

**Federal Demonstration Partnership  
Terms and Conditions Standing Committee  
Quarterly Meeting – Irvine, California  
January 9-10, 2003**

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**Attendees:**

1. Jean Feldman, NSF, Co-Chair, Terms and Conditions Standing Committee
2. Ann Powell, University of New Mexico
3. Paul Brundage, NASA
4. Diane Barrett, University of Wisconsin
5. Joanne Altieri, Kansas University
6. Jim Becker, University of Indiana
7. Hall Gollos, University of Pittsburgh Medical Center
8. Lee Boozer, University of Hawaii
9. Wayne Kuentler, University of Texas
10. Pamela Wood, New Mexico State University
11. Brenda Truesdail, Cornell University
12. Trudy Wood, DOE
13. Suzanne Polmer, Yale University
14. Marcia Hahn, NIH
15. Mike Ludwig, Purdue University
16. Steve Martin, University of Indiana
17. Erica Kropp, University of Maryland
18. Renee de Guehery, Duke University
19. Norm Braaten, University of Nebraska, Lincoln
20. Deb Golden-Eppelein, University of Oregon Health & Science University
21. Sue Koger, University of Miami
22. Reata Busby, University of North Texas
23. Kathie Hall, Emory University
24. David Winters, ONR
25. Karen Seward, ONR
26. Eileen Powers, ONR
27. Barbara Lewis, USC
28. Harry Haraldsen, AFOSR
29. Ann Holmes, University of Maryland
30. Donna Helm, Johns Hopkins University
31. Mary Schmiedel, Georgetown University
32. Carol Langguth, CSREES/USDA
33. Samuela Evans, University of California System
34. Marianne Woods, University of Texas
35. Holly Sommers, Emory University
36. Caitlin Deck, University of California, Santa Cruz

37. Theresa Rainer, University of Chicago
38. Carolyn Martinson, San Diego State University
39. Howard Hanson, University of Notre Dame
40. Susan Hill, Army Research Office
41. Kathryn McManus, Army Research Office
42. Judy Dillon, Duke University

The following agenda items were discussed at the meeting:

### **Item 1: Terms and Conditions Maintenance by Agencies**

Jean Feldman advised the committee that when FDP Phase IV was implemented, the committee had not updated the Prior Approval Matrix (dated July, 2000) that is available on the NSF website. With issuance of new Agency Specific Requirements for Phase IV, the agencies had not assessed this prior approval matrix for any necessary changes.

**Action Item:** Each agency was requested to review the prior approval matrix on the NSF website and provide any changes to Jean Feldman by 2/15/03.

In addition, since original issuance of Appendix B to the FDP Terms and Conditions in July 2000, a number of additional statutes have been issued that are not reflected in the document.

**Action Item:** Each agency was requested to review Appendix B to determine if additional statutes or regulations should be added. This input also is due by February 15, 2003.

### **Item 2: NIH award subject to Part II, Subpart B of the NIH Grants Policy Statement**

Issue: After NIH extended “expanded authorities” to additional grant instruments, it also extended FDP terms and conditions to all grant mechanisms, effective October 1, 2002. However, Article 11 of the NIH Agency Specific Requirements states:

*Part II, Subpart B of the NIHGPS (rev. 3/01) includes terms and conditions that vary from standard terms and conditions because of the type of grant, grantee, or grant-supported activity. These terms and conditions may apply in addition to or in lieu of, those in the FDP Terms and Conditions. Each section of Part II, Subpart B of the NIHGPS specifies how the coverage relates to the NIHGPS (rev. 3/01), and consequently to the FDP Terms and Conditions. The Office of Policy for Extramural Research*

*Administration (OPERA) is responsible for developing and maintaining this document. Interim changes will be published in the NIH Guide. Each change will be described, including its applicability and effective date.*

Should the committee attempt to develop a matrix for the relevant NIH grants that are subject to Part II, Subpart B of NIHGPS (rev. 3/01)?

