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Mr. Norman Dong
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725 17th Street, NW
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Subject: Proposed Guidance, Federal Register, Vol. 78, No. 22-February 1, 2013
Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (including the Single Audit Act)

The University of North Carolina System appreciates the opportunity to comment on the Proposed Guidance for Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (including the Single Audit Act) as published in the Federal Register, Vol. 78, No. 22-February 1, 2013. The University of North Carolina is a multi-campus university composed of all 16 of North Carolina's public institutions that grant masters and baccalaureate degrees. The University of North Carolina received over $1.36 billion in research funding in FY 2012.

The University of North Carolina submitted comments to the initial Request for Information issued by the A-21 Taskforce on June 29, 2011 and to the Advanced Notice of Proposed Guidance (ANPG) issued by the Office of Management and Budget (OMB) on February 28, 2012. Our attached comments to the February 1, 2013 Proposed Guidance are organized under the subheadings General Provisions and Requirements, Cost Principles/Direct and Indirect Costs, Audit Requirements and Appendix IV Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Educational Institution. Proposed replacement language is underlined and deletions feature a strikethrough.

It is evident the Proposed Guidance was prepared with careful consideration of the issues impacting both the grantee community and the Federal Government and we believe it goes a long way in achieving the objective of true grant reform. In many ways it will foster the Federal government's partnership with non-federal stakeholders to best achieve program outcomes while ensuring the financial integrity of the dollars spent. As the Final Guidance issued by OMB will have broad implications for University of North Carolina campuses we are mindful of

the need for due diligence and thoughtful and thorough implementation plans to avoid unintended consequences of the proposed reforms.

Sincerely,

Christopher S. Brown

cc: Sarah Smith

General Provisions and Requirements
Subchapter A – General Provisions

__ .100 through __ .111

.100 and .101 – Consistent use of Terminology Throughout the Proposed OMB Guidance for "Federal Award," to Which the Guidance is Applicable

Consistent use of key terms and their applicability in the Final Guidance will be critical. Our understanding is that the term "*Federal award*" has been used as a key operational term throughout the Proposed Guidance. The definition as shown in Subchapter H, Appendix 1 – Definitions, is clear:

> *Federal Award means Federal financial assistance, ~~and~~ Federal cost-reimbursement and Federal fixed price contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities where the Federal funds are used to carry out a program or project for a public purpose. It does not include procurement contracts, including procurement contracts under grants or contracts that are used to buy goods or services from contractors where the goods or services are ancillary to the operations of the Federal program or project. Contracts to operate Federal government owned, contractor operated facilities (GOCOs) and direct Federal contracts are excluded from the requirements of this guidance.*

However, there are inconsistencies throughout the Proposed Guidance. We believe the guidance in Subchapters B through G and the relevant appendices in Subchapter H should be clearly stated as applicable to all Federal awards. In other words, Administrative, Costing, and Audit principles should be applicable to Federal financial assistance and Federal cost-reimbursement contracts.

.102(b) – Greater Transparency Needed on Agency Exceptions

We are concerned the conditions for and documentation of permissible individual exceptions, including limitations on cost reimbursement, be clearly described for all parties. In addition, the process for granting OMB approval of classes of exceptions, including limitations on cost reimbursement, should be detailed and available to the Federal awardee community.

> *.102(b) Exceptions on a case-by-case basis for individual recipients and subrecipients may be authorized by the affected Federal agencies except where otherwise required by law or where OMB or other approval is expressly required by this guidance. OMB will provide guidance to Federal agencies regarding how case-by-case exceptions are granted and how granted exceptions are documented. Where case-by-case exceptions are approved by OMB, they will be published timely on the OMB website at www.whitehouse.gov/omb. ~~No case-by-case exceptions may be granted to the provisions of Subchapter G- Audit Requirements.~~*

.107 –Include Incorporation of Research Terms and Conditions

We and others in the university research community believe it should be made clear that when OMB issues Final Guidance, the Government-wide Research Terms and Conditions are incorporated into or referenced, accordingly. If not, the result could be the unintended disruption of the streamlining and simplifications brought about with the Government-wide Research Terms and Conditions.

> *.107 The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in Subchapters B through G and the Appendices in Subchapter H of this Guidance. Federal agencies making Federal awards to non-Federal entities, either directly or indirectly, shall implement the language in the Subchapters B through G and the Appendices in Subchapter H of this guidance in codified regulations, unless different provisions are required by Federal statute or are approved by OMB. Implementation of the language in Subchapters B through G and the Appendices in Subchapter H of this guidance further authorizes continued implementation of the Government-wide Research Terms and Conditions.*

.108 –OMB Responsibilities Should Include Provisions for Grantee Appeal to OMB, and if Applicable, OMB Intervention

It is imperative for the non-Federal recipient community to have a mechanism to appeal to OMB those decisions or actions by agencies that: 1) are not in compliance with this Final Guidance, 2) have been interpreted by an agency in a manner that requires OMB engagement, or 3) require special consideration due to other circumstances. This provision will maximize accountability and transparency between the non-Federal recipient community and the Federal agencies, and further, will establish a formal process where ambiguities and disputes in policy interpretation are effectively resolved.

> *.108 OMB will review agency regulations and implementation of this guidance, and will provide interpretations of policy requirements and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented. Non-federal entities can contact OMB in those situations when agency decisions or actions are not in compliance with this guidance, when there is a dispute in interpretation of this guidance, or in other applicable situations. OMB will provide a formal mechanism to resolve the issue, which will include a written statement, and documentation of the resolution will be issued to the grantee within 120 days of filing the appeal.*

.111 –Specify a Clear and Uniform Effective Date

Clear direction for the orderly and timely implementation of the guidance must be prioritized to avoid significant discrepancies in effective date between various agencies. This inconsistency will create unnecessary confusion and additional administrative burden. We recommend that all regulations be effective as of the same date. For the special case of Section G – Audit Requirements, we recommended that the effective date be the second fiscal year after OMB issues Final Guidance. The timing of the annual Single Audit Cycle is such that it may be appropriate to implement the Section G – Audit Requirements under a lagged model to provide both the grantee and audit communities with the appropriate lead time to prepare for the changes in audit requirements.

.111(a) The standards set forth in this guidance which affect administration of Federal Awards ~~grants and cooperative agreements~~ issued by Federal agencies become effective once codified by Agencies as described below.

.111(b) Federal agencies shall implement the policies and procedures applicable to recipients of ~~awards and agreements~~ federal awards (and subrecipients) by promulgating final regulations and any other appropriate guidance documents effective on a specified date by OMB. In the event an agency does not promulgate final regulations within the one year deadline, this Final Guidance will supersede the agency's policies until such time the agency implements final regulations.

.111(c) The standards set forth in Subchapter G– Audit Requirements which apply directly to Federal agencies, shall be effective [date to be inserted when this guidance becomes final], and shall apply to audits of fiscal years beginning the second fiscal year after [date to be inserted when this guidance becomes final].

