DoDGARs . . .	which addresses . . .	applies to . . .
Part 26 (32 CFR part 26)	Governmentwide drug-free workplace requirements.	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definition of "award" at 32 CFR 26.605.
Part 28 (32 CFR part 28)	Governmentwide restrictions on lobbying	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definitions of "Federal grant" and "Federal cooperative agreement" at 32 CFR 28.105.
Part 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations.	grants and cooperative agreements other than TIAs ("award," as defined in 32 CFR 34.2). Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 37 (32 CFR part 37)	Agreements officers' responsibilities for award and administration of TIAs.	TIAs. Note that this part refers to other portions of DoDGARs that apply to TIAs.

[85 FR 51241, Aug. 19, 2020]

PART 22—DoD GRANTS AND AGREEMENTS—AWARD AND ADMINISTRATION

Subpart A—General

Subpart B—Selecting the Appropriate Instrument

Subpart C—Competition

Subpart D—Recipient Qualification Matters—General Policies and Procedures

Subpart E—National Policy Matters

Subpart F—Award

Subpart G—Field Administration

Subpart H—Post-Award Administration

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 63 FR 12164, Mar. 12, 1998, unless otherwise noted.

Subpart A—General

§ 22.100 Purpose.

This part outlines grants officers' and DoD Components' responsibilities

related to the award and administration of grants and cooperative agreements.

[85 FR 51242, Aug. 19, 2020]

§ 22.105 Definitions.

Other than the terms defined in this section, terms used in this part are defined in 32 CFR part 21, subpart F.

Administrative offset. An action whereby money payable by the United States Government to, or held by the Government for, a recipient is withheld to satisfy a delinquent debt the recipient owes the Government.

Advanced research. Advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector (i.e., early phases of research and development on which commercial competitors are willing to collaborate, because the work is not so coupled to specific products and processes that the results of the work must be proprietary). It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Advanced Technology Development (Budget Activity 3 and Research Category 6.3A) programs within Research, Development, Test and Evaluation (RDT&E).

Applied research. Efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology such as new materials, devices, methods and processes. It typically is funded in Applied Research (Budget Activity 2 and Research Category 6.2) programs within Research, Development, Test and Evaluation (RDT&E). Applied research normally follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition; these efforts are within the definition of ''development.''

Basic research. Efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. It typically is funded within Basic Research (Budget Activity 1 and Research Category 6.1) programs within Research, Development, Test and Evaluation (RDT&E). For the purposes of this part, basic research includes:

(1) Research-related, science and engineering education, including graduate fellowships and research traineeships.

(2) Research instrumentation and other activities designed to enhance the infrastructure for science and engineering research.

Claim. A written demand or written assertion by one of the parties to a grant or cooperative agreement seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to a grant or cooperative agreement. A routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by written notice to the grants officer if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.

Debt. Any amount of money or any property owed to a Federal Agency by any person, organization, or entity except another United States Federal Agency. Debts include any amounts due from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, or overpayments, penalties, damages, interest, fines and forfeitures, and all other claims and similar sources. Amounts due a nonappropriated fund instrumentality are not debts owed the United States, for the purposes of this subchapter.

Delinquent debt. A debt:

(1) That the debtor fails to pay by the date specified in the initial written notice from the agency owed the debt, normally within 30 calendar days, unless the debtor makes satisfactory payment arrangements with the agency by that date; and

(2) With respect to which the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

Development. The systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of potential new products, processes, or services to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing.

Electronic commerce. The conduct of business through the use of automation and electronic media, in lieu of paper transactions, direct personal contact, telephone, or other means. For grants and cooperative agreements, electronic commerce can include the use of electronic data interchange, electronic mail, electronic bulletin board systems, and electronic funds transfer for: program announcements or solicitations; applications or proposals; award documents; recipients' requests for payment; payment authorizations; and payments.

Electronic data interchange. The exchange of standardized information communicated electronically between business partners, typically between computers. It is DoD policy that DoD Component EDI applications conform to the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X–12 standard. [1]

Electronic funds transfer. A system that provides the authority to debit or credit accounts in financial institutions by electronic means rather than source documents (e.g., paper checks). Processing typically occurs through the Federal Reserve System and/or the Automated Clearing House (ACH) computer network. It is DoD policy that DoD Component EFT transmissions conform to the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X–12 standard.

Historically Black colleges and universities. Institutions of higher education determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. Each DoD Component's contracting activities and grants officers may obtain a list of historically Black colleges and universities from that DoD Component's Small and Disadvantaged Business Utilization office.

Institution of higher education. An educational institution that meets the criteria in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)). Note, however, that institution of higher education has a different meaning in § 22.520, as given at § 22.520(b)(2).

Minority institutions. Institutions of higher education that meet the criteria for *minority institutions* specified in 10 U.S.C. 2323. Each DoD Component's contracting activities and grants officers may obtain copies of a current list of institutions that qualify as *minority institutions* under 10 U.S.C. 2323 from that DoD Component's Small and Disadvantaged Business Utilization office (the list of *minority institutions* changes periodically, based on Department of Education data on institutions' enrollments of minority students).

Research. Basic, applied, and advanced research, as defined in this section.

Subaward. An award of financial assistance in the form of money, or property in lieu of money, made under a DoD grant or cooperative agreement by a recipient to an eligible subrecipient. The term includes financial assistance for substantive program performance by the subrecipient of a portion of the program for which the DoD grant or cooperative agreement was made. It does not include the recipient's procurement of goods and services needed to carry out the program.

[63 FR 12164, Mar. 12, 1998, as amended at 68 FR 47160, Aug. 7, 2003]

Subpart B—Selecting the Appropriate Instrument

§ 22.200 Purpose.

This subpart provides the bases for determining the appropriate type of instrument in a given situation.

§ 22.205 Distinguishing assistance from procurement.

Before using a grant or cooperative agreement, the grants officer shall

[1] Available from Accredited Standards Committee, X–12 Secretariat, Data Interchange Standards Association, 1800 Diagonal Road, Suite 355, Alexandria, VA 22314–2852; Attention: Manager Maintenance and Publications.

make a positive judgment that an assistance instrument, rather than a procurement contract, is the appropriate instrument, based on the following:

(a) *Purpose.* (1) The grants officer must judge that the principal purpose of the activity to be carried out under the instrument is to stimulate or support a public purpose (i.e., to provide assistance), rather than acquisition (i.e., to acquire goods and services for the direct benefit of the United States Government). If the principal purpose is acquisition, then the grants officer shall judge that a procurement contract is the appropriate instrument, in accordance with 31 U.S.C. chapter 63 (''Using Procurement Contracts and Grant and Cooperative Agreements''). Assistance instruments shall not be used in such situations, except:

(i) When a statute specifically provides otherwise; or

(ii) When an exemption is granted, in accordance with § 22.220.

(2) For research and development, the appropriate use of grants and cooperative agreements therefore is almost exclusively limited to the performance of selected basic, applied, and advanced research projects. Development projects nearly always shall be performed by contract or other acquisition transaction because their principal purpose is the acquisition of specific deliverable items (e.g., prototypes or other hardware) for the benefit of the Department of Defense.

