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an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

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December 9, 2015

Suzanne H. Plimpton, Reports Clearance Officer
Office of the General Counsel
National Science Foundation
4201 Wilson Blvd
Arlington, VA 22230
splimpto@nsf.gov

Subject: Research Terms and Conditions

Dear Ms. Plimpton:

On behalf of the Council on Governmental Relations (COGR) and the membership, we'd like to wholeheartedly thank the Research Business Models (RBM) group, the National Science Foundation (NSF), the National Institutes of Health (NIH) and participating agencies for the many positive changes in the revised set of Research Terms and Conditions (RTCs) implementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200 (Uniform Guidance).

Among many of the positive developments, we'd especially like to thank you for the changes made to performance measurement by acknowledging that research awards already have a standard information collection method for performance that does not relate financial information, and inclusion of the 120 day closeout period for all reports—financial, performance, and other reports (equipment, small business, etc.). These changes clearly demonstrate a commitment to reducing administrative burden for institutions of higher education and non-profit organizations.

We encourage the RBM and participating agencies to continue efforts to require or encourage participation of remaining agencies and their components funding research at our member organizations to adopt the RTCs as well as remind participating agencies that implementation deviations from the RTC's will complicate and add burden to institutions. We recommend as a further commitment to consistent application of the Uniform Guidance and these RTCs, that participating agencies identify a high ranking official within the agency as a contact for confidential inquiries from recipients when agency actions appear to deviate from requirements of the Uniform Guidance and these RTCs without the proper exception approvals.

We note that many technical corrections have been made to the Uniform Guidance since the release of the draft RTCs version dated June 4, 2015. We recommend a reconciliation prior to release of the final RTCs that would incorporate the latest technical corrections, e.g., COFAR September 2015 FAQ .110-6 “Effective Dates and Grace Period for Procurement” granting an extension for two additional non-Federal entity fiscal years on or after December 26, 2014.

Other specific comments to the RTCs are italicized below:

- §200.17 Cluster of programs. *Classifying awards differently for the SEFA and F&A treatment becomes a complex set of “if” “then” scenarios to manage within our systems. The complexities of tracking these attributes in systems are likely to lead to errors in preparing the SEFA and add administrative cost to universities, as enhancements to existing systems will be required to track the additional requirement. We suggest that the best option is for SEFA classification for R&D to be based solely on the CFDA number. We further suggest that the RBM and NSF work with the Federal Demonstration Partnership to explore other options if the CFDA number cannot be exclusively relied on for the purpose of SEFA classification.*
- §200.112 Conflicts of Interest. *We believe the RTC’s silence on COI is a missed opportunity to clarify the intent of 200.112. The OMB FAQ’s .112-1 state “the conflict of interest policy in 2 CFR 200.112 refers to conflicts that might arise around how a non-Federal entity expends funds under a Federal award. These types of decisions include, for example, selection of a subrecipient or procurements as described in section 200.318.” While the general intent of section 200.112 is widely understood to be procurement focused (and several federal agencies have adopted the language in 200.318 as their COI policy), there is no such equivalent language in 2 CFR 200 for subrecipients or the selection thereof. In 2000, FDP was able to get confirmation from OMB that subawards are not considered procurement actions; this deserves to be recognized. COGR has raised this issue with OMB. Since the language remains “as-is” in the COFAR FAQ’s, we believe that the RTCs have an opportunity to document the intent of 200.112 as applicable to procurement transactions only and should clearly cross-reference the general procurement standards in 200.318.*
- §200.211 Public Access to Federal Award Information. *We appreciate the clarity added in this section; however, we ask that any notification process to an agency of potentially classifiable information include the involvement of the Institutional Official as well as the Principal Investigator. To accommodate this request, we recommend the language in in 200.211(b) be changed to the “Principal Investigator, via his or her Institutional Official, should promptly notify the awarding agency’s Program Official...”. This is also consistent with many institution’s policies on communicating official information with federal agencies.*
- §200.300 National Policy Requirements. *We object to the inclusion of the statement, “should an applicable national requirement be missing from the matrix, recipients and subrecipients are nevertheless responsible for compliance with applicable national policy*

requirements.” While this language was included in the prior RTCs, 200.300 (a) states “The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.” While we recognize that on occasion a requirement may be inadvertently omitted and downstream corrective action is necessary and appropriate, we suggest replacing the existing language with “if an omission to the terms and conditions of the award has been identified, the federal awarding agency will modify the award to include the additional requirement. The grantee shall be allowed a reasonable amount of time to comply with the requirement.”

