

FEDERAL GRANTS NEWS

for Colleges and Universities

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Your update has been mailed. Watch for its arrival!

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U.S. Supreme Court Upholds Solomon Amendment; Government May Deny Funding

As *Federal Grants News* went to press last month, the U. S. Supreme Court unanimously ruled that the federal government may withhold federal funds from colleges and universities if they refuse to allow military recruiters on campus or restrict recruiters' access. The Forum for Academic and Institutional Rights (FAIR), a coalition of law schools, challenged the policy in 2003 on the basis of the First Amendment.

The National Defense Authorization Act of 1995 (Pub. L. 103-337) was the first of a series of statutes to require that no federal funds be made available to an institution if the secretary of Defense determines that the institution has a policy or practice that prohibits or essentially prohibits the department from obtaining entry to campus, access to students on campus, or access to directory information on students for military recruiting purposes. The provision (10 U.S.C. § 983), referred to as the Solomon amendment, also denies funding to institutions that refuse to establish and operate a ROTC program. As originally enacted, federal funding included student aid, but that requirement was removed in 1999.

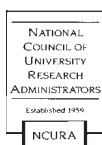
The reach of the Solomon amendment goes beyond the Department of Defense. In 1996, legislation broadened the scope to include the Departments of Education, Labor, and Health and Human Services, and related agencies, such as the Corporation for Public Broadcasting and the United States Institute of Peace. The law now includes the Department of Homeland Security as well.

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The Sunshine Project Resurfaces; Requests Institutional Biosafety Minutes Again

The Sunshine Project has turned its attention once again to the college and university research community, requesting minutes of institutional biosafety committee (IBC) meetings, just as it did in January 2004. The Sunshine Project is an international nonprofit organization with U.S. headquarters in Austin, Texas. Its mission is to work against the hostile use of biotechnology and to ensure that international treaties effectively prevent development and use of biological weapons.

The Sunshine Project made headlines in the college and university research community in late 2004 with publication of its report, *Mandate for Failure: The State of Institutional Biosafety Committees in an Age of Biological Weapons Research*. The report contained the results of the Sunshine Project's survey of IBCs and their compliance with the National Institutes of Health (NIH) guidelines for research involving recombinant DNA (rDNA) molecules. (NIH is charged with oversight of rDNA activities for the entire government and government-funded projects.) The survey not only requested minutes of the two most recent IBC meetings at the institution, but also asked each IBC to indicate whether the institution handled bioweapons agents. For many institutions, responding to this request was difficult because it raised concerns about the safety and security of their research activities, particularly in the select agent categories.



The report widely condemned the research community for failing to make their IBC minutes available. It implied that this failure also meant that research institutions were not conducting the review of rDNA research in an open environment. Even those institutions that did provide IBC minutes were criticized because of redactions in the minutes. Redactions are permitted under the *NIH Guidelines*.

More Minutes and a Question

In early March 2006 the Sunshine Project again requested the minutes of IBC meetings held since May 2003 from the 445 IBCs registered with NIH. More than half are listed as a university IBC. The request also contained the following question:

The (institution) has/has not implemented written policies for the identification, review, and oversight of research involving any of the seven categories of experiments of concern identified by the National Academies of Science in its report *Biotechnology in an Age of Terrorism* (the 'Fink Committee' report).

NIH has not issued specific requirements for written policies, and each institution will need to make their own decision whether to answer this question.

The NIH Office of Biotechnology Activities issued guidance in May 2004, which clarified the NIH policy on public access to IBC minutes (www4.od.nih.gov/oba/IBC/IBC_Minute_Q_A.pdf). It cites section IV-B-2-a-(7) of the *NIH Guidelines*, which requires the institution to make IBC meeting minutes available to the public. However, the guidance also permits institutions to redact private and proprietary information "judiciously and consistently" in all requested documents. Examples of redaction include trade secret and other confidential commercial information, home telephone numbers and addresses of IBC members, and specific information that would directly compromise institutional or national security.

The Sunshine Project has requested replies by April 28, 2006, and warns on its Web site that, "it will lodge a formal complaint against any IBC that fails to reply to the survey." The project also intends to post responses to its survey on an institution-by-institution basis on its Web site, www.sunshine-project.org. ♦

OLAW Issues Guidance on IACUC Telecom Meetings

NIH's Office of Laboratory Animal Welfare (OLAW) has issued guidance to awardees addressing the use of telecommunications for a convened meeting of the Institutional Animal Care and Use Committee (IACUC).