(b) *Fee or profit.* Payment of fee or profit is consistent with an activity whose principal purpose is the acquisition of goods and services for the direct benefit or use of the United States Government, rather than an activity whose principal purpose is assistance. Therefore, the grants officer shall use a procurement contract, rather than an assistance instrument, in all cases where:

(1) Fee or profit is to be paid to the recipient of the instrument; or

(2) The instrument is to be used to carry out a program where fee or profit is necessary to achieving program objectives.

§ 22.210 Authority for providing assistance.

(a) Before a grant or cooperative agreement may be used, the grants officer must:

(1) Identify the program statute, the statute that authorizes the DoD Component to carry out the activity the principal purpose of which is assistance (see 32 CFR 21.410 through 21.420.

(2) Review the program statute to determine if it contains requirements that affect the:

(i) Solicitation, selection, and award processes. For example, program statutes may authorize assistance to be provided only to certain types of recipients; may require that recipients meet certain other criteria to be eligible to receive assistance; or require that a specific process shall be used to review recipients' proposals.

(ii) Terms and conditions of the award. For example, some program statutes require a specific level of cost sharing or matching.

(b) The grants officer shall ensure that the award of DoD appropriations through a grant or cooperative agreement for a research project meets the standards of 10 U.S.C. 2358, DoD's broad authority to carry out research, even if the research project is authorized under a statutory authority other than 10 U.S.C. 2358. The standards of 10 U.S.C. 2358 are that, in the opinion of the Head of the DoD Component or his or her designee, the projects must be:

(1) Necessary to the responsibilities of the DoD Component.

(2) Related to weapons systems and other military needs or of potential interest to the DoD Component.

[63 FR 12164, Mar. 12, 1998, as amended at 68 FR 47160, Aug. 7, 2003]

§ 22.215 Distinguishing grants and cooperative agreements.

(a) Once a grants officer judges, in accordance with §§ 22.205 and 22.210, that either a grant or cooperative agreement is the appropriate instrument, the grants officer shall distinguish between the two instruments as follows:

(1) Grants shall be used when the grants officer judges that substantial involvement is not expected between

the Department of Defense and the recipient when carrying out the activity contemplated in the agreement.

(2) Cooperative agreements shall be used when the grants officer judges that substantial involvement is expected. The grants officer should document the nature of the substantial involvement that led to selection of a cooperative agreement. Under no circumstances are cooperative agreements to be used solely to obtain the stricter controls typical of a contract.

(b) In judging whether substantial involvement is expected, grants officers should recognize that ''substantial involvement'' is a relative, rather than an absolute, concept, and that it is primarily based on programmatic factors, rather than requirements for grant or cooperative agreement award or administration. For example, substantial involvement may include collaboration, participation, or intervention in the program or activity to be performed under the award.

§ 22.220 Exemptions.

Under 31 U.S.C. 6307, ''the Director of the Office of Management and Budget may exempt an agency transaction or program'' from the requirements of 31 U.S.C. chapter 63. Grants officers shall request such exemptions only in exceptional circumstances. Each request shall specify for which individual transaction or program the exemption is sought; the reasons for requesting an exemption; the anticipated consequences if the exemption is not granted; and the implications for other agency transactions and programs if the exemption is granted. The procedures for requesting exemptions shall be:

(a) In cases where 31 U.S.C. chapter 63 would require use of a contract and an exemption from that requirement is desired:

(1) The grants officer shall submit a request for exemption, through appropriate channels established by his or her DoD Component (see 32 CFR 21.320(a)), to the Director of Defense Procurement and Acquisition Policy (DDP&AP).

(2) The DDP&AP, after coordination with the Assistant Secretary of Defense for Research and Engineering (ASD (R&E)), shall transmit the request to OMB or notify the DoD Component that the request has been disapproved.

(b) In other cases, the DoD Component shall submit a request for the exemption through appropriate channels to the ASD (R&E). The ASD (R&E) shall transmit the request to OMB or notify the DoD Component that the request has been disapproved.

(c) Where an exemption is granted, documentation of the approval shall be maintained in the award file.

[63 FR 12164, Mar. 12, 1998, as amended at 68 FR 47160, Aug. 7, 2003; 70 FR 49464, Aug. 23, 2005; 85 FR 51242, Aug. 19, 2020]

Subpart C—Competition

§ 22.300 Purpose.

This subpart establishes DoD policy and implements statutes related to the use of competitive procedures in the award of grants and cooperative agreements.

§ 22.305 General policy and requirement for competition.

(a) It is DoD policy to maximize use of competition in the award of grants and cooperative agreements. This also conforms with:

(1) 31 U.S.C. 6301(3), which encourages the use of competition in awarding all grants and cooperative agreements.

(2) 10 U.S.C. 2374(a), which sets out Congressional policy that any new grant for research, development, test, or evaluation be awarded through merit-based selection procedures.

(b) Grants officers shall use merit-based, competitive procedures (as defined by § 22.315) to award grants and cooperative agreements:

(1) In every case where required by statute (e.g., 10 U.S.C. 2361, as implemented in § 22.310, for certain grants to institutions of higher education).

(2) To the maximum extent practicable in all cases where not required by statute.

§ 22.310 Statutes concerning certain research, development, and facilities construction grants.

(a) *Definitions specific to this section.* For the purposes of implementing the requirements of 10 U.S.C. 2374 in this

section, the following terms are defined:

(1) *Follow-on grant.* A grant that provides for continuation of research and development performed by a recipient under a preceding grant. Note that follow-on grants are distinct from incremental funding actions during the period of execution of a multi-year award.

(2) *New grant.* A grant that is not a follow-on grant.

(b) *Statutory requirement to use competitive procedures.* (1) A grants officer shall not award a grant by other than merit-based, competitive procedures (as defined by § 22.315) to an institution of higher education for the performance of research and development or for the construction of research or other facilities, unless:

(i) In the case of a new grant for research and development, there is a statute meeting the criteria in paragraph (c)(1) of this section;

(ii) In the case of a follow-on grant for research and development, or of a grant for the construction of research or other facilities, there is a statute meeting the criteria in paragraph (c)(2) of this section; and

(iii) The Secretary of Defense submits to Congress a written notice of intent to make the grant. The grant may not be awarded until 180 calendar days have elapsed after the date on which Congress received the notice of intent. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Principal Deputy Assistant Secretary of Defense for Research and Engineering.

(2) Because subsequently enacted statutes may, by their terms, impose different requirements than set out in paragraph (b)(1) of this section, grants officers shall consult legal counsel on a case-by-case basis, when grants for the performance of research and development or for the construction of research or other facilities are to be awarded to institutions of higher education by other than merit-based competitive procedures.

(c) *Subsequent statutes.* In accordance with 10 U.S.C. 2361 and 10 U.S.C. 2374, a provision of law may not be construed as requiring the award of a grant through other than the merit-based, competitive procedures described in § 22.315, unless:

(1) *Institutions of higher education—new grants for research and development.* In the case of a new grant for research and development to an institution of higher education, such provision of law specifically:

(i) Identifies the particular institution of higher education involved;

(ii) States that such provision of law modifies or supersedes the provisions of 10 U.S.C. 2361 (a requirement that applies only if the statute authorizing or requiring award by other than competitive procedures was enacted after September 30, 1989); and

(iii) States that the award to the institution of higher education involved is required by such provision of law to be made in contravention of the policy set forth in 10 U.S.C. 2374(a).

