

tunity for the submission of the written comments referred to in section 287a(g) of this title. (July 1, 1944, ch. 373, title IV, § 481, as added Pub. L. 99-158, § 2, Nov. 20, 1985, 99 Stat. 866; amended Pub. L. 103-43, title XV, § 1501(2)(C), (D), June 10, 1993, 107 Stat. 172, 173.)

AMENDMENTS

1993—Pub. L. 103-43 substituted “the Center” for “the Division of Research Resources” and “the Center” for “the Division” wherever appearing.

§ 287a-2. Biomedical and behavioral research facilities

(a) Modernization and construction of facilities

(1) In general

The Director of NIH, acting through the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases, may make grants or contracts to public and nonprofit private entities to expand, remodel, renovate, or alter existing research facilities or construct new research facilities, subject to the provisions of this section.

(2) Construction and cost of construction

For purposes of this section, the terms “construction” and “cost of construction” include the construction of new buildings and the expansion, renovation, remodeling, and alteration of existing buildings, including architects’ fees, but do not include the cost of acquisition of land or off-site improvements.

(b) Scientific and technical review boards for merit-based review of proposals

(1) In general: approval as precondition to grants

(A) Establishment

There is established within the Center a Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities (referred to in this section as the “Board”).

(B) Requirement

The Director of the Center may approve an application for a grant under subsection (a) of this section only if the Board has under paragraph (2) recommended the application for approval.

(2) Duties

(A) Advice

The Board shall provide advice to the Director of the Center and the advisory council established under section 287a of this title (in this section referred to as the “Advisory Council”) in carrying out this section.

(B) Determination of merit

In carrying out subparagraph (A), the Board shall make a determination of the merit of each application submitted for a grant under subsection (a) of this section, after consideration of the requirements established in subsection (c) of this section, and shall report the results of the determination to the Director of the Center and the Advisory Council. Such determinations shall be conducted in a manner consistent

with procedures established under section 289a of this title.

(C) Amount

In carrying out subparagraph (A), the Board shall, in the case of applications recommended for approval, make recommendations to the Director and the Advisory Council on the amount that should be provided under the grant.

(D) Annual report

In carrying out subparagraph (A), the Board shall prepare an annual report for the Director of the Center and the Advisory Council describing the activities of the Board in the fiscal year for which the report is made. Each such report shall be available to the public, and shall—

(i) summarize and analyze expenditures made under this section;

(ii) provide a summary of the types, numbers, and amounts of applications that were recommended for grants under subsection (a) of this section but that were not approved by the Director of the Center; and

(iii) contain the recommendations of the Board for any changes in the administration of this section.

(3) Membership

(A) In general

Subject to subparagraph (B), the Board shall be composed of 15 members to be appointed by the Director of the Center, and such ad-hoc or temporary members as the Director of the Center determines to be appropriate. All members of the Board, including temporary and ad-hoc members, shall be voting members.

(B) Limitation

Not more than three individuals who are officers or employees of the Federal Government may serve as members of the Board.

(4) Certain requirements regarding membership

In selecting individuals for membership on the Board, the Director of the Center shall ensure that the members are individuals who, by virtue of their training or experience, are eminently qualified to perform peer review functions. In selecting such individuals for such membership, the Director of the Center shall ensure that the members of the Board collectively—

(A) are experienced in the planning, construction, financing, and administration of entities that conduct biomedical or behavioral research sciences;

(B) are knowledgeable in making determinations of the need of entities for biomedical or behavioral research facilities, including such facilities for the dentistry, nursing, pharmacy, and allied health professions;

(C) are knowledgeable in evaluating the relative priorities for applications for grants under subsection (a) of this section in view of the overall research needs of the United States; and

(D) are experienced with emerging centers of excellence, as described in subsection (c)(2) of this section.

(5) Certain authorities

(A) Workshops and conferences

In carrying out paragraph (2), the Board may convene workshops and conferences, and collect data as the Board considers appropriate.

(B) Subcommittees

In carrying out paragraph (2), the Board may establish subcommittees within the Board. Such subcommittees may hold meetings as determined necessary to enable the subcommittee to carry out its duties.

