

STATEMENT OF ALLISON C. LERNER
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BEFORE THE
HOUSE SCIENCE OVERSIGHT SUBCOMMITTEE
HOUSE SCIENCE EDUCATION AND TECHNOLOGY SUBCOMMITTEE

Chairmen and Members of the Subcommittees, I appreciate this opportunity to discuss the National Science Foundation Office of Inspector General's (OIG) perspective on the National Science Board (NSB) report, *Reducing Investigators' Administrative Workload for Federally Funded Research*; our audits of four Federal Demonstration Partnership (FDP) effort reporting system pilots; and the comments our office provided the Office of Management and Budget (OMB) during its creation of uniform guidance on administrative requirements, cost principles, and audit requirements for Federal awards. As accountability professionals, my office and the IG community are committed to striking the appropriate balance between reducing burden and maintaining proper accountability. To that end, we are focused on ways to ensure that that balance is maintained or strengthened, not diminished.

Background

For years, Federal cost principles, which govern what can and cannot be procured with Federal grant funds, as well as guidance related to administrative and audit requirements for such grants, were encompassed in eight separate circulars created and managed by OMB. The circulars served the valuable purpose of putting both Federal managers and awardees on notice of how Federal funds should be managed and expended.

The OMB circulars contain many tools essential to combating fraud, waste, and abuse. Using those tools, OIGs have identified situations where recipients have misused grant dollars and been able to pursue criminal, civil and administrative actions to recover those funds. Given their value to oversight professionals, the IG community has always paid close attention to efforts to change the circulars.

One of the most significant efforts to revise the circulars began in response to the February 2011 Presidential Memorandum on *Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments*, which directed OMB to work with Federal agencies, state and local governments, and other key stakeholders to evaluate potential reforms to Federal grants policies, with the goal of eliminating, to the extent permitted by law, unduly burdensome, duplicative, or low-priority requirements. As a result of that effort, in December 2013, OMB released new guidance, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2CFR 200)¹, which consolidated the eight existing grant

¹ Subsequently referred to as the Uniform Guidance.

circulars into one “omni-circular” in an effort to reduce both administrative burden for non-Federal entities receiving Federal awards and the risk of fraud, waste and abuse.

The same interest in streamlining regulations and reducing burden exemplified in the creation of the Uniform Guidance can be seen in the National Science Board’s (NSB) March 2014 report, *Reducing Investigators’ Administrative Workload for Federally Funded Research*. That report, prepared by the NSB’s Task Force on Administrative Burden, built on previous assessments of burden conducted over the past decade. Using data obtained from over 3,000 individuals through a Request for Information (RFI) and from a series of roundtables conducted with over 200 faculty and administrators, the Task Force sought to identify Federal requirements that did not improve scientific or regulatory outcomes but rather resulted in wasteful Federal spending or loss of valuable research time. The report contains the Task Force’s findings and details a number of policy actions aimed at modifying and streamlining inefficient requirements while retaining necessary oversight of federally-funded research.

As an OIG, my office is very concerned about striking the right balance between reducing burden and maintaining accountability. As a result, we established and led a Grant Reform Working Group composed of auditors, analysts, attorneys and agents from across the IG community that carefully followed and communicated with OMB as it worked to create the Uniform Guidance; I am happy to share our thoughts on that topic. I will also share my office’s thoughts on the NSB report on administrative burden. Because both the Uniform Guidance and the NSB report addressed changes to the effort reporting process, I will begin my testimony with that issue.

To ensure efficient and effective performance by grantees that receive Federal funds, Federal agencies must have the ability to monitor and review how grantees spend the funds. While we agree that removing overly burdensome requirements could free up resources to put toward achieving the goals and objectives of each grant, relaxing the focus on financial stewardship and compliance with cost requirements is contrary to that objective. Properly accounting for and safeguarding Federal funds should not impede recipients’ ability to achieve their programmatic goals.

NSF OIG’s Perspectives on Changes to the Labor Effort Reporting Process

What are labor effort reports?

Historically, labor effort reports (sometimes referred to as time and activity reports) have been used as the main support for salaries and wages charged to Federal grants and contracts. Labor effort reports are generally prepared by an individual and show the amount of time that individual charged to the various activities on which he worked during the covered period, including one or more Federal grants or contracts. The individual and/or his direct supervisor, by signing the report, certify the accuracy of the time spent on certain activities.

How do labor effort reports promote accountability?

