG, we would be happy to assist in any way you see fit. In particular, we are interested in ensuring alignment of OMB, sponsor/program staff, and audit staff. This alignment of policy and interpretation across all parties, including universities, will facilitate institutions' ability to develop appropriate internal guidance, communication and training and ideally reduce institutional misunderstanding and auditor discretion.

On behalf of Duke University, I wish to express again our most sincere appreciation for the opportunity to provide thoughtful comment regarding this seminal and essential initiative. Please feel free to contact me at any time for further discussion.

I would be most willing to meet at any time to continue discussions relating to regulatory improvements. Thank you for your efforts on behalf of the research community.

Sincerely,

A handwritten signature in cursive script that reads "James D. Luther".

James D. Luther
Assistant Vice President, Finance
Research Costing Compliance Officer

Attachments:

Duke University Response

Copy: Scott Gibson
Sally Kornbluth
James Roberts
James Siedow
Chris Simmons
Melissa Vetterkind
Tim Walsh

Duke University Response

Reform of Federal Policies Relating to Grants and Cooperative Agreements: Cost Principles and Administrative Requirements (Including Single Audit Act) (Document ID OMB-2012-0002-0002)
(Federal Register: 11778, Vol. 77, No. 39, Tuesday, February 28, 2012)

A. Overarching Questions

1. Which of these reform ideas would result in reduced or increased administrative burden to you or your organization?

Reduced Burden (details provided below) Duke University believes that modifications as suggested below in Effort Reporting and Monitoring and in clarification and allowance of project management staff as direct charges to federally sponsored projects would be the most critically important changes in reducing faculty administrative burden.

Increased Burden (details provided below) Duke University is concerned that any increase of the A-133 audit threshold (from \$500K to \$3M or any amount) may potentially have the effect of shifting additional oversight and sub-recipient monitoring responsibilities to the prime recipient. This issue might be further exacerbated if the current sub-recipient monitoring requirements are not clarified and reduced.

2. Which of these reform ideas would be the most or least valuable to you or your organization?

Most Valuable: (Details are provided below)

- *Allowing the direct charging of project management staff to federally funded projects (Details: C.3.a. below)*
- *Alternatives to time/effort reporting requirements for salaries and wages (Details: C.4 below)*
- *Fair and equitable application of the UCA (Details: C.5. below)*

Least Valuable:

- *Application of a flat F&A rate (Details: A.3. and C.2.)*
- *Consolidating the cost principles into a single document, with limited variations by type of entity.*
 - o *While laudable in its intent, consolidation would require further extensive discussion and would likely provide no reduction of burden nor increase clarity of certain ambiguous terminology. We have concern that focusing on this while addressing many substantive opportunities for burden reduction could distract us from our primary objectives. Further, we are concerned that if in the future a specific cost principle unique to universities (or state and local governments, or nonprofits, or hospitals) has to be addressed, a single document containing all circulars would require the entire document to be opened up for public comment.*
- *Creating a consolidated, uniform set of administrative requirements.*
 - o *As with the proposed combination of Circulars A-21, A-87, and A-122, and the Cost Principles for Hospitals, Duke University strongly believes that*

consolidation would require further extensive discussion and would likely provide no reduction of burden nor increase clarity of certain ambiguous terminology. We have concern that focusing on this while addressing many substantive opportunities for burden reduction could distract us from our primary objectives.

3. Are there any of these reform ideas that you would prefer that OMB not implement?
 - *Application of a flat F&A rate, as it will further cost shift the support of research to universities in a manner that will become more and more unsustainable. As Duke University noted in its July, 2011 response, the Duke School of Medicine alone has calculated that its costs for research compliance and quality assurance have increased approximately \$10 million over the past 10 years. This expense adds to the larger institutional burden for research support – estimated at close to \$100 million for Duke University in total – which must fill the void left by under-recovered F&A costs, research infrastructure investment, bridge funding for seasoned investigators who have lost funding in the current NIH budget environment, caps placed on salaries and administrative costs, and points lost through rate negotiations. A flat rate approach will require most recipients of federal funds to choose between continued support for research and other pressing academic needs.*
 - *As stated above, increasing the A-133 audit threshold poses serious issues for prime recipients and should not be implemented.*

