

# SPONSORED RESEARCH AGREEMENTS AND THE UNIVERSITY MISSION

NCURA Regions IV and V Spring Meeting, April 18, 2012

Eugenie Chao, Grant and Contract Officer



---

---

---

---

---

---

---

## Agenda

- University Mission and Guiding Principles
- Sponsored Research and Sponsored Research Agreements (SRAs)
- Selected Sponsored Research Agreement Provisions



---

---

---

---

---

---

---

## University Mission

- Three primary elements of university mission:  
Instruction, Research and Public Service
- CIRCULAR A-21 Section B1  
Major functions of an institution refers to  
instruction, organized research, other sponsored  
activities and other institutional activities



---

---

---

---

---


---

---

University Mission:

Instruction

- Institutions of higher education educate students
  - Transmit knowledge and skills
  - Create an educated workforce
- Major functions of an institution according to A-21:
  - Sponsored instruction and training



NORTHWESTERN  
UNIVERSITY

---

---

---

---

---

---

---

---

University Mission:

Research

- Universities conduct basic research to expand fundamental knowledge of human nature, society, and the natural world
  - Creation of new products, technologies, jobs, companies
- Major functions of an institution according to A-21:
  - Sponsored research
  - University research



NORTHWESTERN  
UNIVERSITY

---

---

---

---

---

---

---

---

University Mission:

Public Service

- Enhance the lives and livelihoods of our students, and the general public
  - Extension programs, libraries, museums, gardens
- Major functions of an institution according to A-21:
  - Other sponsored activities – health service projects, community service programs



NORTHWESTERN  
UNIVERSITY

---

---

---

---

---

---

---

---

Guiding Principles

- Academic freedom
- Openness in research
- Dissemination of research results



NORTHWESTERN

UNIVERSITY

---

---

---

---


---

---

---

Guiding Principle: Academic Freedom

The freedom of teachers and students to teach, study, and pursue knowledge and research without unreasonable interference or restriction from law, institutional regulations, or public pressure



NORTHWESTERN

UNIVERSITY

---

---

---

---

---


---

---

Guiding Principle: Academic Freedom

Allows faculty members:

- To inquire into any subject and to present their findings
- To teach in the manner they consider professionally appropriate
- To publish their data and conclusions without control or censorship



NORTHWESTERN

UNIVERSITY

---

---

---

---

---

---

---

### Guiding Principle: Openness in Research

- Free and open exchange of ideas
- Research builds upon previous results
- Access to the underlying data, to the processes, and to the final results of research allows research findings to be questioned, replicated, and built upon



---

---

---

---

---

---

---

### Guiding Principle: Dissemination of Research Results

- Expectation of non-profit, tax-exempt institutions is public benefit
  - SRAs must incorporate this expectation
- Key to the university mission of teaching, research, and public service
- Primary methods: publications, conference presentations, classroom lectures



---

---

---

---

---

---

---

### University Mission and Guiding Principles

#### University Mission

- Instruction
- Research
- Public Service

#### Guiding Principles

- Academic freedom
- Openness in research
- Dissemination of research results



---

---

---

---

---

---

---

### Examples of University Mission

#### The University of Illinois

"The University of Illinois will transform lives and serve society by educating, creating knowledge and putting knowledge to work on a large scale and with excellence"



---

---

---

---

---

---

---

### Examples of University Mission

#### The University of Iowa

"Upon founding The University of Iowa in 1847, Iowa's first legislature entrusted it with a threefold mission of teaching, research, and public service"



---

---

---

---

---

---

---

### University Research and Its Role in the US

"Now, to help this country compete for new jobs and businesses, we also need to invest in basic research and technology so the great ideas of the future will be born in our labs and in classrooms"

- President Obama, September 16, 2011  
Signing ceremony of the American Invents Act  
Alexandria, Virginia



---

---

---

---

---

---

---

### Results of University Research

- Transfer of existing know-how (tacit knowledge)
- Production of knowledge infrastructure
- Creation of human capital
- Generation of new knowledge
- Capital investment
- Technological innovation
- Regional leadership
- Influence on the regional milieu



NORTHWESTERN  
UNIVERSITY

Goldstein, Maier, and Luger (1995)

---

---

---

---

---

---

---

---

### University Research – Foundation of our nation's R&D enterprise

- Universities performed 56% of the nation's basic research in 2008
- Universities performed 12% of the nation's applied research in 2008
- In 2010, commercialization of university inventions resulted in 657 new products
- Results of university research is open to the public



NORTHWESTERN  
UNIVERSITY

---

---

---

---

---

---

---

---

### Agenda

- University Mission and Guiding Principles
- Sponsored Research and Sponsored Research Agreements (SRAs)
- Selected Sponsored Research Agreement Provisions



NORTHWESTERN  
UNIVERSITY

---

---

---

---

---

---

---

---

### What is Sponsored Research?

- Research funded by an external entity for a specific purpose
- Sources of funding:
  - federal, state, and local governments, foundations, non-profit organizations
  - for-profit entities, foreign governments
- Types of activities funded: research, training, instruction, public service



---

---

---

---

---

---

---

### What is a Sponsored Project?

A sponsored project is an externally funded project in which a formal written agreement, i.e., a grant, cooperative agreement, or contract, is entered into by a university and by a sponsor



---

---

---

---

---

---

---

### Sponsored Research Agreements (SRAs)

- A Sponsored Research Agreement is a legally enforceable contract between a university and a sponsor for the purpose of funding a research project
- A Sponsored Research Agreement defines the rights and obligations of the parties



---

---

---

---

---

---

---

Types of SRAs


- Grants/Cooperative Agreements
- Contracts
- Subawards and subcontracts
- Industry sponsored Clinical Trial Agreements and basic science agreements
- Other related agreements:
  - Non-Disclosure Agreements (Confidentiality Agreements)
  - Material Transfer Agreement
  - Data Sharing Agreement