*NIH Response: Subpart B of the NIHGPS covers construction, National Research Service Awards, modular, and conference grants; consortium agreements and research patient care activities, as well as grants to for-profit entities and foreign entities. Each topic has a separate section that follows a standard format. If the topic has a cost issue that differs from the NIHGPS/FDP terms it is included in the Subpart B. NIH could amend the Agency-Specific Requirements to link the ASRs with the appropriate section of the NIHGPS, and include a second link to the section on allowability of costs, if applicable.*

*Action Item: The Standing Committee accepted this response and NIH agreed to update the NIH agency specific requirements to contain the appropriate links by 2/15/03.*

### **Item 3: Carryforward of Unobligated Balances by NIH is permitted on an award-by-award basis, rather than a general condition**

Issue: Should this be the subject of an information item to the FDP membership?

*NIH Response: Item #2 asks if the FDP membership should be informed that carryover of unobligated balances is permitted on an award-by-award basis. Sounds like a good idea given that there are activities (e.g. clinical trials, regardless of mechanism) supported by NIH grants, that require prior approval of the NIH office.*

*Action Item: NIH agreed to come back to the FDP with an information item. No due date for this action item was specified.*

### **Item 4: NASA Security Clause in Agency-Specific Requirements**

Article 16. Security requirements. Reference 14 CFR § 1260.35 Investigative requirements (February 2000)

(a) As requested by NASA, the recipient of each grant, and any other individuals to perform on the grant, agree to provide sufficient personal/biographical information necessary to conduct an investigation

of the individual's background. The purpose of the investigation is to allow access to a NASA Center, or to NASA information, for performance of this grant. The recipient acknowledges that NASA reserves the right to perform security checks, and to deny or restrict access to a NASA Center, facility, computer system, or technical information as appropriate.

**Issue:** The NASA security clause as written, says NASA may do background checks - and the university must provide information to allow this - on anyone who visits a NASA center or has access to NASA info. When asked about this, NASA has stated repeatedly that this is really for those cases when work is being done at a NASA center. However, that is not what it says and it does give NASA the right to ask for info from recipients to do checks on those with "access" ... not defined. Where this kind of clearance is needed, it should be a special provision in the award and not applied across-the-board to all NASA grants to FDP institutions. NASA responded that this had been in effect for several years but was new to FDP grants. FDP would like the language clarified to recognize that it applies only to NASA sites.

**Action Item:** NASA agreed to take the issue back for further discussion and NASA will formally respond by February 15, 2003.

#### **Item 5: Acknowledgments and Disclaimers**

Issue: Article 51, Section (a)

(a) **Publications.** The recipient is expected to publish or otherwise make publicly available the results of the work conducted under the award. An acknowledgment of awarding agency support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

(1) The acknowledgment will be: "This material is based upon work supported by the [name of awarding agency(ies) under Award No. [recipient should enter the awarding agency(ies) award number(s)]."

(2) The disclaimer will be: "Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the [name(s) of awarding agency(ies)]."

**Issue:** Should the disclaimer requirement exempt scientific articles or papers published in scientific journals, as the 1997 General Terms and Conditions did?

**Action Item:** After discussion by the Committee, it was agreed that this issue most directly impacted the faculty membership of the FDP and that the faculty should be polled for their perspective via the faculty listserv prior to proceeding further.

**Item 6: Needed A-110 Changes in Documentation Requirement for Cost and Price Analysis**

**Issue:** Despite many assurances, OMB has not yet modified A-110 to clarify that the requirement to perform and document cost and price analysis applies only to purchases above the simplified acquisition threshold. The Terms and Conditions Committee recommends the following revision to A-110:

.....45 Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action [ADD: *in excess of the Simplified Acquisition Threshold*].

(We would also need remind OMB to change the reference to the Small Purchase Threshold to Simplified Acquisition Threshold, wherever it appears in A-110.)

**Item 7: Needed A-110 Changes in Cost Sharing Documentation**

**Issue:** OMB has also not yet modified A-110 to clarify that cost sharing needs documentation. The Committee recommends the following change to A-110:

New Section: \_\_\_\_\_.23(i) The documentation requirements in a. through h. apply only to (1) recipient or third party contributions identified in the proposal budget or budget narrative and (2) to any other cost sharing stipulated in the award.

