

University of California Office of the President  
Senior Vice President—Business and Finance

Research Administration Office

# Memo

## Operating Guidance

No. 90-6 Suppl. 4  
February 17, 2000

CONTRACT AND GRANT OFFICERS (CAMPUS AND LAB)\*

VICE CHANCELLORS--ADMINISTRATION

**Subject:** NIH/SAMHSA Salary Cap

In each of the past eleven years, the HHS Appropriations Act passed by Congress has included a salary rate limitation affecting extramural awards from the National Institutes of Health (NIH) and the Substance Abuse and Mental Health Services Administration (SAMHSA). Salaries in excess of a statutorily-defined rate of pay (commonly referred to as the "cap") may not be paid from NIH or SAMHSA grants and contracts.

After extensive discussion, the 106<sup>th</sup> Congress decided to continue the NIH/SAMSA Salary Cap. Two recent changes have increased the threshold level of the cap. First, the cap has been tied to the Federal Executive Level III and is now tied to the Federal Executive Level II. Second, a raise for federal employees took effect on January 1, 2000. This is very good news! The practical effect is a reference salary increase from \$125,900 to \$141,300.

There were many who participated in the effort to eliminate or raise the cap. The UCDC office was actively involved with Senator Feinstein's office. See copy of Senator Feinstein's letter attached.

NIH provided guidance regarding the new cap in Notice OD-00-011 dated January 6, 2000, Attached. Please note, capped rate amounts are tied to federal fiscal year appropriations which become effective October 1, and calendar year cost of living increases which become effective January 1. Because NIH will not increase modular awards or established commitment levels for non-competing grant awards issued with FY 2000 funds, it is recommended that for modular grants, routine salary increases be budgeted in anticipation of federal annual increases in capped salary levels to maximize recovery of capped salaries. (See RAO Guidance Memo 99-03, NIH Modular Grant Applications and Awards). NIH will adjust proposals with categorical budgets that contain actual salaries. If the capped salary is used in lieu of actual salary, then NIH as a general rule will not accept revised budgets and will use information in existing applications to administer the salary cap.

Over the past year, the HHS Office of Inspector General (HHS-OIG) has been auditing the Cost Accounting Standards Disclosure Statements submitted by each campus. In the course of their review, HHS-OIG found instances of noncompliance with the statutory rate limitation, i.e., some

University employees were found to have been paid from NIH/SAMHSA funds at rates in excess of the cap.

The attached Question-and-Answer document was developed to provide University-wide guidance on the nature of the salary cap, its implications for University employees, and its relationship with University policy. It was circulated in draft form for comment to Academic Personnel Directors, Accounting Officers, Control Directors, Extramural Funds Managers, Federal Audit Coordinators and Contract & Grant Officers. The Q&A document incorporates changes to address the comments and suggestions received.

Compliance with the NIH/SAMHSA salary cap is a legal requirement. Based on the attached Q & A, campuses should develop and implement a formal process to ensure compliance locally. It is not necessary or expected for the same systems and procedures to be adopted at all campus locations. We request campuses to provide their implementation procedures to UCOP by April 21, 2000, attn: Robert Baum, Costing Policy & Analysis.

You should also be aware that HHS has been considering expanding the salary cap to all HHS components beyond NIH and SAMHSA. RAO wrote to OMB taking issue with three agencies in HHS applying the cap without statutory authority. After the Research Administration Office brought this to COGR's attention, COGR met with HHS and sent a letter to discourage the expanded application of the cap. See copy of COGR letter, Attached. We will keep you informed regarding the outcome of this proposed change.

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Subject Index: 07  
Organization Index: F-375

David F. Mears  
Director  
Research Administration Office

Enclosures

Cc: Academic Personnel Directors  
Accounting Officers  
Control Directors  
Extramural Fund Managers  
Federal Audit Coordinators

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**University of California, Office of the President**

**Questions & Answers Regarding the NIH Salary Cap**

## Background

### 1. What is the NIH salary cap and where does it come from?

The "NIH salary cap," as it is commonly referred to, is a limitation on the **rate of pay** (see Q&A 2 below) directly chargeable to grants, cooperative agreements and contracts issued by the National Institutes of Health (NIH) and the Substance Abuse and Mental Health Services Administration (SAMHSA). Federal fiscal year 2000 was the eleventh consecutive year that Congress has passed a statutory restriction of this kind. The relevant language from the FY 2000 Health and Human Services (HHS) Appropriations Act reads as follows: "None of the funds appropriated in this title for the National Institutes of Health and the Substance Abuse and Mental Health Services Administration shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II of the Federal Executive Pay Scale."