(2) *Institutions of higher education—follow-on grants for research and development and grants for the construction of any research or other facility.* In the case of any such grant to an institution of higher education, such provision of law specifically:

(i) Identifies the particular institution of higher education involved; and

(ii) States that such provision of law modifies or supersedes the provisions of 10 U.S.C. 2361 (a requirement that applies only if the statute authorizing or requiring award by other than competitive procedures was enacted after September 30, 1989).

(3) *Other entities—new grants for research and development*—(i) *General.* In the case of a new grant for research and development to an entity other than an institution of higher education, such provision of law specifically:

(A) Identifies the particular entity involved;

(B) States that the award to that entity is required by such provision of law to be made in contravention of the policy set forth in 10 U.S.C. 2374(a).

(ii) *Exception.* The requirement of paragraph (c)(3)(i) of this section does not apply to any grant that calls upon the National Academy of Sciences to:

(A) Investigate, examine, or experiment upon any subject of science or art of significance to the Department of

Defense or any Military Department; and

(B) Report on such matters to the Congress or any agency of the Federal Government.

[63 FR 12164, Mar. 12, 1998, as amended at 85 FR 51242, Aug. 19, 2020]

§ 22.315 Merit-based, competitive procedures.

Competitive procedures are methods that encourage participation in DoD programs by a broad base of the most highly qualified performers. These procedures are characterized by competition among as many eligible proposers as possible, with a published or widely disseminated notice. Competitive procedures include, as a minimum:

(a) *Notice to prospective proposers.* The notice may be a notice of funding availability or Broad Agency Announcement that is publicly disseminated, with unlimited distribution, or a specific notice that is distributed to eligible proposers (a specific notice must be distributed to at least two eligible proposers to be considered as part of a competitive procedure). Requirements for notices are as follows:

(1) The format and content of each notice must conform with the Governmentwide format for announcements of funding opportunities established by the Office of Management and Budget (OMB) in a policy directive entitled, ''Format for Financial Assistance Program Announcements.'' [2]

(2) In accordance with that OMB policy directive, DoD Components also must post on the Internet any notice under which domestic entities may submit proposals, if the distribution of the notice is unlimited. DoD Components are encouraged to simultaneously publish the notice in other media (*e.g.*, the FEDERAL REGISTER), if doing so would increase the likelihood of its being seen by potential proposers. If a DoD Component issues a specific notice with limited distribution (*e.g.*, for national security considerations), the notice need not be posted on the Internet.

(3) To comply with an OMB policy directive entitled, ''Requirement to Post Funding Opportunity Announcement Synopses at Grants.gov and Related Data Elements/Format,'' [3] DoD Components must post on the Internet a synopsis for each notice that, in accordance with paragraph (a)(2) of this section, is posted on the Internet. The synopsis must be posted at the Governmentwide site designated by the OMB (currently *http://www.Grants.gov*). The synopsis for each notice must provide complete instructions on where to obtain the notice and should have an electronic link to the Internet location at which the notice is posted.

(4) In accordance with an OMB policy directive entitled, ''Requirement for a DUNS Number in Applications for Federal Grants and Cooperative Agreements,'' [4] each notice must include a requirement for proposers to include Data Universal Numbering System (DUNS) numbers in their proposals. If a notice provides for submission of application forms, the forms must incorporate the DUNS number. To the extent that unincorporated consortia of separate organizations may submit proposals, the notice should explain that an unincorporated consortium would use the DUNS number of the entity proposed to receive DoD payments under the award (usually, a lead organization that consortium members identify for administrative matters).

(b) At least two eligible, prospective proposers.

(c) Impartial review of the merits of applications or proposals received in response to the notice, using the evaluation method and selection criteria described in the notice. For research and development awards, in order to be considered as part of a competitive procedure, the two principal selection

[2] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants_docs.html* (the link is ''Final Policy Directive on Financial Assistance Program Announcements'').

[3] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants_docs.html* (the link is ''Office of Federal Financial Management Policy Directive on Use of Grants.Gov FIND'').

[4] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants_docs.html* (the link is ''Use of a Universal Identifier by Grant Applicants'').

criteria, unless statute provides otherwise, must be the:

(1) Technical merits of the proposed research and development; and

(2) Potential relationship of the proposed research and development to Department of Defense missions.

[63 FR 12164, Mar. 12, 1998, as amended at 70 FR 49464, Aug. 23, 2005; 72 FR 34988, June 26, 2007; 85 FR 51242, Aug. 19, 2020]

§ 22.320 Special competitions.

Some programs may be competed for programmatic or policy reasons among specific classes of potential recipients. An example would be a program to enhance U.S. capabilities for academic research and research-coupled graduate education in defense-critical, science and engineering disciplines, a program that would be competed specifically among institutions of higher education. All such special competitions shall be consistent with program representations in the President's budget submission to Congress and with subsequent Congressional authorizations and appropriations for the programs.

Subpart D—Recipient Qualification Matters—General Policies and Procedures

§ 22.400 Purpose.

The purpose of this subpart is to specify policies and procedures for grants officers' determination of recipient qualifications prior to award.

§ 22.405 Policy.

(a) *General.* Grants officers normally shall award grants or cooperative agreements only to qualified recipients that meet the standards in § 22.415. This practice conforms with the Governmentwide policy to do business only with responsible persons, which is stated in OMB guidance at 2 CFR 180.125(a) and implemented by the Department of Defense in 2 CFR part 1125.

(b) *Exception.* In exceptional circumstances, grants officers may make awards to recipients that do not fully meet the standards in § 22.415 and include special award conditions that are appropriate to the particular situation, in accordance with 32 CFR 34.4 for awards to for-profit organizations or as described in OMB guidance at 2 CFR 200.207 for awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

[63 FR 12164, Mar. 12, 1998, as amended at 70 FR 49464, Aug. 23, 2005; 72 FR 34988, June 26, 2007; 85 FR 51242, Aug. 19, 2020]

§ 22.410 Grants officers' responsibilities.

The grants officer is responsible for determining a recipient's qualification prior to award. The grants officer's signature on the award document shall signify his or her determination that either:

(a) The potential recipient meets the standards in § 22.415 and is qualified to receive the grant or cooperative agreement; or

(b) An award is justified to a recipient that does not fully meet the standards, pursuant to § 22.405(b). In such cases, grants officers shall document in the award file the rationale for making an award to a recipient that does not fully meet the standards.

§ 22.415 Standards.

To be qualified, a potential recipient must:

(a) Have the management capability and adequate financial and technical resources, given those that would be made available through the grant or cooperative agreement, to execute the program of activities envisioned under the grant or cooperative agreement.

(b) Have a satisfactory record of executing such programs or activities (if a prior recipient of an award).

(c) Have a satisfactory record of integrity and business ethics.

(d) Be otherwise qualified and eligible to receive a grant or cooperative agreement under applicable laws and regulations (see § 22.420(c)).

§ 22.420 Pre-award procedures.

(a) The appropriate method to be used and amount of effort to be expended in deciding the qualification of a potential recipient will vary. In deciding on the method and level of effort, the grants officer should consider factors such as:

(1) DoD's past experience with the recipient;

(2) Whether the recipient has previously received cost-type contracts, grants, or cooperative agreements from the Federal Government; and

(3) The amount of the prospective award and complexity of the project to be carried out under the award.

