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TO: COGR Membership

FROM: COGR Staff

SUBJECT: Summer 2006 Update

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1. NIH Revises Tuition Payment Policy for NRSA Awards

The August 4, 2006 NIH Guide includes a Notice of a two-year pilot project establishing a revised policy (grants.nih.gov/grants/guide/notice-files/NOT-OD-06-90.html) for funding of tuition and fees, and health insurance under the Ruth L. Kirschstein National Research Service Awards (NRSA) program.
Currently, the NIH reimburses 100% of the request tuition, fees, and health insurance costs up to $3,000 plus 60% of the costs above $3,000, per trainee. Under the revised policy, the NRSA award will be based on tuition and fees equal to 60% of the level request by the institution, up to $16,000 per year for pre-doctoral trainees, $4,500 per year for postdoctoral trainees, and $21,000 per year for trainees in a combined dual-degree training program. However, the NIH Notice states that institutions have the opportunity to rebudget awarded positions into the tuition and fees category.

For institutional training grants, the training related expenses category will be modified to include health insurance as an allowable expense. An additional $2,000 per predoctoral trainee, per year, and an addition $4,000 per postdoctoral trainee, per year will be provided in this category. The revised policy applies to new and competing renewal institutional NRSA awards made in FY2007, non-competing institutional awards in FY2007 for programs that received competing awards in FY2006, and competing individual NRSA awards made in FY2007.

During this two-year pilot, NIH will use the annual progress report to collect data on the impact of the revised policy. NIH expects to issue a final policy by July 2010, to be applied to competing awards made in FY2011.

2. **Inspector General Audit of Graduate Student Compensation**

In a July 18 message to the COGR listserv we described this audit by the DHHS Inspector General. The impetus for this comes from a letter sent last year to the IG by Representative Joe Barton (R-TX), Chair of the House Energy and Commerce Committee, alleging that graduate student researchers at some universities were being compensated at exorbitant rates. Rep. Barton asked for an investigation into university practices. We contacted the Assistant IG in charge of this audit, and he explained that the focus is to test compliance with the NIH policy – that is, to compare graduate student researcher compensation levels charged on the sampled NIH grants to the “zero” level salary established by NIH for postdoctoral appointees.

Two questions have been raised with respect to the compensation level established by NIH as “reasonable”. The first is whether the NIH notice was issued as guidance or policy, and if you read the 2001 Notice you will see that NIH calls it a policy. The second question is whether NIH has the authority to determine “reasonable compensation”, since OMB Circular A-21 establishes the general parameters institutions must follow in determining what is reasonable. However, as stated in the 2001 Notice, NIH was encouraged by OMB to set a reasonable compensation level for graduate student researchers, and in fact OMB approved the level set by NIH as reasonable.

3. **NIH to Issue Summary of Conflict of Interest Reviews**

For the past several months NIH Compliance Office staff have been conducting not-for-cause site visits at selected universities to review conflict of interest policies and procedures. Based on discussion with NIH officials, it appears that, at least in the view of the NIH staff, some institutions have conflict of interest policies that are less than fully compliant. Areas of concern include: 1) Breadth of coverage - COI policies that only cover principal investigators, rather than all key personnel; 2) Reporting - when a potential conflict is managed, reduced or eliminated by the institution, NIH expects to receive a report stating the outcome; and 3) Subgrantee compliance - prime grant recipients that are not ensuring that subawardees are in compliance.
It is our understanding that NIH Compliance staff is preparing a summary report of observations from the site visits that should be released later this summer, and it will highlight these and other concerns NIH has with the state of compliance. If you have seen the recent NIH Extramural Nexus newsletter from the Deputy Director for Extramural Research (July 2006, available on the NIH web site), you will note the emphasis on conflicts of interest.