## Basic Guidance

### 2. What is a "rate of pay" and why is it important?

Compliance with the salary cap requires comparing a University employee's rate of pay with the maximum rate of pay established by Congress for the NIH or SAMHSA award.

For purposes of University guidance regarding the NIH salary cap, an employee's rate of pay is the salary in dollars payable to the employee per unit of time worked, normalized to one person-month at 1.0000 FTE effort. For example, a fiscal year employee who is paid \$120,000 per year for full time work has a rate of pay of \$10,000 per full time month worked. A fiscal year employee who is paid \$60,000 per year for half time work also has a rate of pay of \$10,000 per full time month worked. An academic year employee who is paid \$120,000 for full time effort during the academic year has a rate of pay of \$13,333.33 per full time month worked, because the annual salary is divided by nine months of required effort, not twelve. The rate of pay in the last example is unaffected by whether the employee receives pay in nine or twelve annual installments; the timing of paychecks does not determine the rate of pay for salary cap purposes.

### 3. What are the maximum rates of pay chargeable to NIH and SAMHSA awards?

The salary cap limits the rate of pay (see Q&A 2 above) chargeable to NIH and SAMHSA awards to a maximum that is tied to the Federal Executive Pay Scale and the year of the award. Expressed as a monthly rate for full time work, the most recent rates are as follows:

For awards made with federal FY 2000 funds:

\$11,775.00/month (beginning 1/1/00)

\$11,391.67/month (10/1/99 – 12/31/99)

For awards made with federal FY 1999 funds:

\$10,850.00/month (beginning 1/1/00)

\$10,491.67/month (10/1/98 – 12/31/99)

For awards made with federal FY 1996-1998 funds:

\$10,416.67/month (beginning 10/1/95)

See Appendix for further information. Salary charges in excess of these rates of pay are not allowable on NIH or SAMHSA awards. See Q&A 14 below for a description of fund sources to which salary above the cap is chargeable.

**The NIH salary cap only affects employees whose rate of pay is above the defined rates, and who charge some or all of their salary to awards and/or subawards from NIH or SAMHSA. The NIH salary cap has no effect on employees whose rate of pay is less than the defined rates, or whose salary is not charged to sponsored projects originating from NIH or SAMHSA.**

#### 4. How does the salary cap relate to effort?

Ordinarily, the salary chargeable to a sponsored project is the employee's rate of pay multiplied by the employee's percent of full time equivalent effort on the project. For example, if Professor Jones is paid \$12,000 per month for a full-time fiscal year appointment, and if she spends 10% of her effort on a grant, she ordinarily could charge 10% of her salary, or \$1,200 per month, to the grant.

However, for awards subject to the salary cap, employees who earn at rates above the cap are limited to the capped rate of pay multiplied by their percent of full time effort. If Professor Jones is working at 10% effort on a grant from NIH or SAMHSA made in federal fiscal year 1999, she could charge at most \$1,085.00 per month to the grant for work in calendar year 2000. Higher levels of effort mean proportionately more salary can be charged, up to the maximum of \$10,850 per month at 100% effort on fiscal year 1999 awards, and \$11,775 per month at 100% effort on fiscal year 2000 awards. See Appendix for a summary of rates by federal fiscal year. Also see Q&A 10 below regarding academic year appointees.

#### 5. Could the cap affect someone charging less than \$141,300 per year or \$11,775 per month to NIH awards?

Yes. The salary cap is a limitation on the rate of pay (see Q&A 2 above) charged to the sponsor, not just a ceiling on the total amount charged. Whether the cap could affect an employee depends upon whether the employee's rate of pay exceeds the capped rate.