(b) There is no DoD-wide requirement to obtain a pre-award credit report, audit, or any other specific piece of information. On a case-by-case basis, the grants officer will decide whether there is a need to obtain any such information to assist in deciding whether the recipient meets the standards in § 22.415 (a), (b), and (c).

(1) Should the grants officer in a particular case decide that a pre-award credit report, audit, or survey is needed, he or she should consult first with the appropriate grants administration office (identified in § 22.710), and decide whether pre-existing surveys or audits of the recipient, such as those of the recipient's internal control systems under OMB guidance in subpart F of 2 CFR part 200, will satisfy the need (see § 22.715(a)(1)).

(2) If, after consulting with the grants administration office, the grants officer decides to obtain a credit report, audit, or other information, and the report or other information discloses that a potential recipient is delinquent on a debt to an agency of the United States Government, then:

(i) The grants officer shall take such information into account when determining whether the potential recipient is qualified with respect to the grant or cooperative agreement; and

(ii) If the grants officer decides to make the award to the recipient, unless there are compelling reasons to do otherwise, the grants officer shall delay the award of the grant or cooperative agreement until payment is made or satisfactory arrangements are made to repay the debt.

(c) In deciding whether a recipient is otherwise qualified and eligible in accordance with the standard in § 22.415(d), the grants officer shall ensure that the potential recipient:

(1) Is not identified in the Exclusions area of the System for Award Management (SAM Exclusions) as being debarred, suspended, or otherwise ineligible to receive the award (SAM is at *www.sam.gov*). In addition to being a requirement for every new award, note that checking SAM Exclusions also is a requirement for subsequent obligations of additional funds, such as incremental funding actions, in the case of pre-existing awards to institutions of higher education, as described at § 22.520(e)(5). The grants officer's responsibilities include (see the OMB guidance at 2 CFR 180.425 and 180.430, as implemented by the Department of Defense at 2 CFR 1125.425) checking SAM Exclusions for:

(i) Potential recipients of prime awards; and

(ii) A recipient's principals (as defined in OMB guidance at 2 CFR 180.995, implemented by the Department of Defense in 2 CFR part 1125), potential recipients of subawards, and principals of those potential subaward recipients, if DoD Component approval of those principals or lower-tier recipients is required under the terms of the award.

(2) Has provided all certifications and assurances required by Federal statute, Executive order, or codified regulation, unless they are to be addressed in award terms and conditions at the time of award (see § 22.510).

(3) Meets any eligibility criteria that may be specified in the statute authorizing the specific program under which the award is being made (see § 22.210(a)(2)).

(d) Grants officers shall obtain each recipient's Taxpayer Identification Number (TIN, which may be the Social Security Number for an individual and Employer Identification Number for a business or non-profit entity) and notify the recipient that the TIN is being obtained for purposes of collecting and reporting on any delinquent amounts that may arise out of the recipient's relationship with the Government. Obtaining the TIN and so notifying the recipient is a statutory requirement of 31 U.S.C. 7701, as amended by the Debt Collection Improvement Act of 1996 (section 31001(i)(1), Pub. L. 104–134).

[63 FR 12164, Mar. 12, 1998, as amended at 70 FR 49464, Aug. 23, 2005; 72 FR 34988, June 26, 2007; 85 FR 51242, Aug. 19, 2020]

Subpart E—National Policy Matters

§ 22.505 Purpose.

The purpose of this subpart is to supplement other regulations that implement national policy requirements, to the extent that it is necessary to provide additional guidance to DoD grants officers.

[85 FR 51242, Aug. 19, 2020]

§ 22.510 Certifications, representations, and assurances.

(a) *Certifications*—(1) *Policy*. Certifications of compliance with national policy requirements are to be obtained from recipients only for those national policies where a statute, Executive order, or codified regulation specifically states that a certification is required. Other national policy requirements may be addressed by obtaining representations or assurances (see paragraph (b) of this section). Grants officers should utilize methods for obtaining certifications, in accordance with Executive Order 12866 (3 CFR, 1993 Comp., p. 638), that minimize administration and paperwork.

(2) *Procedures*. (i) When necessary, grants officers may obtain individual, written certifications.

(ii) Whenever possible, and to the extent consistent with statute and codified regulation, grants officers should identify the certifications that are required for the particular type of recipient and program, and consolidate them into a single certification provision that cites them by reference.

(A) If a grants officer elects to have proposers incorporate certifications by reference into their proposals, he or she must do so in one of the two following ways. When required by statute or codified regulation, the solicitation must include the full text of the certifications that proposers are to provide by reference. In other cases, the grants officer may include language in the solicitation that informs the proposers where the full text may be found (*e.g.*, in documents or computer network sites that are readily available to the public) and offers to provide it to proposers upon request.

(B) Appendix A to this part provides language that may be used for incorporating by reference the certification on lobbying, which currently is the only certification requirement that commonly applies to DoD grants and agreements. Because that certification is required by law to be submitted at the time of proposal, rather than at the time of award, Appendix A includes language to incorporate the certification by reference into a proposal.

(C) Grants officers may incorporate certifications by reference in award documents when doing so is consistent with statute and codified regulation (that is not the case for the lobbying certification addressed in paragraph (a)(2)(ii)(B) of this section). The provision that a grants officer would use to incorporate certifications in award documents, when consistent with statute and codified regulation, would be similar to the provision in Appendix A to this part, except that it would be modified to state that the recipient is providing the required certifications by signing the award document or by accepting funds under the award.

(b) *Representations and assurances*. Many national policies, either in statute or in regulation, require recipients of grants and cooperative agreements to make representations or provide assurances (rather than certifications) that they are in compliance with the policies. Part 1122 of the DoDGARs (2 CFR part 1122) provides standard wording of general award terms and conditions to address several of the more commonly applicable national policy requirements. These terms and conditions may be used to obtain required assurances and representations for national policy matters covered in part 1122 at the time of award, which is as effective and more efficient and less administratively burdensome than obtaining them at the time of each proposal. If any other assurances or representations must be obtained at the time of proposal, grants officers should use the most efficient method for doing so—*e.g.*, for a program that has a program announcement and applications using the standard application form

(SF–424[5]), the program announcement should include the texts of the required assurances and representations and clearly state that the applicant's electronic signature of the SF–424 will serve to affirm its agreement with each representation or assurance.

[63 FR 12164, Mar. 12, 1998, as amended at 70 FR 49464, Aug. 23, 2005; 85 FR 51242, Aug. 19, 2020]

§ 22.515 Provisions of annual appropriations acts.

An annual appropriations act can include general provisions stating national policy requirements that apply to the use of funds (e.g., obligation through a grant or cooperative agreement) appropriated by the act. Because these requirements are of limited duration (the period during which a given year's appropriations are available for obligation), and because they can vary from year to year and from one agency's appropriations act to another agency's, the grants officer must know the agency(ies) and fiscal year(s) of the appropriations being obligated by a given grant or cooperative agreement, and may need to consult legal counsel if he or she does not know the requirements applicable to those appropriations.

§ 22.520 Campus access for military recruiting and Reserve Officer Training Corps (ROTC).

(a) *Purpose.* (1) The purpose of this section is to implement 10 U.S.C. 983 as it applies to grants. Under that statute, DoD Components are prohibited from providing funds to institutions of higher education that have policies or practices, as described in paragraph (c) of this section, restricting campus access of military recruiters or the Reserve Officer Training Corps (ROTC).