(6) Terms

(A) In general

Except as provided in subparagraph (B), each appointed member of the Board shall hold office for a term of 4 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of the term of the predecessor.

(B) Staggered terms

Members appointed to the Board shall serve staggered terms as specified by the Director of the Center when making the appointments.

(C) Reappointment

No member of the Board shall be eligible for reappointment to the Board until 1 year has elapsed after the end of the most recent term of the member.

(7) Compensation

Members of the Board who are not officers or employees of the United States shall receive for each day the members are engaged in the performance of the functions of the Board compensation at the same rate received by members of other national advisory councils established under this subchapter.

(c) Requirements for grants

(1) In general

The Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases may make a grant under subsection (a) of this section only if the applicant for the grant meets the following conditions:

(A) The applicant is determined by such Director to be competent to engage in the type of research for which the proposed facility is to be constructed.

(B) The applicant provides assurances satisfactory to the Director that—

(i) for not less than 20 years after completion of the construction involved, the facility will be used for the purposes of the research for which it is to be constructed;

(ii) sufficient funds will be available to meet the non-Federal share of the cost of constructing the facility;

(iii) sufficient funds will be available, when construction is completed, for the ef-

fective use of the facility for the research for which it is being constructed; and

(iv) the proposed construction will expand the applicant's capacity for research, or is necessary to improve or maintain the quality of the applicant's research.

(C) The applicant meets reasonable qualifications established by the Director with respect to—

(i) the relative scientific and technical merit of the applications, and the relative effectiveness of the proposed facilities, in expanding the capacity for biomedical or behavioral research and in improving the quality of such research;

(ii) the quality of the research or training, or both, to be carried out in the facilities involved;

(iii) the congruence of the research activities to be carried out within the facility with the research and investigator manpower needs of the United States; and

(iv) the age and condition of existing research facilities.

(D) The applicant has demonstrated a commitment to enhancing and expanding the research productivity of the applicant.

(2) Institutions of emerging excellence

From the amount appropriated to carry out this section for a fiscal year up to \$50,000,000, the Director of the Center shall make available 25 percent of such amount, and from the amount appropriated to carry out this section for a fiscal year that is over \$50,000,000, the Director of the Center shall make available up to 25 percent of such amount, for grants under subsection (a) of this section to applicants that in addition to meeting the requirements established in paragraph (1), have demonstrated emerging excellence in biomedical or behavioral research, as follows:

(A) The applicant has a plan for research or training advancement and possesses the ability to carry out the plan.

(B) The applicant carries out research and research training programs that have a special relevance to a problem, concern, or unmet health need of the United States.

(C) The applicant has been productive in research or research development and training.

(D) The applicant—

(i) has been designated as a center of excellence under section 293c¹ of this title;

(ii) is located in a geographic area whose population includes a significant number of individuals with health status deficit, and the applicant provides health services to such individuals; or

(iii) is located in a geographic area in which a deficit in health care technology, services, or research resources may adversely affect the health status of the population of the area in the future, and the applicant is carrying out activities with respect to protecting the health status of such population.

¹ See References in Text note below.

(d) Requirement of application

The Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Director and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

(e) Amount of grant; payments**(1) Amount**

The amount of any grant awarded under subsection (a) of this section shall be determined by the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases, except that such amount shall not exceed—

(A) 50 percent (or, in the case of the Institute, 75 percent) of the necessary cost of the construction of a proposed facility as determined by the Director; or

(B) in the case of a multipurpose facility, 40 percent (or, in the case of the Institute, 75 percent) of that part of the necessary cost of construction that the Director determines to be proportionate to the contemplated use of the facility.

(2) Reservation of amounts

On the approval of any application for a grant under subsection (a) of this section, the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases shall reserve, from any appropriation available for such grants, the amount of such grant, and shall pay such amount, in advance or by way of reimbursement, and in such installments consistent with the construction progress, as the Director may determine appropriate. The reservation of any amount by the Director under this paragraph may be amended by the Director, either on the approval of an amendment of the application or on the revision of the estimated cost of construction of the facility.

