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32 CFR Parts 21, 22, 25, etc.
DoD Grants and Agreement Regulations; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 21, 22, 25, 32, 33, 34 and 37

RIN 0790–AH75

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is revising the DoD Grant and Agreement Regulations (DoDGARs) to implement four Office of Management and Budget (OMB) policy directives, to conform the DoDGARs with several statutory and regulatory revisions, and to make other administrative changes. The four OMB directives that are being implemented: require Federal agencies to use a new standard format for announcements of funding opportunities; require Federal agencies to electronically post synopses of those announcements at a Governmentwide Internet site; require Governmentwide use of the Data Universal Numbering System (DUNS) number as the universal identifier for recipient organizations; and amend OMB Circular A–B3 to raise the threshold of Federal funding at which recipients must obtain single audits. The statutory and regulatory changes with which the DoDGARs are being conformed concern matters such as nonprocurement debarment and suspension, drug-free workplace requirements for grants, and campus access for military recruiters and Reserve Officer Training Corps.

DATES: These final rules are effective on September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 696–0372.

SUPPLEMENTARY INFORMATION:

A. Background

On July 28, 2004 (69 FR 44990), DoD proposed to update the DoDGARs, the regulations that provide uniform policies and procedures for DoD Components' award and administration of grants and agreements. The proposed updates involved amendments to seven DoDGARs parts—32 CFR parts 21, 22, 25, 32, 33, 34 and 37—that are needed to conform those parts with Governmentwide and DoD policy changes and with DoD organizational and administrative changes.

DoD received one substantive and one editorial comment on the proposed updates, both from DoD Components. The final rule largely is the same as proposed, with a few changes to: respond to the two comments; correct typographical errors and one omission in the July 28, 2004, **Federal Register** document; and conform the characterization of the statutory requirement concerning military recruiters with a recent amendment to that statute. The changes are described at the end of this Supplementary Information section.

B. Summary of the Regulatory Updates

The following paragraphs describe the changes to the DoDGARs and the reasons for them.

Governmentwide standard format for program announcements. OMB issued a policy directive. ''Format for Financial Assistant Program Announcements'' [68 FR 37370, June 23, 2003], that requires Federal agencies to use a standard format for announcements of funding opportunities under which discretionary awards of grants or cooperative agreements may be made. The policy directive further requires that those announcements, with a few exceptions, be posted on the Internet. The DoD is revising paragraphs (a), (a)(1) and (2) of 32 CFR 22.315 to implement this OMB policy directive (see amendment number 7 following this preamble).

Electronic posting of synopses of program announcements. A second OMB policy directive ''Requirement to Post Funding Opportunity Announcement Synopses at Grants.gov and Related Data Elements/Format'' [68 FR 58146, October 8, 2003], requires Federal agencies to post on the Internet a summary of each announcement. The DoD is revising paragraph (a)(3) of 32 CFR 22.315 to implement this policy directive (see amendment number 7 following this preamble).

Use of Data Universal Numbering System (DUNS) numbers. A third OMB policy directive ''Requirement for a DUNS number in Applications for Federal Grants and Cooperative Agreements'' [68 FR 38402, June 27, 2003], established the DUNS number as the universal identifier for Federal grant and cooperative agreement applicants and recipients. It states that applications must include the DUNS number and that Federal agency electronic systems that handle data on grants and cooperative agreements must be able to accept the DUNS number. The DoD is adding a new section 32 CFR 21.565 to implement the requirement for agency electronic systems and a revised paragraph (a)(4) in 32 CFR 22.315 to address the requirement for including DUNS numbers in applications (see amendment numbers 2 and 7 following this preamble).

Dollar threshold for single audit requirements. The OMB also revised OMB Circular A–33, ''Audits of States, Local Governments, and Non-Profit Organizations,'' to increase the threshold at which recipients are required to have single audits. The revision to the circular [68 FR 38401, June 27, 2003] increased the threshold from $300,000 per year to $500,000 per year in expenditures of Federal funds. The revision also increased the threshold (from $25 million per year $50 million per year in expenditures of Federal funds) at which a recipient would be assigned a cognizant Federal agency for audits and made related technical changes. The DoD is revising two sections of the DoDGARs—32 CFR 33.26 for awards to State, local, and other governmental organizations and 34.16 for awards to for-profit organizations—to replace the $300,000 threshold amount with the updated $500,000 threshold (see amendment numbers 25 and 28 following this preamble).