(2) By addressing the effect of 10 U.S.C. 983 on grants and cooperative agreements, this section supplements the DoD's primary implementation of that statute in 32 CFR part 216, ''Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education.'' Part 216 establishes procedures by which the Department of Defense identifies institutions of higher education that have a policy or practice described in paragraph (c) of this section.

(b) *Definition specific to this section.* ''Institution of higher education'' in this section has the meaning given at 32 CFR 216.3, which is different than the meaning given at § 22.105 for other sections of this part.

(c) *Statutory requirement of 10 U.S.C. 983.* No funds made available to the Department of Defense may be provided by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that the institution (or any subelement of that institution) has a policy or practice that either prohibits, or in effect prevents:

(1) The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior ROTC (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution (or any subelement of that institution);

(2) A student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(4) Access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(i) Names, addresses, and telephone listings.

(ii) Date and place of birth, levels of education, academic majors, degrees

[5] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the ''Federal Directory of Contract Administration Services (CAS) Components,'' which may be accessed through the Defense Contract Management Agency homepage at: *http://www.dcma.mil.*

received, and the most recent educational institution enrolled in by the student.

(d) *Policy*—(1) *Applicability to cooperative agreements.* As a matter of DoD policy, the restrictions of 10 U.S.C. 983, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(2) *Deviations.* Grants officers may not deviate from any provision of this section without obtaining the prior approval of the Assistant Secretary of Defense for Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Basic Research, OASD(R&E), 3040 Defense Pentagon, Washington, D.C. 20301–3040.

(e) *Grants officers' responsibility.* (1) A grants officer shall not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified as being ineligible in the Exclusions area of the System for Award Management (SAM Exclusions). The exclusion types in SAM Exclusions broadly indicate the nature of an institution's ineligibility, as well as the effect of the exclusion, and the Additional Comments field may have further details about the exclusion. Note that OMB guidance in 2 CFR 180.425 and 180.430, as implemented by the Department of Defense at 2 CFR part 1125, require a grants officer to check the SAM Exclusions prior to determining that a recipient is qualified to receive an award.

(2) A grants officer shall not consent to a subaward of DoD funds to such an institution, under a grant or cooperative agreement to any recipient, if the subaward requires the grants officer's consent.

(3) A grants officer shall include the following award term in each grant or cooperative agreement with an institution of higher education (note that this requirement does not flow down and that recipients are not required to include the award term in subawards):

''As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

(A) The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution (or any subelement of that institution);

(B) Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(C) The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(D) Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.''

(4) If an institution of higher education refuses to accept the award term in paragraph (e)(3) of this section, the grants officer shall:

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession Policy, Office of the Deputy Under Secretary of Defense for Military Personnel Policy (ODUSD(MPP)), 4000 Defense Pentagon, Washington, DC 20301–4000. This will allow ODUSD(MPP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that

has a policy or practice described in paragraph (c) of this section.

(5) With respect to any pre-existing award to an institution of higher education that currently is listed in SAM Exclusions pursuant to a determination under 32 CFR part 216, a grants officer:

(i) Shall not obligate additional funds available to the DoD for the award. A grants officer therefore must check SAM Exclusions before approving an incremental funding action or other additional funding for any pre-existing award to an institution of higher education. The grants officer may not obligate the additional funds if the cause and treatment code indicates that the reason for an institution's SAM Exclusions listing is a determination under 32 CFR part 216 that institutional policies or practices restrict campus access of military recruiters or ROTC.

(ii) Shall not approve any request for payment submitted by such an institution (including payments for costs already incurred).

(iii) Shall:

(A) Terminate the award unless he or she has a reason to believe, after consulting with the ODUSD(MPP), 4000 Defense Pentagon, Washington, DC 20301–4000), that the institution may be removed from SAM Exclusions in the near term and have its eligibility restored; and

(B) Suspend any award that is not immediately terminated, as well as all payments under it.

(f) *Post-award administration responsibilities of the Office of Naval Research (ONR).* As the DoD office assigned responsibility for performing field administration services for grants and cooperative agreements with institutions of higher education, the ONR shall disseminate the list it receives from the ODUSD(MPP) of institutions of higher education identified pursuant to the procedures of 32 CFR part 216 to:

(1) ONR field administration offices, with instructions to:

(i) Disapprove any payment requests under awards to such institutions for which post-award payment administration was delegated to the ONR; and

(ii) Alert the DoD offices that made the awards to their responsibilities under paragraphs (e)(5)(i) and (e)(5)(iii) of this section.

(2) Awarding offices in DoD Components that may be identified from data in the Defense Assistance Awards Data System (see 32 CFR 21.520 through 21.555) as having awards with such institutions for which post-award payment administration was not delegated to ONR. The ONR is to alert those offices to their responsibilities under paragraph (e)(5) of this section.

[70 FR 49465, Aug. 23, 2005, as amended at 72 FR 34988, June 26, 2007; 85 FR 51243, Aug. 19, 2020]

§ 22.525 Paperwork Reduction Act.

Grants officers shall include appropriate award terms or conditions, if a recipient's activities under an award will be subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3500, *et seq.*):

(a) Generally, the Act only applies to Federal agencies—it requires agencies to obtain clearance from the Office of Management and Budget before collecting information using forms, schedules, questionnaires, or other methods calling either for answers to:

(1) Identical questions from ten or more persons other than agencies, instrumentalities, or employees of the United States.

(2) Questions from agencies, instrumentalities, or employees of the United States which are to be used for statistical compilations of general public interest.

(b) The Act applies to similar collections of information by recipients of grants or cooperative agreements only when:

(1) A recipient collects information at the specific request of the awarding Federal agency; or

(2) The terms and conditions of the award require specific approval by the agency of the information collection or the collection procedures.

§ 22.530 Metric system of measurement.

(a) *Statutory requirement.* The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205) and implemented by Executive Order 12770 (3 CFR, 1991 Comp., p. 343), states that:

(1) The metric system is the preferred measurement system for U.S. trade and commerce.

(2) The metric system of measurement will be used, to the extent economically feasible, in federal agencies' procurements, grants, and other business-related activities.

(3) Metric implementation shall not be required to the extent that such use is likely to cause significant inefficiencies or loss of markets to United States firms.

(b) *Responsibilities.* DoD Components shall ensure that the metric system is used, to the maximum extent practicable, in measurement-sensitive activities supported by programs that use grants and cooperative agreements, and in measurement-sensitive outputs of such programs.

Subpart F—Award

§ 22.600 Purpose.

This subpart sets forth grants officers' responsibilities relating to the award document and other actions at the time of award.

§ 22.605 Grants officers' responsibilities.

At the time of award, the grants officer is responsible for ensuring that:

(a) The award:

(1) Conforms to the award format specified in 2 CFR part 1120.

(2) Includes appropriate general terms and conditions and any program-specific and award-specific terms and conditions needed to specify applicable administrative, national policy, and programmatic requirements. These requirements include:

(i) Federal statutes or Executive orders that apply broadly to Federal or DoD grants and cooperative agreements; and

(ii) Any requirements specific to the program, as prescribed in the program statute (see § 22.210(a)(2)), or specific to the funding, as stated in pertinent Congressional appropriations (see § 22.515).

