

## SUBCHAPTER B—DoD GRANT AND AGREEMENT REGULATIONS

### PART 21—DoD GRANTS AND AGREEMENTS—GENERAL MATTERS

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#### Subpart A—Defense Grant and Agreement Regulatory System

##### § 21.100 Scope.

The purposes of this part, which is one portion of the DoD Grant and Agreement Regulations (DoDGARs), are to:

(a) Provide general information about the DoDGARs.

(b) Set forth general policies and procedures related to DoD Components' overall management of functions related to grants and cooperative agreements.

##### § 21.105 Authority, purpose, and issuance.

(a) DoD Directive 3210.6<sup>1</sup> established the Defense Grant and Agreement Regulatory System (DGARS). The directive authorized publication of policies and procedures comprising the DGARS in the DoD Grant and Agreement Regulations (DoDGARs), in DoD instructions, and in other DoD publications, as appropriate. Thus, the DoDGARs are one element of the DGARS.

(b) The purposes of the DoDGARs, in conjunction with other elements of the DGARS, are to provide uniform policies and procedures for grants and cooperative agreements awarded by DoD Components, in order to meet DoD needs for:

(1) Efficient program execution, effective program oversight, and proper stewardship of Federal funds.

(2) Compliance with relevant statutes; Executive orders; and applicable guidance, such as Office of Management and Budget (OMB) circulars.

(3) Collection from DoD Components, retention, and dissemination of management and fiscal data related to grants and agreements.

(c) The Director of Defense Research and Engineering, or his or her designee:

(1) Develops and implements DGARS policies and procedures.

(2) Issues and maintains the DoD Grant and Agreement Regulations and other DoD publications that comprise the DGARS.

##### § 21.110 Applicability and relationship to acquisition regulations.

(a) *Applicability to grants and cooperative agreements.* The DoD Grant and Agreement Regulations (DoDGARs) apply to all DoD grants and cooperative agreements.

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060-6218.

(b) *Applicability to other nonprocurement instruments.* (1) In accordance with DoD Directive 3210.6, the DoDGARs may include rules that apply to other nonprocurement instruments, when specifically required in order to implement a statute, Executive order, or Governmentwide rule that applies to other nonprocurement instruments, as well as to grants and cooperative agreements. For example, the rule on nonprocurement debarment and suspension in 32 CFR part 25, subparts A through E, applies to all nonprocurement transactions, including grants, cooperative agreements, contracts of assistance, loans and loan guarantees (see definition of “primary covered transaction” at 32 CFR 25.110(a)(1)(i)).

(2) The following is a list of DoDGARs rules that apply not only to grants and cooperative agreements, but also to other types of nonprocurement instruments:

(i) Requirements for reporting to the Defense Assistance Award Data System, in subpart C of this part.

(ii) The rule on nonprocurement debarment and suspension in 32 CFR part 25, subparts A through E.

(iii) Drug-free workplace requirements in 32 CFR part 25, subpart F.

(iv) Restrictions on lobbying in 32 CFR part 28.

(v) Administrative requirements for grants, cooperative agreements, and other financial assistance to:

(A) Universities and other nonprofit organizations, in 32 CFR part 32.

(B) State and local governments, in 32 CFR part 33.

(3) Grants officers should be aware that each rule that applies to other types of nonprocurement instruments (i.e., other than grants and cooperative agreements) states its applicability to such instruments. However, grants officers must exercise caution when determining the applicability of some Governmentwide rules that are included in the DoDGARs, because a term may be defined differently in a Governmentwide rule than it is defined elsewhere in the DoDGARs. For example, the Governmentwide implementation of the Drug-Free Workplace Act of 1988 (32 CFR part 25, subpart F) states that it applies to grants, but defines “grants” to include cooperative agree-

ments and other forms of financial assistance.

(c) *Relationship to acquisition regulations.* The Federal Acquisition Regulation (FAR) (48 CFR parts 1–53), the Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR parts 201–270), and DoD Component supplements to the FAR and DFARS apply to DoD Components’ procurement contracts used to acquire goods and services for the direct benefit or use of the Federal Government. Policies and procedures in the FAR and DFARS do not apply to grants, cooperative agreements, or other nonprocurement transactions unless the DoDGARs specify that they apply.