4. COGR Requests Army to Reconsider Applicability of Contractor Manpower Reporting Requirement to Educational Institutions

The COGR June 2006 Meeting Report discussed the new Army Contractor Manpower Reporting (CMR) requirement to report estimated direct labor hours on Army contracts. Information about CMR may be found at [https://contractormanpower.army.pentagon.mil/](https://contractormanpower.army.pentagon.mil/)

On July 31, 2006 COGR wrote to the Army expressing its concerns about the requirement. We indicated that implementation of this requirement for educational institutions raises serious questions of consistency with OMB Circular A-21 and the Federal Acquisition Regulations (FAR). We pointed out that making the estimates necessary to meet the Army requirement might require creation of new payroll cost allocation systems by universities. We also noted that reconciling the estimates with other payroll data produced by existing systems for audit purposes would be difficult and costly. We stated that conflicting and inconsistent federal requirements should be avoided, particularly when the effect is to impose costly new unfunded mandates, and requested that the Army reconsider the applicability of the requirement to educational institutions. A copy of the COGR comment letter has been posted on the COGR website.

5. COGR Joins Amicus Brief in MedImmune v. Genentech and City of Hope

COGR has joined in an *amicus* brief to the Supreme Court in *MedImmune v. Genentech and City of Hope* (No. 5-608). Other *amicus* include the American Association of Medical Colleges (AAMC), the Association of American Universities (AAU), the National Association of State Universities and Land Grant Colleges (NASULGC), Columbia and Stanford Universities, California Institute of Technology, the University of California System, and the University of Washington. The brief was filed on July 26, 2006.

The core issue in the case involves the ability of a patent licensee in good standing to seek a declaratory judgment to invalidate the patent. In the companion case of *MedImmune v. Centocor* (No. 05-656), which involves a patent jointly owned by Columbia and Stanford, the Federal Circuit (409 F.3d 1376(2005)) upheld the dismissal of MedImmune’s declaratory judgment suit on the grounds that where a license agreement exists with which all parties are complying, no actual controversy exists as is necessary for federal court jurisdiction under the Declaratory Judgment Act. COGR applied the Criteria developed for COGR Participation in *Amicus* Briefs (see COGR October 2004 Meeting Report) in determining to join in the brief. Permitting declaratory judgment suits by patent licensees in good standing could seriously threaten the ability of universities to negotiate license agreements, since substantial potential litigation expenses to defend the patent would have to be built into the royalty calculations of every agreement. This would adversely affect the policy objectives of the Bayh-Dole Act and the overall ability of universities to transfer their technologies for public benefit.
6. **COGR Discusses DARPA Deviations from Normal University Intellectual Property Rights with DOD**

The June Meeting Report discussed a recent DARPA research announcement (RA 06-07) that provided for other than normal intellectual property rights for universities, with no indication that DARPA had followed the required “DEC” procedure for approval of such deviations. The proposal information pamphlet had indicated that successful proposals might result in grants, cooperative agreements, or other transactions.

COGR discussed this deviation with a DOD official, who acknowledged that the statement in the proposer information pamphlet about grants and cooperative agreements was erroneous. DARPA’s intent is to use the other transaction authority, where DECs are not required for deviations from normal university invention rights. We were informed that for future reference, where program announcements contain such deviations, it signals DARPA’s intent to use the other transaction mechanism, even if not specifically stated in the announcements.


The June 2006 COGR Meeting Agenda discussed the rule changes proposed in January 2006 by the Patent and Trademark Office (PTO) in patent practice for continuing applications, requests for continued examination, applications containing patentably indistinct claims, and the examination of claims ((71 FR Vol.1, pp. 48-61; Docket Nos.: 2005-P-066 and 067). COGR commented on the proposed changes in a letter to PTO dated May 2, 2006, which is posted on the COGR website.

Two other pending PTO rules are of potential interest to universities; Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm) for which the comment deadline has just closed; and Changes to Information Disclosure Statement Requirements and Other Related Matters (Fed. Reg., Vol. 71, No. 131; p. 38808, July 10, 2006), for which comments are due September 8. We did not comment on the former rule, since it directly involves areas of patent examination practice. In addition, the Guidelines are lengthy and complex, and we lack a baseline to assess how much of a change they may represent. (AAMC submitted comments expressing concern about the potential for PTO to grant overbroad patents on natural laws or principles due to the lack of adequate recognition in the guidelines of "judicial exemptions" to patentability)

