

OTA WORKING GROUP UPDATE

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OTHER TRANSACTION AUTHORITY (OTA)

OTHER TRANSACTION AUTHORITY--Other Transaction Authority (OTA) is petitioned for by a federal agency; the authorization is approved by Congress. OTAs are, purposefully, for R&D only, the funding mechanism is designed to allow the US to retain economic competitive advantage. A federal agency with OTA can issue an Other Transaction (OT), an agreement distinct from federal financial assistance or a FAR-based contract.

OTHER TRANSACTIONS (OT)

- All terms are negotiable
- OTs are defined by what they are not. They are not grants, nor are they cooperative agreements, contracts, or CRADAs.
- OTs are not subject to the FAR or 2 CFR 200.
- IP rights are fully negotiable under this mechanism. Neither Procurement Integrity Provisions nor the Bayh-Dole act are applicable to these funds.
- None of this applies: Competition for Contracting Act, The Procurement Protest Act; Limitation on the Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, the Anti-Kickback Act of 1986, the Walsh Healy Act, the Drug-Free Workplace Act of 1988, and the Buy American Act, Truth in Negotiations Act, Cost Accounting Standards.

IS OT USE INCREASING?

- YES
- While OT remains a relatively small percentage of the budgetary spending across the agencies that have this ability it is increasing. Mandates for rapid procurement.
- For the DOD OT use grew more than 500% between 2012 and 2017
- Changes to the laws governing OTA are also changing: now production authority is included
- Key questions: are OTAs delivering? Providing quicker and better solutions to the federal government? Key questions: transparency, accountability, and competition
- Will the Empire Strike Back? OTA and the Future of Acquisition (April 27, 2018) Stan Soloway, Defense News
- Other Transactions Do the Rewards Outweigh the Risks? (March 15, 2019) Scott Amey, Project of Government Oversight

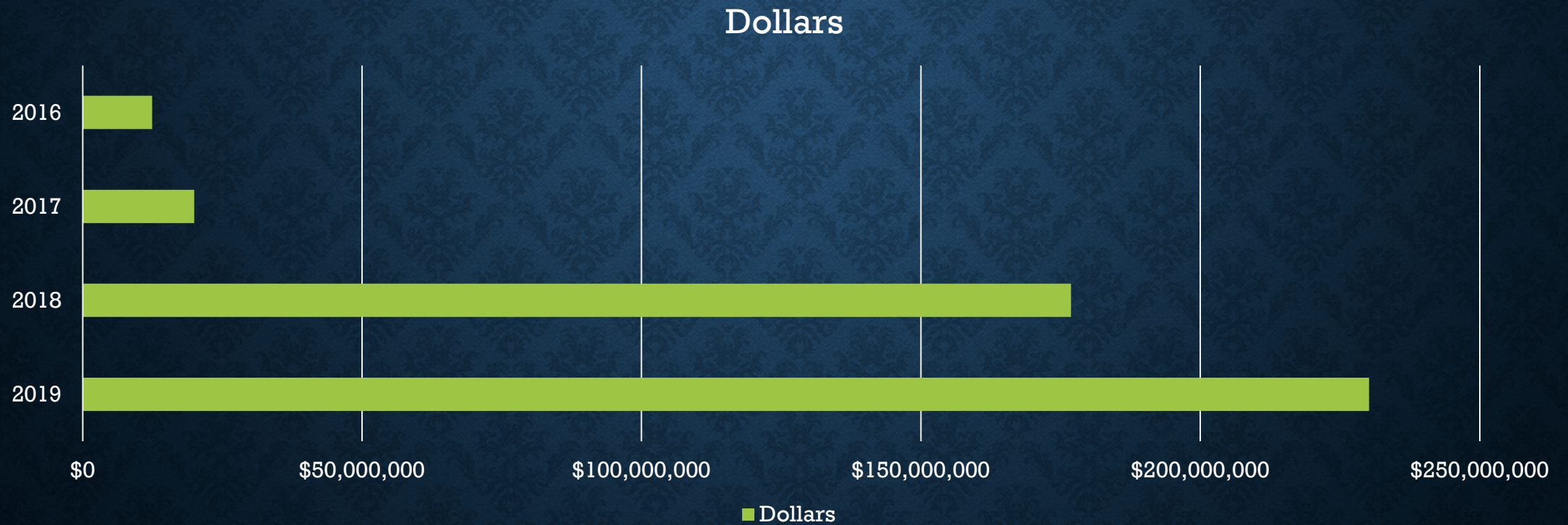
WHY A WORKING GROUP?