(b) Information about the award is reported to the Defense Assistance Award Data System (DAADS), in accordance with Subpart E of 32 CFR part 21.

(c)(1) In addition to the copy of the award document provided to the recipient, a copy is forwarded to the office designated to administer the grant or cooperative agreement, and another copy is forwarded to the finance and accounting office designated to make the payments to the recipient.

(2) For any award subject to the electronic funds transfer (EFT) requirement described in § 22.810(b)(2), the grants officer shall include a prominent notification of that fact on the first page of the copies forwarded to the recipient, the administrative grants officer, and the finance and accounting office. On the first page of the copy forwarded to the recipient, the grants officer also shall include a prominent notification that the recipient, to be paid, must submit a Payment Information Form (Standard Form SF–3881[6]) to the responsible DoD payment office, if that payment office does not currently have the information (e.g., bank name and account number) needed to pay the recipient by EFT.

[63 FR 12164, Mar. 12, 1998, as amended at 68 FR 47160, Aug. 7, 2003; 70 FR 49465, Aug. 23, 2005; 85 FR 51243, Aug. 19, 2020]

Subpart G—Field Administration

§ 22.700 Purpose.

This subpart prescribes policies and procedures for administering grants and cooperative agreements. It does so in conjunction with 32 CFR part 34 and subchapter D of 2 CFR chapter XI, which prescribe administrative requirements for particular types of recipients.

[63 FR 12164, Mar. 12, 1998, as amended at 85 FR 51243, Aug. 19, 2020]

§ 22.705 Policy.

(a) DoD policy is to have each recipient deal with a single office, to the maximum extent practicable, for post-award administration of its grants and cooperative agreements. This reduces burdens on recipients that can result when multiple DoD offices separately administer grants and cooperative

[6] See footnote 5 to § 22.510(b).

agreements they award to a given recipient. It also minimizes unnecessary duplication of field administration services.

(b) To further reduce burdens on recipients, the office responsible for performing field administration services for grants and cooperative agreements to a particular recipient shall be, to the maximum extent practicable, the same office that is assigned responsibility for performing field administration services for contracts awarded to that recipient.

(c) Contracting activities and grants officers therefore shall use cross-servicing arrangements whenever practicable and, to the maximum extent possible, delegate responsibility for post-award administration to the cognizant grants administration offices identified in § 22.710.

§ 22.710 Assignment of grants administration offices.

In accordance with the policy stated in § 22.705(b), the DoD offices (referred to in this part as ''grants administration offices'') that are assigned responsibility for performing field administration services for grants and cooperative agreements are (see the ''Federal Directory of Contract Administration Services (CAS) Components''[7] for specific addresses of administration offices):

(a) Regional offices of the Office of Naval Research, for grants and cooperative agreements with:

(1) Institutions of higher education and laboratories affiliated with such institutions, to the extent that such organizations are subject to the cost principles in subpart E of 2 CFR part 200.

(2) Nonprofit organizations that are subject to the cost principles in subpart E of 2 CFR part 200 if their principal business with the Department of Defense is research and development.

(b) Field offices of the Defense Contract Management Agency, for grants and cooperative agreements with all other entities, including:

(1) For-profit organizations.

(2) Nonprofit organizations identified in appendix VIII to 2 CFR part 200 that are subject to for-profit cost principles in 48 CFR part 31.

(3) Nonprofit organizations subject to the cost principles in subpart E of 2 CFR part 200, if their principal business with the Department of Defense is other than research and development.

(4) State and local governments.

[63 FR 12164, Mar. 12, 1998, as amended at 70 FR 49466, Aug. 23, 2005; 72 FR 34989, June 26, 2007; 85 FR 51243, Aug. 19, 2020]

§ 22.715 Grants administration office functions.

The primary responsibility of cognizant grants administration offices shall be to advise and assist grants officers and recipients prior to and after award, and to help ensure that recipients fulfill all requirements in law, regulation, and award terms and conditions. Specific functions include:

(a) Conducting reviews and coordinating reviews, audits, and audit requests. This includes:

(1) Advising grants officers on the extent to which audits by independent auditors (i.e., public accountants or Federal auditors) have provided the information needed to carry out their responsibilities. If a recipient has had an independent audit in accordance with subpart F of 2 CFR part 200, and the audit report disclosed no material weaknesses in the recipient's financial management and other management and control systems, additional preaward or closeout audits usually will not be needed (see §§ 22.420(b) and 22.825(b)).

(2) Performing pre-award surveys, when requested by a grants officer, after providing advice described in paragraph (a)(1) of this section.

(3) Reviewing recipients' systems and compliance with Federal requirements, in coordination with any reviews and compliance audits performed by independent auditors under subpart F of 2 CFR part 200, or in accordance with the terms and conditions of the award. This includes:

(i) Reviewing recipients' financial management, property management, and purchasing systems, to determine the adequacy of such systems.

[7] The ''Federal Directory of Contract Administration Services (CAS) Components'' may be accessed through the Defense Contract Management Agency homepage at *http://www.dcma.mil*.

(ii) Determining that recipients have drug-free workplace programs, as required under 32 CFR part 26.

(iii) Determining that governmental, university and nonprofit recipients have complied with requirements in subpart F of 2 CFR part 200, as implemented at subpart E of 2 CFR part 1128, to have single audits and submit audit reports to the Federal Audit Clearinghouse. If a recipient has not had a required audit, appropriate action must be taken (*e.g.*, contacting the recipient and coordinating with the Office of the Assistant Inspector General for Audit Policy and Oversight (OAIG(P&O)), Office of the Deputy Inspector General for Inspections and Policy, Office of the Inspector General of the Department of Defense (OIG, DoD), 4800 Mark Center Drive, Alexandria, VA 22350–1500).

(4) Issuing timely management decisions, in accordance with DoD Instruction 7640.02, ''Policy for Follow-up on Contract Audit Reports,''[8] on single audit findings referred by the OIG, DoD, under DoD Instruction 7600.10, ''Audits of States, Local Governments, and Non-Profit Organizations.''[9]

(b) Performing property administration services for Government-owned property, and for any property acquired by a recipient, with respect to which the recipient has further obligations to the Government.

(c) Ensuring timely submission of required reports.

(d) Executing administrative closeout procedures.

(e) Establishing recipients' indirect cost rates, where the Department of Defense is the cognizant or oversight Federal agency with the responsibility for doing so.

(f) Performing other administration functions (e.g., receiving recipients' payment requests and transmitting approved payment authorizations to payment offices) as delegated by applicable cross-servicing agreements or letters of delegation.

[63 FR 12164, Mar. 12, 1998, as amended at 70 FR 49466, Aug. 23, 2005; 72 FR 34989, June 26, 2007; 85 FR 51243, Aug. 19, 2020]

[8] Electronic copies may be obtained at the Washington Headquarters Services Internet site *http://www.dtic.mil/whs/directives*. Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[9] See footnote 8 to this section.

Subpart H—Post-Award Administration

§ 22.800 Purpose and relation to other parts.

This subpart sets forth grants officers' and DoD Components' responsibilities for post-award administration, by providing DoD-specific requirements on payments; debt collection; claims, disputes and appeals; and closeout audits.

§ 22.805 Post-award requirements in other parts.