The Information Disclosure Statement (IDS) changes, while appearing to attempt to ease the burden on PTO examiners, would place an extra and significant burden on patent applicants. Furthermore, the new procedures could be counterproductive to the overall goal of a patent system that produces valid, enforceable patents, by resulting in patents that are more susceptible to attack on subjective inequitable conduct grounds. For these reasons we may comment on the proposed IDS changes, and encourage COGR member institutions to review them and also to consider commenting.
8. **Export Control Developments**

a) The Government Accountability Office (GAO) has visited a number of universities to discuss export control issues. Initially GAO had identified 37 institutions for possible visits. COGR and AAU jointly held a conference call on July 6 for those institutions. The list has narrowed considerably. GAO now has visited 8 institutions that we are aware of and has contacted a couple of others. The visits respond to a request from the House Judiciary Committee, apparently prompted by concerns about access of foreign students to (cutting-edge) technologies at universities. Reports from the visited institutions indicate that the GAO representatives were knowledgeable about export controls and that the purpose was not a compliance audit of the campus but an effort to determine how well governmental outreach efforts were working, and to discuss university concerns.

b) As discussed in the June Meeting Agenda and Report, Commerce is establishing a new Deemed Export Advisory Committee (DEAC). COGR worked closely with AAU and NAS to assure that a strong slate of university nominees was submitted to Commerce for the DEAC (July 28 was the deadline for submission of nominations). Commerce is expected to announce the Committee membership this fall.

c) COGR member institutions also should be aware of a proposed clarification of licensing policy on exports to China that was announced by Commerce/BIS on July 6 (Fed. Reg. Vol. 71, No. 129, p. 38313). The proposed rule is intended to prevent exports that would make a material contribution to Chinese military capabilities. The new rule would impose new licensing requirements on many items that are controlled for anti-terrorism reasons to military end-uses in China. The license requirements would apply to a broad-range of electronics, computers and telecommunications equipment such as software designed for certain general purpose electronic equipment, software designed for real-time processing equipment, certain high-performance computers, many types of telecommunications test equipment, certain information security software products, GPS and navigation equipment, and commercial aircraft and parts. There also are revisions of the licensing review policy for items controlled for reasons of national security, chemical and biological proliferation, nuclear nonproliferation and missile technology. These items already required a license for export to China but the license standard would be changed to a presumption of denial for items that would "make a material contribution to the military capabilities" of the PRC. These proposals also would apply to "deemed exports" if the activities are not covered by the fundamental research exclusion.


On August 1 NASA issued a proposed change to its contracting regulations that update requirements for security of information technology (Fed. Reg. Vol. 71, No. 147, p. 43408). The proposed rule expands requirements for IT security plans and increases the level of clearance requirements.

The new requirements are applicable to NASA contracts that require contractors to have physical or electronic access to NASA IT systems or “use information systems to generate, store, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a
NASA or a contractor’s information system.” They implement a number of recent laws and federal policies, including OMB Circular A-130.

We previously have raised concerns about similar requirements from NIH (see COGR October 2005 and February 2004 Meeting Reports). While the NASA requirements do not appear to apply as broadly to contractor information systems, the scope of the application quoted above is unclear. The increased clearance requirements are likely to be burdensome for universities as are the expanded requirements for IT security plans. We plan to submit comments to NASA; the comment deadline is October 2.

10. National Academy Schedules Third Regional Meeting on Science and National Security

The National Academy of Science (NAS) Committee on a New Government-University Partnership for Science and Security will hold the third of three regional campus meetings at Stanford University on September 27-28, 2006. The Committee has been charged by the National Science Foundation and the National Institutes of Health, with the encouragement of the House Science Committee and the White House Office of Science and Technology Policy, to consider issues at the nexus of science and national security. The meeting is intended to bring together faculty and research administrators, and government officials from research and national security agencies, to consider such topics as restrictive clauses in federal contracts and grants, dissemination of scientific information, sensitive but unclassified information, deemed exports, and the management of biological agents in academic research. At the conclusion of the regional meetings, the Committee will organize convocation in Washington, D.C. The Committee will then issue a report identifying the key issues raised during the regional meetings along with policy options. Unedited transcripts from the previous regional meetings held at MIT and the Georgia Institute of Technology are available at http://www7.nationalacademies.org/stl/

COGR has worked closely with NAS on the agenda and panelists for these regional meetings. We encourage COGR member institutions, particularly in the Mountain West and West Coast regions, to consider attending the meeting. There is no registration fee, however, seating is limited. To register for the Stanford meeting, please go to http://nrc58.nas.edu/pgasurvey/Quask/HTML/stanford.htm. The deadline for registration is September 15, 2006. The agenda will be forthcoming.