The PHS Policy on Human Care and Use of Laboratory Animals requires that full IACUC committee approval of a proposed research project or suspension of an activity can occur only after review at a convened meeting with a quorum present and voting in the majority. While traditional meetings with IACUC members physically present are optimal, the guidance said, some forms of telecommunications can facilitate the conduct of business, reduce regulatory burden, and enhance flexibility without compromising the quality of deliberation and interaction.

According to the guidance, telephone or videoconferencing is acceptable for the conduct of an IACUC meeting requiring a quorum as long as certain criteria are met. Those criteria include providing members notice of the meeting, providing documents to all members in advance of the meeting, and ensuring that members have the technology to participate fully. This policy and the criteria are consistent with the policies of the human participant regulatory groups of the Office of Human Research Protections and the Food and Drug Administration.

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OLAW also said that the Department of Agriculture, as part of its animal welfare regulations, will publish the same guidance in its *Research Facility Inspection Guide*.

The full text of the guidance (*NIH Guide*, March 24 2006) can be found at <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-06-052.html>. ✧

Department of Justice Expands Grants Management System

Last year the Department of Justice deployed its electronic Grants Management System (GMS). The system was designed to be a series of modules including proposal submission, award administration, and a financial and payment management system. The proposal section of the system was deployed, and applications have been received electronically through GMS.

In late March, the Office of Justice Programs announced the completion of an additional module that will process Grant Adjustment Notices (GANs). A GAN is used for any programmatic, administrative, or financial change associated with a particular award. Through the new module, grantees can initiate their requests for award modifications, such as a no-cost extension or a change in programmatic activities.

The new GAN module will be available for use in early April. Once it is activated, its use will be mandatory. Further information about the GMS can be found at <http://ojjdp.ncjrs.org/funding/gms.html>. ✧

NSF Eliminates Ceiling on Consultant Payment

The National Science Foundation (NSF) has announced the elimination of the statutory limitation on payments to consultants under NSF awards. As anticipated in last month's issue of this newsletter, the announcement stated that the costs of consultants "are allowable when reasonable in relation to the services rendered" and that payments should be comparable to the norm paid to consultants in a particular field or discipline.

In conjunction with the announcement, NSF revised its Grant General Conditions (GC-1), effective March 15, 2006, to recognize the change. The text of the GC-1 can be found at www.nsf.gov/awards/managing/general_conditions.jsp.

NSF has cautioned the community that prior year funds remain subject to the consultant pay limitation. This means that any continuing awards issued before March 15, 2006, that do not contain the revised GC-1

remain subject to the consultant pay limitation, which cannot exceed the daily equivalent of the then-current maximum rate paid to an Executive Schedule Level IV federal employee. For FY 05 funds, that maximum daily rate is \$537. NSF also has announced that it will not amend awards to provide additional funds for the increase in consultant pay allowability.

NSF has developed a set of FAQs to answer anticipated questions about the revised policy. It can be found at www.nsf.gov/bfa/dias/policy/docs/consultantfaqs06.pdf. ✧

Grants.gov Is in Your Future: More Tips for Getting Ready

Getting ready for Grants.gov is a process that involves incremental steps and continued evaluation. The March issue of *FGN* outlined several strategies for ensuring that your institution is prepared for proposal submissions through Grants.gov. The tips in this issue focus on training and education.

Educate and train the central Office of Sponsored Programs staff first. It may be beneficial to appoint a lead individual to provide training to central staff and to coordinate the training for the university community. In addition to the basics of the SF-424 R&R application form, central offices should consider what training will be required outside of the form itself. For instance, an institution's technology solutions may involve instruction on downloading/uploading the proposal application to a shared or central server, access to an institutional Citrix server or use of Adobe software. For NIH applicants, the conversion to person months from percentage of effort in the budget and current and pending support statements may be problematic at first. All these solutions will require explanation and instruction. Central programs staff should have familiarity with all the processes that will be required from faculty, departmental administrators, in addition to central staff.

