

FEDERAL GRANTS NEWS

for Colleges and Universities

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Editor

Jane A. Youngers
University of Texas
Health Science Center
at San Antonio

Contributing Editors

Jerry G. Fife
Vanderbilt University
Gunta Lidars
University of Rochester

Managing Editors

Darla Fera
Frances Fernald

Core Standard Research Award Terms and Conditions Are Final; Policy Mandates Use

After years of testing, discussion, and revision, the Office of Science and Technology Policy through its National Science and Technology Council Research Business Models (RBM) Subcommittee of the Committee on Science opened 2008 by announcing the availability of new core terms and conditions for research awards, including grants and cooperative agreements (73 Fed. Reg. 4563, Jan. 25, 2008). Modeled after the Federal Demonstration Partnership's (FDP) terms and conditions that implement the provisions of OMB Circular A-110, the new standard terms and conditions are meant to promote greater consistency in the administration of federal research awards.

The policy became effective Jan. 25, the date of publication in the *Federal Register*, and applies to research awards made to all institutions, not just those participating in the FDP. Those agencies participating in the FDP (see box, p. 4) must use the standard terms and conditions for research awards. These core administrative requirements may be supplemented with agency-specific, programmatic, or award-specific requirements. Agencies that do not participate in the FDP are encouraged to use the terms and conditions as well. The notice cautions agencies to limit any supplemental requirements to those that are consistent with OMB Circular A-110 (codified at 2 CFR 215), required by statute, or necessary for programmatic purposes or good stewardship of federal funds.

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HHS OIG Releases Report on COI; Recommends Changes in NIH Oversight

The Department of Health and Human Services Office of Inspector General (OIG) is taking the National Institutes of Health (NIH) to task because of its oversight of financial conflicts of interest (COI) among its grantees. In January, the OIG released its report, *National Institutes of Health: Conflicts of Interest in Extramural Research*, and it contains several significant findings:

- ◆ NIH could not provide an accurate count of the financial conflict-of-interest reports that it received from grantees during fiscal years 2004 through 2006 (the period under review).
- ◆ NIH is not aware of the types of financial conflicts of interest that exist within grantee institutions because details are not required to be reported, and most conflict-of-interest reports do not state the nature of the conflict.
- ◆ Many institutes' primary method of oversight is reliance on grantee institutions' assurances that conflict-of-interest regulations are being followed.

As a result of the findings, the OIG made three recommendations:

- (1) NIH should increase oversight of grantee organizations to ensure their compliance with federal financial conflict-of-interest regulations.

continued



(2) Grantee institutions should be required to provide details regarding the nature of financial conflicts of interest and how they are managed, reduced, or eliminated.

(3) Individual NIH institutes should forward to the NIH Office of Extramural Research (OER) all financial conflict-of-interest reports they receive from grantee institutions and ensure that the OER's conflict-of-interest database contains information on all such reports.

NIH Opposes Seeing 'Details'

NIH concurred with two of the three recommendations. It disagreed with the second recommendation that institutions should be required to provide details of the conflicts and how they are managed.

In its response to the OIG, NIH stated that the responsibility for identifying and managing conflicts of interest must remain with grantee institutions and that the current regulations do not require such detailed disclosures. Furthermore, NIH believes that once it is notified of specifics, then responsibility for managing conflicts effectively is transferred to the government.

Despite the NIH objection, it is likely that the OIG will press for a change in the current requirements to require awardee institutions to provide NIH with details on identified conflicts of interest.

Link to the report: www.oig.hhs.gov/oei/reports/oei-03-06-00460.pdf. ↗

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Editor, Jane Youngers; Managing Editor, Frances Fernald; Contributing Editors, Jerry G. Fife, Gunta Lidars; Production Director, Andrea Gudeon; Marketing Director, Donna Lawton; Fulfillment Manager, Gwen Arnold

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EPA Training Requirements Do Not Apply to Colleges and Universities

Effective Oct. 1, 2007, the Environmental Protection Agency (EPA) is requiring nonprofit organizations to complete a mandatory online grants management training course. An EPA source has said in an informal conversation that the agency does not intend to include colleges and universities in the training requirement. When asked whether the requirement must be flowed down by an educational institution to a nonprofit subrecipient, the EPA representative stated that flow down was not required.