Subchapter B – Pre-Award Requirements

__ .204

.204(a)(G) –Agency Solicitations and Submission Deadline Should Remain 90-Days

As interdisciplinary research efforts increase, we are concerned that Agencies do not issue solicitations far enough in advance of the application submission deadline to permit adequate coordination among anticipated collaborators and proposal preparation and review. All universities want to submit high-quality, competitive proposals. Allowing solicitations to be available for at least 30 day will have a detrimental effect on the quality of collaborative efforts

and the resulting proposals. We propose retaining the 90-day timeframe to allow for a more timely and rational proposal submission methodology. The following change is requested:

> *.204(a)(G) Agencies shall make all solicitations available for application for at least ~~30~~ 90 days, unless exigent circumstances dictate otherwise, as determined by the head of the agency.*

Subchapter C – Federal Award Notice

__ .302

.302 – Implementation of Unique Award ID Codes and Similar Federal Identifiers

We are pleased with OMB's efforts to streamline the many Federal identifiers and codes. Federal award recipients are required to manage a wide variety of Federal identifiers and systems (e.g., CFFA, SAM, etc.), and any change can have a significant impact as both internal accounting systems and external reporting requirements are dependent on these Federal identifiers and codes. We encourage OMB to implement any changes in Federal identifiers and codes in a manner that is not overly prescriptive and that recognizes what may be appear to be rational change from the Federal perspective can be potentially burdensome on the non-Federal entities. We propose the following change:

> *.302(a) A Federal agency must provide notification of a Federal award to the recipient for each Federal award it makes, which shall include the information listed below:*
>
> *(1) Award recipient;*
>
> *(2) Recipient's DUNS number (see Appendix I – Definitions, Data Universal Numbering System (DUNS) number);*
>
> *(3) Unique award identification code;*
>
> *(~~3~~ 4) Federal award project description; and*
>
> *(~~4~~ 5) Date and amount of the Federal award;*
>
> *OMB shall minimize burden on Federal award recipients by limiting changes to the Federal Identifiers listed above and limiting implementation of additional Federal Identifiers.*

Subchapter E – Post Federal Award Requirements

__ .501 Subrecipient Monitoring and Management

We are concerned with not only the prescriptive nature of monitoring requirements listed in Section 501(c), which will significantly impact the Higher Education community, but also the additional administrative burden associated with Subrecipient Monitoring, as the guidance is currently written. We believe monitoring activities should be risk-based, value add activities.

.501(b) –Burdensome and Unnecessary Requirement to Document Classifications of Transactions

Section .501 already provides adequate guidance on how subaward and procurement classifications are to be performed by recipients; and the proposal review process already allows for an appropriate review by agencies of the classification of work. It is therefore unnecessary and inefficient to allow federal agencies to impose new record-keeping and documentation requirements on recipients to document how individual transactions are classified. We recommend the following change:

> *(b) Subrecipient and Contractor Determinations. An entity may concurrently receive Federal funds as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal agencies and pass-through entities. Therefore a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds cast the party receiving the funds in the role of a subrecipient or a contractor. ~~Federal agencies may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.~~*

.501(c) –Role of Federal Agencies and Pass-through Entities on Provision of Award Terms

Section .501(c)(1)(A) and (B) include an overly detailed list of specific individual requirements that pass-through entities are required to flow down to subrecipients. This is likely to create an unnecessary opportunity for disagreement among federal agencies, auditors, and recipients about what should or should not have been flowed down to a subrecipient. We recommend that this section be reworded to mirror the language used in Section .713(c)(2) describing the responsibilities of federal agencies making awards to their Recipients. In addition, we recommend that Section .713 be modified to require federal agencies to include in their award documents the specific citations or specific requirements that are needed by Recipients to meet the flow down requirements of this section. This will lead to efficient subcontracting and promote clear understandings with agencies, auditors, pass-through entities and subrecipients about which requirements are applicable. In addition, Section .501(c)(4) appears to duplicate these requirements. We therefore recommend the following changes:

Section 501(c) All pass through entities shall:

(1) Ensure that every subaward includes:

(A) ~~All clauses required by Federal statute, regulations, guidance, E.O.'s and their implementing regulations;~~ All requirements imposed on them by Federal laws, regulations, and the terms and conditions of Federal awards, as included in the pass-through entity's award.

~~(B) Each administrative, national policy, and program specific requirements that the Federal awarding agency requires the pass-through entity to flow down to its subawards and subrecipients.~~

~~(C) Any additional Federal requirements that the pass-through entity imposes on the subrecipient in order for the pass through entity to meet its own responsibility to the Federal agency~~

Section 501(c)(4) – we recommend deletion of this duplicate language:

~~(4) Ensure that subrecipients are aware of requirements imposed upon them by Federal laws, regulations, the provision of subawards, and any supplemental requirements imposed by the pass-through entity. See also section _402 Administrative and National Policy Requirements.~~

.501(c)(1)(D) –Increase De minimus Rate to 15%

We enthusiastically support section 501 (c)(1)(D) that indicates that pass-through entities are first expected to utilize a subrecipient's federally-negotiated F&A rate, and if no such rate exists, allow for the flexibility of negotiating a rate or applying a de minimus F&A rate of 10% MTDC. Based on the collective experience of the University research administration community, we believe that a more appropriate de minimus rate is 15% MTDC rather than 10% MTDC. We believe use of a 15% rate would decrease the number of times that subrecipients without federally negotiated rates would demand to negotiate a rate with the pass-through entity. Most rates negotiated by Universities with their subrecipients are at the 15% MTDC rate or higher.

In addition, clarification is needed in this paragraph as to the proper handling of F&A when the federal program has an approved exception to use a lower F&A rate. We recommend adding language to the beginning of this section that reads:

> ***501(c)(1)(D)*** *Unless the federal program has been granted an exception to use a lower F&A rate as specified in Section .616, the pass-through entity shall use an approved Federally recognized …*

.501(c)(5) –Overly Prescriptive Subrecipient Monitoring Requirements.

Existing monitoring requirements, including the expectation that pass-through entities ensure that subaward performance goals are achieved, represents the appropriate level of review for most research-based subawards and are consistent with OMB's goal of providing improved

project outcomes in a more streamlined manner. The prescriptive and burdensome requirements imposed in Section 501(c)(5)(A), including "analyses of financial and programmatic reports submitted by subrecipients to identify patterns and trends of program activity", is neither necessary nor a wise use of federal research dollars. Pass-through entities should have the freedom and flexibility to monitor their subrecipients as they see fit based on their assessment of risk and the strategic use of resources. We recommend modification of this section as follows:

> *501(c)(5) Monitor the activities of subrecipients as necessary to ensure that Federal subawards are used for authorized purposes, in compliance with laws, regulations, and the provisions of subawards; and that subaward performance goals are achieved, in accordance with the guidance in section 505 Performance and Financial Monitoring and Reporting. The mechanisms used to monitor subrecipients are at the discretion of the pass-through entity and ~~Pass-through entity monitoring of subrecipients shall~~ may include:*
>
> > *(A) Analyzing financial and programmatic reports submitted by subrecipients ~~(including analyses to identify patterns and trends of program activity)~~ and performing such other procedures as necessary to ensure proper accountability and compliance with program requirements and achievement of the performance goals of the award.*
> >
> > *(B) Following up and ensuring that subrecipients take timely and appropriate action on deficiencies detected by the pass-through entity. ~~through audits, on-site reviews, and other means.~~*
> >
> > *~~(C) Issuing a management decision for audit findings affecting the pass-through entity's programs as required by section __.714 Management Decision. For cross-cutting findings, pass-through entities may rely on management decisions issued by the cognizant or oversight agency for audit in lieu of issuing a separate management decision.~~*

.501(c)(6) & (7) –Audit and Risk Assessment Reviews are Unnecessarily Duplicated

We support the potential opportunity for pass-through entities to avoid duplication of effort by allowing use of management decisions issued by the cognizant or oversight agency. We believe that both the risk assessment sections and the audit sections of this guidance need to be revised to permit pass-through entities to rely on work previously performed and accepted by the federal government. To reduce duplicative efforts, subrecipients subject to A-133 audits where audits are on file, and corrective action plans are already in place and already being monitored by that entity's auditor – that the federal government allow the pass-through entity to rely on any corrective action plan already in place without engaging in a duplicative review or assessment process. This will allow pass-through entities to use their monitoring resources more effectively to concentrate on high risk subrecipients or to provide more assistance to those experiencing difficulty achieving programmatic objectives. We therefore recommend that Section (6) and (7) be amended to read as follows:

501(c)(6) Evaluation of risk posed by subrecipients for purposes of monitoring may include such factors as:

(D) The extent of Federal monitoring if the subrecipient entity also receives direct awards. If a pass-through entity confirms that a proposed subrecipient has a current audit report posted in the Federal Clearinghouse and has not otherwise been excluded from receipt of federal funding (e.g., has been debarred or suspended), the pass-through entity may rely on the subrecipient's auditors and cognizant agency oversight for routine audit follow-up and management decisions. Such reliance does not eliminate the obligation of the pass-through entity to perform ongoing monitoring of its subawards and take necessary corrective action in accordance with 501(c) (5).