## **Types of Pay Excluded/Included in Determining the Rate of Pay**

### 6. Is all pay included in determining whether someone's rate of pay exceeds the cap?

No. Only the categories of pay that can be charged to sponsored projects are counted in an employee's rate of pay for comparison with the salary cap. This principle underlies the responses to questions 7, 8 and 9 below.

### 7. Are administrative stipends, honoraria, or consulting fees included in the salary cap?

No. Administrative stipends, honoraria, outside consulting fees and supplemental compensation for incidental services to University Extension are not included in the rate-of-pay determination. These types of pay should not be charged to NIH and SAMHSA awards.

### 8. Is pay above the Health Sciences Salary Scales base salary included in the salary cap?

For employees covered by a health sciences compensation plan, both the UC Health Sciences Salary Scale base salary, or "X" component of salary, and the negotiated additional compensation, or "Y" component of salary, are included in determining the employee's rate of pay. If the combined rate of pay (including both X and Y) exceeds the capped rate, the maximum amount chargeable to NIH and SAMHSA awards is the capped rate multiplied by the employee's effort on each award.

However, any incentive/bonus compensation under a health sciences compensation plan, also known as the "Z" component, is not included in the employee's rate of pay, and is not an allowable charge to NIH or SAMHSA awards.

### 9. Is summer research pay included in the salary cap?

Yes. Summer salary of academic year appointees is subject to the salary cap. Summer pay is based on effort (service days on duty status), and is chargeable to NIH and SAMHSA awards up to the capped rate. See Q&A 10, 11 and 12 below for further considerations applicable to academic year employees, including the summer pay example in Q&A 12.

## **Considerations Applicable to Academic Year Appointees**

### 10. How is the rate of pay calculated for academic year appointees paid over twelve months?

Most academic year appointees receive their academic year salary over twelve monthly pay periods for service rendered over a nine month period. For example, Professor Smith has an academic year salary of \$108,000 and receives twelve monthly paychecks of \$9,000.00 each. At first glance Professor Smith's rate of pay would appear to be below the FY 2000 capped rate. However, his academic year pay is earned based on nine working months, not twelve, so his actual rate of pay is  $\$108,000 / 9 \text{ months} = \$12,000$  per month, which exceeds the FY 2000 capped rate. Consequently, a portion of Professor Smith's compensation could not be charged to NIH or SAMHSA awards.

#### 11. What are the capped rates for academic year salary paid over twelve months?

The capped rates of pay apply equally to academic year appointees and fiscal year appointees. The rates shown below are equivalent to the capped rates shown in Q&A 3 above, but scaled to the academic year and 12-month payment plan, respectively:

For awards made with federal fiscal year 2000 funds:

\$105,975/ academic year or \$8,831.25/month over 12 months (beginning 1/1/00)

\$102,525/academic year or \$8,543.75/month over 12 months (10/1/99 – 12/31/99)

For awards made with federal fiscal year 1999 funds:

\$97,650/academic year or \$8,137.50/month over 12 months (beginning (1/1/00)

\$94,425/academic year or \$7,868.75/month over 12 months (10/1/98 – 12/31/99)

For awards made with federal fiscal years 1996-1998 funds:

\$93,750/academic year or \$7,812.50/month over 12 months (beginning 10/1/95)

See Appendix for further information.

#### 12. How does the salary cap affect summer work of academic year appointees?

The University's guidelines for payment of additional compensation to academic year appointees during the summer (APM 600, Appendix 1) can be found at <http://www.ucop.edu/acadadv/acadpers/apm/s4-600l.html>. The guidelines provide for calculation of summer pay using time factors that correspond to the number of service days on duty status during a given calendar month.

For academic year employees whose rate of pay exceeds the cap and whose summer pay will be charged to NIH or SAMHSA grants, the time factors corresponding to service days working on the NIH or SAMHSA grants should be multiplied by the applicable capped rate of pay as shown in Q&A 3 above.

