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**COGR Comment Letter to NSF on Proposal and Award Policies and Procedures Guide**

Author: Carol Blum

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# COGR

an organization of research universities

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1200 New York Avenue, N.W., Suite 750, Washington, D.C. 20005  
(202) 289-6655/(202) 289-6698 (FAX)

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Submitted via email to: [splimpto@nsf.gov](mailto:splimpto@nsf.gov)

July 12, 2012

Suzanne H. Plimpton  
Reports Clearance Officer  
National Science Foundation  
4201 Wilson Boulevard, Suite 295  
Arlington VA 22230

SUBJECT: Proposal and Award Policies and Procedures Guide:  
Information Collection Renewal

Dear Ms. Plimpton:

The Council on Governmental Relations (COGR) is an association of over 185 research universities and their affiliated academic medical centers and research institutes. COGR concerns itself with the influence of federal regulations, policies, and practices on the performance of research conducted at its member institutions. The partnership between the National Science Foundation (NSF) and the research community has flourished because of the strong collaborative spirit NSF brings to it. We appreciate the opportunity to offer formal comments on the draft version of the *Proposal and Award Policies and Procedures Guide* (PAPPG) before its anticipated release and effective date of January 2013.

#### Merit Review

We believe NSF has effectively integrated, throughout the draft PAPPG, the recommendations of the National Science Board (NSB) as articulated in its report, *National Science Foundation's Merit Review Criteria: Review and Revisions* (December 2011) and the policy directive included in the *America COMPETES Reauthorization Act of 2010*. We have followed with interest the NSB's examination of the merit review criteria used by NSF in the evaluation of proposals submitted for support. We offered formal comment to the NSB during its review and welcomed the participation of Joanne Tornow, Executive Secretary to the NSB Task Force on Merit Review, at COGR's membership meetings during the NSB deliberations. We congratulate NSF on a clear articulation of its principles and how those principles inform the merit review process. We recognize the purpose of the Certification Regarding Organizational Support (GPG II.C.1.e.) which affirms that the institution will support the performance of the NSF-funded activity.

## **Grants Proposal Guide (GPG)**

### **Certifications**

#### **GPG II.C.1.e. Certifications Regarding Unpaid Federal Tax Liability and Criminal Convictions**

We are assuming that when the text refers to “corporation,” the meaning of “corporation” is consistent with the meaning of “recipient” in the Office of Management and Budget (OMB) Circular A-110\_2(cc) & 2CFR §215.2(cc) – “an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program.”

### **Biographical Sketch**

#### **GPG II.C.2.f.(i).(c)**

We understand but are concerned with the changes in Biographical Sketch requested information associated with Products. “Acceptable Products must be citable and accessible,” a hurdle, in the latter instance, that may be difficult to reach for manuscripts submitted and even accepted for publications and other documents and materials. We recognize that citations can be provided but access to the documents and materials may need to rely on institutional or personal websites. Will that be sufficient access to meet the submission requirements? As you know, sometimes the most recent manuscripts are those closely related to the proposed project and demonstrate a competency and knowledge to perform the proposed activity. Including this material in the Biographical Sketch is important for demonstrating the applicant’s ability to successfully pursue and complete the proposed project.

### **Indirect Costs**

#### **GPG II.C.2.g.(viii)**

We fully endorse the use of the applicable negotiated indirect cost rate(s) on all proposals and welcome the clear statement of policy and prohibition against program staff negotiating, suggesting or requesting a reduction or waiver of these costs except as explicitly specified in an NSF program solicitation.

### **Vertebrate Animals**

#### **GPG II.D.6 [and AAG VI.B.4.b(i)]**

We question the need for the additional paragraph concerning research involving the study of wildlife in the field or in the laboratory. The basic requirement to meet the standards of the Animal Welfare Act [7 USC 2131 et seq.], those outlined in the National Academy of Science’s (NAS) Guide for the Care and Use of Laboratory Animals, and, finally, the Public Health Service (PHS) Policy and Government Principles Regarding the Care and Use for Animals, including the requirement to hold a PHS Animal Welfare Assurance provide more than sufficient direction for the case of wildlife studied in field or laboratory research without highlighting specific guide references within the PAPPG.