Discussion: Items 6 and 7 were deferred given the ongoing activity by the PL 106-107 Preaward Working Group in this area. When drafts are provided for consideration, the Terms and Conditions Standing Committee should consider whether formal submission of these comments is appropriate.

No further action on these items is required at this time.

### **Item 8: Prior Approval Matrix**

Issue: EPA prior approval requirement for foreign travel. This was a requirement for EPA in the 2000 version, also, but was overlooked in the Prior Approval Matrix. A new matrix showing this requirement was posted. EPA also appears to have dropped the prior approval for subawarding a significant portion of the project.

**Action Item:** As stated in Item 1, EPA will be requested to review the Prior Approval Matrix for accuracy and provide any necessary changes by February 15, 2003.

### **Item 9: USDA (Food Nutrition Service) Alternative Requirements for Effort Reporting**

Issue: The following information was distributed at a training seminar held by FNS:

"Provisions and requirements under OMB circulars represent the minimum fiscal criteria for FSNEP funding. In many cases, FNS policies or Food Stamp Program regulations may be more stringent, but must be adhered to in order to receiving funding."

"Time and Effort Reporting: FNS policy requires that staff committing 100% of their time to FSNE activities retain semi-annual certification stating such, signed by the appropriate supervisor. Staff dedicating less than 100% time, including University faculty, must maintain weekly time records for FSNE activities and must have documentation to account for 100% of their time regardless of whether or not the other activities are charged to FSNE. Exceptions to the weekly time record requirement are: -

Plan Confirmation: A systematic method of tracking time approved by the U.S. Dept. of Health & Human Services for a given academic period. To qualify for this alternative, you must submit a document signed by DHHS indicating that you are operating under Plan Confirmation and that includes FSNE/FNS programs in the list of covered programs. (This is different from your Indirect Cost Rate approval.) - Federally approved Random-Moment Time Studies (valid, statistically significant sample)

- alternative methodology which MUST be approved by the FNS Regional Office and only used for projects/staff who cannot feasibly maintain weekly records (minimum req't = rolling, 1 month/quarter)"

Questions:

Is the FNS supposed to be using FDP terms and conditions? If so, would this reporting requirement be nullified? Is HHS issuing the letters necessary for the alternative?

USDA Response: CSREES indicated that while efforts continue within USDA to solicit participation from other USDA subordinate organizations, at the present time only CSREES is participating in the FDP, and, only CSREES awards will reflect the FDP Terms and Conditions. No further action is necessary on this issue at this time.

#### **Item 10: NASA grants covered by FDP Terms and Conditions**

**Issue:** Is the NASA agency-specific article stating the grants covered by FDP descriptive of actual practice? Should the agency-specific be changed?

NASA states in its agency-specifics that the FDP Terms apply to "research grants" but some organizations report that they are getting FDP terms on training and public service grants.

**Action Item:** NASA concurred that limitation of the FDP Terms and Conditions to research awards only was inappropriate and agreed to consider a change to its agency specific requirements. A response regarding this issue is due by February 15, 2003

#### **Item 11: Article 17 of the NASA agency-specific requirements. Buy American Encouragement**

**Issue:** NASA added this article in its October 2002 terms and conditions. This article presents confusing direction with regard to FDP terms and property standards for NASA. First, the Buy America Act is in the Appendix B Matrix, making it unnecessary for NASA to repeat it in its Ts and Cs. The NASA article goes on to incorporate property standard sections of the NASA Grants and Cooperative Agreement Handbook. Property standards are covered in the FDP implementation of OMB A-110, Section 34. By adding this article to its terms and conditions, NASA has incorporated OMB A-110 section 34, as reiterated in NASA Grant Handbook sections 1260.131 through 1260.137. The FDP already implements A-110 \_\_\_\_34 in its General Terms and Conditions. Its agency-specific incorporation of A-110 seems to give all FDP institutions a different set of property standards to review just for NASA grants which are not the same as those set forth in FDP general terms and conditions.

Questions: Does Article 17 add something specifically required by NASA that isn't already addressed elsewhere, and if so, is this NASA's intention?

**Action Item:** NASA agreed to take the issue back for further consideration and possible revision of its agency specific requirements. A response is due by February 15, 2003.