Note that for a one-third summer appointment, the sum of the time factors cannot exceed 1.0000; the total pay cannot exceed 1/9 of the academic year compensation, and the total charged to NIH/SAMHSA cannot exceed the monthly capped amount. For a two-thirds summer appointment, the sum of the time factors cannot exceed 2.0000; the total pay cannot exceed 2/9 of the academic year compensation, and the total charged to NIH/SAMHSA cannot exceed two times the monthly capped amount. For a three-thirds summer appointment, the sum of the time factors cannot exceed 3.0000; the total pay

cannot exceed 3/9 of the academic year compensation, and the total charged to NIH/SAMHSA cannot exceed three times the monthly capped amount.

Example: Professor Lee, who earns \$108,000.00 for the academic year, is working in the summer of 2000 on a SAMHSA grant made in federal fiscal year 2000. She has a full summer appointment, two thirds of which will be spent working on the grant. Two thirds of the summer period translates into 38 service days in duty status. Professor Lee works 23 days in July and 15 days in August, corresponding to time factors of 1.2105 and 0.7895, respectively. With the salary cap, the maximum salary that could be charged to the SAMHSA grant would be \$14,253.64 in July [= \$11,775 x 1.2105] and \$9,296.36 in August [= \$11,775 x 0.7895]. If there were no salary cap, the total salary chargeable to the SAMHSA grant would be 2/9 of Professor Lee's academic year compensation, or \$24,000. However, because of the salary cap, the maximum that can be charged to the SAMHSA grant is \$23,532. The difference of \$468 would need to be charged to an unrestricted, non-State fund (see Q&A 14 below) in order for Professor Lee to receive her regular compensation for the work in question.

## Guidance on Compliance

### 13. What procedures will ensure that personnel charges do not exceed the salary cap?

With UCOP guidance, campuses are responsible for implementing local procedures to comply with the salary cap requirement. Because this issue is currently under review by the U.S. Department of Health and Human Services, campuses are requested to provide their proposed implementation procedures to UCOP by April 21, 2000.

### 14. What fund sources can be used for salary not reimbursed by NIH/SAMHSA?

When an employee's rate of pay exceeds the funding agency's cap, the difference between what the employee would have earned at full pay and the maximum amount allowed under the cap for that percent of effort **must not** be charged to another federal award. The difference may be charged to a privately sponsored award only when specifically allowed by the private sponsor. University policy also prohibits the use of State appropriations, including general (19900) funds, to pay for salary above the capped level. Unrestricted funds, including gift funds and health sciences compensation plan funds, may be used to make up amounts not chargeable to NIH or SAMHSA due to the salary cap.

The prohibition on the use of general funds for salary above the capped level is somewhat tempered by the broad range of purposes for which general funds may be appropriately used. Whenever employees with budgeted 19900 salaries charge a portion of their time to sponsored projects, salary savings are generated in the 19900 fund. In many cases these general fund salary savings can be substituted for unrestricted funds being used in an academic department, organized research unit, or dean's office, and the unrestricted funds can thereby be released and used for salary above the capped level without violating University policy.

Supplementation (i.e., pay above the capped level) is subject to the availability of funds and is not an entitlement. The Chancellor or designee may authorize supplementation for individual faculty. The above policy was disseminated to Academic Vice Chancellors in a memo from Associate Vice President Moore dated March 22, 1991.

15. Does the salary cap affect pay on NIH / SAMHSA awards only, or all fund sources?

It is the policy of the University to oppose salary rate limitations except where mandated by law. The statutory limitation applies only to awards and subawards originating from NIH and SAMHSA. Salary paid from other fund sources is not capped, except in the unusual circumstance where the University has voluntarily agreed to restrict salary rate payments under the terms of a contract or grant.

16. How is information on the salary cap level updated?

As of the date of issuance of this guidance, the latest NIH announcement regarding the salary cap is found at:

<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-00-011.html>

Changes to the NIH/SAMHSA salary cap are communicated to campuses via Contract and Grant Memos. The most recent C&G Memo regarding the salary cap is dated February 17, 2000 and is available at:

<http://www.ucop.edu/raohome/cgmemos/90-6S4.html>

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WASHINGTON, DC 20510

July 26, 1999

The Honorable Arlen Specter, Chairman  
Subcommittee on Labor-HHS-Education Appropriations  
United States Senate  
184 Dirksen Office Building  
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing to urge the subcommittee an Labor-MRS-Education Appropriations to raise the NIH salary cap for university-based researchers to a level equal to the salaries of top researchers based at NIH, if salary cap language is included in the bill.

