

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Proposed Policy on Research and Research-Related Grant Terms and Conditions

AGENCY: Executive Office of the President, Office of Science and Technology Policy (OSTP) and Office of Management and Budget (OMB), Office of Federal Financial Management (OFFM).

ACTION: Notice of proposed issuance of policy on terms and conditions for grants under Federal research and research-related programs.

SUMMARY: The Federal Demonstration Partnership (FDP), a streamlining initiative of ten Federal awarding offices and 92 academic and nonprofit research institutions, developed a core set of FDP terms and conditions that it has been using for several years for the implementation of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," (2 CFR part 215). The OSTP and OFFM request comment on making the FDP terms and conditions a government-wide standard, and broadening their use to all academic and nonprofit grantees, under Federal research and research-related programs.

The proposed policy directive also instructs Federal agencies to minimize the degree to which they supplement the core set with agency-specific, program-specific, or award-specific terms and conditions. The directive should therefore result in the near term in the use of more uniform terms and conditions for Federal research and research-related grants. In parallel with the establishment of this standard for research and research-related grants, an interagency group helping to implement the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106-107) will continue working toward the longer-term objective of standard award format and content for all Federal grants and cooperative agreements, including government-wide standard terms and conditions.

DATES: Comments must be received by February 28, 2005.

ADDRESSES: Comments should be addressed to Beth Phillips, Office of Federal Financial Management, 725 17th Street, NW., Washington, DC

20503; telephone (202) 395-3993; FAX (202) 395-3952; e-mail ephillip@omb.eop.gov. Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

FOR FURTHER INFORMATION CONTACT: For information on OMB Circular A-110 requirements, contact Beth Phillips at the addresses noted above. For information on the Research Business Models (RBM) Subcommittee see the RBM Web site at <http://rbm.nih.gov>, or contact Geoff Grant at the Office of Science and Technology Policy at 725 17th Street, NW., Washington, DC 20503; e-mail ggrant@ostp.eop.gov; telephone (202) 456-6131; FAX (202) 456-6027.

SUPPLEMENTARY INFORMATION

I. Background

This proposal is an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science (CoS), a committee of the National Science and Technology Council (NSTC). The RBM Subcommittee's objectives include:

- Facilitating a coordinated effort across Federal agencies to address policy implications arising from the changing nature of scientific research, and
- Examining the effects of these changes on business models for the conduct of scientific research sponsored by the Federal government.

The Subcommittee used public comments, agency perspectives, and input from a series of regional public meetings to identify priority areas in which it would focus its initial efforts. In each priority area, the Subcommittee is pursuing initiatives to promote, as appropriate, either common policy, the streamlining of current procedures, or the identification of agencies' and institutions' "effective practices." As information about the initiatives becomes available, it is posted at the Subcommittee's Internet site <http://rbm.nih.gov>.

The objective of one RBM priority area is greater consistency in the format and content of Federal agencies' research grant and cooperative agreement awards. Federal agency awarding offices currently include different requirements in their awards, use different language to state the same requirements, and organize the award content differently. The variation in

format and content increases both administrative effort and costs for recipients of Federal awards. More uniformity is possible because most requirements flow from common sources in the OMB circulars and in government-wide statutes and regulations.

Within the priority area on award uniformity, the Subcommittee identified two initiatives—one that could be achieved in the near term and a second that would be a longer-term effort. The proposal in this **Federal Register** notice is the result of the near-term initiative, which is to broaden use of the core set of terms and conditions developed by the FDP for research and research-related grants. The longer-term initiative relies on work being carried out by the Pre-Award Work Group under Public Law 106-107 to develop standard award format and content for all Federal grants and cooperative agreements.

This near-term initiative will broaden use of the core set of terms and conditions developed by the FDP:

- From Federal agencies that participate in the FDP to all Federal agencies that make research and research-related awards (each Federal agency must determine which of its programs are "research-related" for purposes of using the terms and conditions).
- From the ten awarding offices in agencies that currently participate in the FDP to all awarding offices in those agencies.
- From research and research-related awards received by universities and nonprofit organizations that participate in the FDP to research and related awards received by all such institutions.

II. Terms and Conditions—General Approaches

While Federal agencies organize their grant and cooperative agreement awards differently, there are three elements that they include in some form. One element is what some agencies call the award notice, which includes basic information such as the name of the recipient organization, the amount of Federal funding under the award, any required cost sharing, the beginning and end dates for Federal support, and the title of the project. Because this information is specific to a particular award, an awarding agency transmits it to the recipient each time an award is made.

The other two elements of the award are the administrative requirements and the national policy requirements with which recipients must comply, which together comprise the award terms and conditions. Examples of administrative

requirements are: Standards that a recipient's financial management, property management, and procurement systems must meet; performance reporting requirements; and rules for use and disposition of supplies and equipment. OMB Circular A-110 (2 CFR part 215) is the government-wide source of administrative requirements for an academic or other nonprofit research institution. An award's administrative terms and conditions therefore must implement that circular. In some cases, awards under a particular program may impose additional administrative requirements due to the nature of the program or its authorizing statute. In a relatively few instances, there also may be award-specific administrative requirements due to the nature of a particular project.