501(c)(7) ~~Ensure~~ Verify in the Federal Clearinghouse that every subrecipient is audited as required under section _.701 Audit Requirements if it has expended Federal Funds during the respective year that equaled or exceeded the threshold for audit set forth in that section. Audits are not required for entities not meeting the audit specifications in Section 701.

.501(c)(5)(E) –Recovery of F&A and Distribution Basis on First $25,000 of Each Subaward should be Annualized

Subrecipient Monitoring and Management is an administratively burdensome and costly activity. To better recognize the costs associated with suberecipient monitoring and management, which is an ongoing activity rather than a one-time up-front occurrence, we recommend allowing F&A recovery on the first $25,000 of expenditures by the subrecipient on an annual basis, rather than using the life of the subaward.

__ .502 Standards for Financial and Program Management

.502(a) & .502(c)(4) –Inappropriate Linkage between Performance and Financial Reports

We are concerned about the link established between Performance and Financial reports, as OMB has previously developed standardized Grant Reporting Forms. We believe already developed standardized reports such as the SF-425 and the Research Performance Progress Report should be required. We recommend the changes below to several sections in .502 that will require the use of already developed standardized reports such as the SF-425 and the Research Performance Progress Report (RPPR). In those applicable situations, OMB should require agencies to use Government Wide Standard Grants Reporting Formats.

.502(a) Performance measurement. *Federal awarding agencies shall require recipients to utilize Government Wide Standard Grants Reporting Forms when providing financial and performance reports. ~~relate financial data to performance accomplishments of the award whenever practicable. Where available, recipients shall also provide cost information to demonstrate cost effective practices (e.g., through unit cost data).~~ The award recipient's*

performance should be measured in a way that will help Federal agencies and other recipients to improve program outcomes, share lessons learned and spread the adoption of promising practices. Federal awarding agencies should provide recipients with clear performance goals, indicators, and milestones expected as a condition of the grant. Performance reporting frequency and content should be established to not only allow the Federal agency to understand recipient progress but also to facilitate identification of promising practices among recipients and build upon the evidence base on which the Federal agency's program and performance decisions are made.

.502(c)(4) *Comparison of outlays with budget amounts for each Federal award utilizing Government Wide Standard Grants Reporting Forms. ~~Whenever possible, financial information should be provided in the context of performance accomplishments of the award (e.g., unit cost data).~~*

.502(f)(1) –Incorporate Voluntary Uncommitted Cost Sharing (OMB M-01-06) into the Final Guidance

The January 5, 2001 OMB Memorandum (M-01-06), Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing (VUCS) and Tuition Remission Cost, should be incorporated into Final Guidance to ensure all communities, including the audit community, acknowledge the authority of this important and helpful 2001 OMB Clarification Memo.

To incentivize institutional commitment, rather that penalizing it, the language should be clarified to exclude from the F&A research base all expenditures, project cost overruns, salaries that exceed Executive Level salary limitations, and other similar institutional cost sharing not committed in the proposed project budget. This update will provide consistency in the treatment of voluntary uncommitted cost share and will eliminate the unintended financial penalty incurred by institutions when required to include non-reimbursable, uncommitted costs in the institution's F&A research base.

.502(f)(1) Voluntary committed cost sharing is not expected under Federal research proposals and is not to be used as a factor in the review of applications or proposals. See also section __.616 Indirect (F&A) Costs. Only mandatory cost sharing or cost sharing specifically committed in the project proposal shall be included in the organized research base for computing the F&A rate or reflected in any allocation of F&A costs. Where cost sharing is allowed, all contributions, including cash and third party in-kind contributions, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria …

.502(f)(2) –Treatment of Unrecovered Indirect Costs

Unrecovered indirect costs are real costs of the University and we believe these costs are acknowledged by our cognizant agency in the acceptance and negotiation of our institutions'

F&A rate agreements. These costs should be allowed as cost sharing or matching commitment, without specific approval required. We encourage OMB to change this section as follows:

> *.502(f)(2) Unrecovered indirect costs, including indirect costs on direct cost sharing, may be included as part of cost sharing or matching ~~only with the prior approval of the Federal awarding agency~~.*

.502(f)(5) – Exclusion of Overhead on Third-Party Cost Sharing

To fully capture the value of a third party contribution, the third party should be able to include a factor for its overhead costs in its cost sharing contribution, equal to either its federally negotiated rate (if available), or absent a federally negotiated rate, at the de minimus rate of 15% in accordance with Section .616(e). The following changes are suggested to make this section consistent with Sections .501(c)(1)(D) and .621, C-13(6)(B).

> *.502(f)(5) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that is reasonable, allowable, and allocable, ~~but exclusive of~~ and overhead costs at either the employer organization's federally approved rate or, absent a federal rate, a de minimus rate of 15%), provided these services employ the same skill(s) for which the employee is normally paid.*

.502(h)(3)(C) – Absence of the Principal Investigator

With regards to Absence of the Principal Investigator, we urge OMB to take a broader view of this concept in light of all the technological advances made since the term was first introduced. We believe "absence" should not be assumed if the investigator is absent from a physical location. We recommend the following changes to this section:

> *.502(h)(3)(C) The absence from the project, regardless of where the project work is taking place, for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.*

.502(h)(3)(E) – Eliminate Prior Approval Requirement for Rebudgeting Funds from Indirect Cost to Direct and Vice Versa

The charging of F&A costs are already highly regulated. Requiring agency prior approval to rebudget funds from indirect cost to direct cost or vice versa increases the administrative burden on faculty during their evaluation of account balances and projecting available funds. We do not support this as an item requiring prior approval and recommend the section be deleted.

.502(h)(3)(E) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

.502(h)(9) – Concern: Delete Notification Language

We believe this section is no longer useful in the management of Federal awards and should be deleted. Our institutions are not likely to be able to anticipate a balance of $5,000 or more until the last 30-60 days of the project period. Notification of the sponsor at that time will yield little value. We see little value in notifying the agency that late in the award period.

~~.502(h)(9) For both construction and non-construction Federal awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation Federal award.~~

.502(j)(3) – Clarification of Applicability

We believe the section below is unclear as to its applicability and recommend that a reference back to the definitions of Subrecipients and Contractors (see .501(b)(1) and(2)) would provide clearer definition.

.502(j)(3) A cost type contract means a contract or subcontract under an award or subaward for which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee, for the purpose of obtaining goods and services and where such a contract or subcontract creates a procurement relationship between the parties (see .501(b)(2)). ~~but~~ It does not include a Federal cost reimbursement contract that an agency makes to a non-Federal entity.

__ .504 Procurement Standards

.504(b)(4) –Reinstatement of Equipment Screening Requirement

We are concerned the proposed language requires the reinstatement of equipment screening procedures which were eliminated in the early 90's by requiring a "review of proposed procurements to avoid acquisition of unnecessary or duplicative items". Equipment screening

was eliminated due to the burden created and the lack of any cost saving for the Federal Government. The language requiring a review should be removed.

> *.504(b)(4) Recipient and subrecipient procedures will ~~provide for a review of proposed procurements to~~ avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.*

.504(c)(2) –Prohibition of State Requirements under Procurement Actions

Public Universities will be subject to State Law regarding procurement activities that require geographical preference in certain situations. Despite the clause that states: "Nothing in this section preempts state licensing laws", the proposed regulation would put many public Universities in a conflicted position between State law and the requirements under this section. COGR recommends the deletion of this entire section.

