

Contract and Grant Manual

RESEARCH FUNDING SYSTEMS

(Relationships, Reviews, and Reforms) Revised November 2011

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19-100 INTRODUCTION AND SCOPE

The purpose of this *Manual* chapter is to summarize the various types of award relationships and instruments for use by the University in doing business with extramural sponsors, and to outline the major issues or concerns associated with each type.

19-200 THE FEDERAL EXTRAMURAL SUPPORT SYSTEM

There are two basic types of mechanisms that federal agencies use to provide funds to State governments and other recipients in furtherance of public programs, including research: *assistance* and *acquisition*. An assistance-type relationship exists when the principal purpose of the relationship is the transfer of anything of value in order to accomplish a public purpose of support or stimulation. An acquisition-type relationship exists when the principal purpose is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government. (See [Section 2-F02](#) of this *Manual*.)

Grants and cooperative agreements are used when the government wants to assist a recipient in accomplishing a public purpose. Grants are normally used when no substantial involvement is anticipated between the federal agency and the recipient during the performance of the contemplated activity. When substantial involvement is anticipated, a cooperative agreement is usually awarded.

When the government wants to acquire goods and services for its own direct benefit or use, it usually issues a contract.

Research, training, and public service activities supported by federal funds are governed by two broad sets of regulations depending on whether grants and cooperative agreements or contracts

are used to provide the funds. Assistance regulations are discussed below in Section 19-210 and acquisition regulations are discussed in [Section 19-220](#).

19-210 ASSISTANCE REGULATIONS

Regulations governing grants and cooperative agreements awarded by a particular federal agency are usually codified in that agency's section of the [Code of Federal Regulations](#) (CFR). (For example, grant rules for the [Department of Health and Human Services](#) are codified at [45 CFR Part 74](#).) These regulations are often repeated in and supplemented by handbooks, guides, manuals, or other documents. In the formulation of its grant and cooperative agreement rules for universities, a federal agency is required to follow the guidance in [Office of Management and Budget \(OMB\)](#), *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, [2 CFR Part 215](#) (OMB Circular A-110) unless prohibited by statute or OMB grants an exception.

19-211 2 CFR Part 215 - OMB Circular A-110

[2 CFR Part 215](#) sets forth standards for obtaining consistency among federal agencies in the administration of grants to and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations.

The three major sections of this CFR part concern pre-award, during-award, and after-award requirements. Specific sub-sections of this CFR part are covered in various chapters of this *Manual*, as follows:

- Pre-award and during-award requirements are covered in [Chapter 2](#), including monitoring and reporting program performance and termination.
- Financial reporting and program management are covered in [Chapter 6](#), with the exception of cost sharing and matching which are discussed in [Chapter 5](#).
- Property standards are covered in [Chapter 15](#), with the exception of insurance coverage which is discussed in [Chapter 21](#).
- Procurement standards are found in [Chapter 16](#).
- Retention and access requirements for records are covered in [Chapter 17](#).

19-212 Agency Implementations of 2 CFR 215 – A-110

Individual federal agencies implement 2 CFR 215 in their respective sections of the Code of Federal Regulations (CFR) and may supplement it with additional administrative requirements in various agency-specific handbooks, guides, and manuals for their grants and cooperative agreements.

Within part 52, the numbering scheme is 52.2XX-Y, where the XX refers to the FAR part in which the clause is prescribed in parts 1 to 51. The -Y, however, is merely a sequential identifier (beginning with -1) and is not related to the prescribing FAR *section*. Thus 52.229-4 is the fourth clause prescribed in part 29.

Each federal contracting agency has the option of issuing its own supplement to the FAR, and these supplements are assigned a unique 1- or 2-digit number that precedes the corresponding FAR number. For example, the Department of Defense (DOD) is assigned the number 2, so that in its FAR supplement, the Defense FAR Supplement or DFARS, clauses all begin with 252. Thus 252.227-XXXX identifies DFARS clauses that are prescribed in part 227 of the DFARS and pertain to subject matter covered in part 27 of the FAR (in this case, intellectual property).

Although each agency has a certain part or section of the CFR where it publishes its acquisition regulations (including grant assistance rules), FAR supplements for all agencies are codified in [Part 48 of the CFR](#). FAR [part 25](#), for example, is found in [48 CFR Chapter 1, Part 25](#). The DFARS is found at [48 CFR Chapter 2](#); the Department of Health and Human Services HHSAR Supplement is [48 CFR Chapter 3](#); and so on.

Agencies must seek approval from the Office of Federal Procurement Policy as well as publish proposed changes for public comment in the *Federal Register* in order to add to or modify their FAR supplements.