National policy requirements arise from Federal statutes, Presidential executive orders, or regulations with government-wide effect, such as prohibitions against discrimination. Most apply broadly to many or all Federal programs, though some apply only to specific agencies or programs. National policy requirements are included in award terms and conditions to help ensure post-award compliance, notwithstanding any pre-award assurances of compliance an agency requires applicants to submit.

Usually, an awarding office has a set of general terms and conditions that apply to a broad class of awards, which may be all of the awards that office makes or, in some cases, all of the awards the office makes under a particular program. An awarding office's general terms and conditions include the government-wide, as well as agency-specific, administrative requirements and national policy requirements described above, and also may include program-specific requirements. Agencies often do not transmit the general terms and conditions with each award, instead incorporating them by reference in the award notice (e.g., by reference to an Internet site where the agency or office maintains its general terms and conditions). In that case, the agency only needs to transmit with the award notice any award-specific terms and conditions that are required to supplement the general terms and conditions.

III. The Proposed Core Set of Terms and Conditions—The FDP Approach

The core terms and conditions developed by the FDP work differently from the general approach described in the previous section, in that there is a core set that all of the FDP participating agencies use along with a separate set of

agency-specific terms and conditions for each agency. The core set includes both uniform administrative requirements and national policy requirements.

The administrative requirements are designed as a model implementation of OMB Circular A-110 (2 CFR part 215), and they:

- Provide a standard organization of the administrative requirements that parallels the order of presentation in the circular.
- Provide standard language for administrative requirements for which the circular sets a single government-wide approach, rather than alternative approaches among which an agency may select.
- Include default provisions, with standard language, for administrative requirements for which there are agency options. For example, OMB Circular A-110 (2 CFR part 215) provides multiple options for disposition of program income a recipient might earn—an agency can specify that a recipient is to use: (1) An additive method, using the income to increase the total funding for the project supported by the award; (2) a deductive method, keeping the amount of support the same and reducing the amount of Federal funding to be used; or (3) a method that uses the income to help meet the recipient's cost sharing requirement. The administrative requirements in the FDP core terms and conditions include language in the program income article to specify use of the additive method. An agency that needs to override that default can do so by specifying a different option in its agency-specific or award-specific terms and conditions.

The administrative requirements may be viewed in one of two ways on the Internet at <http://rbm.nih.gov>. One of the posted documents shows the core set's administrative terms and conditions. The other document shows each article of the administrative requirements in a side-by-side presentation with the section of OMB Circular A-110 (2 CFR part 215) that is the basis for that article. The second document is designed to assist users who are not familiar with the language of the circular.

The national policy requirements in the core set of terms and conditions also may be viewed at <http://rbm.nih.gov>. They are presented within a table that includes information on the types of awards, types of recipient organizations, and specific situations to which each requirement applies. Each award term, in the left-hand column of the table, includes citations for the agencies' regulations pertinent to the particular national policy requirement.

In the future, OMB in conjunction with OSTP plans to maintain—or designate a Federal agency or interagency group to maintain—the core set of administrative and national policy requirements in an RBM Tool Kit at <http://rbm.nih.gov>, perhaps with links to additional sites such as OMB, OSTP, and the NSTC. When the terms and conditions are amended, previous versions would be maintained in the archives at the RBM site for access by recipients with awards pre-dating the amendment. Each version would bear a version date for clarity.

At the same Internet site, OSTP plans to maintain a list of the research or research-related programs that obtained approval, under Section 5.b of the proposed policy directive, for an exception from the requirement to use the government-wide core set of terms and conditions. With a centrally maintained list, an academic or nonprofit research institution can verify whether an award that does not include the standard terms and conditions falls within an approved exception. To enable OMB to maintain the list, Section 5.c of the proposed policy directive would require agencies to notify OMB when they approve exceptions.

As we expand the use of the core set of terms and conditions to more agencies, awarding offices, and programs, it is possible that some offices may need to augment the core set with program-specific or award-specific terms and conditions, in addition to any agency-wide supplement. A particular program, for example, may not need the article in the terms and conditions that specifies procedures a recipient must follow when research results unexpectedly raise questions about a need to classify the results for national security reasons. A program office that did not need that article could include an agency-specific or program-specific term to override the requirement. The proposed policy directive would allow that flexibility, which is essential to some programs; however, to maintain maximum uniformity Section 4.b of the proposed directive includes language that would instruct agencies to minimize supplementation of the core set.