4. Are there any reform ideas, beyond those included in this notice, that OMB should consider as a way to relieve administrative burden?
 - *Including the cost of certain computing devices as allowable direct cost supplies. Duke University applauds the proposed change that will allow computing devices as allowable direct cost supplies, but strongly urges OMB to eliminate the requirement that these items must be documented as separate line items in budget requests. This clarification would be aimed at ensuring that charges are appropriately classified in order to provide support for all of the costs directly associated with a federal award, while reducing the burdens of securing special permission to purchase. This is not intended to result in a net cost increase, but rather to recognize the changing dynamic of how computers and related supplies have become essential to the research enterprise. Additional detail was supplied in our July 2011 response.*
 - *Elimination of the FAR Requirement for Document Retention: Duke University July 2011 Response: Remove requirement from all regulations, including the FAR (4.703), that require retention of paper documents after imaging to permit periodic validation of the imaging system.*
 - a. *Burden/Cost: Under the current regulations, many universities are required to maintain a massive amount of paper documentation in the unlikely possibility that it is related to a federal contract. One example, which is extremely costly, is the requirement when applied to the procurement cycle. To provide some high*

level numbers to this statement, although Duke University has less than \$7 million dollars in contract procurement spend (excluding payroll, fringe and related F&A), we are required to maintain supporting documentation for more than \$1.5 billion of procurement spend to ensure we were meeting the FAR requirement. This occurs because as an accounts payable invoice is received, the central office has no way of knowing whether the document is related to a federal contract, a student group, the health system, the football team, or any other unit within the university. Per FAR 4.703, we are required to retain the paper document for one year after scanning. This requires clerical support, filing cabinets, office supplies, rental space, etc. all to ensure that the ½% of potential contract related spend is retained in support of a potential audit.

- b. As we expand the imaging solution to other business process cycles, such as travel and grants processing (proposal through closeout), we will continue to incur significant costs even though our contract volume (\$20M) is small compared to the rest of our institutional business (\$3B).*
- c. Background: Technology has improved over the recent years so that imaging solutions are full featured and searchable, secured, and add significant value to the business process while often reducing transaction cost. They allows an institution to workflow documents, share documents via corporate systems such as a general ledger, and most importantly maintain/retain the documents in an electronic format so that the original paper documents can be disposed of, as well as the associated file cabinets. Many institutions have made progress in this area in the procurement cycle and are now considering an expansion of the use of technology, including the entire grant cycle from proposal through closeout. Other opportunities include the travel/reimbursement business process, procurement card, check request, etc. OMB A-110 (2 CFR 215.53, para c) states that "Copies of original records may be substituted for the original records if authorized by the Federal awarding agency." DHHS has identified a process to transition to electronic records (OGAM AT 99-1), but very clearly states in the "Purpose and Background" section that institutions should "be aware that Federal contract documents are subject to FAR 4.703(c)(3), which states, "the contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.") Recent discussions with cognizant officials at DHHS have confirmed this interpretation. Institutions should be permitted to meet document retention guidelines in any manner they deem reasonable with the understanding that it is their ultimate responsibility to provide backup documentation as required to substantiate all expenditures, proposals, agreements, etc. This documentation, whether paper or electronic, must be available and legible for the appropriate retention period.*

- *Address continuing problems regarding arbitrary cost reimbursement policies issued by individual agencies which have the effect of setting limits on F&A reimbursement without due process and input. We strongly endorse COGR's position on this issue.*
- *Update the cost principles to allow prime awardees to recover F&A on the first \$25,000 of each subgrant or subcontract for each and every year during the life of the project. We strongly endorse COGR's position on this issue.*
- *During the communication and execution of any policy and guidance changes related to this ANPG, ensure alignment of OMB, program staff, and audit staff. As stated above, we applaud OMB and COFAR's focus on the items mentioned in the ANPG and previously discussed over the past year. But we encourage all parties to ensure alignment of policy and interpretation so that institutions are able to develop appropriate internal guidance, communication and training and reduce institutional misunderstanding and auditor discretion.*

