



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23-091]

Conflict of Interest Policy for Recipients of NASA Financial Assistance Awards

AGENCY: National Aeronautics and Space Administration

ACTION: Final notice of a new NASA policy and term and condition regarding conflict of interest disclosures for grant and cooperative agreement recipients.

SUMMARY: The National Aeronautics and Space Administration (NASA) is publishing, in final form, a new policy and term and condition regarding conflict of interest disclosures. The final policy can be found in Grant Information Circular (GIC) 23-07. NASA's intention to develop and implement this new policy and term and condition was specified in the **Federal Register** of January 30, 2023.

FOR FURTHER INFORMATION CONTACT: For any questions, comments, or concerns regarding this policy, please contact Christopher Murguia at christopher.e.murguia@nasa.gov or 202-909-5918.

SUPPLEMENTARY INFORMATION:

Background

In December 2020, the U.S. Government Accountability Office (GAO) published report GAO-21-130, *Federal Research: Agencies Need to Enhance Policies to Address Foreign Influence*. This report included two recommendations for NASA that pertained to 1) updating NASA's conflict of interest policy to include a definition of non-financial conflicts, such as conflicts of commitment, and 2) documenting procedures, roles, and responsibilities for addressing and enforcing failures to disclose required information.

In response to GAO-21-130, NASA published a proposed conflict of interest and conflict of commitment policy in the **Federal Register** in January 2023 (88 FR 5930, pages 5930-5932, January 30, 2023). After reviewing public comments and feedback, NASA has

revised the proposed policy to only address financial conflicts of interest. All references to conflicts of commitment in the January 2023 draft policy have been removed.

The revised policy is designed to standardize NASA's conflict to interest disclosure requirements with those of other Federal research funding agencies. In summary, the policy requires NASA grant and cooperative agreement recipients to maintain and enforce a conflict of interest policy that requires the disclosure of significant financial interests to an authorized official prior to application submission. Prior to the expenditure of grant or cooperative agreement funds, the institution shall review disclosed significant financial interests, determine if a conflict of interest exists, and determine what conditions or restrictions, if any, should be imposed to manage, reduce, or eliminate such conflict of interest. Institutions shall notify NASA of any conflict of interest that cannot be managed, reduced, or eliminated in accordance with the institution's policy.

Public Comments Discussion

In response to NASA's request for public comment, the Agency received seven letters containing multiple comments from colleges and universities, for-profit entities, and other non-profit organizations. All comments were carefully reviewed and considered prior to finalizing the policy.

NASA received several comments pertaining to the lack of consistency between the Agency's proposed conflict of interest and conflict of commitment policy and other agencies' conflict of interest policies. Commenters stated that this lack of consistency could result in award recipients having to adopt unique processes, tools, and training to address unique requirements in NASA's proposed policy. *Response:* NASA recognizes the inconsistencies between the proposed policy and that of other Federal research agencies and the confusion that those inconsistencies may cause. As such, NASA has aligned its conflict of interest policy with those of other Federal research agencies to the greatest extent practicable.

Several comments pertained to the conflation of conflicts of interest and conflicts of commitment in NASA's proposed policy. Conflicts of interest and commitment affect research in different ways and, therefore, actions taken to address conflicts of interest are different than those taken to address conflicts of commitment. As such, commenters recommended that NASA address conflicts of interest via a standalone policy similar to other agencies' financial conflicts of interest policies and address conflicts of commitment via biographical sketch and current and pending support disclosures. *Response:* NASA recognizes that conflicts of interest and commitment affect research and are addressed in different ways. Therefore, NASA has removed all references to conflicts of commitment in its policy so as not to conflate the two concepts.

Some comments pertained to the definitions of "conflict of interest", "conflict of commitment", and "covered individual" in the proposed policy. Comments stated that the definitions were vague and inconsistent with terminology and definitions used by other Federal research agencies. Moreover, commenters requested that a definition of "significant financial interest" be added to the policy and that that definition include dollar thresholds for what should and should not be considered a significant financial interest. *Response:* NASA has updated the definition of "conflict of interest" to align to that used by other Federal research agencies, removed all references to conflicts of commitment, and added a definition for "significant financial interest" that includes dollar thresholds.

A few comments requested that NASA revise the time at which conflict of interest information had to be reviewed and managed. Per the comments, other Federal agencies require that significant financial interest disclosures be reviewed and managed, as necessary, prior to the expenditure of award funds. NASA's proposed policy, on the other hand, required conflict of interest information to be reviewed and managed prior to application submission. *Response:* NASA recognizes that its proposed policy included requirements for the review and management of conflict of interest information that is burdensome and inconsistent with other

Federal research agencies. NASA has revised the policy to require that significant financial interest disclosures be reviewed and managed, reduced, or eliminated prior to the expenditure of awards funds.