Nonprocurement debarment and suspension and drug-free workplace requirements. The DoD joined thirty-two other Federal agencies to publish [68 FR 66534, November 26, 2003] updated Governmentwide common rules on nonprocurement debarment and suspension and on drug-free workplace requirements for grants and agreements. The updated common rule on nonprocurement debarment and suspension is part 25 of the DoDGARs (32 CFR part 25) and the common rule on drug-free workplace requirements is part 26 (32 CFR part 26). The DoD is making conforming amendments to DoDGARs parts 21, 22, 32, 33, 34 and 37, to incorporate changes in policies and procedures due to the revisions of parts 25 and 26 and to correct references to sections of those two revised parts (see amendment numbers 3, 5, 8, 9.a, 11.a, 15, 17, 18, 22, 23, 26, 29, 31, 32, and 33 following this preamble).

Campus access for military recruiters and Reserve Officer Training Corps (ROTC). Section 549 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) recodified and consolidated—in 10 U.S.C. 983—two separate statutes applicable to institutions of higher education that receive DoD grants. The first of the two statutes prohibits DoD from providing funds by grant to institutions that deny military recruiters access to campuses, students, or student information for recruiting purposes. Before Public Law 106–65 recodified that requirement in 10 U.S.C. 983, it was in section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–

337). The DoD implemented that section 558 requirement, as it applied to grants, in the DoDGARs at 32 CFR 22.520.

The second of the two statutes prohibits DoD from providing funds by grant to an institution that prevents the establishment and operation of a Senior ROTC unit on campus or student enrollment in a unit at an alternate institution. That statute was originally codified in 10 U.S.C. 983 by the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).

With the recodification and consolidation of both requirements in 10 U.S.C. 983, the DoD is revising section 32 CFR 22.520 of the DoDGARs and making conforming changes in sections 32 CFR 22.420 and 32 CFR 25.425. The revision of 32 CFR 22.520 addresses the requirements concerning ROTC, as well as the restrictions concerning military recruiters' access that already were addressed in 32 CFR 22.520. Among the changes in 32 CFR 22.520 are: the inclusion of the requirement concerning ROTC in the award term in paragraph 22.520(f); a clarification in a new paragraph 22.520(e)(2) that the prohibition on providing funds by grant extends, by law, to obligations of additional funds for pre-existing awards (*e.g.*, incremental funding actions); and a revision to paragraph 22.520(d)(1) to apply the prohibition on use of DoD funds to an institution of higher education as a whole, as 10 U.S.C. 983 requires, when any subordinate element of the institution has a policy or practice that denies access for ROTC or military recruiters (see amendment number 12 following this preamble for the changes to section 32 CFR 22.520 and amendment numbers 9.a and 20 for the conforming changes to section 32 CFR 22.420 and 32 CFR 25.425).

Other Revisions. In addition to the revisions described above, the DoD is making other needed updates to the DoDGARs. Those updates are: (1) A revision of paragraphs (a)(3) and (4) of section 32 CFR 22.715, to conform that section with revised procedures for oversight of single audits; (2) changes in Appendices A and B to 32 CFR part 22, to reflect revisions in regulations implementing national policy requirements; and (3) updates to office names, footnote references to sources of OMB and DoD documents, and cross references to sections within the DoDGARs (see amendment numbers 6, 9.b, 11.b, 13, 14, 15, 16, and 18 following this preamble).

C. Changes From the Proposed Rulemaking Notice

These final amendments include one change made in response to a comment from a DoD Component. The commenter pointed out the need for 32 CFR 22.715, which lists functions of grants administration offices, to identify each office's responsibilities to: (1) Take appropriate action when a governmental, university, or nonprofit recipient has not complied with requirements to have a single audit and submit its audit report; and (2) issue timely management decisions on single audit findings that the Office of the Inspector General, DoD, refers to the office. Accordingly, we are adding a new paragraph 32 CFR 22.715(a)(3)(iii) and revising paragraph 32 CFR 22.715(a)(4), rather than deleting it as proposed in July 2004 (see amendment number 15 following this preamble).

Another change in the final rule responds to an amendment to 10 U.S.C. 983 that was made by Section 552 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375), after the rule was proposed for public comment. The amendment specifies that military recruiters' access to campuses and students must be at least equal in quality and scope to the access provided to any other employer. The final rule includes language to conform with that statutory change in two places: paragraph 22.520(c)(3), which describes the requirements of 10 U.S.C. 983, and the corresponding paragraph (C) of the award term under 22.520(e)(3) (see amendment number 12 following this preamble).

