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Conditioning Federal Grant Awards: Understanding Grant Agreements, Amendments, and Terminations

Federal grants provide a significant portion of financial resources to state and local governments as well as certain nonprofit organizations. Federal grant funding is generally provided under either a grant agreement or cooperative agreement (hereinafter referred to as “agreement”) between the federal government and the primary recipient of the grant award (hereinafter “grant recipient”). The agreement describes the terms and conditions the federal government and the grant recipient have agreed to with regard to the use of the federal grant funds.

The process for establishing the terms and conditions included in an agreement is commonly known as “conditioning a federal grant award.” The specific types of conditions included in the agreement may arise from both federal agency and congressional requirements. The Office of Management and Budget (OMB) issues guidance on the general conditions to be included in grant or cooperative agreements; federal agencies may also add conditions that are specific to a particular federal grant program. Congress may also enact statutory requirements for certain conditions to be included in these agreements as well, both through program authorizations and through appropriations measures.

This In Focus discusses the general and specific terms and conditions commonly included in grant and cooperative agreements, as well as amendment or termination of these agreements.

OMB Guidance Establishing General Terms and Conditions for Grants

OMB guidance directs federal agencies to ensure that the grant and cooperative agreements contain general terms and conditions, either by direct stipulation in the agreement or by reference, and that these conditions are communicated to the grant recipient. The general terms and conditions to be incorporated into the agreements include

- *Administrative requirements*, as detailed in 2 C.F.R., Part 200, including pre-award requirements, post-award requirements, cost principles, audit requirements, and other general grant administration provisions.
- *National policy requirements*, including those required by statutory provision, executive order, other presidential directive, and regulation that are not grant program specific, such as regulations applying to implementation of the relevant laws like the Digital Accountability and Transparency Act of 2014 (DATA Act, P.L. 113-101).
- *Recipient integrity and performance standards*, such as requirements that the grant recipients receiving awards

over \$500,000 to promptly disclose when there is credible evidence of the violation of federal criminal law involving fraud, conflict of interest, bribery, and other violations of federal law.

- *Impacts on current and future budget periods*, to include clarification of the period of performance for awarded grant funding which may include multiple budget periods. The federal agency must indicate that subsequent federal grant funding is subject to “the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions” in the agreements.
- *Termination provisions*, wherein the federal agency sets applicable provisions as set forth in the agency’s regulations to allow for termination of the agreement.

Federal Agency-Specific Terms and Conditions

In addition to the general terms and conditions set forth by OMB guidance, OMB also requires federal agencies to incorporate other specific terms and conditions into their grant and cooperative agreements. These terms may apply at the grant program level to all program grant recipients of the program, or specific grant recipients within that group.

Grant Program-Specific Conditions

Program-specific terms and conditions (and other performance expectations) typically relate to the grant program planning and design, as well as the performance goals and objectives of the federal grant program. For example, a federal agency may require that all program grant recipients collect and report certain performance data such as the number of jobs created by the funded project.

Individual Grant Recipient-Specific Conditions

Federal agencies may also include specific terms and conditions that only apply to particular grant recipients. This sometimes occurs when a federal agency designates the grant recipient as a high-risk grantee requiring additional monitoring and oversight by the federal agency. According to OMB, individual grant recipient-specific terms and conditions may include

- Requiring payments as reimbursements rather than advance payments;
- Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance;
- Requiring additional or more detailed financial reports;

- Requiring additional project monitoring;
- Requiring the recipient or subrecipient to obtain technical or management assistance; or
- Establishing additional prior approvals. (2 C.F.R., §200.208(c)).

For individual grant recipient-specific terms and conditions, OMB guidance also states

Prior to imposing specific conditions, the Federal agency or pass-through entity must notify the recipient or subrecipient as to:

(1) The nature of the specific condition(s); (2) The reason why the specific condition(s) is being imposed; (3) The nature of the action needed to remove the specific condition(s); (4) The time allowed for completing the actions; and (5) the method for requesting the Federal agency or pass-through entity to reconsider imposing the specific condition. (2 C.F.R., §200.208)

Specific terms and conditions may apply intermittently or throughout the grant award period, at the discretion of the federal grantmaking agency.

Congress and Conditioning Grants

Congress may also establish terms and conditions for grant and cooperative agreements in a number of ways, including original authorizing legislation for the program, amendments to that authorization, as well as language in appropriations measures.

The authority of Congress to establish such terms and conditions in grant and cooperative agreements is inherent in the spending power established in the Constitution. According to the U.S. Government Accountability Office (GAO)

When Congress enacts grant legislation and provides appropriations to fund the grants, it is exercising the spending power conferred upon it by the Constitution. As such, it is clear that Congress has the power to attach terms and conditions to the availability of receipt of grant funds, either in grant legislation itself or in a separate enactment.

GAO further states that such conditions should be

(1) in pursuit of the general welfare, (2) expressed unambiguously, (3) reasonably related to the purpose of the expenditure, and (4) not in violation of other constitutional provisions.

Amending the Terms and Conditions

Grant and cooperative agreements are legally binding contracts that require formal amendment to be changed. Amendments to these agreements are also sometimes called grant award modifications. Such amendments can be initiated by the grant recipient or by the federal agency. Grant recipients may initiate amendments to adjust for unexpected issues arising during the implementation of the project. For example, if there are delays in receiving

construction materials for a grant-funded facility, the grant recipient may request an extension on the grant's period of performance. In order for the amendment to take effect, both parties to the agreement must agree to the amendment and execute the amended agreement.

Federal agencies can also initiate amendments to agreements. For example, when a federal agency awards a grant to a project that requires multiple years of funding, the initial agreement may provide funding for only the first year of the project, and the federal agency will generally amend this agreement once grant program funding is made available to obligate for each subsequent year.

Any time an amendment to the agreement is introduced, any of the other terms and conditions also may be amended upon agreement by both parties to the agreement.

Agreement Termination Conditions

As noted above, OMB guidance directs federal agencies to include termination provisions in the general terms and conditions of agreements. According to OMB, an agreement may be terminated (in part or entirely):

(1) By the Federal agency or pass-through entity if the recipient or subrecipient fails to comply with the terms or conditions of the Federal award;

(2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;

(3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or

(4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

Termination of an existing agreement relies on program-specific conditions and any recipient-specific conditions that incorporated into the agreement. As a result, there may be variation between grant recipients, federal grant programs, and federal agencies regarding the specific process for terminating existing agreements. (2 C.F.R. §200.340, Termination)

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