One comment requested that NASA clarify how its proposed policy would impact subaward recipients. *Response:* NASA has added language to the policy describing pass-through entities' and subaward recipients' responsibilities.

One comment recommended that NASA add language to the proposed policy specifically allowing the use of independent third party or contracted services for the provision of technical assistance to meet the due diligence and review requirements described in the policy. *Response:* NASA has declined to add this recommended language to the policy. As written, the policy permits discretion when grant and cooperative agreement recipients are determining which individual(s) is responsible for soliciting and reviewing significant financial interest disclosures.

One comment recommended that the proposed policy be updated to include language allowing security review requirements to be considered a direct cost or, at a minimum, considered a reasonable and allocable cost under title 2 of the Code of Federal Regulations part 200, sections 404 and 405. *Response:* NASA assumes that this comment was made in response to language in the proposed policy's definition of conflicts of commitment that pertained to conflicting obligations that threaten research security. Given that all references to conflicts of commitment have been removed, NASA has declined to add this recommended language.

The full text of the policy and term and condition is provided below:

GCAM section 3.3, Conflicts of Interest Policy, is revised as follows:

1. For the purposes of section 3.3, the following definitions apply:
 - a. The term "conflict of interest," or "COI," means a situation in which an investigator, or the investigator's spouse or dependent children, has a significant financial interest that could directly and significantly affect the design, conduct, or reporting of NASA-funded research.

- b. The term “significant financial interest” means anything of monetary value, including, but not limited to, salary and any payment for services not otherwise identified as salary (e.g., consulting fees or honoraria), equity interest (e.g., stock, stock options, private equity, or other ownership interests), venture or other capital financing, and intellectual property rights (e.g., patents, copyrights, and royalties from such rights). The term does not include the following:
- i. Salaries, royalties, or other remuneration paid by the proposing institution to the investigator if the investigator is currently employed or otherwise appointed by the institution;
 - ii. Any ownership interests in the proposing institution if the institution is a commercial or for-profit organization;
 - iii. Income from investment vehicles, such as mutual funds and retirement accounts, as long as the investigator does not directly control the investment decisions made in these vehicles;
 - iv. Income from seminars, lectures, or teaching engagements sponsored by a public or nonprofit entity;
 - v. Income from service on advisory committees or review panels for a public or nonprofit entity;
 - vi. An equity interest that, when aggregated for the investigator and the investigator’s spouse and dependent children, meets both of the following tests: (1) does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value and (2) does not represent more than a 5 percent ownership interest in any single entity; or
 - vii. Salaries, royalties, or other payments that, when aggregated for the investigator and the investigator’s spouse and dependent children, are not expected to exceed \$10,000 during the prior twelve-month period.
- c. The term “institution” means any domestic or foreign, public or private, entity or organization

that is applying for, or that receives, a NASA research grant or cooperative agreement.

- d. The term “investigator” means the principal investigator, project director, and any other person, regardless of title or position, identified on the proposed project who is responsible for the design, conduct, or reporting of research funded or proposed for funding by NASA.
2. All recipients of NASA research grants and cooperative agreements (hereinafter “award”) shall maintain a written and enforced policy addressing COI. Pass-through entities shall be responsible for ensuring that (1) subaward recipients have their own policies in place that meet the requirements of NASA’s COI policy or (2) investigators working for subaward recipients follow the COI policies of the pass-through entity.
 3. Institutions’ COI policies shall:
 - a. Designate an official(s) to solicit disclosures of significant financial interests (including those of the investigator’s spouse and dependent children) of investigators that would reasonably appear to be affected by research funded or proposed to be funded by NASA or in entities whose financial interests would reasonably appear to be affected by such activities.
 - b. Ensure that investigators who are planning to participate in NASA-funded research disclose to the institution’s designated official(s) the investigator’s significant financial interests no later than the time of application for NASA-funded research. Institutions must also require that disclosures are updated during the award’s period of performance, either on an annual basis, or as new reportable significant financial interests are obtained.
 - c. Prior to an institution’s expenditure of any funds under a NASA-funded research award, institutions shall require the designated official(s) to review investigators’ disclosures of significant financial interests, determine whether a COI exists, and, if so, determine what conditions or restrictions, if any, should be imposed by the institution to manage, reduce, or eliminate such COI. Examples of conditions or restrictions that an institution or subrecipient might impose to manage, reduce, or eliminate a conflict include, but are not limited to:
 - i. Public disclosure of the COI (e.g., when presenting or publishing the research),