As you know, our subcommittee instituted a cap (\$120,000) in the FY 1990 Labor/HHS-Education Appropriations bill on the salary level that researchers could apply toward their NIH grants. The FY 1992 bill raised the cap to \$125,000, where it stayed for many years. In last year's appropriations for the National Institutes of Health (Omnibus Consolidated and Emergency Supplemental Appropriations for fiscal Year 1999- Public Law 105-277), the language in Sec. 204 changed the cap again to restrict it to federal executive level III. But tying the cap to executive level M (currently at \$125,900) still leaves the cap far too low, especially compared to the cap on researcher salaries within NRL which are tied to executive level I (currently at \$151,800).

Instead of last year's cap, we propose the following language.

Sec. 204 None of the funds appropriated in this Act for the National Institutes of Health and the Substance Abuse and Mental Health Services Administration shall be used to pay the salary of and individual, through a grant or other extramural mechanism, at a rate in excess of the maximum allowable under the Senior Biomedical Research Service.

This change would:

1. eliminate the disparity between the salary level of NIH researchers and external researchers on NIH grants.
2. allow universities and other academic research institutes to better compete with the private sector and attract the nation's top biomedical researchers; and
3. require the NIH to pay a more equitable share of the salaries of distinguished scientists who are interested in performing NIH-supported research.

As you know, this Subcommittee has focused in recent years on increasing the NIH research budget. Now is the time to adequately support the women and men working on NIH-sponsored grants in the university laboratories to conduct the research leading to medical advances and cures.

Thank you for your attention to this important issue.

Sincerely,

<signature>

Dianne Feinstein  
United States Senator

<signature>

Patty Murray  
United States Senator

DF:gb

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NIH Guide: SALARY LIMITATION ON GRANTS, COOPERATIVE AGREEMENTS AND CON'  
<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-00-011.html>

## SALARY LIMITATION ON GRANTS, COOPERATIVE AGREEMENTS AND CONTRACTS

Release Date: January 6, 2000  
NOTICE: OD-00-011

National Institutes of Health

The purpose of this notice is to provide updated information regarding the salary limitation as it relates to NIH grant and cooperative agreement awards. This information also applies to extramural research and development contract awards. The last notice in the NIH Guide for Grants and Contracts regarding the salary limitation was published December 22, 1998.

Fiscal Year (FY) 2000 is the eleventh consecutive year for which there is a legislatively mandated provision for the limitation of salary. specifically, the Department of Health and Human Services (HHS) Appropriation Act for FY 2000, Public Law 106-113, restricts the amount of direct salary of an individual under an NIH grant or cooperative agreement (hereafter referred to as a grant) or applicable contract to Executive Level II of the Federal Executive Pay scale. For FY 2000 awards the Executive Level II salary level is \$136,700 for the period October 1 through December 31, 1999. Effective January 1, 2000, the Executive Level II salary level increased to \$141,300.

For FY 1999 awards, the legislatively imposed salary limitation was linked to Executive Level III of the Federal Executive Pay scale, which was set at a level of \$125,900 for the period October 1, 1998 through December 31, 1999. Effective January 1, 2000, this level was raised to \$130,200. Direct salary is exclusive of fringe benefits and facilities and administrative (F&A) expenses, also referred to as indirect costs. NIH grant/contract awards for applications/proposals that request direct salaries of individuals in excess of the applicable RATE per year will be adjusted in accordance with the legislative salary limitation and will include a notification such as the following:

According to the FY 2000 HHS Appropriations Act, "None of the funds appropriated in this title for the National Institutes of Health and the Substance Abuse and Mental Health Services Administration shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II of the Federal Executive Pay Scale."

The term "salary" means "direct salary" which is exclusive of fringe benefits and F&A expenses. "Direct salary" has the same meaning as the term "institutional base salary." An individual's institutional base salary is the annual compensation that the applicant organization pays for an individual's appointment, whether that individual's time is spent on research, teaching, patient care, or other activities. Base salary excludes any income that an individual may be permitted to earn outside of duties to the applicant organization.