Every year, billions of dollars in Federal funds are used to cover salary costs of individuals who work on Federal grants. Labor effort reports are essential documents for ensuring accountability

over Federal grant funds, as they represent support for amounts charged for labor conducted under an award.

Over the years, OIG auditors and investigators have repeatedly found that not all such charges are appropriate—and some are even fraudulent. My office has had numerous investigations involving university grantees that have failed to adequately track time and effort, resulting in improper and unsupported charges to Federal grants and the misuse of grant funds. The cases that have been resolved, to date, have resulted in criminal convictions; civil settlements under the Civil False Claims Act and common law theories, with mandatory compliance programs monitored by the government; and government-wide suspensions and debarments. In many cases, those outcomes would not have been possible without certified effort reports.

As an example, we have had multiple investigations in which university personnel have simultaneously held full-time positions at universities in the United States and abroad without disclosing the dual employment to either university or to the Federal agencies funding their research. In one such case, the summer effort certifications maintained by the American university revealed that the Principal Investigator (PI) was certifying 100% effort on his NSF awards for several summers in a row, and thus receiving NSF-funded summer salary for his work, when he was in fact performing his paid position for an Italian university. The false summer effort certifications resulted in summer salaries being inappropriately funded by the NSF award, and we used those summer effort reports to support our recommendation to NSF that the PI be debarred government-wide. We would not have had the requisite evidence to use for the debarment recommendation but for those summer effort certifications.

In another case, a PI on a Small Business Technology Transfer (STTR) award maintained his full-time position with a university despite his repeated certifications to NSF that he was primarily employed by the company that received the STTR award. At the university, he was the PI on multiple federally-funded subcontracts for which he was required to maintain effort certifications. During the academic year those reports reflected the percentage of time he was spending on each area of his job. In summer months he was required to maintain daily time and effort records, which were used to charge his time to federally-funded projects.

During the PI's trial, the university effort reports served as critical government exhibits and demonstrated the fraudulence of the company timesheets he had produced. That evidence contributed to the PI's conviction on seven felony counts, including falsification of evidence and obstruction of justice.

What changes have been proposed to effort reporting?

In light of the value of labor effort reports, the members of the Grant Reform Working Group paid particular attention to proposed changes to that process in the draft Uniform Guidance. In its comments to OMB on that draft, the working group detailed many reasons for its concerns that the proposed changes to labor effort reporting requirements—especially those relating to the standards for documentation of personnel expenses--would seriously undermine the oversight community's ability to identify and question unallowable and even fraudulent charges. Among other things, some proposed changes seemed to implement approaches being tested in pilots conducted as part of the FDP. We noted that the OIG community has agreed to audit those pilots to determine if they are capturing costs that reflect actual labor associated with Federal awards and if there is a sufficient audit trail to support those costs. We recommended that significant changes based on those pilots not be made to the effort reporting process until those audits are

complete. While OMB did make some changes to the effort reporting process in the final version of the Uniform Guidance, it is awaiting the results of the audits before making final determinations about other proposed changes.

The NSB's report noted that investigators and institutions responding to its RFI posting ranked effort reporting as the top area of concern, suggesting that it represented an "extreme burden to scientific staff" and a substantial expense to universities. The report recognized changes made by the Uniform Guidance to the labor effort reporting process, and noted that existing pilots that use institutions' payroll systems to provide automated information to be certified by the PIs were not addressed in the final guidance and were being reviewed by IGs. The report recommended that OMB identify appropriate means by which the piloted payroll certification approach for time and effort reporting could be used by universities and accepted by auditors and IGs. We appreciate that the NSB has recognized the importance of having the pilots audited, and look forward to discussing the results of those audits with the auditees, OMB, the NSB and the FDP.

What is the status of the IG community's audits of the labor effort pilots?

My office and the OIG for the United States Department of Health and Human Services are working together to conduct audits of the four FDP pilots, with each OIG having the lead on two audits. The audits are examining whether the systems universities are using to track labor charges provide data that support labor charges made to Federal awards, and whether universities are certifying, reporting, and claiming labor costs that accurately reflect the *actual* work personnel are doing on the Federal awards to which such costs are charged. We hope to complete these audits by the end of this calendar year.

Because our audit work is not complete, we have not yet finalized our findings. Problems we might encounter when payroll systems are used to support labor charges include using budget estimates for labor that are not adjusted to reflect work actually performed, as well as using a single, unadjusted percentage for effort across the life of an award (which suggests that changes to reflect actual activity are not being made).