We corrected in these final amendments two typographical errors that appeared in the proposed rulemaking notice. First, a reference in 32 CFR 22.520(f)(1)(ii) to ''paragraphs (e)(5)(i) and (e)(5)(i)(iii) of this section'' is corrected to read ''paragraphs (e)(5)(i) and (e)(5)(iii) of this section''. Second, a reference in Appendix B to Part 22 to ''40 CFR 32.110'', a section in the Environmental Protection Agency's implementation of the Clean Air Act and Clean Water Act, is corrected to read ''40 CFR 32.1110'' (see amendment numbers 12 and 18 following this preamble).

These final amendments also include one amendment that was erroneously omitted in the proposed rulemaking notice. The additional amendment updates a reference in 32 CFR 22.605 to what is now Subpart E of 32 CFR part 21 (see amendment number 13.a following this preamble).

Executive Order 12866

OMB has determined this rule to be significant and it has been reviewed and approved for publication

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

32 CFR Part 21

Grant programs, Reporting and recordkeeping requirements.

32 CFR Part 22

Accounting, Grant programs, Grant programs—education, Reporting and recordkeeping requirements.

32 CFR Part 25

Administrative practice and procedure; Grant programs; Loan programs; Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 33

Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Government property, Grant programs, Nonprofit

organizations, Reporting and recordkeeping requirements.

32 CFR Part 37

Accounting, administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

■ Accordingly, Title 32 of the Code of Federal Regulations, Chapter I, Subchapter B is amended as follows:

PART 21—[AMENDED]

■ 1. The authority citation for part 21 continues to read as follows:

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

Subpart E—[Amended]

■ 2. Subpart E is amended by adding a new section § 21.565 to read as set forth below.

§ 21.565 Must DoD Components' electronic systems accept Data Universal Numbering System (DUNS) numbers?

The DoD Components must comply with paragraph 5.e of the Office of Management and Budget (OMB) policy directive entitled, ''Requirement for a DUNS number in the Applications for Federal Grants and Cooperative Agreements [6].'' Paragraph 5.e requires electronic systems that handle information about grants and cooperative agreements (which, for the DoD, include Technology Investment Agreements) to accept DUNS numbers. Each DoD Component that awards for administers grants or cooperative agreements must ensure that DUNS numbers are accepted by each such system for which the DoD Component controls the system specifications. If the specifications of such a system are subject to another organization's control and the system can not accept DUNS numbers, the DoD Component must alert that organization to the OMB policy directive's requirement for use of DUNS numbers with a copy to: Director for Basic Sciences, ODDR&E, 3040 Defense Pentagon, Washington, DC 20301–3040.

[6] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html*.

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■ 3. Appendix A to part 21 is revised to read as follows:

Appendix A to Part 21—Instruments to Which DoDGARs Portions Apply

DoDGARs . . .	which addresses . . .	applies to . . .
Part 21 (32 CFR part 21), all but Subparts D and E	The Defense Grant and Agreement Regulatory System and the DoD Grant and Agreement Regulations	"awards," which are grants, cooperative agreements, technology investment agreements (TIAs), and other nonprocurement instruments subject to one or more parts of the DoDGARs.
Part 21 (32 CFR part 21), Subpart D	Authorities and responsibilities for assistance award and administration	grants, cooperative agreements, and TIAs.
Part 21 (32 CFR part 21), Subpart E	DoD Components' information reporting requirements	grants, cooperative agreements, TIAs, and other nonprocurement instruments subject to reporting requirements in 31 U.S.C. chapter 61.
Part 22 (32 CFR part 22)	DoD grants officers' responsibilities for award and administration of grants and cooperative agreements	grants and cooperative agreements other than TIAs.
Part 25 (32 CFR part 25)	Governmentwide debarment and suspension requirements	nonprocurement generally, which includes grants, cooperative agreements, TIAs, and other instruments that are covered transactions under 32 CFR 25.210, with the exceptions identified at 32 CFR 25.215.
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 32 (32 CFR part 32)	Administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations	grants, cooperative agreements other than TIAs, and other assistance included in "award," as defined in 32 CFR 32.2. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 33 (32 CFR part 33)	Administrative requirements for grants and agreements with State and local governments	grants, cooperative agreements other than TIAs, and other assistance included in "grant," as defined in 32 CFR 33.3. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations	grants and cooperative agreements other than TIAs ("awards," 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 portions of DoDGARs parts 32, 33, and 34 that apply to TIAs.