In summary, the following reflects the time frames associated with the existing salary caps:

FY 1999 Awards (Executive Level III)

October 1., 1998 through December 31, 1999 \$125,900

January 1, 2000 and beyond \$130,200

FY 2000 Awards (Executive Level II)

October 1, 1999 through December 31, 1999 \$136,700

January 1, 2000 and beyond \$141,300

The following are examples of the adjustments that NIH will make when salaries exceed the current salary limitation:

**EXAMPLE 1. INDIVIDUAL WITH FULL-TIME APPOINTMENT** (based on grant award/contract issued after January 1, 2000 with a \$141,300 salary

limitation)

Individual's institutional base salary for a FULL-TIME (twelve month) appointment \$150,000

Research effort requested in application/proposal - 50%

Direct Salary requested \$ 75,000

Fringe benefits requested (25% of salary) \$ 18,750

Subtotal; \$ 93,750

Applicant organization's F&A (indirect) costs at a  
rate of 45% of subtotal \$ 42,188

Amount requested - salary plus fringe benefits  
plus associated F&A (indirect) costs \$135,938

If a grant/contract is to be funded, the amount included for the above individual will be  
calculated as follows:

Direct salary - restricted to a RATE of \$141,300  
multiplied by effort (50%) to be devoted to project \$ 70,650  
Fringe benefits (25% of allowable salary) \$ 17,663  
Subtotal \$ 88,313

Associated F&A (indirect) costs at 45% of subtotal \$ 39,741  
Total amount to be awarded due to  
salary limitation \$128,054

Amount of reduction due to salary limitation (\$135,938 requested minus  
\$128,054 awarded) \$ 7,884

**EXAMPLE 2. INDIVIDUAL WITH HALF-TIME APPOINTMENT** (based on a grant  
award/contract issued after January 1, 2000 with a \$141,300 salary limitation)

Individual's institutional base salary for a HALF-TIME appointment (50% of a full-time  
twelve month appointment) \$ 75,000

Research effort requested in application/proposal 30%

Direct-Salary requested \* \$22,500

Fringe benefits requested (25% of salary) \$ 5,625

Subtotal \$ 28,125

Applicant organization's F&A. (indirect) costs at a rate  
of 45% of subtotal \$ 12,656

Amount requested - salary plus fringe benefits  
plus associated F&A (indirect) costs \$ 40,781

If a grant/contract is to be funded, the amount included in the award for the above individual  
will be calculated as follows:

Direct salary - restricted to a RATE of \$141,300  
multiplied by 50% appointment by 30% effort  
to be devoted to project \$ 21,195

Fringe benefits (25% of allowable salary) \$ 5,299

Subtotal \$ 26,494

Associated F&A (indirect) cost at 45% of subtotal \$ 11,922

Total amount to be awarded due to salary  
limitation \$ 38,416

Amount of reduction due to salary limitation  
(\$40,781 requested minus \$38,416 awarded) \$ 2,365

Implementation of new salary limitation:

- No adjustments will be made to modular grant applications/awards or to previously established commitment levels for non-competing grant awards issued with FY 2000 funds.
  - NIH competing grant awards with categorical budgets reflecting salary levels at or above the new cap(s) issued in FY 2000 will reflect adjustments to the current and all future years so that no funds are awarded or committed for salaries over the limitation.
  - Awards issued with FY 1999 funds are still restricted to the Executive Level III. From the period October 1, 1998 through December 31, 1999, the level is \$,125,900. Effective January 1, 2000, Executive Level III is limited to \$130,200. If adequate funds are available in active-FY 1999 awards, and if the salary cap increase is consistent with the institutional base salary, grantees may rebudget to accommodate these salary levels and contractors may bill at the higher level. However, no additional funds will be provided to the FY 1999 grant award and the total estimated cost of the contract will not be modified.
  - An individual's base salary, per se, is NOT constrained by the legislative provision for a limitation of salary. The rate limitation simply limits the amount that may be awarded and charged to NIH grants and contracts. An institution may supplement an individual's salary with non-federal funds.
  - The salary limitation does NOT apply to payments made to consultants under an NIH grant or contract although, as with all costs, such payments must meet the test of reasonableness and be consistent with institutional policy.
- The salary limitation provision DOES apply to subawards/subcontracts for substantive work under an NIH grant or contract.
- COMPETING grant applications and contract proposals that include a categorical breakdown in the budget figures/business proposal should continue to reflect the actual institutional base salary of all individuals for whom reimbursement is requested. In lieu of actual base salary, however, applicants/offerors may elect to provide an explanation indicating that actual institutional base salary exceeds the current salary limitation. When this information is provided, NIH staff will make necessary adjustments to requested salaries prior to award.

