



Document Downloaded: Tuesday September 07, 2010

Request to DHHS Office of Acquisition Management

Author: COGR

Request to DHHS Office of Acquisition Management on Continued Use of HHSARS Clause on Confidentiality of Information in NIH contracting activities with universities

Published Date: 02/20/2004

COGR

an organization of research
universities

COUNCIL ON GOVERNMENTAL RELATIONS

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

February 20, 2004

BOARD OF DIRECTORS

MARY ELLEN SHERIDAN
CHAIR
University of Chicago

JANET ACKERMAN
Yale University

WENDY BALDWIN
University of Kentucky

MARK BRENNER
Indiana University (IUPUI)

JERRY BRIDGES
The Johns Hopkins University

PETER DUNN
Purdue University

JERRY FIFE
Vanderbilt University

JILDA DIEHL GARTON
Georgia Institute of Technology

TODD GUTTMAN
The Ohio State University

ALBERT HORVATH
California Institute of Technology

KATHLEEN IRWIN
University of Wisconsin-Madison

ERICA H. KROPP
University of Maryland

GUNTA LIDERS
University of Rochester

JOSEPH MULLINIX
University of California System

ANDREW NEIGHBOUR
University of California, Los Angeles

MARVIN PARNES
University of Michigan

YOKE SAN REYNOLDS
University of Virginia

ANDREW B. RUDCZYNSKI
University of Pennsylvania

V'ELLA WARREN
University of Washington

JANE YOUNGERS
University of Texas Health Science
Center at San Antonio

KATHARINA PHILLIPS
President

Mr. Marc Weisman
Acting Director
Office of Acquisition Management and Policy
200 Independence Ave., S.W., Room 336-E
Washington, DC 20201

Dear Mr. Weisman,

The Council on Governmental Relations (COGR) is an association of 150 of the leading research universities in the United States and several affiliated Hospitals and Research Centers. The work of our association is focused on compliance with federal regulations governing sponsored research.

We are writing to express our concern about the continued use of HHSARS clause 352.224-70 Confidentiality of Information (April 1984) in NIH contracting activities with universities. We have been informed by NIH representatives that the HHS General Counsel has determined that paragraphs (b) and (f) of that clause are "unconstitutional." Therefore NIH views these provisions of the clause as unenforceable. However, the NIH representatives stated that since it is a HHSARS clause, they must use the existing clause until your office modifies the clause officially.

While we are pleased that NIH does not plan to enforce these provisions against universities, and understand that your office plans to revise the clause, we are concerned that the existing version of the clause at present continues to be used by NIH in university contracts that involve proprietary data or data of a personal nature about individuals. As I am sure you are aware, Stanford University successfully obtained an injunction against government use of this clause on prior restraint grounds in 1991 (*Stanford v. Sullivan*). HHS counsel apparently agrees with the court's holding in that case that continued use of this clause by NIH raises constitutional issues. It is disconcerting that NIH must continue for bureaucratic reasons to use a contract clause that both a federal court and HHS's own counsel have determined to be inappropriate. While we have informed COGR membership of the situation, we are concerned that other universities

[Click here for Page 2](#)