#### §21.115 Compliance and implementation.

The Head of each DoD Component that awards or administers grants and cooperative agreements, or his or her designee:

(a) Is responsible for ensuring compliance with the DoDGARs within that DoD Component.

(b) May authorize the issuance of regulations, procedures, or instructions that are necessary to implement DGARS policies and procedures within the DoD Component, or to supplement the DoDGARs to satisfy needs that are specific to the DoD Component, as long as such regulations, procedures, or instructions do not impose additional costs or administrative burdens on recipients or potential recipients. Heads of DoD Components or their designees shall establish policies and procedures in areas where uniform policies and procedures throughout the DoD Component are required, such as for:

(1) Requesting class deviations from the DoDGARs (see §21.125) or exemptions from the provisions of 31 U.S.C. 6301 *et seq.*, that govern the appropriate use of contracts, grants, and cooperative agreements (see 32 CFR 22.220).

(2) Designating one or more Grant Appeal Authorities to resolve claims, disputes, and appeals (see 32 CFR 22.815).

(3) Reporting data on assistance awards and programs, as required by 31 U.S.C. chapter 61 (see subpart C of this part).

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(4) Prescribing requirements for use and disposition of real property acquired under awards, if the DoD Component makes any awards to institutions of higher education or to other nonprofit organizations under which real property is acquired in whole or in part with Federal funds (see 32 CFR 32.32).

### § 21.120 Publication and maintenance.

(a) The DoDGARs are published as chapter I, subchapter B, title 32 of the Code of Federal Regulations (CFR) and in a separate loose-leaf edition. The loose-leaf edition is divided into parts, subparts, and sections, to parallel the CFR publication. Cross-references within the DoDGARs are stated as CFR citations (e.g., a reference to § 21.115 in part 21 would be to 32 CFR 21.115).

(b) Updates to the DoDGARs are published in the FEDERAL REGISTER. When finalized, updates also are published as Defense Grant and Agreement Circulars, with revised pages for the separate, loose-leaf edition.

(c) Revisions to the DoDGARs are recommended to the Director of Defense Research and Engineering (DDR&E) by a standing working group. The DDR&E, Director of Defense Procurement, and each Military Department shall be represented on the working group. Other DoD Components that use grants or cooperative agreements may also nominate representatives. The working group meets when necessary.

### § 21.125 Deviations.

(a) The Head of the DoD Component or his or her designee may authorize individual deviations from the DoDGARs, which are deviations that affect only one grant or cooperative agreement, if such deviations are not prohibited by statute, executive order or regulation.

(b) Class deviations that affect more than one grant or cooperative agreement must be approved in advance by the Director, Defense Research and Engineering (DDR&E) or his or her designee. Note that OMB concurrence also is required for deviations from two parts of the DoDGARs, 32 CFR parts 32 and 33, in accordance with 32 CFR 32.4 and 33.6, respectively.

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(c) Copies of justifications and agency approvals for individual deviations and written requests for class deviations shall be submitted to: Deputy Director, Defense Research and Engineering, ATTN: Research, 3080 Defense Pentagon, Washington DC 20301-3080.

(d) Copies of requests and approvals for individual and class deviations shall be maintained in award files.

### § 21.130 Definitions.

*Acquisition.* The acquiring (by purchase, lease, or barter) of property or services for the direct benefit or use of the United States Government (see more detailed definition at 48 CFR 2.101). In accordance with 31 U.S.C. 6303, procurement contracts are the appropriate legal instruments for acquiring such property or services.

*Assistance.* The transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants and cooperative agreements are examples of legal instruments used to provide assistance.

*Contract.* See the definition for procurement contract in this section.

*Contracting activity.* An activity to which the Head of a DoD Component has delegated broad authority regarding acquisition functions, pursuant to 48 CFR 1.601.

*Contracting officer.* A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A more detailed definition of the term appears at 48 CFR 2.101.

*Cooperative agreement.* A legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition "grant"), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include "cooperative research and development agreements" as defined in 15 U.S.C. 3710a.

*Deviation.* The issuance or use of a policy or procedure that is inconsistent with the DoDGARs.

*DoD Components.* The Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and DoD Field Activities.

*Grant.* A legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(1) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(2) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

*Grants officer.* An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

*Nonprocurement instrument.* A legal instrument other than a procurement contract. Examples include instruments of financial assistance, such as grants or cooperative agreements, and those of technical assistance, which provide services in lieu of money.

