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Managing Horizon 2020 Grants: the Experiences of the University of Michigan and Harvard

By Ryan Lankton and Jennifer Ponting

By now, many U.S. research administrators are aware of Horizon 2020, the European Commission's 2014-2020 grant program totaling €77 billion (approximately US\$95 billion). In fact, articles in previous issues of the *NCURA Magazine* (Jan/Feb 2014 and Mar/Apr 2014) have introduced the opportunities available for U.S. researchers to participate in European grant programs. Since then, the European Commission has awarded its first tranche of awards and more than 40 U.S. institutions are part of consortia that have successfully applied for and been awarded Horizon 2020 grants. Furthermore, NCURA had organized a highly successfully workshop in August 2015 in order to provide updates on U.S. participation in Horizon 2020 as well as practical tips on how to apply for those who may not be familiar with the application process.

As a part of this workshop, NCURA invited two of its members from the University of Michigan and Harvard University to describe their experiences in applying for and managing Horizon 2020 grants. In fact, U.S. research administrators have at times been hesitant to engage with European grants due to their unfamiliarity with the terms and conditions as well as the “work-arounds” they might need to do in order to acquiesce to the template Horizon 2020 agreement.

With this in mind, we will cover the following two issues in order to shed light on two U.S. universities' experience in Horizon 2020:

- (1) What are the differences and potential areas of concern for U.S. institutions regarding Horizon 2020 versus U.S. federal awards?
- (2) What is one model for dealing with the jurisdictional and liability issues inherent in the template Horizon 2020 agreement?

Horizon 2020 versus U.S. Federal Awards

While the landscape is improving, it can be somewhat challenging to take full advantage of the funding opportunities presented by the Horizon 2020 program. Until general best practices can be developed, research administrators and other university officials will need to devise their own ways to

tackle the challenges presented by the Horizon 2020 program's unique set of risks and responsibilities.

Key Differences

Numerous aspects of Horizon 2020 grants differ in significant ways from standard U.S. federal grants. This brief article cannot get into deep details; however, the issues listed below are among those that warrant careful attention and consideration.

Governing law and jurisdiction. These grant provisions are set by legislation¹ and not subject to change through negotiation. For U.S. institutions, the grant agreement will be governed by EU law, supplemented as needed by Belgian law. Belgian courts have been given sole jurisdiction in disputes over the validation, interpretation, or application of the grant agreement. U.S. federal grants, in contrast, are silent on governing law and jurisdiction.

Access rights to background technology and results. Unlike U.S. federal grants, grant recipients are required to authorize use of their background technology and project results when a consortium member needs them in order to implement that member's grant actions. Such use must generally be

authorized on a royalty-free basis. In addition, for a period of one year after the project ends, use must be granted under fair and reasonable conditions when a consortium member needs the beneficiary's background technology or results in order to exploit their own grant results.²

The grant agreement terms governing these obligations are quite broad and somewhat vague. Thus, grant beneficiaries are encouraged to refine their rights and responsibilities under the grant agreement. To this end, it is worth considering the following.

- As defined, "background" is potentially everything that the institution holds, not just what the institution owns. Beneficiaries should consider limiting access rights to background technology that is specifically enumerated in the consortium agreement.³
- "Results" constitute anything derived from the grant action.
- Requests for access must be formally made in writing. The subsequent authorization allows the requesting party to use but not to sublicense the technology. The right to request access may extend to all or certain affiliates of a consortium member.⁴
- Requests for access are evaluated on the basis of need. However, "need" is not defined within the grant agreement, and so the parties to the collaboration should define "need" in the consortium agreement.
- Early termination of participation by a beneficiary does not excuse that beneficiary from its obligation to provide access to its background technology or results. Once a beneficiary accedes to the grant agreement terms, it is obligated to provide access to its background technology and results as outlined in the grant.

Read the annotated model grant and consortium agreements. These annotated models provide a wealth of knowledge to potential program beneficiaries.

Protection of the results. For a period of four years after the project ends and similar to U.S. federal grant requirements under the Bayh-Dole Act, beneficiaries must proactively take adequate steps to protect those results under the grant which are reasonably expected to have commercial value.⁵ Beneficiaries are also required to coordinate with the EU and other consortium members before licensing or disseminating the results. They must affirmatively address the legitimate interests of all members of the consortium. Beneficiaries are free to choose the means of protecting their results and to seek reimbursement from the EU for such activities, but fail-

ure to adequately protect the results can lead to assumption of ownership of the results by the EU.⁶

Promotion of the grant action and results. Unlike U.S. federal grants, Horizon 2020 grant beneficiaries are required to develop and implement a comprehensive plan that effectively promotes the beneficiary's actions and results under the grant. The plan is also expected to communicate the EU's role in funding the grant.