11. EPA Proposes Performance Standards – Comments Due

Comments are due August 21, 2006 on the Environmental Protection Agency’s (EPA) proposed rule creating a new Subpart K to the Resource Conservation and Recovery Act (RCRA) regulations setting performance-based Standards Applicable to Academic Laboratories for the management of hazardous wastes. In our June 12, 2006 electronic notice to the membership we described the leadership provided by a number of organizations in crafting these alternative standards with the EPA. The Campus Safety Health and Environmental Management Association (CSHEMA) has developed a detailed letter to EPA on the proposed rule that COGR intends to endorse, in part. A copy of CSHEMA letter is available on its web site at: http://www.cshema.org/committee/Govtrelations/academiclabrule.htm We encourage the membership to review the letter and consider sending a letter endorsing the adoption of performance standards as an alternative compliance approach for academic laboratories.
COGR’s letter will recommend adoption of the new rule with modifications as proposed by CSHEMA. Our only departure from that endorsement may be to encourage a broader application of these standards to include all non-production and non-diagnostic research laboratories at and/or affiliated with non-profit (non-commercial) organizations. EPA’s approach toward eligibility focuses on the type of educational institution even asking if the proposed rule should be extended to non-degree granting, non-accredited educational institutions. It may be useful to direct EPA’s attention to a consideration of extending the provisions to research laboratories at federally funded non-profit organizations as an alternative measure of eligibility.

Instructions for submitting comments are provided at the CSHEMA website and in EPA’s Federal Register notice of May 23, 2006 (71FR29712). It is often as important to let an agency know when we support an action rather than reserving comment only on those proposals with which we disagree.

12. NIH Proposes Changes in Grant Appendix Material

In the July 31, 2006 Federal Register and August 4 edition of the NIH Guide, the National Institutes of Health (NIH) and the Agency for Healthcare Research and Quality (AHRQ) requested information from the research community on changes in – a virtual elimination of – the use of appendices in applications submitted using the electronic Standard Form 424 Research and Related (SF 424 R&R) grant application. Comments on the proposed changes are due September 14, 2006.

The goal of the changes is to encourage concise, but complete, applications. The proposal would eliminate as a separate appendix: photographs or other color images; material essential to review but more appropriate for inclusion in another section, e.g., informed consent documents would be included in the Protection of Human Subjects section of the application; and reprints or preprints PDF files or a list of the publications’ URLs. The only permitted appendices will be those specifically required by a program announcement. NIH/AHRQ argues that information that is critical for the review and evaluation of the application should be included in the body of the application.

In requesting comment, NIH/AHRQ ask a series of five (5) questions: if there is a need to reduce appended materials; what information is essential that cannot be included in the body of the application; what if any need there is for reprints or preprints PDF files as appendices; if there are concerns with eliminating appended photographs or color images; and if the changes favor or disfavor any group of applicants.

COGR is preparing a response and welcomes your comments on these proposals (cblum@cogr.edu). The proposed changes in the use of appendices complement efforts to streamline the application process and we understand the investigator community is generally supportive of these changes. The only question that might be raised in COGR’s response is how to provide important reprints or preprints for publications not or not currently available online.


On August 8, 2006, the National Science Foundation request comment on a proposal to combine the Grants Proposal Guide (GPG) and Grant Policy Manual (GPM). (See Federal Register at 71
The community is invited to comment by October 26, 2006. The combination of these two documents presents a new framework that NSF believes will improve “awareness and knowledge” of all NSF policies and procedures; ease access; and eliminating redundancies. As a part of the proposal, NSF will combine the GPG with the Proposal Review Process documents to help NSF to manage amendments between the two documents because of administrative changes. If approved, NSF looks toward a January 2007 effective date. COGR is not preparing to comment now but welcomes your suggestions or concerns (cblum@cogr.edu). If the membership’s response warrants a reconsideration of the decision concerning commenting we will notify the membership.