PART 22—[AMENDED]

■ 4. The authority citation for part 22 continues to read as follows:

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

■ 5. Section 22.100 is amended as follows:
■ A. In paragraph (b)(1) by revising the phrase ''Governmentwide rules on debarment, suspension and drug-free workplace requirements'' to read ''The Governmentwide rule on nonprocurement debarment and suspension'';
■ B. Redesignate paragraphs (b) (2) and (3) as paragraphs (b)(3) and (4) respectively; and
■ C. Add a new paragraph (b)(2) to read as follows:

§ 22.100 Purpose, relation to other parts, and organization.

* * * * *

(b) * * *

(2) The Governmentwide rule on drug-free workplace requirements, in 32 CFR part 26.

* * * * *

§ 22.220 [Amended]

■ 6. In § 22.220, amend paragraph (a)(1) by revising ''Director of Defense Procurement (DDP)'' to read ''Director of Defense Procurement and Acquisition Policy (DDP&AP)'', and amend paragraph (a)(2) by revising ''DDP'' to read ''DDP&AP''.

■ 7. Section 22.315 is amended by revising paragraph (a) to read as set forth below:

§ 22.315 Merit-based, competitive procedures.

* * * * *

(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 entitles 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.FedGrants.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.

[3] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

(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).

* * * * *

[2] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

[3] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

[4] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

§ 22.405 [Amended]

■ 8. Section 22.405, paragraph (a) is amended by revising ''32 CFR 22.115(a)'' to read ''32 CFR 25.110(a)''.

■ 9. Section 22.420 is amended as follows:
■ a. Revision paragraph (c)(1) to read as set forth below; and
■ b. Redesignating the current footnote 2 in paragraph (b)(1) as footnote 5 and revising it to read as set forth below:

§ 22.420 Pre-award procedures.

* * * * *

(c) * * *

(1) Is not identified in the Governmentwide Excluded Parties List System (EPLS) as being debarred, suspended, or otherwise ineligible to receive the award. (In addition to being a requirement for every new award, note that checking the EPLS also is a requirement for subsequent obligations of additional funds, such as incremental funding actions, for pre-existing awards to institutions of higher education, as described at 32 CFR 22.520(e)(2).) The grants officer's responsibilities include (see 32 CFR 25.425 and 25.430) checking the EPLS for:

(i) Potential recipients of prime awards; and

(ii) A recipient's principals (as defined at 32 CFR 25.995), potential recipients of subawards, and principals of those potential subaward recipients, if DoD Component approval of those principals of lower-tier recipients is required under the terms of the award (e.g., if a subsequent change in a recipient's principal investigator or other key person would be subject to the DoD Component's prior approval under 32 CFR 32.25(c)(2), 33.30(d)(3), or 34.15(c)(i)).

* * * * *

[5] Electronic copies may be obtained at Internet site *http://www.whitehouse.gov/OMB.* For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW., New Executive Office Building, Washington, DC 20503.

■ 10. Section 22.505 is amended by redesignating the existing footnotes 3 and 4 in paragraph (a) of section 22.505 as footnotes 6 and 7, respectively, and by revising them to read as follows:

§ 22.505 Purpose.

* * * * *

[6] See footnote 5 to § 22.420(b)(1).

[7] See footnote 5 to § 22.420(b)(1).

■ 11. Section 22.510 is amended by:
■ a. Revising paragraphs (a)(2)(ii)(A), (a)(2)(ii)(B), and (a)(2)(ii)(C) to read as set forth below; and
■ b. Redesignating the current footnote 5 in paragraph (b) as footnote 8 and revising it to read as set forth below:

§ 22.510 Certifications, representations, and assurances.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(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.

* * * * *

[8] 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*.

■ 12. Section 22.520 is revised to read as follows:

§ 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 of Secretary of Homeland Security from gaining access to campuses, or access to student (who are 17 years of age or older) or campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope of 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) Name, address, and telephone listings.

(ii) Date and place of birth, levels of education, academic majors, degrees received, and the most recent education institution enrolled in by the student.

(d) *Policy.* (1) *Applicability to cooperative agreements.* As a matter of DoD policy, the restriction 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 Director of Defense Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Basic Sciences, ODUSD(LABS), 3040 Defense Pentagon, Washington, D.C. 20301–3040.

(e) *Grants officers' responsibility.* (1) A grants officers shall not award any grant or cooperative agreements 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 on the Governmentwide Excluded Parts List System (EPLS). The cause and treatment code on the EPLS indicates the reason for an institution's ineligibility, as well as the effect of the exclusion. Note that 32 CFR 25.425 and 25.430 require a grants officers to check the EPLS 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 officers shall include the following award term in each grant or cooperative agreements 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 for 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 of 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 provide to any other employer; or

(D) Access by military recruiters for purposes of military recruiter to the name of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their address, telephone listing, date and places of birth, levels of education, academic majors, and degrees received; and the most recent education 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 agreements 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 awards.''

