

# COGR

an organization of research universities

## COUNCIL ON GOVERNMENTAL RELATIONS

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April 17, 2009

OMB Request for Feedback:

RE: Updated Implementing Guidance for the  
American Recovery and Reinvestment Act of 2009 (M-09-15)

Email to: [recovery@omb.eop.gov](mailto:recovery@omb.eop.gov)  
Include "guidance feedback" in title to email

The Council on Governmental Relations (COGR) is an association of more than 175 research universities and their affiliated academic medical centers and research institutes. COGR concerns itself with the influence of federal regulations, policies and practices on the performance of research and other sponsored activities conducted at its member institutions.

OMB has requested feedback on the Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 (M-09-15). We understand that the Guidance continues to be updated, and that OMB will issue a subsequent memorandum within the next 30 to 60 days. We have organized our comments according to the section references from the updated guidance, and we encourage OMB to consider these comments for the next update.

COGR also will comment on the Federal Acquisition Regulation: FAR Case 2009-009 - Reporting Requirements, and the Office of Management and Budget: Proposed Information Collection concerning the Standard Data Elements for the Section 1512 Reports as requested in recent *Federal Register* notices.

### **2.10 What reporting will be collected from recipients of Federal funding for reporting on Recovery.gov?**

Comment 1. Subrecipient Reporting. In the original February 18 memorandum (M-09-10), it stated that the neither a subrecipient nor subsequent subrecipients had any specific reporting obligations for Recovery.gov purposes (p. 15). The updated guidance (M-09-15) appears to reverse this by stating that OMB plans to expand the reporting model.

Section 1512 of the Recovery Act includes information requirements for any subcontracts and subgrants awarded by the recipient, and we recognize that prime grantees must meet these requirements. However, to expand subrecipient reporting requirements above those required by the Recovery Act legislation (e.g., extending requirements to second-tier subrecipients) could result in additional burdens, and effectively distract from the core accountability and transparency objectives of the Recovery Act.

Comment 2. Recipient Payment Requests. The Recovery Act legislation requires detailed expenditures and completion status reporting on a project or activity basis. However, there is no requirement in the legislation that correlates project-centric reporting with how an institution requests payment. However, at least one Federal agency (NIH) has indicated that grantees will not be able to pool advances from multiple grants into a single payment request. An agency policy such as this does not enhance the accountability and transparency objectives of the Recovery Act. In fact, it could create inefficiencies that negatively impact institutional cash flow, as well as create unforeseen difficulties associated with managing Recovery Act funds.

We recommend that recipients be allowed to pool cash drawdowns as is permitted by OMB under Circular A-110 (section .22(c), “*Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.*”)

## **2.11 When will the recipient reporting required by Section 1512 begin?**

Comment 3. July 10<sup>th</sup> Reporting Cycle. Section 1512(f) establishes October 10, 2009 as the initial statutory reporting deadline. However, July 10, 2009 has been cited as a date to require recipients to provide quarterly reports for the first time. Since [FederalReporting.gov](http://FederalReporting.gov) will not be operational by July 10<sup>th</sup>, and therefore, a single data entry portal will not be available, we are concerned that agency requirements may have significant variance and create confusion if a July 10<sup>th</sup> reporting cycle is used.

We suggest OMB eliminate a formal July 10<sup>th</sup> reporting date, and instead utilize a cumulative report on October 10<sup>th</sup> as the first official reporting date. Since the most significant expenditure activity on Recovery act research awards is not likely to start until May, this could serve as the rationale for this approach. In addition, this would eliminate the risk of varying agency requirements. If a July 10<sup>th</sup> reporting date is important, we propose that a highly simplified, uniform and one-time reporting model be utilized.

Comment 4. The 10-day Deadline. The statutory 10-day deadline can be problematic for a number of reasons. Institutional monthly fiscal and payroll cycles do not always correspond to the calendar month end; there will be months where the fiscal cycle extends several days into the subsequent month. Also, we recognize subrecipient reporting is an integral reporting requirement; institutions will be challenged to obtain subrecipient documentation in a timely manner.

Consequently, to meet the 10-day reporting deadline, most institutions will have to estimate activity for the final month of the quarter. An alternative approach would be to report on a “lag” basis; in other words, the October 10<sup>th</sup> report would cover Recovery Act activity through August 31<sup>st</sup>. This would ensure complete and accurate data is provided at the end of each quarter, which arguably enhances the accountability and transparency principles required under law.

Furthermore, we suggest that the 10-day deadline be interpreted as “10 business days”. It is not clear what the intent of the Recovery Act legislation was, but most business and government operating practices work under the principle of “business days”.

## **2.12 Will OMB publish standardized guidance on the recipient reporting required by Section 1512 of the Recovery Act that will apply across all federal agencies?**

Comment 5. Agency Standardization. The updated OMB guidance is clear and thorough in describing that all processes related to Recovery Act grants and contracts administration be standardized and uniform. This should include reporting requirements, data elements, standard terms and conditions, web face interface (i.e., single data entry portal via [FederalReporting.gov](http://FederalReporting.gov)), and all other information and management processes. While case-by-case exceptions could be warranted, we encourage OMB to closely scrutinize all exception requests and to allow grant recipients to comment before exceptions are approved.