B. Single Audits – the following response applies to questions 1, 2, and 3

- *Duke University understands the fundamental precepts that prompt this recommendation; however, by concentrating audits on higher dollar, higher risk awards, the end result could inadvertently impose even further compliance management requirements to larger research universities who are most commonly the recipients of such awards. If commensurate changes are not made in reducing the burden of subrecipient monitoring for prime recipients, it is inevitable that the end effect would be to cost-shift monitoring burdens to large institutions. Such action could also lead to unintended consequences where research institutions shy away from subcontracting with small entities and/or where the institutional cost of oversight associated with monitoring small entities significantly increases.*
- *Thus, Duke concurs with COGR in recommending that OMB should issue new guidance that results in the reduction of monitoring responsibilities by the prime recipient on those sub-awards made to other entities subject to the single audit. The primary responsibility of the prime recipient is to ensure the quality and integrity of the science that is being conducted and that any required follow-up/monitoring should be triggered only when there are A-133 findings that include questioned costs on the subgrant or subcontract issued by the prime. The A-133 Compliance supplement should specifically reflect this change, and so advise the auditing community. In support of the COGR recommendation, Duke University also concurs that OMB also should consider extending a "safe harbor" to research institutions that subcontract with small institutions that have less than \$3 million in federal awards. The "safe harbor" would be designed to replicate the audit relief that OMB has proposed for both institutions with less than \$1 million and institutions with less than \$3 million of federal awards.*

5. What processes or tools should the Federal Government implement in order to ensure better coordination in the Single Audit oversight by Federal agencies and pass-through agencies, including the resolution of audit findings that cut across multiple agencies' programs?

- *Duke University remains concerned that the role of the cognizant audit agency is not well understood and agencies sometimes implement differing audit resolution processes.*
- *We support the COGR recommendation that a senior level, specifically designated accountable agency official should be given the responsibility to serve as advocate for recipients of federal funds, and should review unusual audit findings that may prove to be inconsistent with agency and/or OMB policy.*

C. Cost Principles

1. On indirect cost rates:

a. Would administrative burden be reduced by having an indirect cost rate in place for 4 years?

- *Duke University currently negotiates a four-year rate in most cases; this seems to be a reasonable term, although the university should have the option to petition to extend or shorten this process based on case-specific scenarios.*

2. What are your views on the following types of indirect cost rates?

a. A flat rate –

- *Duke University does not support a flat rate. While Duke University agrees that there is significant opportunity for improvement in the development and negotiation of F&A rates, we believe that the chief cause for concern and therefore remediation lies in creating a rate structure that is standardized, transparent, and reflective of the true costs of providing a productive, compliant infrastructure dedicated to supporting the nation's research agenda. Artificial caps and negotiated discounts of F&A rates fail to acknowledge the growing cost of research and of compliance. A more transparent, and therefore open, system where right of appeal is open and consistent is far superior to a flat rate or to the current system. We support the following as recommended by COGR: "Formalize an F&A Rate Negotiation Model that is transparent, unambiguous, consistent and collaborative between the Federal government and Research Universities and Institutions."*

b. Longer term for negotiated rates to be in effect –

- *While this may be a sensible approach, it should be at the discretion of the university. OMB should provide an option, exercised at the discretion of an institution, where an institution can extend its current negotiated F&A rate at the same level utilizing an automatic, up to 5-year extension. The Federal cognizant agencies, OMB, research institutions, and appropriate representatives from the research community should agree on a simplified baseline level of documentation in support of the 5-year extension. At the end of the 5-year extension period, the institution can apply for an additional 5-year extension, subject to approval from its cognizant agency.*

c. A flat rate that would be a fixed percentage of the organization's already existing negotiated rate –

- *As stated above, Duke University does not support a flat rate of any type. Again, Duke University estimates that approximately \$100M is provided from university resources annually in support of research. A flat rate would require additional resources on the part of the university – resources which would be in competition for other pressing academic needs.*

3. In general terms, what would be the cost implications of implementing each of the following reforms, and/or of all of them together?

a. The proposed clarifications to allowable charges of directly allocable administrative support as a direct cost. As currently envisioned, reforms would clarify that project-specific activities such as managing substances/chemicals, data and image management, and security are allowable.