> ~~.504(c)(2) Recipients and subrecipients will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.~~

.504(d) –Overly Prescriptive Procurement Requirements

We are concerned about the prescriptive nature of methods of procurement cited in this section. Defining the specific procurement methods hampers our efforts, at the system and campus-levels, to develop new ways to achieve the best value for us and the Federal Government. We believe the principles of competition were well stated in section C43 of OMB Circular A-110 and those principles should replace the prescriptive methods that have been included in the Proposed Guidance. We recommend that the language shown directly below be utilized for .504(d) and that the currently proposed sections of .504(d)(1-4) be deleted.

> *.504(d) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Awards shall be made to the bidder or offeror whose bid is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered.*

~~.504(d)(1-4) Methods of procurement to be followed. In all of the below methods, some form of cost or price analysis is required as described in paragraph (f)(1) of this section.~~

~~Recipients and subrecipients may be required to submit the proposed procurement to the Federal awarding agency for pre-Federal award review in accordance with paragraph (g) of this section.~~

~~(1) Procurement by small purchase procedures …~~

~~(2) Procurement by sealed bids (formal advertising) …~~

~~(3) Procurement by competitive proposals …~~

~~(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source or, if after solicitation of a number of sources, competition is determined inadequate …~~

__ .505 Performance and Financial Monitoring and Reporting

.505(d)(2)(B)(i) –Inappropriate Relationship between Performance and Financial Reports

Consistent with the comments provided for section 502(a), we believe this section is in direct conflict with previous efforts by OMB to develop standardized Grants Reporting Forms. As stated previously, OMB should require agencies to use Government Wide Standard Grants Reporting Formats.

.505(d)(2)(B)(i) A comparison of actual accomplishments to the objectives of the award established for the period. ~~Where the accomplishments of the award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful.~~ Where performance trend data and analysis would be informative to the Federal agency program, the agency should include this as a performance reporting requirement in accordance with Section __.404 and utilizing Government Wide Standard Grants Reporting Forms.

Direct Costs and Indirect Costs and General Provisions for Selected Items of Cost

Subchapter F – Cost Principles

Subtitle I. General Provisions: .601 through .602

.601(d) Policy Guidance Should Address the Dual Role of Students

Students, postdocs and fellows make significant contributions to the fundamental mission of colleges and universities, and even more so, within higher education research institutions. Regardless of funding source, sponsored award objectives are heavily dependent on the efforts and contributions provided by students. This involvement is encouraged and provided for under sponsored awards and should be reflected in this costing guidance. We propose to revise Section 601 as shown below to add back applicable language already included in OMB circular A-21. Subsequent sections already included would be re-lettered accordingly.

> ***.601(d)*** Whether the individual concerned acted with prudence in the circumstances considering their responsibilities to the non-federal entity, its employees, its students in the case of institutions of higher education, the public at large, and the Federal government.

.602(b) Clarification Requested on Cost Accounting Standards and the DS-2

Currently, two of the sixteen UNC campuses have an approved DS-2 in place. One campus submitted its DS-2 application over a year ago, with approval pending. Another campus was scheduled to submit its DS-2 application this year and has requested an extension pending the outcome of the Proposed Guidance and two other campuses are scheduled to submit in 2014. We would like the Proposed Guidance to be clear regarding the impact of the elimination of reference to the DS-2 on institutions with active, pending or scheduled DS-2s.

The University of North Carolina appreciates that references to Cost Accounting Standards (CAS) and to the DS-2 have essentially been eliminated. Reflecting the diversity of the UNC constituent institutions, our support for this change takes on a different context for different institutions. We support the elimination of the requirement to file the DS-2 application package, in particular for our campuses that are approaching the threshold for filing. Faced with limited resources and additional administrative burdens associated with other aspects of research administration, the prospects of devoting extensive time and human capital to preparation of the DS-2 are not welcomed. However, our larger institutions have concerns that without the framework for costing consistency the DS-2 provides they will be put at a disadvantage with those institutions that take positions far beyond what is currently accepted as sound practices. While OMB is keeping the requirement that cost accounting practices must be documented and reviewed by auditors, this takes away the compliance framework that helped research administrators ensure that costs were charged consistently.

In the event Cost Accounting Standards are eliminated, we request clarification that in those situations where a Federal Contract is awarded to an entity and a CAS clause has been incorporated, the CAS clause is applicable only to the affected Federal contract and not to the entire portfolio of the institution's Federal awards.

.602(b) Federal Contract. Where a Federal contract awarded to a non-Federal entity incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. ~~In such cases, the non-Federal entity and the cognizant Federal agency shall establish an appropriate advance agreement on how the entity will comply with applicable CAS requirements when estimating, accumulating, and reporting costs under CAS-covered contracts. The agreement shall indicate that the requirements of this guidance will be applied to other Federal awards~~ only to the CAS-covered contracts, and not to other Federal awards. In all cases, only one set of records needs to be maintained by the non-Federal entity.

Subtitle II. Basic Considerations: .604 through .607

.605(c) & (d) –Eliminate Inappropriate Requirements for Non-Federal Awards

The paragraphs cited under Sections .605(c) and (d) are taken from Circulars A-87 and A-122 cost principles and include proposed language that is extremely expansive by extending restrictive cost and charging principles to non-federally funded programs. Circular A-21 does not contain this language. Sections .605(c) and (d) can be combined and reworded to emphasize the important principle of "consistency" across Federal awards, and without inappropriately prescribing management practices associated with non-federal awards. This change provides for both appropriate Federal costing guidance as well as costing latitude on non-federal awards.

(c) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

~~(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the organization.~~

~~(d) Be accorded consistent treatment.~~

.607(b) –Inappropriate Expansion of the Allocation Base

The proposed language inappropriately expands the allocation base for F&A costs. Since donated services do not draw a proportionate share of administrative or facilities costs, it would result in inequitable adjustment to the institution's basis for determining the fair level of F&A cost reimbursement. The following edit to .607(b) should be made.

.607(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities ~~and donated services by the non-Federal entity or third parties~~, will receive an appropriate allocation of indirect costs.

Subtitle III. Direct and Indirect (F&A) Costs: .615 through .616

.615(d) –Clarification Requested on Salaries of Administrative and Clerical Staff

This item was requested in our previous comments submissions and we are encouraged to see this important change in the Proposed Guidelines. So the full benefit of this change may be realized, some guidelines are needed to ensure that these charges reach reasonable levels and do not burden administrative procedures to support non-material charges to federal awards. Any requirement that states "such costs are explicitly included in the budget" effectively would negate the intended goal of reducing faculty administrative burden. Institutions regularly rebudget as is allowable under expanded authorities. If it is in the interest of the Federal award to rebudget for activities that involve the direct charging of administrative and clerical staff, this should not be prohibited. We suggest the following changes:

(d) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate where all of the following conditions are met:

(1) administrative or clerical services are integral to a project or activity;

(2) individuals involved can be specifically identified with the project or activity;

(3) such costs are ~~explicitly~~ included in the budget and/or are documented in accordance with the Federal awarding agencies' budgeting guidelines and flexibilities; and

(4) the costs are not also recovered as indirect costs

.616(c) –Indirect (F&A Costs)

616(c) We were very encouraged to see OMB address the issue of all Federal Agencies Accepting Negotiated indirect cost rates. We would like to see some additional transparency in the language to help foster the partnership between the federal agencies and the awardee entities. We strongly believe language should be added to direct federal agencies to submit justifications to OMB when negotiated rates are not accepted. In addition these justifications should be publically available with appeal rights to OMB from the awardee entities where we believe the justifications create inequities. We recommend that a prescribed time frame for this appeals process be outlined in this section. We recommend the following changes:

.616(c) Federal Agency Acceptance of Negotiated Indirect Cost Rates. (Please see also section .502 Standards for financial and program management (f) cost sharing and matching.)

(1) The negotiated rates shall be accepted by all Federal agencies. Only when required by law or regulation, or when approved by a Federal agency head based on documented justification to OMB as described in paragraph (3) below may an agency use a rate different from the negotiated rate for a class of Federal awards or a single Federal award.

(2) ~~Agency heads shall notify OMB of any approved deviations.~~ Limitations not required by statute or regulation must be approved by the agency head and OMB.