IV. Invitation To Comment

We welcome your input on any aspect of the proposed policy provided below, and the core set of terms and conditions posted on the Internet at <http://rbm.nih.gov>. (Please note the final policy will include the core set of terms and conditions as an attachment, as stated in the "Background" section. However, those are not included in this

notice, but rather are available at the Web site noted above.) Questions that you may wish to address include:

- Are the terms and conditions easy to use and understand?
- With the general terms and conditions posted on the Internet, would you be able to readily determine which terms and conditions apply to a specific award?
- Where OMB Circular A-110 (2 CFR part 215) gives agencies options for addressing particular administrative requirements, does the core set of terms and conditions include default provisions appropriate for research and research-related grants?
- Are there other national policy requirements that should be included in the core set of terms and conditions?
- Is the proposed policy directive clear and unambiguous, or does it need further detail?

Dated: January 25, 2005.

Linda M. Springer,

Controller, Office of Management and Budget.

Kathie L. Olsen,

Associate Director for Science, Office of Science and Technology Policy.

To the Heads of Executive Departments and Establishments

Subject: Interim Standard Terms and Conditions for Research Grants.

1. *Purpose.* This policy letter establishes a core set of terms and conditions as the government-wide standard for research grants. The standard is for use by Executive Branch departments and agencies on an interim basis, pending completion of an ongoing effort to develop a standard for all Federal grant and cooperative agreement awards.

2. *Authority.* This policy letter is a result of the regular review of the Government-university research partnership under Executive Order 13185. It also is a part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106-107).

3. *Background.* Begun as the Florida Demonstration Project in the 1980's, the Federal Demonstration Partnership (FDP) is a cooperative initiative among ten Federal awarding offices and 92 academic and nonprofit institutions that receive Federal research awards. The FDP's purpose is to streamline administrative procedures associated with the award and administration of research funding. In the late 1990's, the FDP developed terms and conditions that are a model implementation, specifically for research grants, of the 1993 issuance of OMB Circular A-110, "Uniform Administrative Requirements

for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." (OMB Circular A-110 is now located in Title 2 Code of Federal Regulations, Part 215.) The ten Federal awarding offices have been using the FDP terms and conditions for research grants to the non-Federal institutions participating in the FDP.

Another effort to develop standard terms and conditions began after the enactment of Pub. L. 106-107. That Act requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. Twenty-six Executive Branch agencies currently participate in interagency initiatives to implement Pub. L. 106-107. One of the initiatives is to develop standard terms and conditions, to the extent practicable, for all Federal awards of grants and cooperative agreements to governmental and nonprofit organizations, including research awards.

Pending the completion of the Pub. L. 106-107 initiative, which is a long-term endeavor, some near-term benefits can be obtained on an interim basis by expanding the use of the FDP's grant terms and conditions to more Federal awarding offices and more research recipients. To enable that expanded use, the Research Business Models (RBM) Subcommittee of the National Science and Technology Council's Committee on Science made minor modifications to the terms and conditions developed originally for FDP participants. The result—the terms and conditions attached to this policy letter—are appropriate for all Federal agencies' research grants to academic and nonprofit institutions.

4. *Policy.* a. The standard terms and conditions maintained by OMB and the Office of Science and Technology Policy (OSTP) under paragraph 5.b.i of this directive are the government-wide core set to be used by agencies for grants awarded to institutions of higher education, hospitals, and other non-profit organizations under basic and applied research and research-related programs.

b. Agencies may supplement the core set of terms and conditions with agency-specific, program-specific, or award-specific terms and conditions. Agencies are to minimize supplements, limiting these to terms and conditions that are required by a statute or:

- i. Consistent with OMB Circular A-110; and

ii. Necessary for programmatic purposes or good stewardship of Federal funds.

c. Agencies are encouraged to extend the use of the attached grant terms and conditions to cooperative agreements and other forms of financial assistance, to the extent practicable.

5. *Responsibilities.* a. Each Executive Branch department and agency must:

i. Issue any needed direction to offices that award research grants, in order to establish the attached terms and conditions as the core set for those offices' awards.

ii. Designate policy level officials, (1) authorized to grant exceptions from the requirement to use the attached core set if a departmental or agency office, or program, can demonstrate the need for an exception; and (2) responsible for notifying the OMB in writing about the scope of exceptions approved by the department or agency and the reasons for them.

b. OMB and OSTP will maintain—or designate a Federal agency or interagency group to maintain—at a government-wide Internet site (either the RBM Web site, currently at <http://rbm.nih.gov>, or a site to be named) and with additional links to OMB, OSTP, and the National Science and Technology Council:

i. The core set of terms and conditions, including uniform administrative requirements and national policy requirements.

ii. A list of agency programs and offices that have been granted exceptions, under paragraph 5.a.ii of this directive, from the requirement to use the core set of terms and conditions.

6. *Information Contact.* Direct any questions regarding this policy letter to Elizabeth Phillips, Office of Federal Financial Management, (202) 395-3993.

7. *Effective Date.* The policy letter is effective 30 days after issuance. All implementing actions other than regulatory revisions must be completed by the Executive departments and agencies within 6 months of the effective date; any regulatory revisions must be completed within 18 months.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available
From: Securities and Exchange
Commission, Office of Filings and