

Subpart C—The DoD Grant and Agreement Regulations

§ 21.300 What instruments are subject to the DoD Grant and Agreement Regulations (DoDGARs)?

(a) The types of instruments that are subject to the DoDGARs vary from one portion of the DoDGARs to another. The types of instruments include grants, cooperative agreements, and technology investment agreements. Some portions of the DoDGARs apply to other types of assistance or non-procurement instruments. The term “awards,” as defined in subpart D of this part, is used in this part to refer collectively to all of the types of instruments that are subject to one or more portions of the DoDGARs.

(b) Note that each portion of the DoDGARs identifies the types of instruments to which it applies. However, grants officers and agreements officers must exercise caution when determining the applicability of some Governmentwide rules that are included within the DoDGARs, because a term may be defined differently in a Governmentwide rule than it is defined elsewhere in the DoDGARs. One example is part 33 of the DoDGARs (32 CFR part 33), which contains administrative requirements for awards to State and local governments. That DoDGARs part is the DoD’s codification of the Governmentwide rule implementing OMB Circular A-102.³ Part 33 states that it applies to grants, but defines the term “grant” to include cooperative agreements and other forms of financial assistance.

(c) For convenience, the table in Appendix A to this part provides an overview of the applicability of the various portions of the DoDGARs.

§ 21.305 What is the purpose of the DoDGARs?

The DoD Grant and Agreement Regulations provide uniform policies and procedures for the award and adminis-

tration of DoD Components’ awards. The DoDGARs are the primary DoD regulations for achieving the DGARS purposes described in § 21.210.

§ 21.310 Who ensures DoD Component compliance with the DoDGARs?

The Head of each DoD Component that makes or administers awards, or his or her designee, is responsible for ensuring compliance with the DoDGARs within that DoD Component.

§ 21.315 May DoD Components issue supplemental policies and procedures to implement the DoDGARs?

Yes, Heads of DoD Components or their designees may issue regulations, procedures, or instructions to implement the DGARS or supplement the DoDGARs to satisfy needs that are specific to the DoD Component, as long as the regulations, procedures, or instructions do not impose additional costs or administrative burdens on recipients or potential recipients.

§ 21.320 Are there areas in which DoD Components must establish policies and procedures to implement the DoDGARs?

Yes, Heads of DoD Components or their designees must establish policies and procedures in areas where uniform policies and procedures throughout the DoD Component are required, such as for:

(a) Requesting class deviations from the DoDGARs (*see* §§ 21.335(b) and 21.340(a)) or exemptions from the provisions of 31 U.S.C. 6301 through 6308, that govern the appropriate use of contracts, grants, and cooperative agreements (*see* 32 CFR 22.220).

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

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

(d) Prescribing requirements for use and disposition of real property acquired under awards, if the DoD Component makes any awards to institutions of higher education or to other nonprofit organizations under which real property is acquired in whole or in

³Electronic copies may be obtained at the 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.

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part with Federal funds (see 32 CFR 32.32).

§ 21.325 Do acquisition regulations also apply to DoD grants and agreements?

Unless the DoDGARs specify that they apply, policies and procedures in the following acquisition regulations that apply to procurement contracts do not apply to grants, cooperative agreements, technology investment agreements, or to other assistance or non-procurement awards:

(a) The Federal Acquisition Regulation (FAR)(48 CFR parts 1–53).

(b) The Defense Federal Acquisition Regulation Supplement (DFARS)(48 CFR parts 201–270).

(c) DoD Component supplements to the FAR and DFARS.

§ 21.330 How are the DoDGARs published and maintained?

(a) The DoD publishes the DoDGARs in chapter I, subchapter C, Title 32 of the Code of Federal Regulations (CFR) and in a separate internal DoD document (DoD 3210.6–R). The DoD document is divided into parts, subparts, and sections, to parallel the CFR publication. Cross-references within the DoDGARs are stated as CFR citations (e.g., a reference to §21.215 in part 21 would be to 32 CFR 21.215).

(b) The DoD publishes updates to the DoDGARs in the FEDERAL REGISTER. When finalized, the DoD also posts the updates to the internal DoD document on the World Wide Web at <http://www.dtic.mil/whs/directives>.

(c) A standing working group recommends revisions to the DoDGARs to the Director of Defense Research and Engineering (DDR&E). The DDR&E, Director of Defense Procurement, and each Military Department must be represented on the working group. Other DoD Components that make or administer awards may also nominate representatives. The working group meets when necessary.

§ 21.335 Who can authorize deviations from the DoDGARs?

(a) The Head of the DoD Component or his or her designee may authorize individual deviations from the DoDGARs, which are deviations that

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affect only one award, if the deviations are not prohibited by statute, executive order or regulation.

(b) The Director of Defense Research and Engineering (DDR&E) or his or her designee must approve in advance any class deviation that affects more than one award. Note that OMB concurrence also is required for class deviations from two parts of the DoDGARs, 32 CFR parts 32 and 33, in accordance with 32 CFR 32.4 and 33.6, respectively.

§ 21.340 What are the procedures for requesting and documenting deviations?

(a) DoD Components must submit copies of justifications and agency approvals for individual deviations and written requests for class deviations to: Deputy Director of Defense Research and Engineering, ATTN: Basic Research, 3080 Defense Pentagon, Washington, DC 20301–3080.

(b) Grants officers and agreements officers must maintain copies of requests and approvals for individual and class deviations in award files.

Subpart D—Authorities and Responsibilities for Making and Administering Assistance Awards

§ 21.400 To what instruments does this subpart apply?

This subpart applies to grants, cooperative agreements, and technology investment agreements, which are legal instruments used to reflect assistance relationships between the United States Government and recipients.

§ 21.405 What is the purpose of this subpart?

This subpart describes the sources and flow of authority to make or administer assistance awards, and assigns the broad responsibilities associated with DoD Components' use of those instruments.

§ 21.410 Must a DoD Component have statutory authority to make an assistance award?

Yes, the use of an assistance instrument to carry out a program requires authorizing legislation. That is unlike the use of a procurement contract, for