NSF OIG '08 Work Plan Portends More Oversight of Grantees

Throughout the National Science Foundation Office of Inspector General (NSF OIG) FY '08 Audit Plan, the NSF OIG points out the shortcomings in both NSF's oversight of grantees and of the grantees' grants management systems, particularly in financial management capabilities. To make its case, the plan cites a number of completed audits and concludes that

NSF must have timely and effective risk assessment, award monitoring and closeout procedures to ensure that awardees are capable of administering NSF funds and that the grant expenditures are valid, accurate, allowable, and consistent with the project's goals and objectives.

To move toward these goals, the NSF OIG lists a series of planned audits in the preaward, active, and postaward phases to assess NSF's progress as well as the compliance level of the NSF grantees. Many of these audits target colleges and universities, and the NSF OIG says that completed audits continue to demonstrate that "NSF grantees, including colleges and universities, vary significantly in their financial management capabilities."

Under the report's preaward section, the NSF OIG says it will continue audits of the terms and conditions of NSF's large facility management agreements to determine their sufficiency and of the foundation's financial and programmatic oversight of its eight center programs. Universities that have large facilities agreements or research centers may experience various forms of increased monitoring from NSF in response to this OIG activity.

Prior Audits Drive New Audit Targets

As support for its audits of active awards, the NSF OIG cites a recent audit that found that over a five-year period approximately 42% of required annual perfor-

Modifications to SF-424 Announced

The Jan. 7, 2008, *Federal Register* (73 Fed. Reg. 1224) contained an information collection request from the Department of Health and Human Services, on behalf of Grants.gov, announcing several changes in the SF-424: an additional data block, "Descriptive Title of Applicant's Project"; revision of the data field "County" to "County/Parish"; and revised instructions to include these changes, as well as revisions regarding funding and congressional district. These changes will help federal agencies comply with the requirements of the Federal Funding Accountability and Transparency Act (FFATA). FFATA requires the establishment of a publicly available, online database containing information about entities that are awarded federal funds. Comments on the revisions must be received by March 7, 2008. **Link:** www.gpoaccess.gov/fr/index.html. Go to "2008," then Jan. 7.

mance reports had not been submitted. The report also draws attention to \$62 million in unresolved questioned costs in numerous audit reports, underscoring the need for continued improvement in this area. Because of these findings, the NSF OIG audits will continue to focus on the adequacy of awardees' systems for safeguarding and properly accounting for NSF funds and overall compliance with federal and NSF award requirements. Audits of contractors also are planned to assess compliance with disclosed accounting practices, reasonableness of indirect cost rates, validity of allowable costs, and adequacy of accounting systems to manage NSF funds.

The NSF OIG will continue its labor effort audits at colleges and universities. While not stated in the plan, it is anticipated that approximately 30 grantee institutions will undergo review.

With regard to the closeout administrative policies, the NSF OIG will look at NSF's audit resolution process to determine whether NSF has adequate procedures and has taken effective corrective actions to resolve grantee audit findings and recommendations in both A-133 and OIG audits. The plan cites a 2004 OIG audit that found approximately 61% of final technical reports were either submitted late or not at all and notes 74 instances of investigators who failed to submit final project reports but still received new NSF funding. The NSF OIG will follow up to see what corrective action NSF has taken to address these specific audit findings.

Previous oversight has come in the form of desk reviews, onsite reviews, audits of new and continuing grants and contracts, and requests for internal audit re-

ports, and grantees should expect continuing compliance and system reviews as well as audits and increased monitoring and enforcement activities.

Link to the plan: www.nsf.gov/oig/fy08_audit_plan.pdf. ♦

DEAC Final Report Criticizes Existing Deemed Export Policy

In late December, the Deemed Export Advisory Committee (DEAC), established by the Secretary of Commerce in October 2006 to examine the U.S. deemed export policy, issued its final report. The extensive report — which is quite critical of the current system — contains findings, observations, and recommendations. The two overall recommendations are as follows:

- ♦ Replace the current deemed export licensing process with a new, simplified process that will enhance national/homeland security and strengthen America's economic competitiveness.
- ♦ Extend the educational outreach program currently conducted by the Bureau of Industry and Security to help ensure that all parties potentially subject to licensing under the deemed export rules are familiar with those rules.

While these recommendations seem somewhat benign and the higher education community welcomes a number of the suggested changes, there are elements of the recommendations that concern to colleges and universities.

