Questions and Issues with NIFA's Treatment of Capacity Funds

March 2018

<u>Additional Administrative Burden on Institutions</u>

Our Hatch, Hatch Multistate, McIntire-Stennis, and AHD projects have a federal fund number that is entered into REEport during the proposal process. Most of these projects run for 5 years, so how do we continue to link these projects from our Banner system to REEport if they have to change on an annual basis? In addition, we have two linked state match funds for each project so this would require establishing three new funds for each project each federal year. We have well over 140 active projects at the current time so establishing new funds would not be an easy or sustainable endeavor….we are looking at potentially over 400 new funds on an annual basis

First in, first out should be more than sufficient for accounting for the different fiscal year allocations, with the one aside related to the requirement that we draw down funding from the current fiscal year even if we have enough funding from prior years to cover the current year's expenditures.

Since Smith Lever isn't currently project based, we simply have a federal Smith Lever fund and a state offset fund for each department. However, this still amounts to over 125 federal funds across the departments, so again, having to establish new fund numbers for each federal year would be a huge undertaking. Tracking would also become more complex as we would need to go down to the fund level to verify when we have used up one year's worth of funding so we can move onto the new year's funding using the new funds.

Furthermore, the opportunities for departments to modify funding incorrectly would increase due to the added complexity without the documentation that accompanies the establishment of an OSP grant. As such, there would be a considerable uptick in labor redistributions to not only correct inadvertent department errors, but also to clear up the overages/shortfalls as we get towards the end of a federal year's funding.

Other issues that remain questionable:
Entry of Estimated FTEs - At this point, no rationale is provided for why this is needed. Actual FTEs are a much better indicator. Seems like an unneeded entry of data.

Information about Students – NIFA is requesting we enter information about undergraduate, graduate, and post doc students for every program we have in the system. There is no indication as to why this is important.

Planned program classification schemes - They are now requesting four different classification schemes, in the past there has been one. These include; Knowledge areas (currently used), Subject of Investigation, Field of Science, and Science Emphasis Area. Again, no reason for collecting. This may be appropriate for a research project, but not an Extension program.

We now have to enter a progress report for each planned program. Then we have to go back in and attach project reports to an annual report. Seems like an extra step that is not needed.

<u>Time and Effort Reporting</u>

We provide twice a year effort reporting to our faculty and monthly effort reporting to our staff. However, our sense from talking with other institutions is that the effort reporting we do at the university may not be sufficient for the NIFA/USDA staff who appear to be imposing stronger guidelines on these funds than other agencies through Uniform Guidance. It would be hard for me to explain why the Office of Navel Research could indicate to our Office of Sponsored Programs that our effort reporting standards for ALL of our grants are effective, but NIFA would say they are not, based on stronger standards.

Budgets

There is some discussion of NIFA/USDA requiring budgets for capacity funds. If that is at a high level (e.g. Salary, operating) then it could be workable. If that is required at a program level, or worse a project level, that will be an extreme burden. Also, to what end? Isn't there some checkpoint on how we spend that money based on our SF 425s and reviews? Isn't there an annual report that shows how we spent that money, how much was integrated, multi-state, and what our impacts were?

We do not currently utilize project level budgeting in our system. If required, this would create significant administrative burden with 160+ active research projects, and we're not sure how it would work in Extension. This creates a huge issue with flexibility and makes it harder to adjust plans readily and respond to emerging issues. Currently, the Director has the ability to re-direct the funds internally.

Comparisons

As outlined below, we propose the same, report the same, and apparently are being audited the same for both capacity and competitive grants. I believe this has been gradually evolving over time. I believe there are some cases where competitive grants are actually given more leeway than capacity funds, as noted below.

The NIFA Policy Guide of 2014 https://nifa.usda.gov/policy-guide which covered NIFA's implementation of 2 CFR part 200 Uniform Administrative Requirements seemed to change not only the name of capacity funds to grants but also superseded all the capacity manuals (page 2) and changed the nature of the funds from appropriated allocations to grant funds.

Similarities between Competitive and Capacity Management

Since around 2010, maybe even earlier, we propose for capacity funds the same way as competitive through Grants.gov through a stripped down competitive package. Beginning in federal year 2020, we will provide budgets for capacity similar to competitive. We already are required to include a statement about matching funds. McIntire Stennis is already requiring a budget in proposals.