Grants officers responsible for post-award administration of grants and cooperative agreements shall administer such awards in accordance with the following parts of the DoDGARs, as supplemented by this subpart:

(a) *Awards to domestic recipients.* Standard administrative requirements for grants and cooperative agreements with domestic recipients are specified in other parts of the DoDGARs, as follows:

(1) For awards to domestic institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, requirements are specified in subchapter D of 2 CFR chapter XI.

(2) For awards to domestic for-profit organizations, requirements are specified in 32 CFR part 34.

(b) *Awards to foreign recipients.* DoD Components shall use the administrative requirements specified in paragraph (a) of this section, to the maximum extent practicable, for grants and cooperative agreements to foreign recipients.

[63 FR 12164, Mar. 12, 1998, as amended at 85 FR 51244, Aug. 19, 2020]

§ 22.810 Payments.

(a) *Purpose.* This section prescribes policies and grants officers' post-award responsibilities, with respect to payments to recipients of grants and cooperative agreements.

(b) *Policy.* (1) It is Governmentwide policy to minimize the time elapsing between any payment of funds to a recipient and the recipient's disbursement of the funds for program purposes.

(2) It also is a Governmentwide requirement to use electronic funds transfer (EFT) in the payment of any grant unless the recipient has obtained a waiver in accordance with Department of the Treasury regulations at 31 CFR part 208. As a matter of DoD policy, this requirement applies to cooperative agreements, as well as grants. Within the Department of Defense, the Defense Finance and Accounting Service implements this EFT requirement, and grants officers have collateral responsibilities at the time of award, as described in §22.605(c), and in post-award administration, as described in paragraph (c)(3)(iv) of this section.

(3) Expanding on these Governmentwide policies, DoD policy is for DoD Components to use electronic commerce, to the maximum extent practicable, in the portions of the payment process for grants and cooperative agreements for which grants officers are responsible. In cases where recipients submit each payment request to the grants officer, this includes using electronic methods to receive recipients' requests for payment and to transmit authorizations for payment to the DoD payment office. Using electronic methods will improve timeliness and accuracy of payments and reduce administrative burdens associated with paper-based payments.

(c) *Post-award responsibilities.* In cases where the recipient submits each payment request to the grants officer, the administrative grants officer designated to handle payments for a grant or cooperative agreement is responsible for:

(1) [Reserved]

(2) Reviewing each payment request to ensure that:

(i) The request complies with the award terms.

(ii) Available funds are adequate to pay the request.

(iii) The recipient will not have excess cash on hand, based on expenditure patterns.

(3) Maintaining a close working relationship with the personnel in the finance and accounting office responsible for making the payments. A good working relationship is necessary, to ensure timely and accurate handling of financial transactions for grants and cooperative agreements. Administrative grants officers:

(i) Should be generally familiar with policies and procedures for disbursing offices that are contained in Chapter 19 of Volume 10 of the DoD Financial Management Regulation (the FMR, DoD 7000.14-R[10]).

(ii) Shall forward authorizations to the designated payment office expeditiously, so that payments may be made in accordance with the timely payment guidelines in Chapter 19 of Volume 10 of the FMR. Unless alternative arrangements are made with the payment office, authorizations should be forwarded to the payment office at least 3 working days before the end of the period specified in the FMR. The period specified in the FMR is:

(A) No more than seven calendar days after receipt of the recipient's request by the administrative grants officer, whenever electronic commerce is used (i.e., EDI to request and authorize payments and electronic funds transfer (EFT) to make payments).

(B) No more than thirty calendar days after receipt of the recipient's request by the administrative grants officer, when it is not possible to use electronic commerce and paper transactions are used.

(C) No more than seven calendar days after each date specified, when payments are authorized in advance based on a predetermined payment schedule, provided that the payment schedule was received in the disbursing office at least 30 calendar days in advance of the date of the scheduled payment.

(iii) Shall ensure that, for recipients not required to register in the System for Award Management, the recipients' Taxpayer Identification Number (TIN) is included with each payment authorization forwarded to the payment office. This is a statutory requirement of 31 U.S.C. 3325, as amended by the Debt

[10] See footnote 8 to §22.715(a)(4).

Collection Improvement Act of 1996 (section 31001(y), Pub. L. 104–134).

(iv) For each award that is required to be paid by EFT (see § 22.605(c) and (§ 22.810(b)(2)), shall prominently indicate that fact in the payment authorization.

[63 FR 12164, Mar. 12, 1998, as amended at 70 FR 49467, Aug. 23, 2005; 85 FR 51244, Aug. 19, 2020]

§ 22.815 Claims, disputes, and appeals.

(a) *Award terms.* Grants officers shall include in grants and cooperative agreements a term or condition that incorporates the procedures of this section for:

(1) Processing recipient claims and disputes.

(2) Deciding appeals of grants officers' decisions.

(b) *Submission of claims*—(1) *Recipient claims.* If a recipient wishes to submit a claim arising out of or relating to a grant or cooperative agreement, the grants officer shall inform the recipient that the claim must:

(i) Be submitted in writing to the grants officer for decision;

(ii) Specify the nature and basis for the relief requested; and

(iii) Include all data that supports the claim.

(2) *DoD Component claims.* Claims by a DoD Component shall be the subject of a written decision by a grants officer.

(c) *Alternative Dispute Resolution (ADR)*—(1) *Policy.* DoD policy is to try to resolve all issues concerning grants and cooperative agreements by mutual agreement at the grants officer's level. DoD Components therefore are encouraged to use ADR procedures to the maximum extent practicable. ADR procedures are any voluntary means (e.g., mini-trials or mediation) used to resolve issues in controversy without resorting to formal administrative appeals (see paragraph (e) of this section) or to litigation.

(2) *Procedures.* (i) The ADR procedures or techniques to be used may either be agreed upon by the Government and the recipient in advance (e.g., when agreeing on the terms and conditions of the grant or cooperative agreement), or may be agreed upon at the time the parties determine to use ADR procedures.

(ii) If a grants officer and a recipient are not able to resolve an issue through unassisted negotiations, the grants officer shall encourage the recipient to enter into ADR procedures. ADR procedures may be used prior to submission of a recipient's claim or at any time prior to the Grant Appeal Authority's decision on a recipient's appeal (see paragraph (e)(3)(iii) of this section).

(d) *Grants officer decisions.* (1) Within 60 calendar days of receipt of a written claim, the grants officer shall either:

(i) Prepare a written decision, which shall include the reasons for the decision; shall identify all relevant data on which the decision is based; shall identify the cognizant Grant Appeal Authority and give his or her mailing address; and shall be included in the award file; or

(ii) Notify the recipient of a specific date when he or she will render a written decision, if more time is required to do so. The notice shall inform the recipient of the reason for delaying the decision (e.g., the complexity of the claim, a need for more time to complete ADR procedures, or a need for the recipient to provide additional information to support the claim).

(2) The decision of the grants officer shall be final, unless the recipient decides to appeal. If a recipient decides to appeal a grants officer's decision, the grants officer shall encourage the recipient to enter into ADR procedures, as described in paragraph (c) of this section.

(e) *Formal administrative appeals*—(1) *Grant appeal authorities.* Each DoD Component that awards grants or cooperative agreements shall establish one or more Grant Appeal Authorities to decide formal, administrative appeals in accordance with paragraph (e)(3) of this section. Each Grant Appeal Authority shall be either:

(i) An individual at a grade level in the Senior Executive Service, if civilian, or at the rank of Flag or General Officer, if military; or

(ii) A board chaired by such an individual.