Inspector General Community Grant Reform Working Group Comments on OMB Guidance: Cost Principles, Audit and Administrative Requirements for Federal Awards

The Grant Reform Working Group is comprised of staff from OIGs that oversee grant programs at twenty Federal agencies. Collectively, the agencies overseen by working group members fund 94 percent of the approximately \$1.2 trillion in direct Federal award dollars covered by Single Audits each year.

The working group supported OMB's efforts to tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, and to identify rules that may be outmoded, ineffective, insufficient, or excessively burdensome. However, we also realized that it was vital, especially in the current budget environment, to ensure that Federal funds provided for research are used for the purposes for which they were provided and in keeping with Federal financial requirements. In order to ensure such stewardship occurs, program managers, pass-through entities and OIGs need tools to help them assess how grant recipients are using the Federal funds they receive.

Labor effort reports, cost accounting standards and disclosure statements, certifications and Single Audits are tools which provide crucial information to individuals charged with program management and/or oversight responsibilities. The working group provided feedback to OMB as part of the Uniform Guidance comment process which focused on the critical roles these tools play in ensuring the appropriate stewardship of Federal funds, and the impact that proposed changes could have on them.

The working group's concerns about proposed changes to the effort reporting process have already been discussed. With respect to cost accounting standards and disclosure statements, we recommended that OMB retain cost accounting standards requirements for grants and cooperative agreements received by educational institutions with Federal awards of \$25 million or more, instead of eliminating them as proposed. These requirements were imposed in 1996 following audits questioning millions of dollars claimed by universities. In the years since their enactment, the resulting standards and disclosure statements have reduced the number of after-the-fact disagreements over universities' cost allocation processes, resulted in a more structured process for resolving cost accounting issues, and have thereby benefitted both the Government and the educational institutions. Disclosure statements, in particular, are critical tools for Federal officials charged with negotiating, monitoring or auditing awards, and their absence would significantly impair each of those activities. All of these benefits come with little burden, and their elimination would seriously undermine the Government's ability to hold institution's accountable for their use of Federal funds. The Council on Financial Assistance Reform (COFAR)² recommended retaining these requirements in the Uniform Guidance, although they raised the threshold to \$50 million.

We also recommended that certification language be strengthened throughout the Uniform Guidance. Done well, certifications are critical tools in the pursuit of fraud because they put awardees on notice of their obligations (and the consequences of making false statements) and facilitate prosecutions by demonstrating that awardees understood their responsibilities. We noted that certification language in the draft did not include specific reference to the consequences of a false certification and provided language to address that omission. While advancing accountability and facilitating oversight, certifications impose no realistic burden on awardees. The COFAR concurred with this recommendation.

With respect to Single Audits, we recommended that OMB retain the existing \$500,000 threshold for Single Audits instead of raising it to \$750,000 as proposed. We were concerned that raising the threshold would result in a loss of audit coverage for approximately 6,400 auditees representing nearly \$4 billion in Federal expenditures, thereby creating a significant loss of audit coverage for many low-dollar but high-risk entities. Recipient burden could also be increased if the threshold is raised because, absent Single Audits, smaller recipients may have to undergo audits or oversight visits from several different funding agencies. While the COFAR did not concur with this recommendation, it resisted requests from other stakeholders to raise the threshold even more and recommended setting the threshold at \$750,000 in the final version of the Uniform Guidance.

² Created by OMB, the COFAR reviewed all comments received in response to the February 2013 Notice of Proposed Guidance and recommended changes to the guidance based on that feedback.

**Accountability and Stewardship over Federal Funds: OIG Perspective on NSB Report,
*Reducing Investigators' Administrative Workload for Federally Funded Research***

The NSB report, *Reducing Investigators' Administrative Workload for Federally Funded Research*, stated that the most frequently reported areas associated with high administrative workload were financial management; the grant proposal process; progress and other outcome reporting; human subjects research and institutional review boards; time and effort reporting; research involving animals and institutional animal care and use of committees and personnel management. The report made recommendations intended to ensure that investigators' time is focused on science; to eliminate or modify ineffective regulations; to harmonize and streamline requirements; and to increase university efficiency and effectiveness.