The Terms and Conditions on the Capacity Award Face Sheet changed beginning with the 2015 award, to include the General Provisions 2 CFR Part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements adopts 2 CFR Part 200 which is used for competitive grants. Beginning in 2017, the Award Face Sheet added a new NIFA Capacity Award Terms and Conditions, which includes Prior Approval Requirements and many other Articles identical to competitive awards. Prior approval of equipment is stated in these terms and conditions https://nifa.usda.gov/resource/capacity-award-terms-and-conditions-november-2016
We are required to initiate a project in REEport for both competitive and capacity projects. Grants.gov feeds information into REEport for competitive. Administrator enters information in REEport for capacity.

USDA auditors' request that we have separate account numbers, distinct for each year of funding. This is a huge burden, but is the same type of account set up that would be used for a competitive grant. The funds for each competitive grant are segregated in a restricted account. We use the same income and expense accounts for capacity funds from year to year. Annual progress reports and final progress reports are submitted by faculty into REEport for both competitive and capacity. We draw down funds through the

ASAP system for both competitive and capacity projects. Financial reporting is done with SF425 for both competitive and capacity. Effort certification is required the same as competitive. Close out is now 90 days for both competitive and capacity. In the past, capacity was due February 1 after the Funds and Manpower deadline.

Differences between Competitive and Capacity

Even though the administrative requirements for capacity are equal to or more than competitive, no indirect cost is provided. Think about Funds and Manpower reports, ARERRA, etc. Unrecovered indirect cost is not allowed to be used even as part of our 1:1 match requirement on capacity funds, but is allowed on most competitive.

An Authorized Organizational Representative has the authority on competitive funds through expanded authorities to extend the end date of a competitive grant for a first request without NIFA approval. There is no option to extend the end date on capacity. Of course, this is because capacity funds are actually federal appropriations, not grants. Even if NIFA is choosing to call them grants, the spending authority does not allow the same time frame for the funds to be expended.

An institution's Authorized Organizational Representative is authorized through Expanded authorities to allow budget changes without NIFA prior approval on competitive grants, including the purchase of equipment. So NIFA has waived prior approval requirement for competitive, but requires it for capacity. See this link, which shows all waived prior approval actions that an AOR can do for any institution with research funds - https://www.nsf.gov/bfa/dias/policy/fedrtc/appendix_a.pdf

Opinion

We should fall back on the Acts themselves to determine appropriate reporting:

Hatch Act intent is clear that states should receive "equitable" allowances or allotments; it is well outside the intent and the letter of the Act to treat these funds as competitive. A significant part of Hatch Act funds exists to allow states to plan research activities, address emerging issues, and respond to emergencies.

For the Smith-Lever Act, the basis of distribution essentially mirrors the Hatch Act. Congress had no intention of treating these funds as competitive either. Capacity funds allow preparedness for real-time threats, like food safety issues and animal health. It's too late to apply for a competitive grant after an outbreak has occurred. Also, capacity funds are used as leverage to obtain funding from other sources.

NIFA's interpretations of Uniform Guidance are an issue. We thought the implementation of UG would lead to more flexibility and less administrative burden. NIFA requirements seem to be more restrictive than what is required in Uniform Guidance. A conference call and email exchange last July with Mary Britt (Policy & Oversight Division, OGFM, NIFA) confirmed this was the case, particularly with time and effort reporting.

I would like to offer an illustration of the problem for us. In the world of competitive grants, it is accepted that the expenses incurred for clerical staff are not allowable as a direct charge to a grant. This was further clarified in 2 CFR 200.413(c) when it was released. For an organization like Extension, we have at least one office associate in every county, and as I read the language, the salary & fringe expenses for these employees would not be allowable as a charge to Smith-Lever or the Smith-Lever match funds. For my institution, that would be over $3,000,000 of salaries & fringes that would not be allowable as either direct or match expense.

<u>Considerations for Capacity Funds Management</u>

State support for NIFA's streamlining of reporting is possible when it does not interfere with the intent of the funding.

We recognize that the "old" Hatch manual is now replaced, statements in that manual reflect the spirit of Hatch funding management, and are included as examples of the intended management of said funds.