- ii. Monitoring of research by independent reviewers,
 - iii. Modification of the research plan,
 - iv. Change of personnel or personnel responsibilities,
 - v. Disqualification of personnel from participation in all or a portion of the NASA-funded activity,
 - vi. Divestiture of significant financial interests that create the COI (e.g., sale of an equity interest), or
 - vii. Severance of relationships that create the COI.
- d. Establish adequate enforcement mechanisms and provide for employee sanctions or other administrative actions to ensure investigators' compliance as appropriate.
 - e. Institutions may apply COI disclosure standards that are more stringent than section 3.3 of this Manual (e.g., standards that require more extensive disclosure of financial interests).
4. Institutions shall adhere to the following notification requirements:
- a. Prior to the expenditure of any funds under a NASA-funded research award, institutions shall notify the NASA Grant Officer(s) listed on the related award(s) in writing of any COI that cannot be satisfactorily managed, reduced, or eliminated in accordance with the institution's policy. In cases in which an institution identifies a COI and manages, reduces, or eliminates it prior to the expenditure of NASA-awarded funds, the institution shall not submit a COI notification to NASA.
 - b. After the expenditure of award funds, institutions shall notify NASA within 60 days of any subsequently identified COI that cannot be managed, reduced, or eliminated.
 - c. Notifications shall include sufficient information to enable NASA to understand the nature and extent of the COI (e.g., award number, name of investigator with the COI, nature of the significant financial interest, etc.).
5. When an institution notifies a NASA Grant Officer(s) of a COI that cannot be eliminated, managed, or reduced, the cognizant Grant Officer or one of their delegates will report the conflict to the Office

of the General Counsel (OGC) as follows:

- a. Grant Officers will report the conflict to the NASA Shared Services Center's (NSSC) OGC and copy the award's Technical Officer. The NSSC OGC then will inform HQ OGC of the reported conflict. In consultation with OGC and the relevant Technical Officer, the Grant Officer must review the COI and take appropriate action, as necessary.
 - i. When an institution notifies NASA of a COI that involves any foreign governments, their instrumentalities, or any other entities owned, funded, or otherwise controlled by a foreign government, the cognizant Grant Officer must review the COI and take appropriate action, as necessary, in consultation with the award's Technical Officer, OGC, and the NASA Office of International and Interagency Relations (OIIR).
 - ii. If fraud, misrepresentation, or related misconduct is suspected in relation to any COI notification submitted to NASA, then the Grant Officer or Technical Officer also will refer the matter to the NASA Office of Inspector General and OGC's Acquisition Integrity Program.
- b. If a Grant Officer must take appropriate actions after conducting the reviews described above, then they will do so in accordance with the remedies for noncompliance and termination provisions in 2 CFR 200.339 through § 200.343. Remedies for noncompliance include but are not limited to:
 - i. Temporarily withholding payment,
 - ii. Disallowing all or part of the cost of an award activity,
 - iii. Wholly or partly suspending or terminating the award,
 - iv. Initiating referrals for consideration of suspension or debarment proceedings, and
 - v. Withholding further Federal awards for the project or program.
- c. A Grant Officer intending to take action per paragraph (b) of this section, with the exception of paragraph (b)(iv), will notify each institution about the specific reason for the action and will adhere to the requirements in GCAM section 7.13, Appealing a Suspended or Terminated

Award, as necessary. However, notice of suspension or debarment proceedings will be issued consistent with 2 CFR part 180, as adopted by NASA at 2 CFR part 1880. Additionally, if NASA determines that an investigator will be disqualified from participating on an award due to a COI that cannot be managed, reduced, or eliminated, then NASA will offer the institution an opportunity to address the COI prior to taking action on the award.

Appendix D, Award Terms and Conditions, is revised as follows:

D39. Conflict of Interest Policy Requirements

- a. All NASA grant and cooperative agreement recipients shall comply with the conflict of interest policy and notification requirements in section 3.3, Conflicts of Interest Policy, of the *NASA Grant and Cooperative Agreement Manual* (GCAM), as amended by Grant Information Circular 23-07, Conflict of Interest Policy.

End of Policy and Term and Condition

NASA has implemented the new policy and term and condition through GIC 23-07, which modifies sections 3.3, Conflicts of Interest Policy, and Appendix D, Award Terms and Conditions, of the *Grant and Cooperative Agreement Manual*. The policy and term and condition are effective December 1, 2023, and the term and condition will be placed into new and amended awards at that time.

Antanese Crank,

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