New Fundamental Research Definition Proposed

The report does recommend retaining the basic research exclusion, but it proposes a new definition of fundamental research. The current definition of basic or fundamental research is "research where the resulting information is ordinarily published and shared broadly within the scientific community." The proposed definition provides that "research is excluded from deemed export licensing requirements if it (1) falls within a more conventional definition of fundamental research (e.g., curiosity-driven research seeking new knowledge); or (2) is not precluded from publication in the relevant contractual documents or other regulatory mechanisms." The university community is concerned that if this language is adopted, federal agencies may issue more agreements that include publication approval requirements.

The report also suggests a seven-step "construct" that organizations would use to determine whether an export license would be required. The first step calls for an assessment of an individual's "loyalty" to a country other than the United States. Among other factors, the

assessment would weigh “the time and character of [an individual’s] past and present foreign involvements.” Colleges and universities are concerned about how such an assessment would be conducted.

Another unclear proposal is the designation of “trusted entities,” which would afford certain organizations “special, streamlined treatment in the processing of deemed export license applications.” According to the report, academic institutions would “voluntarily qualify” by meeting specific criteria and obtaining approval from Commerce’s Bureau of Industry Security. However, the report does not describe the approval process.

The higher education community now awaits the Commerce Department’s response to DEAC.

Link to *The Deemed Export Rule in the Era of Globalization*: <http://tac.bis.doc.gov/2007/deacreport.pdf>. ✧

NIH Conforms Policies to FY ‘08 Appropriations Law

The Consolidated Appropriations Act of 2008 (Pub. L. No. 110-161) contained a number of mandates for the National Institutes of Health (NIH), including continuation of the maximum salary rate allowable under NIH awards and a revision to the public access policy.

Effective Jan. 1, the maximum salary rate charged to NIH awards increased from \$186,600 to \$191,300, the federal Executive Level I salary level. NIH will not make adjustments to awards, but grantees may rebudget to accommodate the increase. The rate cap is a flow-down requirement. **Link to NOT-OD-08-035:** <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-08-035.html>.

The voluntary policy of placing full-text, peer-reviewed journal articles on the National Library of Medicine’s PubMedCentral (PMC) is now mandatory. Effective for any articles that arise, in whole or in part, from NIH funding and are accepted for publication on or after April 7, 2008, all investigators must submit an electronic version of their final peer-reviewed manuscripts to PMC upon acceptance for publication. The manuscript will be made publicly available no later than 12 months after the official date of publication.

Beginning with the May 25, 2008, proposal due date, any applications, proposals, or progress reports to the NIH must include the PMC or NIH manuscript submission reference number when citing applicable articles arising from NIH-funded research.

Link to NOT-OD-08-033: <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-08-033.html>. ✧

FDP Participating Agencies

- ◆ National Science Foundation (NSF)
- ◆ National Institutes of Health (NIH)
- ◆ Office of Naval Research (ONR)
- ◆ Department of Energy (DOE)
- ◆ Department of Agriculture (USDA)
- ◆ Air Force Office of Scientific Research (AFOSR)
- ◆ Army Research Office (ARO)
- ◆ Army Medical Research and Materiel Command (AMRMC)
- ◆ National Aeronautics and Space Administration (NASA)
- ◆ Environmental Protection Agency (EPA)

Standard Terms and Conditions

continued from p. 1

The FDP also has developed a matrix of the national policy requirements (those mandated by statute or regulations) that are common to all grants and is updating a list of requirements that flow down in subawards. Agencies are encouraged to use these two documents “as tools to precisely identify which laws and regulations apply to their recipients” and subrecipients. An agency is allowed to revise the FDP documents as needed for currency, completeness, and applicability to the agency’s programs. **Link to the standard terms and conditions and the national policy matrix:** www.nsf.gov/bfa/dias/policy/rtc/index.jsp.

Agencies Must Post Plans by July

Each Committee of Science (COS) member agency is required to post its plan for implementing the core administrative requirements no later than July 2008. (All cabinet-level agencies as well as NSF, NIH, NASA, and EPA are members of the CoS.) The implementation plans will be accessible from the RBM Web site, <http://rbm.nih.gov>.

The core terms and conditions are a prelude to the issuance of governmentwide terms and conditions that will apply to all federal grants and cooperative agreements, not just research and research-related grants. For colleges and universities, the publication of the core administrative requirements is a welcome event. While there are no significant changes in the new core requirements from what institutions already are required to follow, it generally is hoped that their publication will encourage agencies to be more uniform in their grant and cooperative agreement terms and conditions. ✧