14. Update: FAR Clause on Trafficking in Persons

As reported at the June meeting, COGR challenged the recent interim rule revising the Federal Acquisitions Regulations (FAR) to incorporate statutory requirements for Combating Trafficking in Persons. In a June 2006 letter, COGR argues that the FAR requirement to develop policies; conduct employee training; collect written employee certifications; and institute strict enforcement provisions against employees and subcontractors who violate the government’s “zero tolerance” policy goes well beyond the statutory requirements. A copy of COGR’s comment is available on the web site at: www.cogr.edu.

We have continued to follow-up by addressing the FAR interim rule and any potential changes to the policies governing grants and cooperative agreements. The Trafficking Victims Protection Reauthorization Act of 2005 requires a similar termination provision for all federal grants and cooperative agreements as well.

COGR will meet with Office of Science and Technology Policy staff and others to urge a reconsideration of the FAR provisions. We have contacted grant policy staff at NSF, NIH and DOD as well as the chair of the interagency Grants Policy Committee to argue for a more appropriate and tempered approach to the implementation of the statute for grants and cooperative agreements.

We have learned that one NIH institute has initiated an internal request for a FAR deviation to substitute language consistent with COGR’s proposal for the required FAR 52.222-50 in a pending contract. COGR has asked NIH to consider requesting a class, as opposed to an individual contract, deviation to the FAR clause to allow NIH contracting officers to use the COGR-proposed simplified approach on most NIH contracts. We will keep the membership informed of any changes or strategies to manage this requirement.

15. Update: CMS Determination on Payment of Costs for Research-Related Injuries

As reported at the June meeting, the HHS Centers for Medicare and Medicaid Services (CMS) Office of Financial Services determined that Medicare would not be the primary payer for research-related injuries if the clinical trial sponsor is willing to pay for those services. Described in a 2004 letter, CMS indicates that a clinical trial sponsor’s agreement to pay for injuries constitutes a liability plan or policy and, as such, becomes the primary payer responsibility. The apparent contradiction to the National Coverage Decision – Clinical Research Policy – and its goal of providing access to clinical trials for Medicare beneficiaries was the rationale for the Association of American Medical Colleges (AAMC) request for a
clarification. AAMC learned that CMS is preparing a policy statement on the secondary payer issue.

In the interim, on July 10, 2006 CMS requested comment on possible revisions to the Clinical Research Policy – the National Coverage Decision. AAMC crafted a thoughtful and thorough response to the issues raised by CMS and included a request for clarification of the interpretation of Medicare secondary payer rules with regard to the Clinical Research Policy as well.

16. GAO Reports Concerns with P.L. 106-107 Implementation


In May 2005, COGR met with members of the GAO staff as they prepared to initiated this assessment of grant-process reforms on grant recipients. In our discussions with GAO, we reminded them that research institutions are uniquely affected by a lack of coordination among agencies and highlighted the persistent problem of stand-alone audit and post award systems being developed by agencies. We supported the call for greater grantee input into the processes.

Following its own advice for this report, GAO interviewed officials at 17 grantee organizations representing the range of grantees – state, local and tribal governments and universities and nonprofit research organizations. It identified two broad areas of concern: (1) the continued lack of standardization and other inefficiencies in grant administration across agencies; and (2) the difficulties with the implementation of Grants.gov. GAO’s interviewees acknowledged that some federal cross-agency grant management reform initiatives were moving forward, but considered the general progress as inadequate.

GAO recommends that Congress consider reauthorizing P.L. 106-107 to make certain that federal agencies have clear requirements to continue these efforts. The second recommendation asks OMB to ensure that the groups leading the streamlining efforts identify and implement approaches to obtaining grantees' input as policies and procedures are being developed.