(4) If an institution of higher education refuses to accept the award of 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. This grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director of Access Policy, Office of the Deputy Under Secretary of defense of 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 instition under 32 CER 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 on the EPLS 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 the EPLS 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 additoinal funds if the cause and treatment code indicates that the reason for an institution's EPLS 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 of 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 the EPLS 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 institution s for which post-award payment administration was not delegated to ONR. The ONR is to alert those offices to their responsibilities under paragraph (c)(5) of this section.

■ 13. Section 22.605 is amended by:

■ a. Revising ''(see 32 CFR part 21, subpart C)'' to read ''(see 32 CFR part 21, subpart E)'' in paragraph (b); and

■ b. Redesignating the current footnote 6 in paragraph (c)(2) as footnote 9 and revising it to read as follows:

§ 22.605 Grants officers' responsibilities.

* * * * *

[9] See footnote 8 to § 22.510(b).

■ 14. Section 22.710 is amended as follows:

■ a. Revising the introductory text to read as set forth below; and

■ b. Redesignating the current footnotes 7 through 9 in the introductory text and in paragraphs (a)(1) and (2) respectively as footnotes 10 through 12 and revising them to read as set forth below:

§ 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 Contact Administration Services (CAS) Components'' [10] for specific addresses of administration offices):

* * * * *

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

[11] See footnote 5 to § 22.420(b)(1).

[12] See footnote 5 to § 22.420(b)(1).

■ 15. Section 22.715 is amended by revising paragraphs (a)(3) and (4) to read as set forth below:

§ 22.715 Grants administration office functions.

* * * * *

(a) * * *

(3) Reviewing recipients' systems and compliance with Federal requirements, in coordination with any reviews and compliance audits performed by independent auditors under OMB Circular A–133, 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.

(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 OMB Circular A–133, as implemented at 32 CFR 32.26 and 33.26, 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), 400 Army-Navy Drive, Arlington, VA 22202).

(4) Issuing timely management decisions, in accordance with DoD Directive 7640.2, ''Policy for Follow-up

on Contract Audit Reports,'' [13] on single audit findings referred by the OIG, DoD, Directive 7600.10, ''Audits of States, Local Governments, and Non-Profit Organizations''.[14]

[13] 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.

[14] See footnote 13 to § 22.715(a)(4).

■ 16. Section 22.810 is amended by redesignating footnote 10 to paragraph (c)(3)(i) as footnote 15 and revising it to read as follows:

§ 22.810 Payments.

* * * * *

[15] See footnote 13 to § 22.715(a)(4).

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■ 17. Appendix A to Part 22 is revised to read as follows:

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

■ 18. Appendix B to Part 22 is revised to read as follows:

Appendix B to Part 22—Suggested Award Provisions for National Policy Requirements That Often Apply

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Nondiscrimination By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:				
a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195.	Grants, cooperative agreements, and other financial assistance included at 32 CFR 195.2(d).	Any.	Any.	32 CFR part 195.6 requires grants officer to obtain recipient's assurance of compliance. It also requires the recipient to flow down requirements to subrecipients.
b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.	Grants, cooperative agreements, and other prime awards defined at 40 CFR 60-1.3 as "Federally assisted construction contract."	Any.	Awards under which construction work is to be done.	The grants officer should inform recipients that 41 CFR 60-1.4(b) prescribes a clause that recipients must include in federally assisted construction awards and subawards [60-1.4(d) allows incorporation by reference]. This requirement also is at 32 CFR 33.36(l)(3) and in Appendices A to 32 CFR part 32 and 32 CFR part 34.
c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.	Grants, cooperative agreements, and other financial assistance included at 20 U.S.C. 1682.	Any [for sex discrimination, 32 CFR 196.235 excepts an entity controlled by a religious organization, if not consistent with the organization's religious tenets].	Any educational program or activity receiving Federal financial assistance.	32 CFR 196.115 requires assurance of compliance. The inclusion of subrecipients in the definition of "recipient" at 32 CFR 196.105 requires recipient to flow down requirements to subrecipients.
d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."	Any.	Any.	45 CFR 90.4 requires that recipient flow down requirements to subrecipients [definition of "recipient" at 45 CFR 90.4 includes entities to which assistance is extended indirectly, through another recipient].