19-222 FAR Clause Database

The OP [Research Policy Analysis & Coordination Office \(RPAC\)](#) reviews changes in the FAR and major agency FAR supplements as they are published in the *Federal Register*. RPAC maintains [FAR clause guidance on its homepage](#). Lists of [FAR](#), [DFARS](#), and [NASA FAR Supplement](#) provisions and clauses that are of interest to Contract and Grant Officers are available in an [on-line database](#) on the RPAC homepage. These lists provide the clause/provision name and number, date, prescription location, summary, guidance, and other information for FAR, DFARS and NASA FAR clauses generally found in research contracts with educational institutions.

Provisions and clauses are added to these lists both in response to campus requests and as a result of review of issuances in the *Federal Register*. The "Comment" field in each list provides guidance if there are any special circumstances that Contract and Grant Officers should know about the clause, including whether the clause is generally not acceptable to the University. Mere listing of a clause is not intended to be synonymous with saying that the clause is acceptable to the University, nor is non-appearance on a list a sign that the clause is not acceptable as context and applicability as well as University policy must be considered in reviewing these clauses

19-230 SYSTEM REFORMS

OP RPAC is committed to working with sponsors and campuses to make structural improvements in the extramural support system. The development of master agreements or

master terms and conditions with State and private sponsors (see Section [19-330](#)) as well as participation in the [Federal Demonstration Partnership](#), the [Council on Governmental Relations \(COGR\)](#) and other national organizations.

19-231 Federal Demonstration Partnership

The Federal Demonstration Partnership (FDP) is a cooperative initiative of participating federal agencies and research universities whose purpose is to reduce the administrative burden associated with research contracts and grants and to foster productive research environments by:

- Promoting communication and cooperation among all participants in the research support system at the federal, state, and institutional levels;
- Serving as a laboratory to evaluate innovative and controversial changes to existing research support practices;
- Improving, streamlining, and standardizing the management and administration of the research support system; and
- Optimizing the investment of research funds while maintaining appropriate stewardship.

The University has been a participant in the FDP since its inception in 1988, and has taken the lead in the areas of allocation of costs, documentation of costs, equipment screening requirements, contract terms, and subcontracting.

Various pilot projects conducted under the FDP have resulted in measurable decreases in non-productive administrative burdens on both research scientists and university administrators. The long-term goal is to institutionalize and codify changes that have been successfully demonstrated in the pilot projects.

19-300 STATE OF CALIFORNIA AWARDS

19-310 STANDARD AGREEMENTS

The State of California uses a variety of [“Standard Forms,”](#) issued by the [Office of Legal Services](#), when contracting for services with other State and non-State entities. The resulting contracts are either interagency agreements or standard agreements. Although for agreements between State agencies and the University, interagency agreements are the preferred funding mechanism, standard agreements may be acceptable provided the terms and conditions specific to the particular funded project are consistent with University policy.

19-320 INTERAGENCY AGREEMENTS

Units of the State of California obtain services from other State entities using an interagency agreement. Interagency agreements are preferred over standard agreements because the dollar

threshold for exemption from review and approval by the [State Department of General Services](#) is higher and the terms and conditions are appropriate for another State entity such as the University. For example, it should not include clauses dealing with affirmative action, nondiscrimination, required business subcontracting, indemnification or other clauses not required for or applicable to another entity of the State of California.

19-330 *INTERAGENCY MASTER AGREEMENTS*

Interagency master agreements are negotiated by the Office of the President [Research Policy Analysis & Coordination Office](#) (RPAC) as an umbrella mechanism for use by all campuses. The interagency master agreement contains all the basic terms and conditions common to any project to be conducted under the agreement. When a State agency desires to fund a project under the interagency master agreement, it only needs to work out details on the scope of work and the budget with the campus Principal Investigator and Contract and Grant Office. The State then issues a Memorandum of Understanding (MOU) or a Research Technical Agreement (RTA) which incorporates the terms and conditions of the master agreement by reference.

Copies of initial agreements and any amendments that are negotiated and executed by RPAC and are distributed to campuses via [RPAC Memos](#).

19-340 *FEDERAL FLOW-THROUGH*

The State of California may receive funding from the federal government and, in turn, use that money to fund local governments or other providers of goods and services. In order to fulfill its obligations under the prime federal award, the State must include its federal obligations to subawards and subcontracts. Usually this is accomplished by simply flowing down federal grant or contract clauses in the subagreement which may sometimes create problems. For example, [OMB Circular A-102](#), *Grants and Cooperative Agreements with State and Local Governments*, contains the federal grants management standards for state governments. As an educational institution, the University is subject to [2 CFR 215 - OMB Circular A-110](#) (see [19-211](#)), and not A-102. Contract and Grant Officers should make sure that inappropriate federal flow-through clauses are not imposed in State awards.