Hatch funding has always carried exceptions to standard federal provisions and regulations. Quoting (with emphasis added) "**Except as otherwise provided herein**, funds allotted under the Hatch Act are subject to the provisions of 7 CFR Part 3015 … and OMB Circular A-21…"

Budgeting and Expenditure authority

Overhead/Administrative costs:

Competitive projects include overhead costs in their budgets, albeit capped for UDSDA/NIFA. Hatch allocations do not recover such costs. We are allowed to create administrative projects which, as defined in the Hatch manual, "means a component of the eligible Institution's Research Program specifically authorizing expenditure of Hatch funds for research planning and other activities directly associated with the effective administration and direction of the Hatch program."

Treatment of Hatch funds as competitive funds OR interpreting 2 CFR 200 guidance such that administrative projects (and by extension, administrative costs) are no longer allowed, does not follow the spirit of Hatch funding as stated in the Hatch manual.

Director's Authority

Experiment Station Directors are authorized by NIFA (formerly CSRS) to have the responsibility of "Determining the research to be conducted by the station using Hatch funds subject to the approval of CSRS [now NIFA] and matching State funds." NIFA has suggested verbally that it will begin to require budgets for capacity funds. Details are not yet known, but if competitive-style budgets are expected and funds managed as competitive-style budgets, Directors will lose the authority to shift funds between projects without NIFA or NPL approval. The loss of Director's authority is contrary to Hatch fund management philosophy as seen in the following language excerpted from the Hatch manual:

"In view of the continuing nature of the Hatch Act and its Research Program, funds are allocated on a program basis and individual project budgets are not required to be submitted for CSRS approval. Accordingly, requirements of the 7 CFR 3015.110…regarding revision of financial plans are not applicable to the Hatch Research Program." *and* "Hatch formula funds may be assigned or reassigned to approved Hatch projects at the discretion of the Director."

Formula-driven funds are distributed without budgets, and to require budgets for NIFA to pre-approve and manage rather than leaving that task to the Director is adding a level of oversight that has not been previously needed nor is it reflective of the spirit of the funding legislation.

Period of Performance

Currently, Hatch projects may be submitted at any time of year. If budgets must be managed at the NIFA level, and within a defined federal fiscal year, and controlled at that level by the state, funds will have to be taken from existing projects mid-year to fund new ones. To the contrary, if a project terminates with budget remaining, it could be required to revert to NIFA rather than remaining with the Director/Station for internal reallocation. The current model allows the Director discretion to rebudget, an extremely efficient process for mid-cycle adjustments.

Matching

Federal Register Notice "Matching Funds Requirements for Agricultural Research and Extension Capacity Funds at 1890 Land-Grant Institutions and 1862 Land-Grant Institutions in Insular Areas"

Proposed legislation 3419.4 states that "The president of the eligible institution must submit any request for a waiver for matching requirements." Sounds simple, except that the Director has been eliminated from the process. While this specific legislation does not specifically include SAES, the Director must have the authority to request waivers. (Example of existing form with Director authority: "Request for Waiver from Target Percentage Multistate Extension Activities and Integrated Activities" [Form NIFA-Waiver])

Paperwork

Our Experiment Station currently has more than 200 active projects. The additional paperwork to manage this number of separate projects as opposed to **one** Hatch funding source is significant. Think about it this way: each one will have an individual budget, these budgets are spread across 40ish budget managers (each of whom will be impacted), must be consolidated for 425 reporting, mid-year terminations and initiations of each project (rather than a single begin/end for a single Hatch fund), etc. The more paper, the more human error.

Effort Certification

Based on a recent discussion, NIFA is attempting to require paperwork that will allow them to re-calculate effort %'s. Because legislation states that *"It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.",* there is an inherent recognition that reasonable distribution of effort is appropriate. Exact, by-the-hour effort tracking is not expected and should not be required. Reasonable distribution of effort as assessed by the responsible official (PD or department head or director's or their designee) should be recognized by NIFA as sufficient.

In my opinion, we need specific language in or superseding 2 CFR 200 (similar to language found in the old Hatch manual) that gives NIFA a reason for capacity fund management to be different. This takes care of both NIFA and the states in case of audits.