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
e. On the basis of handicap, in:				
1. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.	Grants, cooperative agreements, and other awards included in "Federal financial assistance" definition at 32 CFR 56.3(b).	Any.	Any.	32 CFR 56.9(b) requires grants officer to obtain recipient's written assurance of compliance and specifies what the assurance includes. Note that requirements flow down to subawards ["recipient," defined at 32 CFR 56.3(g), includes entities receiving assistance indirectly through other recipients].
2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).	Grant or loan.	Any.	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.	
Live Organisms By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:				
a. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by the Department of Defense at 32 CFR part 219.	Any.	Any.	Research, development, test, or evaluation involving live human subjects, with some exceptions [see 32 CFR part 219].	32 CFR 219.103 requires each recipient to have a Federally approved, written assurance of compliance [it may be HHS-approved, on file with HHS; DoD-approved, on file with a DoD Component; or may need to be obtained by the grants officer for the specific award].

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. For animals:				
1. Rules on animal acquisition, transport, care, handling, and use in 9 CFR parts 1-4, Department of Agriculture rules implementing the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) , and guidelines in the National Academy of Sciences (NAS) "Guide for the Care and Use of Laboratory Animals" (1996), including the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals in Appendix D to the guide.	Any.	Any.	Research, experimentation, or testing involving the use of animals.	Prior to making an award under which animal-based research, testing, or training is to be performed, DoD Directive 3216.1[1] requires administrative review of the proposal by a DoD veterinarian trained or experienced in laboratory animal science and medicine, as well as a review by the recipient's Institutional Animal Care and Use Committee.
2. Prohibitions on the purchase or use of dogs or cats for certain medical training purposes, in Section 8019 (10 U.S.C. 2241 note) of the Department of Defense Appropriations Act, 1991 (Pub. Law 101-511).	Any.	Any.	Use of DoD appropriations for training on treatment of wounds.	
3. Rules of the Departments of Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.	Any.	Any.	Activities that may involve or impact wildlife and plants.	

1 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.

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Debarment and Suspension The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of 32 CFR part 25, which implements E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235]; and Sec. 2455 of Federal Acquisition and Streamlining Act of 1994 (Pub. L. 103-355). The recipient also agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the recipient enters into transactions that are "covered transactions" under Subpart B of 32 CFR part 25.	Any nonprocurement transaction [see "covered transaction" as specified in Subpart B of 32 CFR part 25, especially sections 25.210 and 25.215]	All but foreign governments, foreign governmental entities, and others excluded at 32 CFR 25.215(a)	Any	
Hatch Act The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.	Grants or loans.	State and local governments.	All but employees of educational or research institutions supported by State; political subdivision thereof; or religious, philanthropic, or cultural organization.	
Environmental Standards By signing this agreement or accepting funds under this agreement, the recipient assures that it will: a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.	Any nonprocurement transaction [see 40 CFR 32.1110].	Any.	Any.	Executive Order 11738 establishes additional responsibilities for grants officers.

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. Identify to the awarding agency any impact this award may have on:				
1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.	Any.	Any.	Any actions that may affect the environment.	The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.
2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.	Grants, cooperative agreements, and other "financial assistance" (see 42 U.S.C. 4003).	Any.	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	The grants officer should inform the recipient that 42 U.S.C. 4012a prohibits awards for acquisition or construction in flood-prone areas (Federal Emergency Management Agency publishes lists of such areas in the Federal Register), unless recipient has required insurance. If action is in a floodplain, Executive Order 11988 [3 CFR, 1977 Comp., p. 117] specifies additional pre-award procedures for Federal agencies. Recipients are to apply requirements to subawards ("financial assistance," defined at 42 U.S.C. 4003, includes indirect Federal assistance).

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.), concerning protection of U.S. coastal resources.	Grants, cooperative agreements, and other "Federal assistance" [see 16 U.S.C. 1456(d)].	State and local governments, interstate and other regional agencies.	Awards that may affect the coastal zone.	16 U.S.C. 1456(d) prohibits approval of projects inconsistent with a coastal State's approved management program for the coastal zone.
4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	Any.	Awards that may affect barriers along the Atlantic and Gulf coasts and Great Lakes' shores.	16 U.S.C. 3504-3505 prohibit new awards for actions within Coastal Barrier System, except for certain purposes. Requirements flow to subawards (16 U.S.C. 3502 includes indirect assistance as "financial assistance").
5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).	Any.	Any.	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	
6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).	Any.	Any.	Construction in any area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for any project that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.
Drug-Free Workplace The recipient agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).	Any financial assistance, including any grant or cooperative agreement [see "award" as broadly defined at 32 CFR 26.605]	Any	Any, except where inconsistent with international obligations of the U.S. or the laws or regulations of a foreign government [see 32 CFR 26.110]	