Establish and provide training for the university community. Depending upon the size of the institution's sponsored programs portfolio and the number of faculty, each institution's needs will differ with respect to education. For many faculty and department administrators, just the SF-424 R&R will be foreign; for others, the entire process of submitting a competing application electronically will be a novel experience.

Grants.gov and the funding agencies that have transitioned to Grants.gov have some training tools available on their Web sites (see, for instance,

www.grants.gov/CompleteApplication#demo, <http://era.nih.gov/ElectronicReceipt/training.htm>).

Institutions may choose to provide more robust training, such as providing hands-on sessions in a computer lab utilizing a “dummy” funding opportunity. While this will not allow for the experience of actually submitting to the Grants.gov portal, it will allow prospective applicants to use the new forms and experience uploading various PDF attachments. If instruction is needed for various technology or e-mail solutions, it should be included in the training. These instructions can encompass even simple tasks, such as the naming of PDF attachments, when files should be deleted from local drives, and naming conventions for uploading and downloading proposal files.

Provide different venues for training. Not all institutions will be able to provide hands-on demonstrations and training in computer labs. Those that have these resources typically will have to schedule these rooms early to accommodate for classes. But there are other venues for disseminating information, such as providing on-site training at department faculty and administrator meetings. Some institutions have designated a Grants.gov contact within each research-intensive department and have provided instruction to these individuals for a “train-the-trainer” approach. Central offices that do not have the resources to provide all the training may find this approach the optimal one.

Look to other institutions for training tools. Many institutions that have experience using Grants.gov have already developed interactive or PowerPoint presentations. At least one institution, the University of Maryland, has tailored the Grants.gov implementation manual to its own internal processes and procedures, thus providing “one-stop shopping” in terms of written instruction to the research community. Its adapted manual is posted at www.umresearch.umd.edu/ORAA/era/grantsgov_docs/ggovtrain.pdf. ♦

FY 06 Grants.gov Goals Are Set

The Program Management Office of Grants.gov has outlined its goals for 2006: posting 100 percent of discretionary funding opportunities on FIND, posting 75 percent of discretionary opportunities on APPLY, receiving 45,000 electronic submissions, improving customer satisfaction, freshening the Grants.gov site to improve user experience, and improving the Contact Center Support. The staff has noted that they have experienced the most usage to date of Grants.gov for applications; in one week alone over 3,750 applications were received with 1,250 submitted in a single day (presumably the December NIH STTR/SBIR programs). ♦

Access to, Retention of Research Data

Access to and retention of research data is a multifaceted topic and not always easily understood. To assist the research community in this complex area, the Council on Governmental Relations (COGR) has issued a guide, *Access to and Retention of Research Data: Rights and Responsibilities*. The comprehensive guide examines the broad context of data stewardship, offers various case studies and scenarios to assist institutions in recognizing policies they may need to develop, and explains how to define responsibilities with respect to access to and retention of data. The guide is posted at <http://206.151.87.67/docs/DataRetentionIntroduction.htm>.

Solomon Amendment Upheld

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The original provision and implementing regulations applied to any “segment” of an institution receiving funds from the applicable agencies, but not to the institution as a whole. Many law schools took exception to the requirements primarily because of the military’s “Don’t Ask, Don’t Tell” policy, and many institutions allowed their law schools to ignore the statute because federal funding was not an issue for the law schools.

Then the National Defense Authorization Act of 2000 expanded the funding prohibition to the entire institution, even if only a segment of the institution prohibited or prevented military recruiting access or ROTC. This interpretation prompted several legal challenges to the law, some of which are still pending, awaiting the outcome of the FAIR suit.

The FAIR argued that colleges and universities have the First Amendment right to exclude recruiters whose hiring practices conflict with their own antidiscrimination policies. It lost its case in a U.S. district court but on appeal, the Third Circuit Court of Appeals ruled the Solomon amendment unconstitutional. But the Supreme Court disagreed. “The Solomon Amendment neither limits what law schools may say nor requires them to say anything. Law schools remain free under the statute to express whatever views they may have on the military’s congressionally mandated employment policy, all the while retaining eligibility for federal funds.” The court’s decision, *Rumsfeld vs. Forum for Academic and Institutional Rights*, Docket No. 04-1152 (March 6, 2006), is posted at www.supremecourtus.gov. ♦