## **2.13 What are the requirements for reporting the number of jobs created?**

Comment 6. Reporting Job Creation and Retention as an Aggregate. Section 1512(c)3(D) requires institutions to provide estimates for the number of jobs created and retained by the project or activity. Universities and research institutions are governed by audit principles under OMB Circular A-133 and the A-133 Compliance Supplement, which establishes research activity to be treated as a single program “cluster”. While universities and research institutions are fully committed to reporting of and compliance with the Recovery Act requirements, we request that these institutions be allowed the option to report job estimates on an aggregate basis or on a grant-by-grant basis.

Having the flexibility to report on the aggregate basis would provide for meaningful estimates, still on an agency-by-agency basis, of the number of jobs created and retained specific to research activity. This approach would be consistent with the Recovery Act statutory requirements (i.e., reporting by “project or activity”), and would recognize the unique university paradigm where the typical research institution has a large volume of research awards, each with a relatively small award size, where individuals can be charged to multiple research awards. Consequently, aggregate reporting could provide a more accurate and user-friendly representation of jobs created and retained.

Comment 7. Full-time Equivalents (FTEs) and Use of Hours. Job creation and retention reporting using FTEs as a metric is a reasonable measurement tool. However, while hours worked can be the basis of determining FTEs, the cost principles that universities and research institutions follow (Circular A-21 and A-122) explicitly exclude hours as the basis for determining an individual’s workload and effort. This principle recognizes that faculty, investigators, and professional employees work irregular hours where a typical workday often exceeds the 8-hour metric.

We request that this principle be recognized and that in the course of possible reviews and audits by Federal audit entities, the distinction between using FTEs to account for jobs created and retained be kept separate from how universities and research institutions are required to account for an individual’s workload and effort.

## **2.17 What role should Federal agencies require States to play in the collection and transmission of information required under Section 1512 of the Recovery Act?**

Comment 8. Universities as the Subrecipient. Universities could be subrecipients to States for selected Recovery Act programs. The updated OMB guidance provides States the flexibility to allow their subrecipients to report directly to the Federal government. This flexibility could be helpful to Universities by allowing them to meet the 10-day quarterly reporting deadline rather than a potentially expedited reporting deadline established by the State. If these arrangements are clearly established between the States and their University subrecipients, we believe this could enhance the quality and timeliness of reporting requirements.

## **5.8 How will transparency be provided for the results of Single Audits?**

Comment 9. Balancing Transparency and Confidential Information. In a footnote to the original February 18 memorandum (M-09-10), it was properly stated single audit reports are publically available with the Federal Audit Clearinghouse (FAC). In addition, the footnote correctly stated that single audit reports are subject to the Freedom of Information Act (FOI), which helps to ensure that personally identifiable information (PII) can be reviewed and redacted prior to release of a single audit report.

This footnote was not included in the updated OMB guidance, and instead, the updated guidance simply stated that single audit reports filed with the FAC would be made publically available on the internet. While we are in full support of the transparency requirements of the Recovery Act, we oppose elimination of safeguards that could result in inappropriate release of confidential and personally identifiable information. We believe the process as described in the February 18 memorandum be included in any official OMB guidance.

## **6.1 Are there actions, beyond standard practice, that agencies must take while planning for contract awards under the Recovery Act?**

Comment 10. FAR Recognition of Research & Development (R&D) Contracting. Part 35 of the FAR identifies the unique circumstances associated with R&D contracting. Section 35.002 states: “*Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance.*” Later, section 35.006(c) states: “*Because the absence of precise specifications and difficulties in estimating costs with accuracy (resulting in a lack of confidence in cost estimates) normally precludes using fixed-price contracting for R&D, the use of cost-reimbursement contracts is usually appropriate.*”

The updated OMB guidance encourages, to the maximum extent possible, that fixed-price contracts be utilized. However, in the case where contracts are used for R&D, we suggest that the OMB guidance be updated to reinforce the unique circumstances associated with R&D contracting, and specifically cite the language in Part 35 of the FAR.

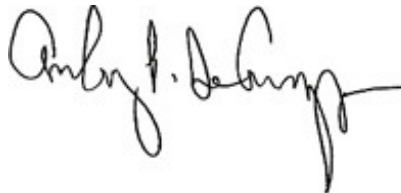
**Other Comments; Treatment of Research Specialist Personnel.**

Comment 11. COGR Proposal on Direct Charging of Research Specialist Personnel. In a COGR letter dated February 27, 2009 to OMB Director, Dr. Peter Orszag, we highlighted the fact that current OMB regulations (i.e., Circulars A-21 and A-122) would allow for research specialist administrative personnel to be direct charged to Recovery Act programs. However, current implementation of the Circulars discourages this practice. Consequently, explicit clarification by OMB that this practice is allowable under the current regulations would be a tremendous help to the research community. We urge quick action by OMB to make this clarification so that institutions can retain or hire the staff necessary to achieve the accountability and transparency required under the Recovery Act, and also begin spending these funds in the most efficient and effective manner.

On behalf of our members, COGR appreciates the opportunity to play an important role in implementing the research components of the American Recovery and Reinvestment Act of 2009. We take seriously our stewardship responsibilities associated with the transparency and accountability requirements of the Act. Our comments and suggestions described in this letter highlight those areas where additional OMB updates and clarifications can further enhance and advance our ability to effectively comply with the requirements of the Recovery Act.

The Council on Governmental Relations appreciates your consideration of our comments, and we look forward to responding to any questions you may have.

Sincerely,

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

Anthony P. DeCrappeo