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
National Historic Preservation The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 C.F.R. part 800 and Executive Order 11593 [3 CFR, 1971-1975 Comp., p. 559].	Any.	Any.	Any construction, acquisition, modernization, or other activity that may impact a historic property.	36 CFR part 800 requires grants officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.
Officials Not to Benefit No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.	Grants, cooperative agreements, and other "agreements."	Any.	Any.	
Preference for U.S. Flag Carriers Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.	Any.	Any.	Any agreement under which international air travel may be supported by U.S. Government funds.	

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Cargo Preference The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.	Grants, cooperative agreements, and other awards included in 46 CFR 381.7.	Any.	Any award where possibility exists for ocean transport of items procured or obtained by or on behalf of the recipient, or any of the recipient's contractors or subcontractors.	46 CFR 381.7 requires grants officers to include appropriate clauses in award documents. It also requires recipients to include appropriate clauses in contracts using U.S. Government funds under agreements, where ocean transport of procured goods is possible [e.g., see clause at 46 CFR 381.7(b)].
Military Recruiters [Grants officers shall include the exact award provision specified at 32 CFR 22.520]	Grants and cooperative agreements.	Domestic institution of higher education (see 32 CFR 22.520).	Any.	
Relocation and Real Property Acquisition The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.	Grants, cooperative agreements, and other "Federal financial assistance" [see 49 CFR 24.2(j)].	"State agency" as defined in 49 CFR part 24 to include persons with authority to acquire property by eminent domain under State law.	Any project that may result in real property acquisition or displacement where State agency hasn't opted to certify to Dept. of Transportation in lieu of providing assurance.	42 U.S.C. 4630 and 49 CFR 24.4, as implemented by DoD at 32 CFR part 259, requires grants officers to obtain recipients' assurance of compliance.

PART 25—[AMENDED]

■ 19. The authority citation for part 25 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235].

■ 20. Section 25.425 is amended by revising paragraphs (c) and (d) and adding a paragraph (e) to read as follows:

§ 25.425 When do I check to see if a person is excluded or disqualified?

* * * * *

(c) Approve a lower tier participant if agency approval of the lower tier participant is required;

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required; or

(e) Obligate additional funding (e.g., through an incremental funding action) for a pre-existing covered transaction with an institution of higher education, as provided in 32 CFR 22.520(e)(2).

PART 32—[AMENDED]

■ 21. The authority citation for part 32 continues to read as follows:

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

§ 32.2 [Amended]

■ 22. Section 32.2 introductory text is amended by revising ''32 CFR 25.105'' to read ''32 CFR 25.1015''.

■ 23. Paragraph 8 of Appendix A to part 32 is revised to read as follows:

Appendix A to Part 32—Contract Provisions

* * * * *

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the Governmentwide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 33—[AMENDED]

■ 24. The authority citation for part 33 continues to read as follows:

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

§ 33.26 [Amended]

■ 25. Section 33.26, paragraph (b) is amended by revising ''$300,000'' to read ''$500,000''.

§ 33.35 [Amended]

■ 26. Section 33.35 is amended by revising ''not make any award or permit any award (subgrant or contract) at any tier to'' to read ''comply with the requirements of Subpart C, 32 CFR part 25, including the restrictions on entering into a covered transaction with''.

PART 34—[AMENDED]

■ 27. The authority citation for part 34 continues to read as follows:

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

§ 34.16 [Amended]

■ 28. Section 34.16, paragraph (a) is amended by revising ''$300,000'' to read ''$500,000''.

■ 29. Paragraph 7 of Appendix A to part 34 is revised to read as follows:

Appendix A to Part 34—Contract Provisions

* * * * *

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the Governmentwide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 37—[AMENDED]

■ 30. The authority citation for part 37 continues to read as follows:

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

■ 31. Section 37.130 is amended by:

■ a. Revising paragraph (b)(1); and

■ b. Redesignating paragraph (b)(2) as (b)(3), and adding a new (b)(2) to read as follows:

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

* * * * *

(b) * * *

(1) Part 25 (32 CFR part 25) on nonprocurement debarment and suspension, which applies because it covers nonprocurement instruments in general;

(2) Part 26 (32 CFR part 26), on drug-free workplace requirements, which applies because it covers financial assistance in general; and

* * * * *

■ 32. Appendix D to part 37 is revised to read as follows:

Appendix D to Part 37—What Common National Policy Requirement May Apply and Need To Be Included in TIAs?