*Procurement contract.* A legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. See the more detailed definition for contract at 48 CFR 2.101.

*Recipient.* An organization or other entity receiving a grant or cooperative agreement from a DoD Component.

### Subpart B—Authorities and Responsibilities

#### § 21.200 Purpose.

This subpart describes the sources and flow of authority to use grants and cooperative agreements, and assigns the broad responsibilities associated with DoD Components' use of such instruments.

#### § 21.205 DoD Components' authorities.

(a) In accordance with 31 U.S.C. 6301 *et seq.*, DoD Components shall use grants and cooperative agreements as legal instruments reflecting assistance relationships between the United States Government and recipients.

(b) Unlike the use of a procurement contract (for which Federal agencies have inherent, Constitutional authority), use of a grant or cooperative agreement to carry out a program requires authorizing legislation, the intent of which supports the use of an assistance instrument (e.g., the intent of the legislation authorizing a program supports a judgment that the principal purpose of the program is assistance, rather than acquisition). DoD Components may award grants and cooperative agreements under a number of statutory authorities that fall into three categories:

(1) *Authorities that statutes provide to the Secretary of Defense.* These authorities generally are delegated by the Secretary of Defense to Heads of DoD Components, usually through DoD directives, instructions, or policy memoranda that are not part of the Defense Grant and Agreement Regulatory System. Examples of statutory authorities in this category are:

(i) Authority under 10 U.S.C. 2391 to make grants or conclude cooperative agreements to assist State and local governments in planning and carrying out community adjustments and economic diversification required by changes in military installations or in DoD contracts or spending that may have a direct and significant adverse consequence on the affected community.

(ii) Authority under 10 U.S.C. 2413 to enter into cooperative agreements with entities that furnish procurement technical assistance to businesses.

(2) *Authorities that statutes may provide directly to Heads of DoD Components.* When a statute authorizes the head of a DoD Component to use a grant or cooperative agreement or to carry out a program with a principal purpose of assistance, use of that authority requires no delegation by the Secretary of Defense. For example, 10 U.S.C. 2358 authorizes the Secretaries

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of the Military Departments, in addition to the Secretary of Defense, to perform research and development projects through grants and cooperative agreements. A Military Department's use of the authority of 10 U.S.C. 2358 therefore requires no delegation by the Secretary of Defense.

(3) *Authorities that arise indirectly as the result of statute.* For example, authority to use a grant or cooperative agreement may result from:

(i) A federal statute authorizing a program that is consistent with an assistance relationship (i.e., the support or stimulation of a public purpose, rather than the acquisition of a good or service for the direct benefit of the Department of Defense). In accordance with 31 U.S.C. chapter 63, such a program would appropriately be carried out through the use of grants or cooperative agreements.

(ii) Exemptions requested by the Department of Defense and granted by the Office of Management and Budget under 31 U.S.C. 6307, as described in 32 CFR 22.220.

### §21.210 Vesting and delegation of authority.

(a) The authority and responsibility for awarding grants and cooperative agreements is vested in the Head of each DoD Component that has such authority.

(b) The Head of each such DoD Component, or his or her designee, may delegate to the heads of contracting activities (HCAs) within that Component, authority to award grants or cooperative agreements, to appoint grants officers (see §21.220(c)), and to broadly manage the DoD Component's functions related to grants and cooperative agreements. An HCA is the same official (or officials) designated as the head of the contracting activity for procurement contracts, as defined at 48 CFR 2.101—the intent is that overall management responsibilities for a DoD Component's functions related to non-procurement instruments be assigned only to officials that have similar responsibilities for procurement contracts.

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### §21.215 Contracting activities.

When designated by the Head of the DoD Component or his or her designee (see 32 CFR 21.210(b)), the HCA is responsible for the grants and cooperative agreements made by or assigned to that activity. He or she shall supervise and establish internal policies and procedures for that activity's assistance awards.

### §21.220 Grants officers.

(a) *Authority.* Only grants officers are authorized to sign grants or cooperative agreements, or to administer or terminate such legal instruments on behalf of the Department of Defense. Grants officers may bind the Government only to the extent of the authority delegated to them.