(3) Exclusion of certain costs

In determining the amount of any grant under subsection (a) of this section, there shall be excluded from the cost of construction an amount equal to the sum of—

(A) the amount of any other Federal grant that the applicant has obtained, or is assured of obtaining, with respect to construction that is to be financed in part by a grant authorized under this section; and

(B) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

(4) Waiver of limitations

The limitations imposed under paragraph (1) may be waived at the discretion of the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases for applicants meeting the conditions described in subsection (c) of this section.

(f) Recapture of payments

If, not later than 20 years after the completion of construction for which a grant has been awarded under subsection (a) of this section—

(1) in the case of an award by the Director of the Center, the applicant or other owner of the facility shall cease to be a public or non profit² private entity; or

(2) the facility shall cease to be used for the research purposes for which it was constructed (unless the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from obligation to do so),

the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the current value (as determined by an agreement between the parties or by action brought in the United States District Court for the district in which such facility is situated) of the facility as the amount of the Federal participation bore to the cost of the construction of such facility.

(g) Guidelines

Not later than 6 months after June 10, 1993, the Director of the Center, after consultation with the Advisory Council, shall issue guidelines with respect to grants under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, §481A, as added Pub. L. 103-43, title XV, §1502, June 10, 1993, 107 Stat. 173; amended Pub. L. 105-392, title I, §101(c), Nov. 13, 1998, 112 Stat. 3537; Pub. L. 106-505, title III, §303, Nov. 13, 2000, 114 Stat. 2330; Pub. L. 108-276, §2(b), July 21, 2004, 118 Stat. 841; Pub. L. 109-482, title I, §§103(b)(40), 104(b)(1)(M), Jan. 15, 2007, 120 Stat. 3688, 3693.)

REFERENCES IN TEXT

Section 293c of this title, referred to in subsec. (c)(2)(D)(i), does not contain provisions relating to designation as a center of excellence. See section 293 of this title.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 109-482, §103(b)(40)(A), in introductory provisions, substituted “to carry out this section for a fiscal year up to” for “under subsection (i)(1) of this section for a fiscal year up to” and “to carry out this section for a fiscal year that” for “under such subsection for a fiscal year that”.

Subsec. (h). Pub. L. 109-482, §104(b)(1)(M), struck out subsec. (h) which required biennial report concerning the status of biomedical and behavioral research facilities and the availability and condition of laboratory equipment.

Subsec. (i). Pub. L. 109-482, §103(b)(40)(B), struck out subsec. (i) which authorized appropriations for the National Center for Research Resources and the National Institute of Allergy and Infectious Diseases.

2004—Subsec. (a)(1). Pub. L. 108-276, §2(b)(1), inserted “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”.

Subsec. (c)(1). Pub. L. 108-276, §2(b)(2)(A), inserted “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”.

Subsec. (c)(2). Pub. L. 108-276, §2(b)(2)(B), substituted “subsection (i)(1)” for “subsection (i)” in introductory provisions.

Subsec. (d). Pub. L. 108-276, §2(b)(3), inserted “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”.

² So in original. Probably should be “nonprofit”.

Subsec. (e)(1). Pub. L. 108-276, §2(b)(4)(A)(i), inserted “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center” in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 108-276, §2(b)(4)(A)(ii), inserted “(or, in the case of the Institute, 75 percent)” after “50 percent”.

Subsec. (e)(1)(B). Pub. L. 108-276, §2(b)(4)(A)(iii), inserted “(or, in the case of the Institute, 75 percent)” after “40 percent”.

Subsec. (e)(2). Pub. L. 108-276, §2(b)(4)(B), inserted “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”.

Subsec. (e)(4). Pub. L. 108-276, §2(b)(4)(C), inserted “of the Center or the Director of the National Institute of Allergy and Infectious Diseases” after “Director”.

Subsec. (f)(1). Pub. L. 108-276, §2(b)(5)(A), inserted “in the case of an award by the Director of the Center,” before “the applicant”.

Subsec. (f)(2). Pub. L. 108-276, §2(b)(5)(B), inserted “of the Center or the Director of the National Institute of Allergy and Infectious Diseases” after “Director”.