(3) Agencies shall implement and make ~~publically~~ publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates,

(4) Per the requirements in section .204 Announcements of Funding Opportunities, policies relating to indirect cost rate reimbursement, matching, or cost share as approved per paragraph (1) above must be included in the announcement of funding opportunity, and as appropriate, incorporated into agency outreach activities with the grantee community prior to the posting of a funding opportunity announcement.

(5) Non-Federal entities can appeal to OMB, per Section .108 OMB Responsibilities, in those situations where an agency deviation is inequitable to the non-federal entity and/or the broader non-Federal community. While prior deviations may not be remedied, the appeal process will allow OMB, the federal agency, and the affected non-Federal entity(ies) to address and remedy the deviation as it relates to future funding opportunities for the program in question.

(~~5~~6) Pass-through entities making subawards are subject to the requirements in section ___.501 Subrecipient Monitoring and Management.

.616(e) –Clarification Requested on Indirect (F&A) Costs

The definition of Modified Total Direct Costs (MTDC) in Section .616(e) does not include scholarships and fellowships as an exclusion as defined in Appendix IV, Section C.2, which are not necessarily interchangeable with participant support costs. Further, the term participant support costs is not used uniformly by all agencies. We recommend reference to participant support costs in this section be deleted. Consistent with recommendations in General Provisions and Requirements, Subchapter E, Post Federal Award Requirements, .501(c)(5)(E) and Audit

Requirements, Subchapter H, Appendix IV, C.2, we recommend increasing the applicable base for subawards to the first $25,000 on an annual basis. The suggested language is as follows:

> .616(e)….MTDC is defined as all salaries and wages, fringe benefits, materials and supplies, services, travel, and ~~subgrants and subcontracts~~ subawards (including subawards issued under federal cost-reimbursement or fixed price contracts) up to the first $25,000 of each subaward ~~subgrant or subcontract~~ (allowable on an annual basis). Equipment, capital expenditures, charges for patient care, ~~rental costs~~, tuition, ~~participant support costs~~ scholarships and fellowships and the portion of subcontracts and subawards in excess of $25,000 shall be excluded from MTDC….

Subtitle V. - Costs Incurred by State and Local Governments: .620

.620(b) Recognize Other Forms of Documentation from the State

We support the concepts of this section and seek to simplify the requirement by allowing other forms of documentation. For example, interest payments provided by a state building authority that were made on behalf of a university could be accepted assuming the university is willing to forgo the additional costs that would be added by performing an approved cost allocation plan.

> *.620(b) The costs are properly supported by appropriate documentation or an approved cost allocation plans in accordance with applicable Federal cost accounting principles.*

Subtitle VI. General Provisions for Selected Items of Cost: .621

C-10(3) –Inappropriate Reference to Conflict of Interest Policies

We believe it is inappropriate to single-out or differentiate an individual institutional policy or practice as different from all applicable organizational policies and practices in defining "non-institutional professional activities." While it is appropriate for the Federal government to affirm that we are using the institutional base salary as the basis for determining compensation, we do not support including a reference to the adequacy of our institutional conflict of interest policies in this Guidance. It is the responsibility of the institution to establish the appropriate definition of institutional responsibilities and the compensation for those responsibilities.

> *(3) Non-institutional professional activities. Unless an arrangement is specifically authorized by a Federal sponsoring agency, a recipient must follow its organization-wide policies and practices ~~(including conflict of interest policies)~~ concerning the permissible extent of professional services that can be provided outside the organization for non-organizational compensation. Where such organization-wide policies do not exist or do not*

adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal government may require that the effort of professional staff working on Federal awards be allocated between (1) organizational activities and (2) non-organizational professional activities. If the sponsoring agency considers the extent of non-organizational professional effort excessive or inconsistent ~~with conflicts-of-interest terms and conditions~~, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

C-10(8)(B)(i) – Separate and Clarify the Definition of "Related" and "Incidental" Activities

The terms "Related Activities" from "Incidental Activities" are not interchangeable and should be separated in the section below.

~~(i) Related and incidental activities. Charges to Federal awards may include reasonable amounts for activities contributing and intimately related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work for which supplemental compensation is allowable under institutional policy need not be included in the payroll distribution systems described in paragraph (9) of this section, provided that the work and compensation are separately identified and documented in the financial management system of the institution.~~

(i) Allowable ~~Related and incidental~~ activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly ~~intimately~~ related to work under an agreement. Additionally, other activities can include ~~such as~~ delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, project management activities in support of the project, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental work for which supplemental compensation is allowable under institutional policy (i.e., excluded from institutional base salary) need not be included in the payroll distribution systems described in paragraph (9) of this section, provided that the work and compensation are separately identified and documented in the financial management system of the institution. Such work must be specifically provided for in the award budget as approved by the Federal awarding agency or approved by the Federal awarding agency.

C-10(8)(B)(ii) – Clarification Requested for Definition of Institutional Base Salary

We are confused with the citation below as the concept of "extra service pay" is introduced, as well as concepts such as "paid appointment period" and "periods outside the academic year." These are new, unfamiliar and not uniformly defined terms and are better understood by introducing the concept of Institutional Base Salary (IBS), which is defined as the annual compensation paid by a university for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. Institutional base salary excludes any income that an individual earns outside of duties performed for the university. We recommend the following re-writes to this section:

~~*(a) Salary basis. Many faculty members accrue salary during an institutionally defined "academic year" (typically 9 month) which is paid to them over a 12 month period. In such cases, efforts during periods outside the academic year (typically summer months) are generally compensated separately, if at all. Additionally, policies of some universities allow for "extra service pay" for effort beyond that expected (and otherwise compensated) during the paid appointment period. In all cases (including, where appropriate, for calculation of indirect cost rates), the basis of an individual faculty member's salary is in the regular compensation received for the committed period of employment under the policies of the institution concerned.*~~

(a) Salary *basis* ~~*rates for the academic year.*~~ *Charges for work performed on Federal awards by faculty members during the academic year are allowable at* *the Institutional Base Salary (IBS)* ~~*the base salary*~~ *rate.* *IBS is defined as the annual compensation paid by a university for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. Institutional base salary excludes any income that an individual earns outside of duties performed for the university.*

(b) *Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to institutional base salary, the principle also applied to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing additional compensation above the IBS are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.*

~~*Additionally, compensation in the form of "Extra service pay" is allowable if the following conditions are met:*~~ *Extra service pay normally represents overload compensation, subject to institutional compensation policies, for services above and beyond IBS. It is allowable if the following conditions are met:*

(1) The entity establishes uniform, consistent policies which apply uniformly to all employees of a given class, not just those working on Federal projects. See Subchapter F Section .621 C-10 Compensation-Personal Services, paragraph (1) and Subchapter F Subtitle II. Basic Considerations of this guidance.

(2) The entity establishes a consistent definition of ~~a full-time workload~~ Institutional Base Salary which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentation.

(3) The amount paid is commensurate with the Institutional base Salary rate and the amount of additional work performed. See Section .621 C-10 Compensation – Personal Services, paragraph (8)(b)(ii)(a) of this guidance.

(4) The supplementation amount paid is commensurate with the Institutional Base Salary rate ~~base pay rate~~ and the amount of additional work performed. See Section .621 C-10 Compensation – Personal Services, paragraph (8)(B)(ii)(a) of this guidance.

(5) The salaries, as supplemented, fall within the salary structure and pay ranges established by or otherwise applicable to the entity.

~~(6) The total salaries and workload as supplemented are considered the full activity of the individual and constitutes 100 percent of effort under the entity's activity reporting system.~~

C-10 (8)(B)(ii)(c)(1-2) – Delete these Sections

C-10(9) –Standards for the Documentation of Personnel Expenses Continue to Create Significant Faculty and Administrative Burden

We support the Federal Demonstration Partnership in its Payroll Certification pilot as an alternative to Time and Effort reporting processes as required under the current circular. We see the possibility to reduce the faculty and administrative burden associated with effort reporting. We are also cognizant that UNC constituent institutions have invested significant resources in developing effort reporting systems. Our hope is institutions can opt to retain these systems as-is in the event payroll certification is allowed as an acceptable means for certifying effort on federal awards.