### Questions & Answers

1. Can I rebudget grant funds or bill contracts issued with FY 1999 funds to allow for the increase from \$125,900 to \$130,200? Yes, provided funds are available and the increase is warranted. Prorated figures should be used for the applicable months, i.e., the \$130,200 level is effective for budget periods that extend beyond January 1, 2000.

2. If a grant award (competing or non-competing) has already been issued in FY 2000, will an adjustment be made? No adjustments will be made; however, rebudgeting is allowable.

3. If an application/proposal fails to provide needed salary information, will an adjustment be made based on the new rates? No adjustment will be made if an application fails to provide adequate information regarding the individual's salary level.

4. Does the NIH appropriation language link the salary cap to a Federal Executive Level or to a dollar level? The link is to the Federal Executive Level pay scale (i.e., Executive Level III for FY 1999 and Executive Level II for FY 2000).

5. As the cap is linked to Federal Executive Levels, can grantees/contractors with ongoing awards rebudget/bill up to the various salary caps, based on the fiscal year of the award and the time of the salary expense? Yes, salary may be charged in accordance with the prevailing FY cap(s), as long as the levels are consistent with the individual's institutional base pay. The following provides an example.

A competitive grant or a contract, using FY 1999 funds, requested salary in excess of the cap and was awarded with an August 1, 1999 start date reflecting a salary level of \$125,900. The grantee/contractor may charge salary at a rate of \$125,900 per annum through December 31, 1999. Effective January 1, 2000, salary may be charged at a rate of \$130,200 per annum through July 31, 2000. Effective with the FY 2000 non-competing award or contract, salary may be charged at the rate of \$141,300 per annum.

6. Will grantees be permitted to submit revised budgets reflecting higher base salaries? Not as a general rule. NIH policy states that grantees should always reflect actual base salaries in the requested budgets or provide an explanation indicating that actual institutional base salary exceeds the current salary limitation. As a general rule, NIH will use the information available in the existing application and make adjustments for salary cap based on information available at the time of award.

#### INQUIRIES

Questions concerning this notice or other policies relating to grants or contracts should be directed to the grants management or contracts management office in the appropriate NIH Institute or Center.

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#### Enclosure 1

#### Council on Governmental Relations

1200 New York Avenue, N.W., Suite 320, Washington D.C. 20005

(202)289-6655/(202)289-6698(FAX)

December 22, 1999

Mr. Charles Gale  
Director, Grants Policy and Oversight  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Room 517-D  
Washington, D.C. 20201

Dear Charles:

You have advised us that the Department of Health and Human Services is inclined to extend



the NIH and SAMHSA salary cap to all DFIHS agencies and you asked us for our reaction to this notion. We have talked to our colleagues at the Association of American Medical Colleges and the Association of American Universities and are writing to express our opposition to extending the cap to other DHHS agencies.

### The Salary Cap was a Budget Saving Device, Unrelated to Reasonable Compensation

In 1990 when Congress first established the salary cap, federal budget deficits were still the rule and spending reductions were imposed on discretionary programs. \$125,000 was set as a cap on compensation for NIH awards as a cost saving measure unrelated to the reasonable compensation standards described in OMB Circular A-21. The following year the cap was set at \$125,000 and it remained at that level until FY 1999, when it was tied to Executive Level 111 (\$125,900). There has never been an indication that Congress considers this cap as anything other than a cost saving measure. Congress routinely included the cap at the same level, year after year, in the DHHS appropriations bill. On the other hand, the Circular A-21 principle of reasonable compensation takes into account the university's established salary policies, including consideration of salary surveys and marketplace comparisons.