- §200.306 Cost sharing or matching. We recommend for further clarity, adding a reference to OMB Memo M-01-06, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs dated January 5, 2001.
- §200.308 Revision of budget and program plans. Section (d)(2)(ii) contains information regarding one-time extensions in that the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised end date at least 10 days before the final end date of the period of performance specified in the award. We recommend that this be revised to read as follows: “For one time extensions, the requirement for the recipient to notify the Federal awarding agency in writing with the supporting reasons and revised end date at least 10 days before the final end date of the period of performance specified in the award is waived. Recipients are required to maintain documentation of the supporting reasons for the extension and must notify the awarding agency of the new end date within 30 days after the period of performance specified in the award.

We further recommend that to add clarity to the acceptable reasons for approving a one-time extension, the last sentence be modified slightly to “This one-time extension is to allow additional time for work related to the project scope and may not be exercised merely for the purpose of using unobligated balances.

- §200.407 Prior written approval (prior approval).
 - §200.308 – See comments above
 - §200.332 - §200.332 refers the reader to §200.407. The Uniform Guidance indicates that agency approval is needed; however, RTCs §200.407 indicates that prior approval is waived unless an Agency-Specific requirement mandates approval. We believe the intent is to waive prior approval for fixed amount subawards unless the agency-specific requirements dictate otherwise, however the inclusion of a reference to the RTCs §200.407 would provide greater clarity. We further recommend that it be made clear that prior approval is waived for fixed amount awards at any dollar amount.

- §200.413 – *This is still unclear as to when prior approval is required. 200.407 provides that prior approval is not necessary if all conditions of 200.413 are met. 200.413(C)(3) states that administrative clerical salaries may be direct charged if “such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency”. We recommend this be revised to “Direct charge the salaries of administrative and clerical staff if all conditions in 2 CFR 200.413 are met, excluding the prior approval requirement in 200.413(c)(3).*
- §200.431 (i)(2)(ii) – *We do not agree that making required severance pay to departing employees should require the prior approval of the awarding agency. The institutions have well documented severance pay policies that provide for the proper allocation of the severance pay across all sources of funds which have supported the individual. With those controls in place, we don’t see the purpose of seeking prior approval from the awarding agency*
- §200.439. *Equipment and Other Capital Expenditures. The language in the RTC clarification (pg. 30) b (3) indicates “capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct costs except with the prior written approval of the Federal awarding agency, or pass-through entity.” This is a major change from the June 2011 version of the RTCs, which in #27 (a) (1) (iii) & (b) (2) allowed “as direct charges capital expenditures for improvements to equipment that materially increases the equipment’s value or useful life.” If this RTC clarification stands, it would create new burden on both the institution as a grantee and pass-through entity if approving for a subrecipient. We recommend the clarification on pg. 30 be modified and limited to “capital expenditures for improvements to land or buildings” and that, consistent with the June 2011 RTCs, the clarification on pg. 37 be expanded to allow capital expenditures for improvements for equipment.*
- §200.456. *Participant Support Costs – Participant Support Costs are listed in 200.407 as a cost item that does not need the prior approval of the awarding agency. However the prior approval requirement in 200.308(c)(5) for rebudgeting from participant support costs to other cost categories is never addressed. Since the participant support costs are listed in 200.407 as a cost that does not require prior approval, it should be clarified in 200.407 whether the rebudgeting of those costs to another category requires prior approval.*

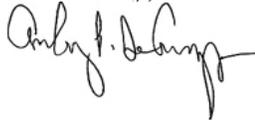
In closing, we congratulate the National Science Foundation, the National Institutes of Health, and the Research Business Models working group for their time and devotion to construct updated RTCs in accordance with the Uniform Guidance. The efforts made to clarify certain terms and conditions, and to waive prior approval requirements to reduce administrative burden for the research community will have a significant positive impact.

December 9, 2015

*COGR Response to the
Research Terms & Conditions*

We do note however that our review is only partial at this time until the appendices (Prior Approval Matrix (Appendix A), Subaward Requirements Matrix (Appendix B) and National Policy Requirements Matrix (Appendix C) have been made available for comment. We believe that in order to avoid additional concerns from the research community, successful implementation will be most effective if all appendices and Agency-Specific Requirements can be made available for comment prior to any finalization of the Research Terms and Conditions. COGR anticipates providing a follow up comment letter once all appendices have been released.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony P. DeCrappeo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Anthony P. DeCrappeo
President