Section C-10(9)C provides that the certification period can be up to twelve months in length, while section C-10(9)B cited a six month reporting period. For efficiency and ease of on-the-ground implementation, we recommend sections C-10(9)B be deleted, as it can be covered by Section C-10(9)C .

(B) ~~Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or a responsible supervisory official.~~

C-11(2) – Treatment of Leave Costs

The language in this section is confusing. Institutions of higher education charge leave costs to Federal awards using either the accrual basis or cash basis. Both are acceptable under GAAP. The language below is not clear as to what is allowable and we recommend tit be deleted.

~~(E) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When an entity uses the accrual basis of accounting, in accordance with GAAP allowable leave costs are the lesser of the amount accrued or funded.~~

C-13 – Request Clarification on Contributions and Donations

Clarification is needed for the treatment of incoming and outgoing contributions and donations to appropriately recognize the full value of services donated by other organizations and to make the citation consistent with Section 502(f)5.

.621, C-13(2) The value of donated services and property received by the entity are not allowable either as a direct or indirect (F&A) cost, except that depreciation on donated assets is permitted in accordance with C-15 Depreciation. ~~In addition~~ However, the value of donated services (including professional and technical personnel, consultants, and other skilled and unskilled labor) and property received by the entity may be used to meet cost sharing or matching requirements (see section .502 Standards for Financial and Program Management (f) of this guidance.

~~.621, C-13(3) Donated or volunteer services may be furnished to an entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not allowable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of section __.502 Standards for Financial and Program Management (f) of this guidance.~~

.621, C-13(6)(B) Services donated by other organizations. When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (~~exclusive~~ inclusive of fringe benefits and indirect costs at either the organization's federally approved rate or a de minimus rate of 15%), provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the

employee is normally paid, fair market value shall be computed in accordance with paragraph (A).

C-15(3)(A)(iii) – Request Clarification on Allowable Depreciation on Matching Portion

Section (3)(A)(iii) is confusing as the language could be interpreted to mean that the funds the institution contributes to the building cannot be included in the depreciation calculation for F&A. C-13(2) allows for depreciation on donated assets. We believe the intent of this section was for the costs to be excluded only where law or agreement prohibit recovery.

.621 C-15(3)(A) The computation of depreciation shall be based on the acquisition cost of the assets involved. For an asset donated to the entity by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost. For this purpose, the acquisition cost will exclude: …

.621 C-15(3)(A)(iii) any portion of the cost of buildings and equipment contributed by or for the entity where law or agreement prohibit recovery, or a related donor organization, in satisfaction of a matching requirement ~~or~~ where law or agreement prohibit recovery. [~~For an asset donated to the entity by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost~~.] …

C-15(3)(A)(iv) – Request Clarification on Allowable Depreciation for Non-Federal Awards

We believe this statement is unfair for assets purchased under non Federal awards where the award is no longer active. This equipment is available and is often used on other awards, including Federal awards. Depreciation should be excluded only on active Non-federal awards. We suggest the following edit.

.621 C-15(3)(A)(iv) any asset acquired for the performance of ~~a~~ an active non-Federal award.

C-18(1)(B) – Overly Prescriptive Treatment of the Depreciation of Software

The new language prescribes a capitalization threshold for information technology systems and software that is out of line with our capitalization policy, which is dictated by the State of North Carolina. We strongly urge OMB to remove this new language from the definition of equipment or raise the threshold for information technology systems to a minimum of $100,000.

C-18(1)(B) "Equipment" means an article of nonexpendable, tangible personal property ~~or information technology systems and software~~ having a useful life of more than one year and

an acquisition cost which equals or exceeds the lesser of the capitalization level established by the entity for financial statement purposes, or $5,000.

C-27 –Requirements to Support Interest Expense are Still Burdensome

We appreciate the removal of the lease-purchase analysis requirement. We also believe several remaining parts of this section are unnecessarily burdensome and provide no added value. Institutions are acutely aware of the need for resources to be used in the most efficient manner possible. Determination of the most efficient method can vary across institutions as many variables need to be considered.

Section .621, C-27(3)(D) raises concern for institutions as it requires limitations on claims for Federal reimbursement of interest costs to the least expensive alternative. In effect, this would require a lease-purchase analysis or similar study to prove the least expensive alternative was undertaken. Sound financial stewardship, and the checks and balances that are required with Governing Boards, already require that the most appropriate financial decisions are pursued. Section .621, C-27(3)(D) is redundant, creates an unnecessary administrative burden, and should be deleted.

Section .621, C-27(3)(G), regarding a 25 percent initial equity contribution requirement for debt arrangements over $1 million should be deleted. While this is not new language, it can be burdensome to implement, especially if the 25 percent was not met by the institution. Many variables go into financing decisions and institutions, as stated above, are accountable to their Governing Boards and the internal checks and balances ensure that the most prudent financial decisions are made.

~~*.621, C-27(3)(D) The recipient limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement shall be limited to the amount of interest determined if leasing had been used.*~~

~~*.621, C-27(3)(G) The following conditions shall apply to debt arrangements over $1 million to purchase or construct facilities, unless the recipient makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the recipient for the acquisition of facilities prior to occupancy.*~~

~~*(i) The recipient shall reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.*~~

~~*(ii) The recipient shall impute interest on excess cash flow as follows:*~~

~~*(a) Annually, the recipient shall prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.*~~

~~*(b) To compute monthly cash inflows and outflows, the recipient shall divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.*~~

~~*(c) For any month in which cumulative cash inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used shall be the three-month Treasury bill closing rate as of the last business day of that month.*~~

C-31 – Request Clarification on Treatment of Computing Devices

This item was requested in our previous comments submissions and we are encouraged to see this important change in the Proposed Guidelines. Complimentary to the overall changes proposed by OMB to this section, we recommend the following sections also be addressed: 1) Section **.621, C-31(3);** General stores and stockrooms also must be staffed to order, receive and distribute materials and supplies. 2) Section **.621, C-31(4)**; allow the shared use of computing devices even if solely purchased on a federal award; and 3) Section **.621, C-31(6)**; clarify that the residual value of computing devices is not included with the residual value of unused materials and supplies.

.621, C-31(3) *Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges and the proportionate share of the costs necessary to order, receive and distribute the materials and supplies are a proper part of materials and supplies costs provided they are not otherwise charged to the federal government either directly or indirectly.*

.621, C-31(4) *Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are necessary ~~essential~~ and allocable, but not solely dedicated, to the performance of a Federal award.*

.621, C-31(6) *In accordance with the policy on disposition of equipment valued at less than $5,000 in section .503 Property Standards (d)(5)(A) a residual inventory of unused materials or supplies (exclusive of computing devices that would be retained by the non-federal entity) not exceeding the greater of $5,000 or 1% of the annual award in total*

aggregate value upon termination or completion of a Federal award may be retained with no further obligation to the Federal government.

C-33 –Memberships, Subscriptions, and Professional Activity Costs

We seek edits to Section .621, C-33(5) as institutions are not generally in a position to make such a determination. We recommend the inclusion of a statement, as Section .621, C-33(6), which would allow the cost of individual memberships in professional organizations when membership is necessary to attend and present material developed under the federal award.

.621, C-33(5) *Cost of membership in organizations whose primary purpose is ~~substantially engaged in~~ lobbying are unallowable.*

.621, C-33(6) *Costs of an individual membership in a professional organization when membership is necessary to attend and present material developed under a federal award or if the cost of membership and resultant reduced registration fee is less than the registration fee for a non-member.*

C-35 – Adopt the NSF Definition of Participant Support Costs

To achieve consistency in understanding the treatment of participant support costs under expanded authorities and across agencies we recommend modification to the last sentence of this section so that it is consistent with the language found in the NSF Grants Policy Manual, Section 618.1.b, as follows.