17. DHHS IG Select Agent Compliance Report

The Department of Health and Human Services’ (HHS) Inspector General (IG) issued a summary report on Universities Compliance with Select Agent Regulations (A-04-05-02006) at the end of June 2006. In a review of fifteen universities, the IG found weaknesses in controls at eleven institutions. The IG inspections cover the period November 2003-November 2004 with the field work conducted during 2004.

The timing of this report is unfortunate because it leaves the impression that universities have failed to meet the Select Agent regulations promulgated as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The IG began its inspection just as the regulations came into full effect in November 2003; before the Department of Justice completed its security risk assessments. In the two years since the IG conducted these
inspections, universities have worked closely with the CDC to bring their institutions into compliance with the regulations.

In its response to the IG’s report, the CDC notes it had identified most of the weaknesses during its own inspections of the institutions and confirms that the weaknesses have been corrected or referred for enforcement. CDC pledges to follow up on the remaining institutions to ensure full compliance.


The Working Group has completed the draft document and the COGR Costing Policies Committee and nine volunteer readers are now reviewing it. The COGR Board will then review an updated version of the draft, and if applicable, recommend additional changes. The target for the final release of the report is early October. As appropriate, various aspects of the Report will be discussed at the October 25-26, 2006 COGR Meeting.

19. **Fine-tuning Compensation Models**

In this leveling-off period of federal research funding, institutions are struggling to find a balance between paying competitive salaries for talented researchers, versus diminishing resources to pay for those salaries. Several hypothetical models have been discussed and require further discussion.

a) **Variable Compensation.** This model is premised on an appointment classification best described as “Limited Full-time, Merit-based.” A faculty member with this type of appointment would be eligible to earn up to the fair, competitive, market-based salary (e.g. $120,000). If circumstances are such that an individual with this appointment has no external funding at a given point in time, his/her salary could be reduced (e.g. down to $100,000). During this “downtime,” there would most likely be a reduction in the normal assigned workload.

During the “downtime,” the individual might be highly engaged in pursuing grant proposals. Because his/her appointment defines his/her salary at $120,000, this would be the base salary used in proposal applications. The rationale for using $120,000 as the base is that it represents a “restoration” to the fair, competitive, market-based salary, which is the foundation of the “Limited Full-time, Merit-based” appointment.

b) **Incidental Compensation.** Per A-21, section J10a: *Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems ... provided such work and compensation are separately identified and documented in the financial management system of the institution.*

Examples might include supplemental clinical coverage or teaching duties necessary to cover faculty vacancies. The supplemental work results in increasing the individual’s effort beyond the normal assigned workload. At issue is the duration and regularity of the supplemental work, and defining institutional policies that clearly differentiate incidental versus normal workload.
If you have been involved in any of discussions related to various compensation models, or have any other ideas on the practicality of these types of arrangements, please contact David Kennedy (dkennedy@cogr.edu).

20. NSF Inspector General Audits of Effort Reporting

As specified in their FY 2006 Annual Audit Plan, the NSF IG plans to conduct 5 or 6 “time and effort reporting” audits. The “Audit of the University of Pennsylvania Effort Reporting System” report (dated June 8, 2006) can be found on the NSF IG’s website at: http://www.nsf.gov/oig/UPENN_06-1-010_final.pdf

The audit covered NSF grants that were active in FY2002 through FY2004. There were no disallowances that resulted in a major fine or penalty. During the actual audit, the University was actively engaged in redefining policies, as well as implementing a new, web-based Effort Reporting System. Subsequently, some of the NSF IG issues were already being addressed. Notable points of the audit report included:

- **Timeliness.** The University has a 45 business day completion policy, and effort reports from the sample were not completed within the 45 business days. The University maintained because A-21 has no completion standard, it is inappropriate to penalize an institution for not meeting its own artificial standard. However, the University acknowledged that enforcing a completion policy is important, and going forward, it will closely manage the timeliness issue.

- **Suitable Means of Verification.** University Business Managers certified effort reports. The audit identified situations where the only “suitable means” was an oral verification from the individual or PI. Since A-21 does not define “suitable means,” and because in some situations an oral verification could be adequate (especially when supported by log books, day-planners, etc.), this finding was inappropriate. The University also indicated that in November of 2003, a new policy was established requiring individuals to sign their own effort reports.