The report's findings regarding effort reporting and financial management were of particular interest to my office. Our thoughts on the effort reporting findings were discussed previously. With respect to the financial management findings, the report noted a lack of harmonization and standardization within and among agencies in all aspects of grant management, including financial audits, which were cited as contributing to administrative burden. Several commenters noted that greater institutional demands for financial details and justifications arose from auditor requests or institutions' concerns about auditing. Further questions were raised as to whether greater levels of certifications sought by OIGs would undermine efforts to streamline processes. The report also noted that a number of respondents raised concerns about the burden imposed by the travel reimbursement process, especially when receipts are required for even very small purchases.

The NSB recommended that a mechanism be established to ensure uniform and consistent audit practices based clearly and directly on regulatory requirements. It noted that audits which focus on larger expenditures, outcomes and infrastructure would significantly reduce investigators' workload while maintaining oversight and urged agencies and institutions to consider requiring receipts only for larger purchases. It also recommended the creation of a high-level, inter-agency, inter-sector committee that would 1) identify a priority list of legislation, regulations and policies that should be eliminated, modified or harmonized to reduce administrative burden, and 2) propose detailed alternatives or solutions as appropriate.

With respect to the audit-focused concerns in the report, it is unclear to me what the respondents meant when they indicated their belief that auditors were exceeding requirements. Most grant-related audit work conducted by OIGs or as part of a Single Audit would use guidance set forth in the Uniform Guidance as criteria and be conducted in accordance with audit standards, which should contribute to consistency in audit approaches. In the absence of concrete examples of situations where such guidance was exceeded or inconsistencies occurred, we can only speculate as to what actions may have led to this finding. We would be happy to work with the NSB to facilitate a dialogue between the grantee and the IG communities to obtain greater insights on this matter. We also believe that, as we saw with the creation of the Uniform Guidance, input from the OIG community would benefit the proposed inter-agency, inter-sector committee. We welcome a chance to work with the organizers of that committee to identify a way in which the IG community could contribute to the committee's work, while still maintaining necessary auditor independence.

On the matter of receipts, while it is hard to see that requiring investigators to obtain and retain receipts for purchases they make using Federal funds imposes a substantial burden, the lack of such receipts would have an immediate and detrimental impact on both an institution's and an OIG's ability to detect and prosecute fraudulent purchases. Requiring receipts only for large purchases would not provide protection for the not infrequent situations where individuals make many small fraudulent purchases with grant funds that eventually add up to a large amount of money. As an example, one OIG investigation found that over a five-year period a university employee made over 3800 personal purchases from 15 different vendors which ultimately diverted over \$315,000. Without receipts, it would have been extremely difficult to make this case. Based on the strength of the evidence we were able to accumulate (including receipts), the defendant ultimately pled guilty to all 22 counts of the indictment, was sentenced to 32 months in prison and ordered to pay \$318,200 in restitution. Eliminating a requirement for receipts might save a few moments, but it would also increase the likelihood of fraud and misuse of grant funds.

Finally, with respect to the burdens imposed by audits, it is important to keep in mind that most institutions are not audited by an OIG on a regular basis. To put the impact of OIG audits in perspective, in an average year NSF funds approximately 2,000 colleges, universities and other institutions. Given size and resource constraints, my office typically audits fewer than 20 of such recipients in a year. It is hard to see how this small number of audits contributes significantly to administrative burden across the academic community. Changes to the Single Audit threshold noted earlier will also substantially reduce the number of institutions being audited each year. As an OIG we are concerned by the resulting loss of audit coverage for approximately 6,400 auditees, representing nearly \$4 billion in Federal expenditures. Past OIG experience has shown that entities that expend smaller amounts of Federal dollars often have more difficulty complying with award requirements, and significantly more findings of non-compliance and material weaknesses.

Unlike contracts, the Federal government has little insight as to how grant funds are used by awardees. It is therefore essential that tools, such as audits conducted by IGs and Single Audits, that are used to ensure accountability over Federal funds remain robust and provide sufficient oversight.

Conclusion

My office will continue to utilize the full range of our audit and investigative resources to exercise robust oversight of NSF's stewardship of Federal funds and to safeguard the integrity of the Foundation's operations. To conduct this oversight, we rely on strong accountability tools and Federal requirements that were established to protect Federal funds from waste, fraud, and abuse. While we recognize the need for a reasonable amount of flexibility to limit administrative burden, NSF awardees must never forget that they are spending the government's money and they must be held accountable for spending that money for its intended purpose.