19-350 *FINANCIAL REPORTING REQUIREMENTS*

Contract and Grant Officers should avoid agreeing to furnish non-federal sponsors with financial reports that are more detailed than those normally provided to federal sponsors. Campus accounting systems are typically geared to automating the production of reports that satisfy federal requirements; anomalies translate into more work and extra costs. In the case of State agencies which expect financial reports to be organized into categories that match up with the project budget or each specific task in the Scope of Work, future problems may be averted if the project budget consists of standard line items that coincide with the budget reporting categories normally used by the campus accounting office.

19-400 RESEARCH AGREEMENTS, UNIVERSITY OF CALIFORNIA: A GUIDE FOR INDUSTRY

The brochure "Research Agreements, University of California: A Guide for Industry" was produced by the Office of the President, Research Administration Office, to assist Contract and Grant Officers in negotiating agreements with private sponsors, particularly awards from for-profit companies. It constitutes a summary of the general provisions that would be applicable to all sponsored agreements. A copy of this brochure is reproduced at the end of this *Manual* chapter.

Agreements to perform research, training or public service with for-profit sponsors should not be classified as "Sales and Services." OP RPAC Operating Guidance Memo [00-06, "Distinguishing between Private Gifts, Private Grants and Contracts; and Sales and Service Transactions"](#) provides further guidance on making a distinction between contracts from industry and sales and service agreements. Specifically, the memo notes that:

Grants and Contracts are written agreements with external sponsors (generally not individuals) in which the University promises to provide research, training, public service, or nonstandardized testing/other services. An agreement which contains one or more of the following provisions is generally a contract or grant: (1) a research protocol or other statement of work, (2) a designated period of performance, (3) a budget, (4) an obligation to account for costs incurred and to return unspent funds, (5) disposition of intellectual property rights. The following are examples of grants and contracts which should not be classified as sales and services:

- Agreements to test a company's drug or device
- Agricultural Marketing Board orders
- Sales of survey services (data collection and/or analysis)
- Service to industry agreements
- Use of unique facilities, when staff support or analytical services are also provided (i.e., not sold at pre-established, per unit, uniform prices for standard routines)
- Agreements with an external party to run a conference
- Educational services provided at sponsor's site or for sponsor's personnel (e.g., through University Extension)
- Sales of consulting services
- Agreements with non-University hospitals or clinics to provide medical services (e.g., scarce anesthesiology or radiology services)

For information on distinguishing gifts from contracts or grants, see [Chapter 9](#) in this *Manual*.

19-410 CLINICAL TRIAL AGREEMENTS

Clinical trial agreements apply to the testing of a private sponsor's proprietary product, such as a drug or device, on human subjects. The approved protocol to be followed in the testing may be that of the sponsor or of the University Principal Investigator. Clinical trials may be funded by corporate sponsors or the federal government.

OP RPAC negotiates clinical trial master agreements for the University system, provides campuses with guidance on clinical trial agreements, and assists campuses, as needed, in the negotiation on individual campus agreements. Master agreements and other materials are available to campuses on the [OP RPAC clinical trial webpage](#).

19-420 MATERIAL TRANSFER AGREEMENTS

A Material Transfer Agreement (“MTA”) is an agreement in which one party agrees to provide physical materials or samples to another party for testing, evaluation, or experimentation. The physical sample may include biological materials (from DNA to live animals), chemical compounds, or even databases and software codes. Institutions involved in the exchange of unique materials (transfer of both incoming and outgoing research materials) include federal laboratories, industrial research laboratories, and laboratories in universities, hospitals, or independent research institutes. The most common subjects of Material Transfer Agreements are biological materials and chemical compounds. Materials used in humans do not fall under the MTA category; the use of such materials in research would fall under a clinical trial agreement described in the previous section. MTAs do not apply to such transfers.

OP RPAC negotiates MTA master agreements for the University system, provides campuses with guidance on MTAs, and assists campuses, as needed, in the negotiation of individual campus agreements. Master agreements and guidance materials for campus MTA negotiators and researchers are available on the [OP Office of Technology Transfer Resources for Staff webpage](#).

19-500 AWARDS FROM FOREIGN ORGANIZATIONS

Most aspects of agreements with foreign sponsors tend to be unique to the particular sponsor, and sometimes even unique to the particular agreement. A few general principles, however, applicable primarily to agreements that support activities in developing countries, are set forth below.