It is instructive in this regard to look at the legislatively mandated compensation cap under federal contracts. Here Congress did establish that the cap was to be based on a comparison to salaries paid in the private sector to major government contractors. Congress gave OMB very detailed guidance on what it considered reasonable, and the cap on compensation under contracts applies to all federal agencies. It seems fair to assume that if it had intended to establish reasonable compensation under grants from the entire Department, Congress would have taken those steps, as it did for contracts, and applied the salary cap to all DHHS agencies.

We agree that DHHS awarding agencies have an obligation to ensure that all costs are reasonable. We object strongly when those agencies stray from the guidance in OMB Circular A-21 in determining reasonable compensation, by adopting a political cost saving measure targeted specifically for NIH and SAMHSA.

### Extending the Salary Cap Shifts Research Costs and Adds Further Stress to the Government-University Relationship

The President's National Science and Technology Council recently issued a report entitled, "Renewing the Federal Government-University Research Partnership for the 21<sup>st</sup> Century", which resulted from a Presidential Review Directive to review the causes of stress in the partnership and to make recommendations to strengthen the partnership. The NSTC report identified increased cost sharing by universities as a particular cause of stress, and specifically pointed to disincentives in contribution of voluntary faculty effort on research projects and limitations on reimbursement of costs. As faculty salaries have increased in the last ten years with essentially no increase in the NIH salary cap, universities have been forced to cost share at increasing levels and have established more stringent controls on cost sharing. Some auditors are treating the difference in what is allowed by NIH and what a researcher actually earns as required cost sharing. This is reducing the ability of faculty to contribute effort voluntarily. As discussed in more detail below, the salary cap has also had a disproportionate impact on physician investigators engaged in clinical research.

Since DHHS is the major funding source for university research, other federal agencies and private foundations are tempted to adopt the salary cap. We have seen this in attempts by the Army Breast Cancer Research Program and the National Cancer Society to impose the cap, arguing that they are funding the same researcher as NIH and therefore should not pay at a higher compensation level. They and others funding healthrelated research are likely to become more restrictive if DHHS were to extend the salary cap. The American Cancer Society, unfortunately, has adopted the cap as part of its grants policy. Extending the salary cap to other HHS agencies will only exacerbate the stress on the government-university partnership, rather than strengthen the partnership as called for in the NSTC report.

### The Salary Cap is a Potential Impediment to Emerging Research Programs

A major concern of the health campuses is the expansion of this nation's capacities to support clinical research. Clinical research is a component of medical and health research intended to produce knowledge essential for understanding human disease, preventing and treating illness, and promoting health. It embraces a continuum of studies involving interaction with patients, diagnostic clinical materials or data, or populations, in any of these categories: disease mechanisms; translational research; clinical knowledge, detection, diagnosis, and natural history of disease; therapeutic interventions including clinical trials-, prevention and health promotion; behavioral research; health services research; epidemiology, and community-based and managed care-based research (the latter significantly relying on agencies across the Public Health Service). The recently released report of the convocation of academic, industrial, and governmental representatives has called attention to the national need for supporting this research, particularly as revenues from patient care surpluses historically used to support costs related to this research have decreased. The AAMC's Task Force on Clinical Research has completed an 18-month effort to develop recommendations for medical schools and teaching hospitals to organize and to strengthen programs of clinical research. The Clinical Research Summit and the AAMC Task Force have noted that the sponsored research programs of the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, and other Public Health Service agencies will be critical for this undertaking. Extension of the salary cap across these agencies will exacerbate the problem of attracting physician investigators within the mix of health professionals needed to support this research, and will further tax limited institutional resources, many of which are already extensively over-leveraged. Indeed, the cap could actually divert institutional funds within academic medical centers away from sponsoring programs and recruiting faculty in emerging areas of health services and other population-based research.

For all these reasons we believe extending the salary cap to agencies other th, an NIH and SAMHSA is poor public policy and should be withdrawn from consideration.

Thank you for the opportunity to provide these comments.

Sincerely,

Anthony DeCrappeo

Cc: Board of Directors  
Research Compliance and Administration Committee

Steve Heinig, AAMC  
George Leventhal, AAU