We recommend deleting the paragraph in its entirety in both the GPG and the AAG. The challenge with including this separate paragraph is that the taxon-specific guidelines and the related references may change and no longer be accurate or up-to-date. Of more concern is the unintended effect it may have on the Institutional Animal Care and Use Committee (IACUC) in its deliberations. IACUCs are directed by the NAS Guide and PHS Policy to use the taxon-specific guidelines among many resources as appropriate. We fear IACUCs may see the guide references as the sole requirement

and fail to exercise its judgment in considering other guides that may be more specific in lieu of or in addition to the cited guides. We are always concerned when a federal agency requires grantees to meet standards developed by non-government agencies in a non-consultative process.

The challenge in making specific references to documents not developed by NSF is highlighted in the first paragraph in AAG VI.B.4.b(i). The final sentence in the paragraph concludes with the requirement “to comply with the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals (included as Appendix D to the NAS Guide).” With the publication of the Eighth Edition of the NAS Guide in 2011, the content of Appendix D has changed to offer biographical information About the Authors of the Guide. Appendix B includes the US Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training.

## **Human Subjects**

### **GPG II.D.7.a**

Recognizing that there has been no change to this section, nonetheless, we would caution NSF against relying on listings in the Department of Health and Human Services (HHS) Office for Human Research Protections (OHRP) International Compilation of Human Research Protections as a definitive eligibility criteria for work conducted outside the US. In preparing the list, OHRP expresses caution in an accompanying disclaimer that the list is for informational purposes only and we have found, in practice that it serves best as an informational source rather than an exhaustive and authoritative compilation. The information is occasionally incomplete and inaccurate and should be used in the manner and to the purpose outlined by OHRP.

Domestic institutions that hold an OHRP Assurance of Compliance will have mechanisms or procedures to review international research activities. Those procedures may use the OHRP list as a starting point or reference but will include an institutional review to ensure that the US standards are being met in the research. These procedures generally include a process to coordinate with international entities and standards to ensure protections meet all requirements occasioned by the locale. We believe NSF should expect and require an IRB approval, as appropriate, for any human subjects research conducted by a domestic institution at a foreign site. The sentences following that affirmative statement [“If the project involves human subject and is to be performed outside the US, evidence of IRB approval also is required.”] should be eliminated to avoid confusion for domestic institutions and investigators.

NSF may want to establish separate requirements for foreign institutions and such requirements should be outlined in a separate paragraph or section.

## **Award and Administration Guide (AAG)**

### **Record Retention and Audit**

#### **AAG II.F.6.**

We request that Section 6 be deleted in its entirety.

As we have noted in a discussion with the Office of Management and Budget (OMB) and NSF, asserting that all NSF awards meet the definition of “Research and Development” (R&D) as defined by OMB Circular A-133 is inaccurate. There are examples of programs within each NSF directorate for which a R&D classification would be inappropriate. For Financial Statement reporting, Facilities and

Administrative rate development and classification on the Schedule of Expenditures of Federal Awards (SEFA), selected programs may more appropriately be considered instructional, educational, or other sponsored activities and not R&D. Some institutions use those programs classified as R&D per the SEFA as the foundation for developing their Financial Statements. A requirement to treat NSF awards in a different way from other Federal awards would create a significant administrative burden and discrepancies between the SEFA and the institution's Financial Statements. If institutions are required to make a classification that they believe is incorrect, they effectively are being asked to compromise their accounting practices by treating NSF awards in a manner that is inconsistent with similar programs from other agencies.

OMB has determined that this language reflected in Section 6 will be excluded from the 2012 A-133 Compliance Supplement. If this language is included in the PAPPG, A-133 auditors would be compelled to follow the Guide even though it is not part of the 2012 A-133 Compliance Supplement. Such a situation will create significant confusion at a time when the A-133 audit is being conducted at many institutions.