Joint and several liability for technical implementation. Under the grant agreement, consortium members are made jointly and severally liable for the technical implementation of the grant action. If a consortium member drops out of the collaboration, the remaining members will be required to complete all the deliverables outlined under the grant. This is in contrast to U.S. federal grants in which the prime recipient is solely responsible for the implementation of the grant action.

Financial statements and payments made in euros. Financial transactions will be conducted in euros, leaving U.S. grant beneficiaries responsible for the costs associated with the currency conversion and the added administrative burden of providing the converted financial statements.

Indirect recovery rate. Unlike the rates regularly negotiated between a U.S. federal agency and a university, beneficiaries are entitled to recover a flat rate of 25% of the eligible total direct costs, less any costs related to (a) subcontracting, (b) in-kind contributions incurred by third parties but not used on the beneficiaries' premises, or (c) providing financial support to third parties.

Recommendations

While best practices are being developed as a whole, U.S. institutions are advised to take the following steps to help reduce the risks and administrative burden posed by Horizon 2020 grants.

- Promptly register the institution in the Participant Portal and designate a legal representative, as required for access to the online system used to conduct formal communication and administration of grants. The registration and validation process can take weeks to complete. The process is a precondition to formally accepting a grant, and a beneficiary has only thirty days after the grant is issued to formally accept it in the Participant Portal.
- Read the annotated model grant⁷ and consortium agreements.⁸ These annotated models provide a wealth of knowledge to potential program beneficiaries.
- Begin negotiating the consortium agreement early. Discussions concerning the consortium's proposed work plan should address the details of access to background technology, narrowing the scope of the background technology implicated by the consortium and defining the meaning of terms such as "need."
- Seek reimbursement for all allowable direct costs⁹. This mitigates the financial burden of the program's extra responsibilities, such as paying to protect research results, and also maximizes the amount that will be recovered under the program's flat rate of indirect cost recovery.
- Use the many resources available to Horizon 2020 program participants. One of the greatest resources is the knowledge and experience of consortium members from the EU who have participated in many similar grant programs. The coordinating beneficiary is often the most experienced member of a consortium.

Harvard Global: One Management Model for Horizon 2020 Grants

In 2012, Harvard University established Harvard Global Research and Support Services, Inc., known as “Harvard Global,” a non-profit corporation affiliated with the President and Fellows of Harvard College. The primary purpose of the new organization is to administer overseas operations on behalf of Harvard University, by providing common infrastructure, processes, and tools to operate its non-profit academic and research endeavors internationally. As a secondary function, Harvard Global also acts as a direct awardee (or, using the EU nomenclature, a “beneficiary”) of sponsored grants with certain onerous and non-negotiable conditions, when there remains a compelling reason to accept the award. As described herein, many awards under Horizon 2020 include significant indemnification

Faculty interest and involvement in the Horizon 2020 funding landscape has been steadily growing since 2012.

obligations and subsequent financial risk which cannot be removed or mitigated. In order to provide access for faculty and participate more fully in Europe’s research funding landscape, Harvard University has chosen to route most Horizon 2020 participation through Harvard Global.

The application, receipt and management of all grants accepted by Harvard Global are overseen by Harvard University’s Office for Sponsored Programs. Despite its legal separation, Harvard Global follows many of the same policies and practices as Harvard University, and as such, grants and awards cannot violate typical values including academic freedom and integrity. For grants under Horizon 2020, Harvard Global is a separately registered entity in the Participant Portal and is the signatory for both the Grant Agreement and the Consortium Agreement. As part of its internal process, Harvard Global enters into secondment agreements with Harvard University that outlines the roles and responsibilities of University staff and/or researchers related to all grant activity at Harvard Global.

Although the establishment of a separate legal entity is complex and not without administrative burden, the Harvard Global model is beneficial: supporting international activity and encouraging the acceptance of more complex research funding. Through Harvard Global, Harvard University has limited the financial risks of participating in Horizon 2020 and has developed significant expertise in the management of EU grants. Harvard Global designed training for faculty and staff and also created compliance measures and internal controls for researchers and departments that enable them to navigate a complex and unfamiliar system. Faculty interest and involvement in the Horizon 2020 funding landscape has been steadily growing since 2012. In addition to the €77 billion committed to fund Horizon 2020 programs,

there are many funding opportunities available to US researchers that often result from the strategic and advantageous research relationships formed while conducting an EU project. Although managing the awards through Harvard Global does require additional administrative commitments and effort to properly steward these awards, the model has created more opportunity and advantages to faculty and researchers. ■

Other Resources

Other resources available to U.S. researchers and research administrators include the following:

Model Horizon 2020 Grant Agreement: http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html#h2020-mga-gga

Annotated Model Grant Agreement: http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

Model Horizon 2020 Consortium Agreement: <http://www.desca-2020.eu>

Bilat USA 2.0 website: www.eusscienceandtechnology.eu

Harvard Global website: www.harvardglobal.org

Presentations from the NCURA Workshop on Horizon 2020: www.ncura.edu/Global/BilatUSA20Horizon2020Horizon2020Workshop-AM57.asp

References

- ¹ See Article 180(1) of the Rules of Application. Commission Regulation (EC, Euratom) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EC, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 298, 26.10.2012, p.1).
- ² Beneficiaries can agree on different terms for accessing background technology or even a different length of time for allowing access to background technology or results, though the default is royalty-free access to all background technology and for the period of up to one year after the project ends. (See Articles 25.3 and 31.3 of the Horizon 2020 Model Grant Agreement).
- ³ Article 24.1 of the Horizon 2020 Model Grant Agreement does allow participants to identify and limit what specifically is the background technology that will be accessible to other consortium members.
- ⁴ Articles 25.4 and 31.4 of the Horizon 2020 Model Grant agreement does allow participants to limit the access rights of some or even all affiliated entities.
- ⁵ Article 27.1 of the Horizon 2020 Model Grant Agreement places specific limits to this requirement.
- ⁶ See Article 26.4 of the Horizon 2020 Model Grant Agreement for details on when the EU may assume ownership.



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Jennifer A. Ponting is currently the Director, Pre-Award Services in the Office for Sponsored Programs at Harvard University. In addition to University-wide compliance responsibilities, she oversees a diverse group of research administrators, negotiators and operations staff that manage and provide pre-award services for a total portfolio of over \$300 million dollars annually. Prior to joining Harvard, Ms. Ponting was a Senior Contract Officer at Columbia Technology Ventures, the tech transfer and licensing office at Columbia University. She also served as the Export Control Officer and Contract Specialist for the Massachusetts Institute of Technology. Ms. Ponting received her B.S. from the University of New Hampshire and her Juris Doctor from Northeastern University School of Law. She can be reached at jennifer_ponting@harvard.edu

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NCURA CALENDAR of EVENTS

TRAVELING WORKSHOPS

Departmental Research Administration Workshop.....January 25-27, 2016
San Diego, CA

LEVEL I: Fundamentals of Sponsored Project
Administration WorkshopJanuary 25-27, 2016
San Diego, CA

LEVEL II: Sponsored Project Administration WorkshopJanuary 25-27, 2016
San Diego, CA

NATIONAL CONFERENCES

Financial Research Administration Conference.....March 6-8, 2016
New Orleans, LA

Pre-Award Research Administration Conference.....March 9-11, 2016
New Orleans, LA

58th Annual MeetingAugust 7-10, 2016
Washington, DC

REGIONAL MEETINGS

Region I – New EnglandMay 1-4, 2016
North Falmouth, MA

Region II – Mid-Atlantic.....May 1-4, 2016
Philadelphia, PA

Region III – Southeastern.....April 30-May 4, 2016
Miramar Beach, FL

Region IV – Mid-America.....May 1-4, 2016
Kansas City, MO

Region V – SouthwesternApril 24-27, 2016
Dallas, TX

Regions VI/VII/VIII – Western/Rocky Mountain/InternationalOctober 2-5, 2016
Maui, HI

VIDEO WEBINARS

Life Cycle of the Award Series

- Proposal Development (3 Part Series) – Available On-Demand
- Pre-Award/Budgeting (3 Part Series) – Available On-Demand
- Award Negotiation and Acceptance (3 Part Series – Jan 20, Jan 27, Feb 3)
- Award Monitoring/Award Management – April 12, 2016
- Compliance – May 16, 2016

See website for details

PROGRAMS AVAILABLE ON-DEMAND

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Crowd Funding: An Enormous Opportunity at Your Fingertips

Creating the Cohesive Team Your Office Needs to Thrive

The Right Metrics: Choosing, Measuring and Evaluating Metrics to Drive
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A Primer on Clinical Trials – 8 week program

A Primer on Federal Contracting – 8 week program

A Primer on Intellectual Property in Research Agreements – 8 week program

A Primer on Subawards – 8 week program

DEADLINES FOR MARCH/APRIL 2016

Submission of Articles to Contributing Editors.....January 22, 2016
Submission of Articles to Co-editorsJanuary 27, 2016
Submission of Advertisements.....January 27, 2016

Additional information for authors can be found at: www.ncura.edu/PublicationsStore/NCURAMagazine/Submissions.aspx

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