Subsec. (i). Pub. L. 108-276, §2(b)(6), designated existing provisions as par. (1), inserted heading, substituted “For the purpose of carrying out this section with respect to the Center,” for “For the purpose of carrying out this section.”, and added par. (2).

2000—Pub. L. 106-505 amended section generally, adding provisions requiring the Director to provide Congress with biennial status reports.

1998—Subsec. (c)(3)(D)(i). Pub. L. 105-392 substituted “part B of subchapter V of this chapter” for “section 293c of this title”.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109-482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109-482, set out as a note under section 281 of this title.

FINDINGS

Pub. L. 106-505, title III, §302, Nov. 13, 2000, 114 Stat. 2330, provided that: “Congress finds that—

“(1) the National Institutes of Health is the principal source of Federal funding for medical research at universities and other research institutions in the United States;

“(2) the National Institutes of Health has received a substantial increase in research funding from Congress for the purpose of expanding the national investment of the United States in behavioral and biomedical research;

“(3) the infrastructure of our research institutions is central to the continued leadership of the United States in medical research;

“(4) as Congress increases the investment in cutting-edge basic and clinical research, it is critical that Congress also examine the current quality of the laboratories and buildings where research is being conducted, as well as the quality of laboratory equipment used in research;

“(5) many of the research facilities and laboratories in the United States are outdated and inadequate;

“(6) the National Science Foundation found, in a 1998 report on the status of biomedical research facilities, that over 60 percent of research-performing institutions indicated that they had an inadequate amount of medical research space;

“(7) the National Science Foundation reports that academic institutions have deferred nearly \$11,000,000,000 in renovation and construction projects because of a lack of funds; and

“(8) future increases in Federal funding for the National Institutes of Health must include increased support for the renovation and construction of extramural research facilities in the United States and the purchase of state-of-the-art laboratory instrumentation.”

§ 287a-3. Construction of regional centers for research on primates

(a) With respect to activities carried out by the National Center for Research Resources to support regional centers for research on primates, the Director of NIH may, for each of the fiscal years 2000 through 2002, reserve from the amounts appropriated to carry out section 287a-2 of this title such sums as necessary for the purpose of making awards of grants and contracts to public or nonprofit private entities to construct, renovate, or otherwise improve such regional centers. The reservation of such amounts for any fiscal year is subject to the availability of qualified applicants for such awards.

(b) The Director of NIH may not make a grant or enter into a contract under subsection (a) of this section unless the applicant for such assistance agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than \$1 for each \$4 of Federal funds provided in such assistance.

(July 1, 1944, ch. 373, title IV, §481B, as added Pub. L. 103-43, title XV, §1503, June 10, 1993, 107 Stat. 178; amended Pub. L. 105-392, title IV, §411, Nov. 13, 1998, 112 Stat. 3590; Pub. L. 106-505, title III, §304, Nov. 13, 2000, 114 Stat. 2335; Pub. L. 109-482, title I, §103(b)(41), Jan. 15, 2007, 120 Stat. 3688.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 109-482, which directed the substitution of “to carry out section 287a-2” for “under section 287a-2(h)”, was executed by making substitution for “under section 287a-2(i)”, to reflect the probable intent of Congress.

2000—Subsec. (a). Pub. L. 106-505, which directed the amendment of subsec. (a) by substituting “2000 through 2002, reserve from the amounts appropriated under section 287a-2(i) of this title such sums as necessary” for “1994” and all that follows through “\$5,000,000”, was executed by making the substitution for “1994 through 1996, reserve from the amounts appropriated under section 287a-2(h) of this title up to \$2,500,000”, to reflect the probable intent of Congress and the amendment by Pub. L. 105-392. See 1998 Amendment note below.

1998—Subsec. (a). Pub. L. 105-392, in first sentence, substituted “may” for “shall” and “up to \$2,500,000” for “\$5,000,000”.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109-482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109-482, set out as a note under section 281 of this title.

§ 287a-3a. Sanctuary system for surplus chimpanzees

(a) In general

The Secretary shall provide for the establishment and operation in accordance with this section of a system to provide for the lifetime care of chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by the National Institutes of Health, the Food and Drug Administration, or other agencies of the Federal Government, and