- **Roles and Accountability.** One of the IGs recommendations was for the Department Chairs to be accountable for monitoring the effort reporting process. Though the University did not disagree that Department Chairs could have that role, the University maintained other individuals (not necessarily Department Chairs) could assume that role. Furthermore, through its new web-based Effort Reporting System, monitoring roles would be clearly defined and electronic processes would enhance accountability.

- **Independent Internal Evaluation.** Using a combination of internal needs assessments (which ultimately led to implementing the new, web-based system) and A-133 external audits, the University conducted detailed reviews of effort reporting policies and practices. However, the IG stated these reviews were inadequate, despite the fact that A-21 does not define how often, nor what comprises an “independent internal evaluation.”

In defining what is required for the “successful application of these cost accounting principles,” section A2b. of A-21 states: “Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.” The NSF-IG audit provides value by focusing on basic elements required in an effort reporting system. However, the audit report does not recognize the flexibility standards built into A-21,
which allow cost principles to be implemented and managed on an institution-by-institution basis. This is an important premise of A-21, and should be recognized in the audit environment.

21. **DHHS Inspector General Audit of Cost Transfers**

The DHHS IG recently released an audit report titled “Audit of Cost Transfers Funded Under NIH Grants at the University of Chicago.” The report is dated June 16, 2006, and can be found on the DHHS-IG’s website at: http://oig.hhs.gov/oas/reports/region5/50500047.pdf

The audit covered a review of cost transfer transactions on NIH grants that were active in FY2004 through FY2005. There were several “procedural” findings where documentation of the cost transfer was incomplete; however, this resulted in no disallowances. In conclusion, the report stated: “Considering the subsequently provided documentation, all of the cost transfers reviewed were accepted … We recommend that the University reemphasize cost transfer policies and procedures with the Comptroller’s and departmental staff.” The University agreed with the IG’s recommendation.

22. **Monitoring F&A Policies of Funding Agencies**

For the second year in a row, one of our member schools contacted us about a Department of Education program announcement (FIPSE, Fund for the Improvement of Postsecondary Education,) which included language that was inconsistent with a June 23, 2003 OMB Directive (Announcement Format of Federal Funding Opportunity.) The Directive is applicable to discretionary awards of grants or cooperative agreements, and per Part V., Application Review Information, it states:

> If an applicant's proposed cost sharing will be considered in the review process ... the announcement must specifically address how it will be considered ...If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants ... 

The FIPSE announcement stated that “… the extent to which an institution reduces or eliminates its indirect cost recovery is relevant …” This clearly constituted “vague” language in “suggesting” the institution cost share by reducing its indirect cost recovery. Upon contacting OMB, they agreed with us, and subsequently contacted the Department of Education. The Department of Education promised this language would not be included in the FIPSE announcement next year.

As a reminder, unless there is statutory language restricting indirect cost recovery (e.g. as in the language governing USDA appropriations), federal agencies should not limit recovery, nor suggest institutions waive indirect costs. Because this is not always practiced, we encourage you to keep COGR posted on similar situations.

23. **COGR Begins F&A Rate Survey**

Every COGR institution should have received the 2006 F&A Rate Survey. We designed this year’s survey as an XLS spreadsheet, which gives us more flexibility to introduce new questions and make quick updates to the format. We also introduced a new section on the “cost of
research compliance.” We encourage you to do your best to provide estimates in this section of the survey.

As you know, it is important that we get as close to a 100% response rate as possible. Data on rates, F&A recovery, research volume, etc. allows COGR to respond to questions and challenges that invariably arise in discussions with federal agency representatives, policy makers, news media, and our own research community. In addition, the summary and detailed tables we develop from the data have proven to be very useful to COGR member institutions in assessing their position within a region or with peer institutions. Finally, in times of tight federal budgets, we can expect challenges from some quarters on F&A costs as a way to cut federal spending. For all these reasons, the more institutions that respond to the survey, the greater confidence we have that the resulting data and analyses are reliable, useful, and reflect current conditions.

Please complete the surveys and return to David Kennedy (dkennedy@cogr.edu) by Friday, September 29, 2006.