(2) *Right of appeal.* A recipient has the right to appeal a grants officer's decision to the Grant Appeal Authority (but note that ADR procedures, as described in paragraph (c) of this section,

are the preferred means for resolving any appeal).

(3) *Appeal procedures*—(i) *Notice of appeal*. A recipient may appeal a decision of the grants officer within 90 calendar days of receiving that decision, by filing a written notice of appeal to the Grant Appeal Authority and to the grants officer. If a recipient elects to use an ADR procedure, the recipient is permitted an additional 60 calendar days to file the written notice of appeal to the Grant Appeal Authority and grants officer.

(ii) *Appeal file*. Within 30 calendar days of receiving the notice of appeal, the grants officer shall forward to the Grant Appeal Authority and the recipient the appeal file, which shall include copies of all documents relevant to the appeal. The recipient may supplement the file with additional documents it deems relevant. Either the grants officer or the recipient may supplement the file with a memorandum in support of its position. The Grant Appeal Authority may request additional information from either the grants officer or the recipient.

(iii) *Decision*. The appeal shall be decided solely on the basis of the written record, unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal. Any fact-finding or hearing shall be conducted using procedures that the Grant Appeal Authority deems appropriate.

(f) *Representation*. A recipient may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding brought pursuant to this section, as long as the representative is not otherwise prohibited by law or regulation from appearing before the DoD Component concerned.

(g) *Non-exclusivity of remedies*. Nothing in this section is intended to limit a recipient's right to any remedy under the law.

§ 22.820 Debt collection.

(a) *Purpose*. This section prescribes procedures for establishing debts owed by recipients of grants and cooperative agreements, and transferring them to payment offices for collection.

(b) *Resolution of indebtedness*. The grants officer shall attempt to resolve by mutual agreement any claim of a recipient's indebtedness to the United States arising out of a grant or cooperative agreement (e.g., by a finding that a recipient was paid funds in excess of the amount to which the recipient was entitled under the terms and conditions of the award).

(c) *Grants officer's decision*. In the absence of such mutual agreement, any claim of a recipient's indebtedness shall be the subject of a grants officer decision, in accordance with § 22.815(b)(2). The grants officer shall prepare and transmit to the recipient a written notice that:

(1) Describes the debt, including the amount, the name and address of the official who determined the debt (e.g., the grants officer under § 22.815(d)), and a copy of that determination.

(2) Informs the recipient that:

(i) Within 30 calendar days of the grants officer's decision, the recipient shall either pay the amount owed to the grants officer (at the address that was provided pursuant to paragraph (c)(1) of this section) or inform the grants officer of the recipient's intention to appeal the decision.

(ii) If the recipient elects not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

(iii) If the recipient elects to appeal the grants officer's decision the recipient has 90 calendar days, or 150 calendar days if ADR procedures are used, after receipt of the grants officer's decision to file the appeal, in accordance with § 22.815(e)(3)(i).

(iv) The debt will bear interest, and may include penalties and other administrative costs, in accordance with the debt collection provisions in Chapters 29, 31, and 32 of Volume 5 and Chapters 18 and 19 of Volume 10 of the DoD Financial Management Regulation (DoD 7000.14–R). No interest will be charged if the recipient pays the amount owed within 30 calendar days of the grants officer's decision. Interest will be charged for the entire period from the date the decision was mailed, if the recipient pays the amount owed after 30 calendar days.

(d) *Follow-up.* Depending upon the response from the recipient, the grants officer shall proceed as follows:

(1) If the recipient pays the amount owed within 30 calendar days to the grants officer, the grants officer shall forward the payment to the responsible payment office.

(2) If within 30 calendar days the recipient elects to appeal the grants officer's decision, further action to collect the debt is deferred, pending the outcome of the appeal. If the final result of the appeal is a determination that the recipient owes a debt to the Federal Government, the grants officer shall send a demand letter to the recipient and transfer responsibility for further debt collection to a payment office, as described in paragraph (d)(3) of this section.

(3) If within 30 calendar days the recipient has neither paid the amount due nor provided notice of intent to file an appeal of the grants officer's decision, the grants officer shall send a demand letter to the recipient, with a copy to the payment office that will be responsible for collecting the delinquent debt. The payment office will be responsible for any further debt collection activity, including issuance of additional demand letters (see Chapter 19 of volume 10 of the DoD Financial Management Regulation, DoD 7000.14–R). The grants officer's demand letter shall:

(i) Describe the debt, including the amount, the name and address of the official that determined the debt (e.g., the grants officer under § 22.815(d)), and a copy of that determination.

(ii) Notify the recipient that the debt is a delinquent debt that bears interest from the date of the grants officer's decision, and that penalties and other administrative costs may be assessed.

(iii) Identify the payment office that is responsible for the collection of the debt, and notify the recipient that it may submit a proposal to that payment office to defer collection, if immediate payment is not practicable.

(e) *Administrative offset.* In carrying out the responsibility for collecting delinquent debts, a disbursing officer may need to consult grants officers, to determine whether administrative offset against payments to a recipient owing a delinquent debt would interfere with execution of projects being carried out under grants or cooperative agreements. Disbursing officers may also ask grants officers whether it is feasible to convert payment methods under grants or cooperative agreements from advance payments to reimbursements, to facilitate use of administrative offset. Grants officers therefore should be familiar with guidelines for disbursing officers, in Chapter 19 of Volume 10 of the Financial Management Regulation (DoD 7000.14–R), concerning withholding and administrative offset to recover delinquent debts.

§ 22.825 Closeout audits.

(a) *Purpose.* This section establishes DoD policy for obtaining audits at closeout of individual grants and cooperative agreements.

(b) *Policy.* Grants officers shall use their judgment on a case-by-case basis, in deciding whether to obtain an audit prior to closing out a grant or cooperative agreement (i.e., there is no specific DoD requirement to obtain an audit prior to doing so). Factors to be considered include:

(1) The amount of the award.

(2) DoD's past experience with the recipient, including the presence or lack of findings of material deficiencies in recent:

(i) Audits of individual awards; or

(ii) Systems-wide financial audits and audits of the compliance of the recipient's systems with Federal requirements, under OMB guidance in subpart F of 2 CFR part 200, where that guidance is applicable. (See § 22.715(a)(1)).

[63 FR 12164, Mar. 12, 1998, as amended at 85 FR 51244, Aug. 19, 2020]

APPENDIX A TO PART 22—PROPOSAL PROVISION FOR REQUIRED CERTIFICATION

PROVISION IN PROPOSAL (or, suitably modified, in award)	USED FOR			SOURCE OF REQUIREMENT
	Type of Award	Type of Recipient	Specific Situation	
By signing and submitting this proposal, the recipient is providing the certification at Appendix A to 32 CFR Part 28 regarding lobbying.	Any financial assistance [see 32 CFR 28.105(b) and definitions of "Federal grant," "Federal cooperative agreement," and "Federal loan" in 32 CFR 28.105(c), (d), and (e)]	All but Indian tribe or tribal organization with respect to expenditures specifically permitted by other Federal law [see 32 CFR 28.105(l)]	Any	32 CFR 28, which implements 31 U.S.C. 1352

[70 FR 49468, Aug. 23, 2005]