19-510 SCOPE OF WORK

The statement of work should describe in unambiguous language exactly what the University is obligated to do under the agreement in order to avoid any future disagreements between the University and the sponsor on project objectives and the means for achieving those objectives. Such concerns could perhaps be mitigated by clear descriptions of the work to be done.

19-520 PAYMENT

It is the University's established practice to receive payment in advance of work performed. This is particularly important in connection with foreign-funded projects because of uncertainties that may exist with regard to the stability of the sponsoring country's economy, government or exchange rate. The agreement should make clear when, how, and in what form payment is to be made, so that losses due simply to changes in the exchange rate are minimized. The total estimated cost should be stated in U.S. dollars.

19-530 FOREIGN LANGUAGE VERSION OF THE AGREEMENT

Contract and Grant Officers should avoid having the agreement written both in English and in a foreign language. If the sponsor insists on a foreign language version in addition to the English, a clause should be inserted in both agreements to the effect that, in case of doubt or conflict, the language in the English version will govern.

19-999 RELATED UNIVERSITY REFERENCES

- [Standing Order of The Regents 100.4 \(dd\)](#), Duties of the President of the University.
 - [Delegation of Authority to Execute Certain Affiliation Agreements with Other Institutions or Hospitals, to Chancellors and Laboratory Directors](#).
 - *Business and Finance Bulletin* [BUS-29](#), *Management and Control of University Equipment*.
 - *Business and Finance Bulletin* [BUS-43](#), *Materiel Management*.
 - [Guidelines on University-Industry Relations](#).
 - Research Agreements: A Guide for Industry [below].
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Research Agreements

University of California

A Guide for Industry

This guide is a summary of the broad principles applicable to research agreements between The Regents of the University of California and industrial and commercial organizations. The principles set forth in this guide reflect the University's position as a publicly supported educational institution and are applicable at each of the University's nine campuses located at Berkeley, Davis, Irvine, Los Angeles, Riverside, San Diego, San Francisco, Santa Barbara, and Santa Cruz, and at Agriculture and Natural Resources' Cooperative Extension and Agricultural Experiment Station. This brief presentation of information about the University will serve to facilitate any research relationships that your organization may wish to initiate with the University.

CORPORATE IDENTITY

The University of California is a public trust, administered by the Regents of the University of California, a California constitutional nonprofit corporation. The corporate headquarters for The Regents is located at 300 Lakeside Drive, Oakland, California, 94612-3550. All research agreements must be issued in the University's legal, corporate name: "The Regents of the University of California".

UNIVERSITY ORGANIZATION OF CONTRACT AND GRANT ADMINISTRATION

Office of the President: The Contracts and Grants Office (now OP RPAC) formulates and disseminates the University's policies concerning the administration of research funding agreements.

Campus Administration: Each campus of the University and the Vice President--Agriculture and Natural Resources maintain their own offices for contract and grant administration. While initial discussions between industrial sponsors and University faculty or senior research staff occur in a variety of ways, no program or project may be established or undertaken unless a carefully defined research proposal, including a budget, has been submitted through University internal review procedures and an acceptable funding agreement has been negotiated and signed by the authorized representatives of both parties.

Authority to solicit, negotiate, and execute awards for research on behalf of The Regents of the University of California is delegated to only a few officials on each campus. Names of the authorized officials may be obtained by contacting the contract and grant administrative offices listed in this brochure.

ACADEMIC POLICY GOVERNING RESEARCH AT THE UNIVERSITY OF CALIFORNIA

One of the primary purposes of the University is to carry out research to advance the frontiers of science and technology and further the University's educational programs. The University will enter into arrangements for research when that research does not interfere with University commitments and: 1) it provides faculty the opportunity to gain experience and knowledge of value to their teaching and research; 2) it is suitable research through which the individual may make worthy contributions to knowledge; or 3) it is an appropriate public service. Routine tasks of a commonplace type will not be undertaken. Tests, studies, and investigations of a purely commercial character are undertaken only when satisfactory facilities for such services do not exist elsewhere or are not reasonably available to the sponsor.

PUBLICATION POLICY

A fundamental principle of the University is that the teaching and research environment should be open so that ideas can be exchanged freely among faculty and students. The University's research activities are conducted as an integral part of the total educational program, and these activities often form the basis for articles in professional journals, seminar reports, presentations at professional meetings, and student dissertations and theses. Therefore, the University will undertake research or studies only if the scientific results can be published or otherwise promptly disseminated. Copyrights and publication rights belong to the University and/or the author.