What your TIA is a cooperative agreement or another type of assistance transaction, as discussed in Appendix B to this part, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statues and regulations. This appendix lists some of the more common requirements to aid you in identifying one that apply to your TIA. The list is not intended to be all-inclusive, however, and you may need to consult legal counsel to verify whether there are other that apply in your situation (*e.g.,* due to a provision in the appropriations act for the specific funds that you are using or due to a statute or rule that applies to a particular program or type of activity).

A. Certifications

One requirement that applies to all TIA's currently requires you to obtain a certification at the time of proposal. That requirement is in a Governmentwide common rule about lobbying prohibitions, which is implemented by the DoD at 32 CFR part 28. The prohibitions apply to all financial assistance. Appendix A to 32 CFR part 22 includes a sample provision that you may use, to have proposers incorporate the certification by reference into their proposals.

B. Assurance That Apply to All TIAs

DoD policy is to use certification, as described in the preceding paragraph, only for national policy requirement that specifically require them. The usual approach to a communicating other national policy requirements to recipients is to incorporate them as award terms of conditions, or assurances. Appendix B to 32 CFR part 22 lists national policy requirements that commonly apply to grants and cooperative agreements. It also has suggested language for assurances to incorporate the requirements in award documents. Of those requirements, the following six apply to all TIAs:

1. Requirements concerning debarment and suspension in the Governmentwide common rule that the DoD has codified in 32 CFR part 25. The requirements apply to all nonprocurement transactions.

2. Requirements concerning drug-free workplace in the Governmentwide common rule that the DoD has codified at 32 CFR part 26. The requirements apply to all financial assistance.

3. Prohibitions on discrimination the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.* These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive research program (as opposed to supplies from whom recipients purchase goods or services). For further information, see item 1. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

4. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act

of 1975 (42 U.S.C. 6101, *et seq.*). They apply to all financial assistance and require flow down to subrecipients. For further information, see item d. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

5. Prohibition on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They apply to all financial assistance and require flow down to subrecipients. For further information, see item e.1. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

6. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which apply to uses of U.S. Government funds.

C. Other Assurances

Additional requirements listed in Appendix B to 32 CFR part 22 may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246 on discrimination on the basis of race, color, religion, sex, or national origin. For further information, see item b. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

2. If the research involves human subjects or animals, it is subject to the requirements in item a. or b., respectively, under the heading ''Live organisms'' in Appendix B to 32 CFR part 22.

3. If the research involves actions that may affect the environment, it is subject to the National Environmental Policy Act, which is item b.1. under the heading ''Environmental Standards'' in Appendix B to 32 CFR part 22. It also may be subject to one or more of the other requirements in items b.2. through b.6. under that heading, which concern flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, and underground sources of drinking water.

4. If the project may impact a historic property, it is subject to the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), as described under the heading ''National Historic Preservation'' in Appendix B to 32 CFR part 22.

■ 33. Appendix E to part 37 is revised to read as follows:

Appendix E to Part 37—What Provisions May a Participant Need To Include When Purchasing Goods or Services Under a TIA?

A. As discussed in § 37.705, you must inform recipients of any national policy requirements that flow down to their purchases of goods or services (*e.g.*, supplies or equipment) under their TIAs. Note that purchases of goods or services differ from subawards, which are for substantive research program performance.

B. Appendix A to 32 CFR part 34 lists seven national policy requirements that commonly apply to firms' purchases under grants or cooperative agreements. Of those seven, two that apply to all recipients' purchases under TIAs are:

1. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).* A contractor submitting a bid to the recipient for a contract award of $100,000 or more must file a certification with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 32 CFR part 28, the DoD's codification of the Governmentwide common rule implementing this amendment.

2. *Debarment and suspension.* A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the Governmentwide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

C. One other requirement applies only in cases where construction work is to be performed under the TIA with Federal funds or recipient funds counted toward required cost sharing:

1. *Equal Employment Opportunity.* Although construction work should happen rarely under a TIA, the agreements officer in that case should inform the recipient that Department of Labor regulations at 41 CFR 60–1.4(b) prescribe a clause that must be incorporated into construction awards and subawards. Further details are provided in Appendix B to Part 22 of the DoDGARs (32 CFR part 22), in section b. under the heading ''Nondiscrimination.''

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L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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