(b) *Responsibilities.* Grants officers should be allowed wide latitude to exercise judgment in performing their responsibilities. Grants officers are responsible for ensuring that:

(1) Individual grants and cooperative agreements are used effectively in the execution of DoD programs, and are awarded and administered in accordance with applicable laws, Executive orders, regulations, and DoD policies.

(2) Sufficient funds are available for obligation.

(3) Recipients of grants and cooperative agreements receive impartial, fair, and equitable treatment.

(c) *Selection, appointment and termination of appointment of grants officers.* Each DoD Component that awards grants or enters into cooperative agreements shall have a formal process (see §21.210(b)) to select and appoint grants officers and terminate their appointments. DoD Components are not required to maintain a selection process for grants officers separate from the selection process for contracting officers, and written statements of appointment or termination for grants officers may be integrated into the necessary documentation for contracting officers, as appropriate.

(1) *Selection.* In selecting grants officers, appointing officials shall consider the complexity and dollar value of the grants and cooperative agreements to

be assigned and judge whether candidates possess the necessary experience, training, education, business acumen, judgment, and knowledge of contracts and assistance instruments to function effectively as grants officers.

(2) *Appointment.* Statements of appointment shall be in writing and shall clearly state the limits of grants officers' authority, other than limits contained in applicable laws or regulations. Information on the limits of a grants officer's authority shall be readily available to the public and agency personnel.

(3) *Termination.* Written statements of termination are required, unless the written statement of appointment provides for automatic termination. No termination shall be retroactive.

### Subpart C—Information Reporting on Grants, Cooperative Agreements, and Other Nonprocurement Instruments

#### § 21.300 Purpose.

This subpart prescribes policies and procedures for compiling and reporting data related to grants, cooperative agreements, and other nonprocurement instruments subject to information reporting requirements of 31 U.S.C. chapter 61.

#### § 21.305 Defense Assistance Awards Data System.

(a) *Purposes of the system.* Data from the Defense Assistance Awards Data System (DAADS) are used to provide:

(1) DoD inputs to meet statutory requirements for Federal Government-wide reporting of data related to obligations of funds by grant, cooperative agreement, or other nonprocurement instrument.

(2) A basis for meeting Government-wide requirements to report to the Federal Assistance Awards Data System maintained by the Department of Commerce and for preparing other recurring and special reports to the President, the Congress, the General Accounting Office, and the public.

(3) Information to support policy formulation and implementation and to meet management oversight requirements related to the use of grants, co-

operative agreements, and other nonprocurement instruments.

(b) *Responsibilities.* (1) The Deputy Director, Defense Research and Engineering (DDDR&E), or his or her designee, shall issue the manual described in paragraph (b)(2)(i) of this section.

(2) The Director for Information Operations and Reports, Washington Headquarters Services (DIOR, WHS) shall, consistent with guidance issued by the DDDR&E:

(i) Process DAADS information on a quarterly basis and prepare recurring and special reports using such information.

(ii) Prepare, update, and disseminate "Department of Defense Assistance Awards Data System," an instruction manual for reporting information to DAADS. The manual, which shall be issued by the office of the DDR&E, shall specify procedures, formats, and editing processes to be used by DoD Components, including magnetic tape layout and error correction schedules.

(3) The following offices shall serve as central points for collecting DAADS information from contracting activities within the DoD Components:

(i) For the Army: As directed by the U.S. Army Contracting Support Agency.

(ii) For the Navy: As directed by the Office of Naval Research.

(iii) For the Air Force: As directed by SAF/AQCP.

(iv) For the Office of the Secretary of Defense, Defense Agencies, and DoD Field Activities: Each Defense Agency shall identify a central point for collecting and reporting DAADS information to the DIOR, WHS, at the address given in paragraph (c)(2) of this section. DIOR, WHS shall serve as the central point for offices and activities within the Office of the Secretary of Defense and for DoD Field Activities.

(4) The office that serves, in accordance with paragraph (b)(3) of this section, as the central point for collecting DAADS information from contracting activities within each DoD Component shall:

(i) Establish internal procedures to ensure reporting by contracting activities that use grants, cooperative agreements or other nonprocurement instruments subject to 31 U.S.C. chapter 61.

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(ii) Collect information required by DD Form 2566, "DoD Assistance Award Action Report," from those contracting activities, and report it to DIOR, WHS, in accordance with paragraph (d) of this section.