We strongly urge the deletion of this section.

### **Conflicts of Interest**

#### **AAG IV.A.6.**

The elaboration of the actions to be taken by the NSF Office of General Counsel (OGC) when notified by an institution that "it is unable to satisfactorily manage a conflict of interest" establishes a new requirement for recipient institutions. We do not believe it is appropriate to modify these requirements through an information collection revision of the PAPPG. Specifically, we recommend that section IV.A.6.1, the examination of institutional policies to ascertain procedures for addressing unmanageable conflicts be removed in its entirety.

Institutional policies are not required to contain procedures for addressing unmanageable conflicts, per se, beyond notifying NSF. If that is the expectation of the OGC in its review – notification of NSF – then we recommend greater clarity in section IV.A.6.1. The section could be revised to state:

Examine a copy of the institution's COI policy to ascertain if the policy and related procedures require notification of the NSF's Office of General Counsel of a conflict of interest it finds it is unable to satisfactorily manage.

In most cases, institutions will seek to eliminate such a conflict or, if unmanageable, not proceed with the activity. Thus, procedures beyond notification are not necessary. It would be a very rare set of circumstances that would compel an institution to proceed with a proposal or project activity that included an unmanageable conflict. This cautionary approach was made clear when the NSF Inspector General reviewed NSF's Oversight of Grantee Institutions' Conflicts of Interest (OIG 11-2-009, September 2011) and found no reported unmanageable conflicts for the period April 2007 to March 2010. Of two subsequent reports, the institution requested termination of the award in the first case; the second involved a vendor purchase that required a sole source. The institution established processes for on-going monitoring of the purchases.

### **Participant Support Costs**

AAG V.B.8.a.(iv)

We disagree with the statement that participant support costs can be generally characterized as flow-through and, as a consequence, do not warrant indirect cost recovery. Depending on the nature of the project proposed, the costs associated with participation can be considered educational, research or public service in nature and warrant recovery of the appropriate indirect costs. Such negotiated rates often reflect the very real administrative burden associated with managing stipends, travel and subsistence, etc. It is appropriate that the recovery of indirect costs be based on the negotiated rate agreement and such a statement would be consistent with NSF policy as articulated at GPG II.C.2.g.(viii). We recommend deleting the sentence: “These types of costs are generally considered flow-through and do not warrant indirect cost recovery.”

### **Life Sciences Dual Use Research of Concern (DURC)**

VI.B.3. Other

In meeting its obligations under the US Government Policy for Oversight of Life Sciences Dual Use Research of Concern (DURC), NSF directs the grantee organizations to identify NSF-funded research that meets the definition of DURC and falls under the scope of the US Policy. It states that grantees will make this identification “through their Institutional Biosafety Committee (IBC).”

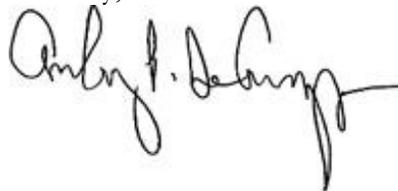
We request that the reference to the IBC be deleted from the PAPPG. We understand and accept the responsibility for reviewing and identifying DURC however some institutions may establish a process that does not include the IBC in the deliberations. In order to create a review that brings a wide and appropriate range of expertise to the process, organizations may establish a different committee or review mechanism. Deletion of the phrase “through their Institutional Biosafety Committee” ensures that organizations can use the best possible mechanism that meets the requirement and reflects the organizational structure.

### **Vertebrate Animals**

AAG VI.B.4.b(i) – See discussion of Vertebrate Animals above under the GPG II.D.6

We appreciate the opportunity to offer these comments and suggestions on the draft revision of the NSF Proposal and Award Policies and Procedures Guide and look forward to continuing the strong partnership between NSF and the research community.

Sincerely,



Anthony P. DeCrappeo  
President