AAU POSITION STATEMENT
GRANT ACT, HR 3433

An association of 61 leading public and private research universities

The Grant Reform and New Transparency (GRANT) Act aims to provide greater transparency to federal grant programs as a means of increasing accountability. The bill requires the creation of new government-wide public website on which information on all federal grants would be posted. Under current laws and regulations governing federal research grants, universities and their faculty already provide to the federal government comprehensive financial and compliance information, which is publicly available. GPRA, OMB Circulars A-21, A-110, and A-133, as well as individual agency grant policies are just a few of the federal requirements with which universities must comply.

Accountability for – including the transparency of – competitively awarded federal research grants is very robust. It may be that greater accountability is needed for federal grants other than those for research; however, the one-size-fits-all approach to transparency in the bill would have unintended and detrimental consequences to our nation's basic research enterprise if the bill becomes law. Because of this, *AAU opposes the Committee-approved version of the legislation.*

HR 3433 was introduced on 11/16/2011 by Representative Lankford (R-OK) and cosponsored by Representatives Issa (R-CA), Kelly (R-PA), Meehan (R-PA), and Pierluisi (D-PR). The bill was approved by the House Oversight and Government Reform Committee on 11/17/2011.

Provisions of Concern:

ONLINE POSTING OF FEDERAL GRANT APPLICATIONS - Section 7404 part (d) (2) (B) copy of proposal, application, or plan:

- This section of the bill requires the posting, once selected, of a full grant application on the public website. Research proposals contain the ideas, procedures, and preliminary research findings of a scientist that make the case for the federal agency to fund a particular area of research that could result in significant breakthroughs. Posting full grant applications would make such ideas and preliminary results available to anyone, domestic and foreign, looking for a shortcut to further their own research or to steal intellectual property, thus undermining the hard work and intellectual capital the applicant and institution have already invested in the project.
- Under the newly reformed U.S. patent law (which allows for the first person or entity to file for a patent to receive it), making full grant proposals public will undermine the competitive position of the U.S. in one of the few arenas in which we still maintain a global competitive advantage.
- **This section of the bill should be revised to require only the posting of abstracts or project summaries.**

GRANT PERFORMANCE INFORMATION – Section 7404 part (e):

- This section of the bill requires, within 60 days of the completion of a grant, the posting on the public website of the final report on the grant and "[o]ther related data or results of the grant that the agency considers to be of value to future researchers or in the public interest."
- Similar to Section 7404 part (d) (2) (B) which requires the posting of awarded grant applications, this provision would expose intellectual property to potential theft. Moreover, when coupled with the full grant application, the intellectual property in the final report and related data would be particularly valuable and hence, vulnerable to theft.
- **This section should be eliminated or revised to require the posting of final reports and related data and results until after publication of the research is published in a research journal.**

DISCLOSURE OF PEER REVIEWERS - Section 7404 part (d) (2) (E):

- This section of the bill requires that all peer reviewers of grant applications be listed on the public website. The bill provides some anonymity, because it does not require that peer reviewers also be identified on the specific grants that they review and makes provisions for the use of a unique identifier. AAU is very concerned about this element of the bill. Anonymity in the peer review process for reviewing scientific and other academic grant proposals has served science and our nation very well over the past several decades.
- Anonymity in the process permits greater candor in the evaluation of grant applications and thereby, contributes to a higher quality of review than would otherwise occur if the names of peer reviewers related to a specific application were known. The promise of anonymity is also helpful in recruiting volunteer peer reviewers.
- **Because some disciplines are so small, the anonymity currently provided in the Committee approved bill cannot be guaranteed. We believe that the downsides of disclosure outweigh the potential benefits, and that this provision should be eliminated.**

EXECUTED GRANT AGREEMENT - Section 7404 part (d) (2) (A):

- The bill currently requires that all awarded grants post their terms and conditions on the public website. There are situations in which, for national security or public safety reasons, posting the terms and conditions of a federal grant agreement would not be in the public interest. In the past, certain federal grants have been advertised without listing the terms and conditions of the federal grant agreement.
- **In such circumstances, we believe the exception to posting information allowed for in Section 7404 part (d) (3) should be expanded to include grant agreement terms and conditions.**

TIMING OF NOTICE OF AWARD - Section 7404 part (d) (1):

- This section of the bill requires that the public website posts when a grant recipient has been selected within 15 days of the decision. A federal research grant award is not official until it is received by a university and the university begins charging expenditures to a grant. Federal agencies often contact the researcher and/or university to inform them that a grant proposal has been selected for funding prior to the official Notice of Award being received by the institution. This is done to allow the institution to complete review and approval of certain "just in time" procedures, such as protocols for research involving human subjects or animals, pending receipt of the official notice**.**
- **AAU believes the Committee-approved bill should be revised to require the information to be posted to the new government-wide website after the institution has received a completely executed Notice of Award.**

AWARD DECISION DOCUMENTATION AND RANKINGS and JUSTIFICATION FOR DEVIATING FROM RANKINGS - Section 7404 part (d) (2) (C):

- This section requires that a description of the ranking system used to select a grant recipient, as well as the rank assigned to the selected grant recipient, be posted to the public website. Rankings of research grant proposals are only one of the decision factors federal agencies use to make awards. Agencies also consider whether research grant proposals meet programmatic goals and the fit with an agency's mission.
- The bill also requires agencies to describe how applications will be selected for award. This is already required by an OMB Final Policy Directive on Financial Assistance Program Announcements issued on June 23, 2003.
- **These two sections could be combined to simply state that, in accordance with Section 7402[c](2)[C], the agency will publicly describe its decision-making process for selecting the application for funding.**

"While we appreciate that during the House Oversight and Government Reform Committee markup of the GRANT Act efforts were made to preserve the anonymity of peer review, we feel that the bill in its current form still poses an unacceptable threat to the peer review system. Increased accountability and transparency are valuable goals which can be achieved without sacrificing intellectual property rights and the peer review process."

– excerpt from a letter signed by 62 House Members to Speaker of the House John Boehner (R-OH) and House Democratic Leader Nancy Pelosi (D-CA) regarding H.R. 3433.

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