(iii) Submit to the DDDR&E, at the address given in §21.125(c), any recommended changes to the DAADS or to the instruction manual described in paragraph (b)(2)(ii) of this section.

(c) *Reporting procedures.* The data required by the DD Form 2566 shall be:

(1) Collected for each individual grant, cooperative agreement, or other nonprocurement action that is subject to 31 U.S.C. chapter 61 and involves the obligation or deobligation of Federal funds. Each action is reported as an obligation under a specific program listed in the Catalog of Federal Domestic Assistance (CFDA, see §21.310). The program to be shown is the one that provided the funds being obligated (i.e., if a grants officer in one DoD Component obligates appropriations of a second DoD Component's program, the grants officer would show the CFDA program of the second DoD Component on the DD Form 2566).

(2) Reported on a quarterly basis to DIOR, WHS by the offices that are designated pursuant to paragraph (b)(3) of this section. For the first three quarters of the Federal fiscal year, the data are due by close-of-business (COB) on the 15th day after the end of the quarter (i.e., first-quarter data are due by COB on January 15th, second-quarter data by COB April 15th, and third-quarter data by COB July 15th). Fourth-quarter data are due by COB October 25th, the 25th day after the end of the quarter. If any due date falls on a weekend or holiday, the data are due on the next regular workday. The mailing address for DIOR, WHS is 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

(3) Reported on a computer tape, floppy diskette or by other means permitted by the instruction manual described in paragraph (b)(2)(ii) of this section. The data shall be reported in the format specified in the instruction manual.

(d) *Report control symbol.* DoD Components' reporting of DAADS data is used by DoD to satisfy Governmentwide re-

quirements to report to the Federal Assistance Awards Data System, which is assigned Interagency Report Control Number 0252-DOC-QU.

### §21.310 Catalog of Federal Domestic Assistance.

(a) *Purpose and scope of the reporting requirement.* (1) Under the Federal Program Information Act (31 U.S.C. 6101 *et seq.*), as implemented through OMB Circular A-89,<sup>2</sup> the Department of Defense is required to provide certain information about its domestic assistance programs to OMB and the General Services Administration (GSA). GSA makes this information available to the public by publishing it in the Catalog of Federal Domestic Assistance (CFDA) and maintaining the Federal Assistance Programs Retrieval System, a computerized data base of the information.

(2) The CFDA covers all domestic assistance programs and activities, regardless of the number of awards made under the program, the total dollar value of assistance provided, or the duration. In addition to programs using grants and cooperative agreements, covered programs include those providing assistance in other forms, such as payments in lieu of taxes or indirect assistance resulting from Federal operations.

(b) *Responsibilities.* (1) Each DoD Component that provides domestic financial assistance shall:

(i) Report to the Director for Information Operations and Reports, Washington Headquarters Services (DIOR, WHS) all new programs and changes as they occur, or as DIOR, WHS requests annual updates to existing CFDA information.

(ii) Identify to the DIOR, WHS a point-of-contact who will be responsible for reporting such program information and for responding to inquiries related to it.

(2) The DIOR, WHS shall act as the Department of Defense's single office for collecting, compiling and reporting

<sup>2</sup>Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

such program information to OMB and GSA.

**§ 21.315 Uniform grants and agreements numbering system.**

DoD Components shall assign identifying numbers to all nonprocurement instruments subject to this subpart, including grants and cooperative agreements. The numbering system parallels the procurement instrument identification (PII) numbering system specified in 48 CFR 204.70 (in the “Defense Federal Acquisition Regulation Supplement”), as follows:

(a) The first six alphanumeric characters of the assigned number shall be identical to those specified by 48 CFR 204.7003(a)(1) to identify the DoD Component and contracting activity.

(b) The seventh and eighth positions shall be the last two digits of the fiscal year in which the number is assigned to the grant, cooperative agreement, or other nonprocurement instrument.

(c) The 9th position shall be a number: “1” for grants; “2” for cooperative agreements; and “3” for other nonprocurement instruments.

(d) The 10th through 13th positions shall be the serial number of the instrument. DoD Components and contracting activities need not follow any specific pattern in assigning these numbers and may create multiple series of letters and numbers to meet internal needs for distinguishing between various sets of awards.

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