- Institutions of higher education are seeing an increase in Other Transactions (OT) either directly from a federal agency or through consortia.
- Since each OT is negotiable, these agreements challenge standard ways of negotiating and accepting grants and FAR-based contracts.
- How OTs are managed differ among and within federal agencies.
- Do OTs represent a landscape change or will they remain as a fraction of how research is funded?
- If more funds are awarded using this mechanism then the academic research community needs to be informed so that it can adapt and compete.

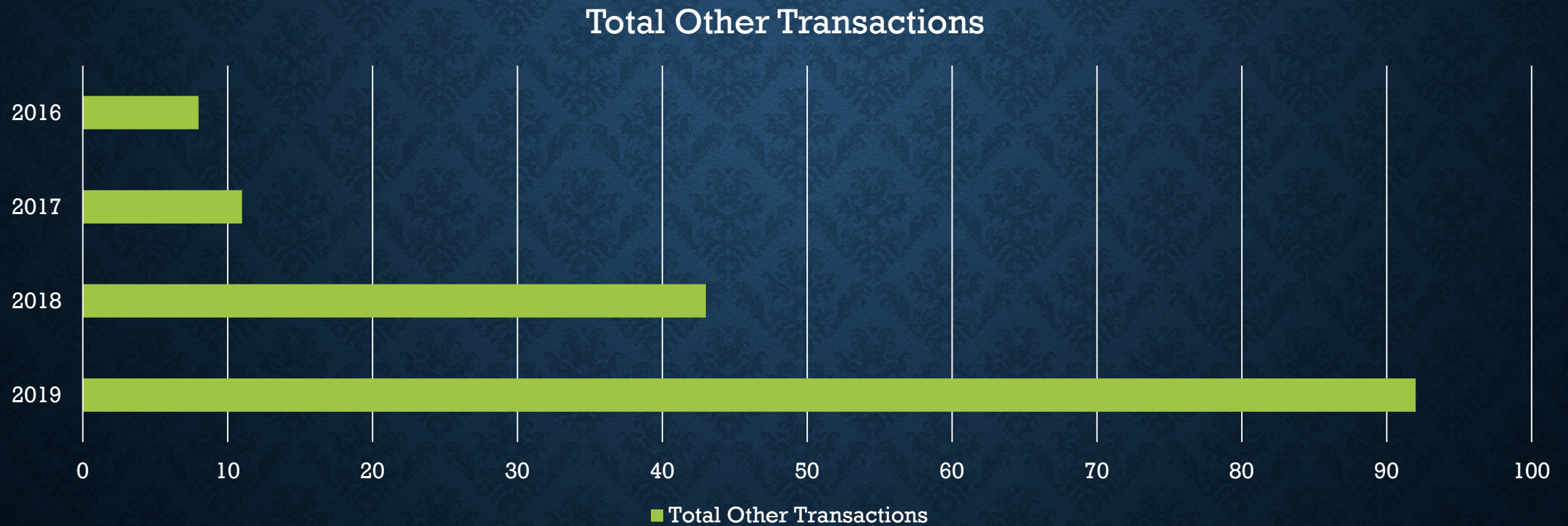
NIH: RAPID GROWTH IN OTHER TRANSACTIONS

- Gained authority to use OTA in 2015 Consolidated and Further Continuing Appropriations Act of 2016
- NIH Activity codes for OTA: OT1, OT2 and OT3
- Awards issued by the NIH using OTA are O awards
- The terms and conditions are different; the NIH has created manuals and is further developing policies to govern its use of OT which may be used alongside grants and contract mechanisms
- Designed to increase the NIH's ability to partner with entities other than research universities
- So far the programs for which the OTA mechanism can be used are limited to the Common Fund Programs and Precision Medicine, NIG Data Commons Pilot (multi component research projects (NOT-RM-17-031))

FUNDING INCREASE FROM FY 2016-2019



TOTAL OTHER TRANSACTIONS AT NIH FROM FY 2016-2019



CURRENT NIH ISSUES: F&A AND COST SHARING

- Recent requests by NHLBI to negotiate F&A cost and provide cost-sharing.
- It may be prudent to coordinate outreach to NIH to establish some principles on OT with higher education.

SURVEY

- The Working Group has developed a survey that will be sent to each FDP member.
- The survey seeks to identify the scale of OT activity among FDP member institutions and understand common challenges in negotiating and managing these awards.
- The survey will be released shortly after this FDP meeting.
- Thank you to everyone on the Working Group who helped develop and edit the survey.

WHAT WE'VE DONE

- Developed a survey
- Presented at NCURA
- Developed a PowerPoint (send us a note, we'll send it to you)
- NCURA Magazine article

NEXT STEPS

- Send out survey
- Develop a white paper that provides background on OTA and survey results.
- Presentation at next FDP meeting
- Presentation at SRAI
- Develop additional tools for FDP website

THANK YOU!

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