.621, C-35 Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. ~~These costs are allowable with the prior approval of the awarding agency.~~ Funds provided for participant support may not be used by grantees for other categories of expense without the specific prior written approval of the awarding agency.

C-53 –Delete Selected Text on Travel Costs

We believe the language in C-53(2) is unnecessary and should be removed. We believe these principles are covered in Subtitle II Basic Considerations .604-.609 and will add unnecessary administrative burden.

.621, C-53(2) Lodging and subsistence. Cost incurred by employees … General. Travel costs are … ~~In addition, documentation must justify that:~~

~~(A) Participation of the individual is necessary to the Federal award;~~

~~*(B) The costs are reasonable and consistent with entity's established travel policy; and*~~

~~*(C) The dependent care costs are direct results of the individual's travel requirement for the Federal award and are only temporary during travel period.*~~

Audit Requirements

Subchapter G – Audit Requirements

Subtitle II. - Audit Requirements

.701(a) –Audit Burden due to $750,000 Threshold should be Offset in Other Areas

While we understand some of the benefits of increasing the Audit threshold to $750,000 we also want to point out that this will increase the administrative costs of subrecipient monitoring on our institutions. We believe this could be mitigated by allowing our institution to rely more heavily on the A-133 report for those institutions that are required to have an A-133 audit. We propose, when a subrecipient is subject to the single audit, the primary responsibility of the pass-through is to ensure the quality and integrity of science that is being conducted such that performance goals are achieved and that any required audit follow-up monitoring should be triggered only when there are audit findings that included questioned costs on the subaward issued by the prime

.701(h) –Overly Prescriptive Methods to Monitor For-Profit Subrecipients

We believe the language below may inappropriately set an expectation that all three of the suggested methods to ensure compliance are required to be performed by the pass-through entity. This expectation is inconsistent with guidance included in sections .501(c)(5)&(6)**,** which describe these as subrecipient "monitoring tools" that may be useful depending on the pass-through entity's assessment of risk. We propose the following edit:

(h) Since this Subchapter G guidance and the Single Audit Act, as amended (31 U.S.C. §§ 7501-7507) does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing audit requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. ~~*Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.*~~ *See also section ___.501 Subrecipient Monitoring and Management.*

Subtitle IV. - Federal Agencies

Overall, we believe the proposed language regarding management decisions will result in duplicative efforts and place unnecessary burden on pass-through entities.

.714(c) – Unnecessary Burden Created for Management Decisions

Administrative burden associated with management decisions by the pass-through entity could be significantly reduced by allowing the pass-through entity to rely on the subrecipient's cognizant agency oversight for routine audit follow-up and management decisions, which are available through the Federal clearinghouse designated by OMB. We propose the following edit to this section:

> *(c) Pass-through entity. As provided in __.713 Responsibilities paragraph (c)(5) ~~(d)(5)~~, and ___.501 Subrecipient Monitoring and Management, the pass-through entity ~~shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.~~ may rely on the subrecipient's cognizant agency oversight for routine audit follow-up and management decisions available through the Federal clearinghouse designated by OMB. ~~For cross-cutting findings where the cognizant or oversight agency for audit has issued a management decision available through the Federal clearinghouse designated by OMB, the pass-through entity may rely on a management decision issued by the cognizant or oversight agency for audit.~~*

.714(d) –New Burden Created by Timing Requirements for Management Decisions

Research institutions that are pass-through entities now have a potentially significant new burden in meeting the section .714(d) "within six months" of acceptance of the audit report by the Federal Clearinghouse. Previously the receipt of a subrecipient's reporting package by the pass-through would trigger the review and determination of whether a management decision was called for and simultaneously trigger the time requirements. Under the new guidance those subrecipient's subject to the single audit no longer have to submit the reporting package to the pass-through but rather directly to the Federal Clearinghouse. Research institutions that are also pass-through entities can have several hundreds of subrecipients that are subject to these audit requirements. To meet the intent of this guidance implies research institutions have sophisticated means to know when each subrecipient has submitted their report to the Federal Clearinhouse. Not all recipients and subrecipients have the same fiscal year end and do not necessarily submit the audit reporting packages consistently as this guidance allows up to nine months after year end for the report to be submitted.

We believe allowing use of management decisions issued by the cognizant or oversight agency and in the cases of subrecipients subject to A-133 audits where audits are on file, and corrective action plans are already in place and already being monitored by that entity's auditor, that the

federal government allow the pass-through entity to rely on any corrective action plan already in place without engaging in a duplicative review or assessment process.

In those instances where the pass-through and subrecipient both are subject to these Subchapter G audit requirements, we recommend the pass-through recipient is provided a "safe harbor" from certain subrecipient monitoring responsibilities. This "safe harbor" would be designed to eliminate any expectation of conducting site visits and other expensive, time consuming activities associated with monitoring subrecipients who are also recipients that meet the audit threshold in this Subchapter G guidance. The primary responsibility of the pass-through is to ensure the quality and integrity of the science that is being conducted and that any required follow-up should be triggered only when there are single audit findings that include questioned costs on the subaward issued by the pass-through or when the pass-through detects subrecipient deficiencies in meeting accountability and compliance with program requirements.

The following proposed language is only sufficient if proposed recommendations for .701(a) are adopted.

> *(d) Time requirements. <u>When issuance of a management decision is applicable,</u> ~~T~~the entity responsible for making the management decision shall do so within six months of acceptance of the audit report by the Federal clearinghouse designated by OMB. The auditee shall initiate corrective action immediately after receipt of the audit report and proceed with corrective action as rapidly as possible.*

Subtitle V - Auditors

<u>.715(d)(3) – Lack of Transparency for Compliance Requirements and Special Provisions</u>

We are concerned that the consolidation of the Compliance Requirements and the potential for Federal agencies to place more reliance on Special Provisions could significantly add to the scope of the single audit. Greater transparency in the development and publication processes associated with the annual update to the Compliance Supplement is needed and the university research community welcomes the opportunity to provide feedback to proposed changes in the annual Compliance Supplement prior to its publication as final guidance. We propose the following update to section .715(d).

> *(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this guidance. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the*

auditor should follow the compliance supplement's guidance for programs not included in the supplement. Three months prior to release of the annual Compliance Supplement by OMB, key stakeholders and representatives of Federal awardees will be provide a draft version of the Compliance Supplement and a summary of changes, and will provide comments to OMB prior to the release of the final version of the Compliance Supplement.

.717(a)(3) –Estimates of Likely Questioned Costs should be based on Projections Calculated Only from a Results of a Statistically Drawn Sample

We recommend the following change to help to ensure that only appropriate and recognized statistical sampling techniques are utilized:

(3) Known questioned costs that are greater than ~~$25,000~~ $50,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the estimate of total costs questions (likely questioned costs), not just the questioned costs specifically identified (known questioned costs. Such estimates may only be made using appropriate and recognized sampling techniques. The auditor shall also report known questioned costs when likely questioned costs are greater than $~~25~~50,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

.717(b) –Eliminate the Use of Inappropriate Projection and Extrapolation Techniques

Statistical sampling is approved and recommended by the American Institute of Certified Public Accountants (AICPA), and yields a more reliable result than non-statistical sampling. We recommend that use of projections should be allowed only when an auditor utilizes statistical sampling in completing audit testing. We believe that use of projections when non-statistical sampling techniques are used by an auditor will lead to an unreliable result, and overstate "likely" questioned costs.

(b) Audit finding detail and clarity. Audit findings shall be presented in sufficient detail and clarity, and should be accompanied by sufficient supporting documentation for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. Consistent with GAGAS, auditors must also place their findings in perspective by describing the nature and extent of the issues being reported and the extent of the work performed that resulted in the finding. To give the reader a basis for judging the prevalence and consequence of findings, auditors should as appropriate, relate the instances identified to the population or the number of cases examined and quantify the results in terms of dollar value or other measures. ~~If the results cannot be projected, auditors should limit their conclusions appropriately.~~ Projections or

extrapolations of results should only be used in those cases where the auditor relies upon or utilizes statistical sampling techniques.