PATENTS AND OTHER INTELLECTUAL PROPERTY

The basic aim of the University's intellectual property policies is to promote the progress of science and technology, to assure that discoveries and inventions are used to benefit the public,

to provide appropriate royalty revenues to the University and the inventor, and to support University research and education through the use of invention-related income. The University retains all patent rights from sponsored research, and any invention or patentable idea conceived or reduced to practice in the course of the research belongs to the University. The University will grant to the sponsor a time-limited first right to negotiate an exclusive or nonexclusive license, based upon the level of sponsor support. Further information about the University's patent and licensing policies can be obtained by contacting the campus contract and grant administrative office or the [Office of Technology Transfer, University of California](#).

PAYMENTS

Contracts with sponsors are performed on a "no-profit--no loss" basis. Therefore, research projects incorporate both direct and indirect costs in the research budget. It is also the University's established policy to receive payment in advance of work performed.

USE OF THE UNIVERSITY'S NAME

California Education Code section 92000 provides that the name "University of California" is the property of the State and that no person shall use that name without permission of The Regents of the University of California. It is University policy that under no circumstances shall a sponsor be permitted to state or imply in any publication or other published announcement that the University has approved any product that is or might be manufactured, sold, or otherwise distributed. The University also requires that its name not be used in connection with any advertisement, press release, or other form of business promotion or publicity, or refer to a research agreement, without its prior written approval.

LIABILITY, RISK, AND BEST EFFORTS

Since research by its nature is unpredictable and without guarantee of successful results, University research is conducted on a "best efforts" basis. However, research projects are organized in a manner which is sensitive to the differing time constraints of sponsors. The University receives no fee or profit on its research. For this reason, and also because it is inconsistent with the best efforts principle, the University will not accept contract provisions that guarantee results, impose penalties for failure to make progress by firm deadlines, or provide for withholding of payment if the sponsor is not satisfied with the results. The University will agree, however, to indemnify the research sponsor for the conduct of University officers, agents, employees, students, invitees, and guests under contracts. In certain medical research projects, the sponsor may be requested to share the cost of any compensation paid in the event of injury to a human subject used in the performance of the research.

PROJECT ADMINISTRATION

The collegial environment and effective departmental management within the University assure the highest standards of performance in all research projects. University policies pertaining to health and safety (such as those governing protection of human subjects, biosafety, occupational and environmental protection, and animal welfare) are applicable to all research conducted at the

University. University projects are also conducted in conformance with equal opportunity and affirmative action principles. The University has strong financial management and internal audit programs that insure careful control and accountability of all expenditures.

Under State and University requirements, all Principal Investigators must file Conflict of Interest disclosure statements indicating whether or not they have a direct or indirect financial interest in each private sponsor of their research. The statements are open to public inspection. When disclosure indicates that a financial interest exists, a committee composed of faculty and administrators conducts an independent substantive review of the disclosure statement and the research project prior to acceptance of a contract, grant, or gift.

TERMINATION

In the event a funding agreement is terminated by the sponsor for any reason, the sponsor will be expected to reimburse the University for all costs incurred to the date of termination and for all uncancellable obligations.

CHARACTERISTICS OF UNIVERSITY-INDUSTRY RELATIONS

The University has a long history of cooperation with industry in the support of research that is consonant with the University's missions of teaching research, and public service. Cooperative efforts are encouraged because they produce mutual benefits as well as benefits to society. Industry support contributes to the education of scientists, engineers, and others and also to the development of technologies that can be put to practical use by society. Facilitating the transfer of technology to improve the health and productivity of society is an important goal of the cooperative University-industry relationship.

Modes of Interaction: The character of University-industry relations is shaped by a variety of interactions, some of which include:

- Direct funding of research costs through contracts and grants.
- Gifts and endowments (including endowed chairs) designated for colleges, schools, departments, or individuals.
- University-industry exchange programs and student internships.
- Specialized programs designed by the University for continuing education and training of professionals, primarily through University Extension.
- Participation of industry representatives on campus and systemwide advisory groups.
- Cooperative research projects, some of which include government participation, and the use of specialized facilities.
- Use of unique University facilities on a fee-for-service basis.
- Activities of Cooperative Extension.
- Research activities at the Agricultural Experiment Station and the Kearney Agricultural Center in the San Joaquin Valley.

This brochure summarizes the key features of only one aspect of University-industry relations: agreements for research projects. Information about the other modes of University-industry interaction can be obtained by contacting the campuses.

FURTHER INFORMATION

Further information about developing a research agreement with The Regents of the University of California may be obtained by contacting the office responsible for [contract and grant administration at each campus](#). Inquiries concerning agricultural cooperative extension projects should be directed to the [Office of the Vice President--Agriculture and Natural Resources](#).