University of California
Office of the President

Senior Vice President—
Business and Finance

Research Administration Office

# Memo
## Operating Guidance

No. 00-02

March 22, 2000

CONTRACT AND GRANT OFFICERS (CAMPUS AND LAB)*
VICE CHANCELLORS--RESEARCH
INFORMATION PRACTICES COORDINATORS

**Subject:** OMB Circular A-110 Revision: Release of Research Data Requested by the Public under Federal Grants via Federal Freedom of Information Act Procedures

Purpose

This Memo provides guidance about implementing the requirements of the A-110 final rule issued by OMB in the Federal Register on October 8, 1999 regarding release of research data, and the Agency common rule issued in the Federal Register on March 16, 2000. The Agency common rule simply incorporates the Final Rule issued by OMB in Agency Codes of Federal Regulations without Agency supplement regarding their respective operational implementation

This Memo finalizes and replaces Interim Contract and Grant Memo No. 99-08 issued December 20, 1999.

NIH did issue important Agency operational implementation and guidance on December 14, 1999 on the www: http://grants.nih.gov/grants/policy/a110/a110_guidance_dec1999.htm, hardcopy enclosed. This Memo relies on the NIH Guidance and generalizes its practical applicability to all Federal Agencies, since there is no equivalent from other Agencies at this time.

Please submit questions or issues to RAO as they arise so we can develop a coordinated UC implementation. RAO will work closely with OP Office of Research, Allison Rosenberg, and Information Practices Coordinator Ross Smith in Office of General Counsel.

Background

Senator Shelby included a provision in Public Law 105-277 which directed "OMB to amend Section___.36, Intangible Property, of Circular A-110 to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act (FOIA).

OMB published the Final Revision to A-110 to implement Public Law 105-277 in the Federal Register dated October 8, 1999. A copy may also be obtained from: www.whitehouse.gov/OMB/fedreg/a110-finalnotice.html

*Note: The addressees above represent the standard distribution of Contract and Grant Memos. Additional addressees, if any, may be added based on the subject of the Memo. See cc's.

It is important to note that "OMB recognizes the importance of ensuring that the revised Circular does not interfere with the traditional scientific process." This is reflected in the care with which definitions were developed.

Guidance

The NIH guidance, including the Q & A, is quite comprehensive and well thought out. There will be additional questions and issues as the implementation unfolds for NIH, other Federal Agencies and UC.

The NIH guidance is limited to releases under the Federal Freedom of Information Act (FOIA). The University is also subject to the California Public Records Act (CPRA). If a request from the public is for research data that are (1) first produced in a project that is supported in whole or in part with Federal funds, and (2) cited publicly and officially by a Federal agency in support of an action that has the force and effect of law, then the procedures in the NIH guidance should be followed, whether or not the requestor cited the FOIA or the CPRA. If the request is for data that do not meet the above criteria, it should be processed under the CPRA.

**University Responsibilities**

a. University Coordination Points

The University has Information Practices Act (IPA) Coordinators on each campus are responsible for handling requests from the public pursuant to the California Public Records Act. It is recommended that IPA Coordinators be assigned the responsibility for handling/coordinating requests for release of research data from Federal agencies pursuant to the A-110 revision.

The NIH guidance provides for NIH to send copies of the request to the Sponsored Research Office and the principal investigator. We recommend that a copy of the notice be sent by the campus Sponsored Research Office to the campus IPA Coordinator upon receipt.

a. University Screening.

Incoming requests from Federal agencies should be screened by the University using the same criteria used for Federal screening as described in the NIH guidance. If the Agency request does not provide the information required or the request is invalid, the IPA Coordinator should go back to the Agency to obtain the information before it is forwarded to the Department.

b. Responsibility to define and provide research data.

- The responsibility for responding to the agency request rests with the University. However, the University's ability to respond, depends, in major part, on the availability of the PI who performed the research, and the availability of the research data.

- The PI who performed the research under the Federal grant is responsible for determining: the scope of the incoming request, the research data within the scope, what data is within the A-110

definition of research data, whether the publication criteria specified by A-110 have been met, the location of the data, and arranging for the copying of the data. If there is more than one PI on one or more UC campuses, or subawards to non-UC research entities, these PIs may have to be identified and contacted as well.

- If the PI who performed the research is unavailable, then the responsibility falls on the Department Chair to prepare the response. This assumes the research data is available to the Department. If the PI has transferred to another institution, and has taken the research data with him/her, the request from the agency should be returned to the Agency with information as to how to locate the PI.

- If the research data cannot be found, the FOIA and CPRA requires that a diligent search be done and a good faith effort be made to comply.

- Research data refers to raw data. In making decisions about what is required to be provided, the obligation is limited to providing the raw data. There is no obligation to create a new document which arranges, organizes, documents, or indexes the data.

c. Estimating costs.

The Department is also responsible for developing a cost assessment to respond to the agency request. NIH guidance states that information will be provided in the near future about estimating costs. Section - __ .36 (d)(1) states in part: "If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A))." The University's experience in responding to requests under the CPRA will be considered together with NIH guidance. Please consult with the campus IPA Coordinator if costs need to be estimated.

Please note the NIH guidance provides for the University to submit a cost estimate to the Federal agency, for approval by the public requestor, before the University is obligated to incur the expense and effort to collect and make the research data available.

d. Record retention.

A-110 requires financial records supporting charges to grants to be retained for "a period of three years from the date of submission of the final expenditure report" under the grant. However, the Federal right of access to records is "not limited to the required retention period (three years) but shall last as long as the records are retained. " So research data must be retained for a minimum of three years, and if kept longer, is required to be provided in response to public requests as long it is retained.

Questions regarding the interpretation of the A-110 data release requirement may be referred to the Campus IPA Coordinator, Campus Vice Chancellor for Research, or OP Research Administration Office, OP Vice Provost for Research, and Office of General Counsel.

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Cancel: C&G Memo 99-08

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Enclosure

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