Subchapter H – Appendix IV

Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Educational Institution

A.2(e)(2) – Request Clarification on Order of Distribution

The proposed guidance expands the "order of distribution" for F&A cost categories. Specifically, it has added "library expenses" to Appendix IV, A2(e)(2). In contrast, the Circular A-21 language does not include library expenses in the order of distribution. Generally, institutions only allocate library expenses to the major benefitting functions. We do not agree with this change as these expenses should not have an allocation to Department administration, Sponsored projects administration, and Student services administration. In developing the Library pool, administrative employees are excluded in the FTE calculation for allocation of the library expenses (see Division of Cost Allocation Best Practices Manual for Reviewing College and University Long-Form Facilities and Administrative Cost Rate Proposals, VII, 4.a.). Consequently, any costs associated with the excluded FTEs also should be excluded from the allocation base.

A.2(e)(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses~~, and library expenses~~ should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution.

B.4(a) – Opportunity: Improve Definition of Allowable Operations and Maintenance

We believe the cost associated with maintaining the infrastructure, including the wiring, cabling, switching and routing, and other normal maintenance of the information technological (IT) enterprise be specifically identified as an allowable Operations and Maintenance expense. These maintenance activities directly coincide with the network and data security, interconnectivity of buildings and research activities, the network switches and routers, and other activities related to updating and maintaining the institution's network. We recommend that in consideration of the importance federal agencies, Congress, and the institutions themselves have placed on data security, defining these infrastructure costs as an allowable Operations and Maintenance expense should be an OMB priority.

B.4(a) The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; maintenance of the information technological infrastructure; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; ~~and~~ central receiving; and other related costs that support operation and maintenance function of the institution. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

B.4(c) –Treatment of Utility Costs

Only one of the sixteen UNC constituent institutions is approved to receive the Utility Cost Adjustment. We support the broad concept that institutions should have a method to demonstrate that utility costs for research are the most utility-intense space on their campus. We also recognize that the single campus approved for the Utility Cost Adjustment used a thorough Special Utility Study and other analysis, which entailed considerable time and expense to demonstrate the fact that the research space was in fact more utility-intense than other function. If new methodologies are introduced, the institutions already approved for the Utilities Cost Adjustment should have recognition in future rate negotiations that they have already demonstrated this higher utility factor.

As fifteen UNC constituent institutions are not approved to receive the Utility Cost Adjustment, we appreciate the effort by OMB to introduce a more fair and cost-based approach to allocating utilities. While institutions have made considerable commitments to reducing utility costs, research space continues to be the most utility-intensive space on campus. The 24/7 nature of research space, which includes energy-intensive equipment and the maintenance of climate-controlled environments, makes the high-consumption of utilities inevitable. Utilization of the benchmarking tools (i.e., REUI) described in the Proposed Guidance provides a useful starting point for developing "effective square footage" factors associated with research space. However, it is important to note that unique circumstances associated with any benchmarking tool need to be considered on a case-by-case basis; otherwise, any solution becomes prescriptive and inflexible in addressing legitimate variances among institutions. We propose the following update to both recognize potential differences and to provide additional clarity in the guidance.

B.4(c) For allocation of utilities costs, ~~either of~~ the following methodologies ~~alternatives~~ may be employed:

~~*(1) Where space is devoted to a single function and metering at either the building or subbuilding level allows unambiguous measurement of usage either, costs shall be assigned to that function.*~~

(1) Metering of utilities is allowed at the sub-building level, building level or multiple building level where an unambiguous measurement of usage is obtained.

(2) In addition to metering of utilities as described in (1) above, ~~*Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function,*~~ *costs can* ~~*shall*~~ *be allocated as follows:*

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on square footage for monitored space (site, building, floor, or room), except that the "effective square footage" described in subsection (ii) below ~~*will*~~ *can be used instead of actual square footage for research space.*

(ii) "Effective square footage" allocated to research space shall be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB website at the time of a rate determination. In those cases where use of the REUI may be inappropriate, the institution shall document the basis for adjustment and provide this documentation to the cognizant agency.

C.2 –Recovery of F&A and Distribution Basis on First $25,000 of Each Subaward should be Annualized

Previous comments on Section .501(c)(5)(E) Subrecipient Monitoring and Management and Section .616(e) Direct and Indirect (F&A) Costs recommended changes in the modified total direct cost base (MTDC). Institutions will experience significant administrative burden and cost associated with subrecipient monitoring. This is and will be the case, regardless of any administrative relief provided in the Final Guidance. A more fair approach would be to allow F&A recovery on the first $25,000 of expenditures by the subrecipient on an annual basis, rather than using the life of the subaward as the allowable recovery period. This solution will provide more equity by recognition that subaward administration is an ongoing responsibility, rather than a one-time up-front occurrence. We recommend C.2 be updated as follows:

C.2 Indirect (F&A) costs shall be distributed to applicable Federal awards and other benefitting activities within each major function (see Section A.1, Major functions of an institution) on the basis of modified total direct costs, consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first $25,000 of each subgrant or subcontract (allowable on an annual basis ~~*regardless of the period covered by the subgrant or subcontract*~~*). Modified total direct costs exclude equipment, capital expenditures, charges for patient care and tuition remission,*

~~rental costs~~, scholarships, and fellowships as well as the portion of each subgrant and subcontract (on an annual basis) in excess of $25,000. Other items may only be excluded where necessary to avoid a serious inequity in the distribution of indirect (F&A) costs. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

C.7 – Use of Negotiated Rates throughout Life of an Award

We request OMB reinstate the text from Circular A-21 that allows the negotiated rate used at the time of the initial award to be used throughout the life of the award. This is the most administratively simple approach to managing those situations where the institution's negotiated rate changes in the middle of award. The new language is both confusing and raises a concern as to whether or not the current regulation (i.e., use the same rate for the life of the award) still can be utilized. We recommend the following change.

C.7 Federal agencies shall use the negotiated rates except as provided in section __.616 Indirect (F&A) Costs paragraph (b)(1) for indirect (F&A) costs in effect at the time of the initial award throughout the life of the Federal award ~~to fund the Federal award throughout its life~~. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. "Negotiated rates" per the negotiated rate agreement include final, fixed, ~~and~~ predetermined ~~rates~~ and ~~exclude~~ provisional rates. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal funding agency at the time of the award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the last negotiated rate ~~for the last year of the Federal award~~ shall be extended through the end of the life of the Federal award.

C.10(f) – Providing Copies of Rate Proposal and Supporting Documentation

We do not agree with the requirement in section (f) that institutions provide copies of rate proposals and supporting documentation to all interested agencies. F&A rates are negotiated between the institution and its cognizant agency. Federal agencies are required to accept that negotiated rate. Requiring institutions to provide detailed documentation to a Federal agency would be costly as well as an administrative burden with no value added. We propose removal of this language as follows:

***C.10(f)** Procedure for establishing facilities and administrative rates. ~~The cognizant agency shall arrange with the institution of higher education to provide copies of rate proposals and supporting documentation for the proposal to all interested agencies. Agencies wanting such copies should notify the cognizant agency.~~ Rates shall be established by one of the following methods: …*

C.10(g) –Cognizant Agency Documentation

We support the new language added specifying what information is to be included in determinations from the cognizant agency, but it is important that the timing for the Cognizant Agency to provide that documentation be specified. In order to confirm a transparent and fair negotiation of F&A rates, that documentation is required by the institution prior to conducting the F&A rate negotiation. If not, then the value of the documentation is meaningless and the transparency of the process is lost. We recommend the following update.

> ***C.10(g)*** *The cognizant agency shall formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments, and should be provided to educational institutions prior to negotiations.*