- *This is an excellent opportunity to provide researchers with a means of focusing on their research and less on the distractions of project management and compliance that have become increasingly burdensome in the past decades. Duke University strongly supports revisions to the current caution regarding allocable administrative support. There is continuing confusion over the interpretation and commensurate audit position for charging these cost directly to sponsored activity, and continued enforcement fails to recognize the significant changes that have occurred in the research enterprise in the past two/three decades. It has been repeatedly documented that principal investigators' time is being consumed with non-research activities, largely driven by two factors: the increasing size and complexity of funded research projects; and, the increased compliance requirements that accompany the current research environment. PIs cannot and should not be expected to divert the time required to be productive researchers in order to administratively manage their projects.*
- *Allowability should be determined by those "project management activities" that can be specifically identified to an individual project – this is the cost allocation criterion defined in the cost principles and it should not be subject to arbitrary and selective limitations. OMB A-21 current reference to "clerical and administrative" was developed over 20 years ago and was generally focused on "secretarial activities" that supported broad administrative functions and could not readily be allocated to a specific project. Examples might include typing correspondence, filing, purchasing basic supplies, incidental travel arrangements, and general office duties. Although these functions remain essential to general administrative operational support, the nature of project management administrative responsibilities and their specific application to sponsored activities has dramatically changed. Over the past four decades, a new profession of research support staff has emerged, with its own body of knowledge, professional credentials, professional associations, and professional standards. These skilled technicians may be found across the globe as professional project managers, and it is these individuals that form the project management support structure that is critical in effective management of sponsored activities.*

Their functions can be readily identified with project management support and their contributions are critical in relieving faculty of burdensome compliance and financial management duties. Unfortunately, current OMB A-21 language is often interpreted to prohibit the direct charging of these otherwise allocable compliance and project administration functions. We recommend that project management support activities be classified as an allowable Direct charge.

4. Would you be potentially interested in participating in a piloted alternative for time-and-effort reporting? Is there a permanent change to time-and-effort requirements that you recommend OMB consider?

- *Duke University agrees with OMB that a more streamlined approach to effort management and reporting is needed. We further agree that appropriate changes could result in substantial reductions to the administrative burden currently associated with effort reporting. This is an important issue – one that cannot be addressed by assuming that effort dedicated to research can easily be measured or quantified. A new, thoughtful paradigm is needed that recognizes that effort can be effectively measured by the productivity of the research produced far better than by the current system. This is not a “factory/hourly wage” process and thought should be given to its unique aspects when crafting new, and hopefully flexible, approaches.*
- *Focusing on outcomes is particularly important for a complex academic medical center where the burden related to accounting for effort is particularly complicated because*
 - i. *There is significant interrelatedness between projects and*
 - ii. *One bedside interaction with a hospital patient is extremely difficult to capture accurately in an effort system. In this situation, the faculty member may simultaneously be exerting effort in support of clinical care, in support of the academic mission (because there may be a graduate accompanying the faculty member), and the research mission (because the patient may also be clinical trial subject). Effort reporting is extremely burdensome and costly, and is not correlated to project outcome in a manner that justifies its cost.*

5. If your organization is an educational institution that does not currently receive the Utility Cost Adjustment (UCA), what are the general factors that your organization would likely consider in deciding whether to conduct a cost study, and complete a plan to reduce utility costs, in order to justify receiving the UCA?

- *Universities that are not permitted to either include the UCA or conduct and include a UC study in F&A negotiations are not being fairly reimbursed for reasonable indirect costs. It is important for all parties to realize that the UCA attempts to appropriately account for the extreme differential in maintenance and operations costs of research space compared to classrooms/offices. We endorse COGR’s position and further would advocate that universities should*
 - i. *Immediately be eligible to receive the 1.3% UCA (preferred option) or*

- ii. *Be allowed to conduct and include a Utility Cost Study in future negotiations*