NORTHWESTERN  
UNIVERSITY

Elements of a SRA


- Statement of Work (SOW)
- Financial Terms (budget, payment schedule)
- **Data Rights**
- **Intellectual Property**
- **Publication**
- Reporting Requirements
- Confidentiality
- Liability, Indemnification and Insurance
- **Term and Termination**



NORTHWESTERN  
UNIVERSITY

Difference between Grant and Contract

Grant	Contract
Loosely defined scope of work proposed by the recipient	Specific work defined by the sponsor
Best efforts – no expectation of results; annual & final programmatic/fiscal reports	Specific deliverables, reports, or milestones
Financial assistance for public purpose	Procurement of goods and services for the sponsor's direct benefit
Federal grant terms and conditions are universally accepted	Terms and conditions needs to be negotiated
Most grants have the same expectations	Need to balance between sponsor needs and university needs



NORTHWESTERN  
UNIVERSITY



Agenda

- University Mission and Guiding Principles
- Sponsored Research and Sponsored Research Agreements (SRAs)
- Selected Sponsored Research Agreement Provisions



NORTHWESTERN

UNIVERSITY

---

---

---

---

---

---

---

---

University Mission and Sponsored Research Agreement Provisions

University Mission	Guiding Principles	Selected SRA Provisions
<ul style="list-style-type: none"> <li>Instruction</li> <li>Research</li> <li>Public Services</li> </ul>	<ul style="list-style-type: none"> <li>Academic freedom</li> <li>Openness in research</li> <li>Dissemination of research results</li> </ul>	<ul style="list-style-type: none"> <li>Data Rights</li> <li>Publication</li> <li>Intellectual Property</li> </ul>



NORTHWESTERN

UNIVERSITY

---

---

---

---

---


---

---

---

Data Rights

- No uniformly accepted definition of “research data” or “scientific data” among federal sponsors
- Definition of data varies
  - Nature of research
  - Tangibles (biological samples, lab notebooks,...etc.)
  - Intangibles (findings, conclusions, statistics,...etc.)
  - Raw data, preliminary data, final research data



NORTHWESTERN

UNIVERSITY

---

---

---

---

---

---

---

---

### Definition of Data

#### NIH GPS:

"recorded information, regardless of the form or media on which it may be recorded, and includes writings, films, sound recordings, pictorial reproductions, drawings, designs, or other graphic representations, procedural manuals, forms, diagrams, work flow charts, equipment descriptions, data files, data processing or computer programs (software), statistical records, and other research data"

#### A110:

"the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues"

---

---

---

---

---

---

---

### SRA Provision – Data Rights

- Universities expect rights to the data they create
- Protect the rights to publish data
- Protect the right to use data for non-commercial, research, development, and educational purposes

---

---

---

---

---

---

---

### Federal Policies on Data Sharing

- Federal grants have the expectation of data sharing and other resources (unique data)
- NIH requires data sharing plan
- NSF requires a data management plan

---

---

---

---

---

---

---

### Data Rights: Compare & Compromise

#### Original SRA clause:

"Any inventions, including, but not limited to, ideas, concepts, discoveries, know-how,..., derivatives, documentation, data, and other rights relating to the data or its use, or developed using the data, which are developed, conceived and/or reduced to practice by Institution or Investigator, alone or jointly with others, during the Term of this Agreement and for a period of six (6) months thereafter, shall be promptly disclosed to sponsor and shall become the sole and exclusive property of Sponsor."



---

---

---

---

---

---

---

---

### Data Rights: Compare & Compromise

#### Revised SRA clause that reflects University Mission:

"The Parties agree that Research Data shall mean information, records, and tangible products arising from or associated with research conducted at the University during the Term of this Agreement and shall be owned by and shall be the sole and exclusive property of University. University shall grant to Sponsor the rights to use research data created during the Term of this Agreement solely for its internal research purpose, or as needed to meet regulatory or other governmental requirements."



---

---

---

---

---

---

---

---

### SRA Provision – Publication

- Outlines what can be published and when
- Why is this so important to a University?
  - Necessary to fulfill University's academic mission
  - Allows results to be used in future studies
  - Enhances University's prominence
  - Contributes to public knowledge
  - Allows grad students to use data for theses



---

---

---

---

---

---

---

---

### Federal Policies – Publication

#### NIH, Grants Policy Statement (GPS), 8. 2

- “This publication was made possible by Grant Number CA12345”
- Publications resulted from grant support must be included in progress report – PMCID#
- NIH Public Access Policy

#### NSF, Award & Administration Guide (AAG), Chapter VI. E

NSF advocates and encourages open scientific and engineering communication. NSF expects significant findings from research it supports to be promptly submitted for publication, with authorship that accurately reflects the contributions of those involved



---

---

---

---

---

---

---

### SRA Provision – Publication

- Expectation for grant sponsors
- Often point of contention with contract sponsors
  - Allow for reasonable delay (30 – 45 days) for review/comment—but never approval—and for patent applications
  - Allow for identifying and deletion of sponsor confidential information



---

---

---

---

---

---

---

### Publication: Compare & Compromise

#### Original SRA clause:

“Institution shall submit to Sponsor a copy of any proposed publication at least 90 days prior to submission for review and approval.”

#### Revised SRA clause that reflects University Mission:

“Institution shall submit to Sponsor a copy of any proposed publication at least 30 days prior to submission for review and comment, which will be considered in good faith.”



---

---

---

---

---

---

---

### What is Intellectual Property?

- It is imagination made real. It is the ownership of dream, an idea, an improvement, an emotion that we can touch, see, hear, and feel. It is an asset just like your home, your car, or your bank account

- United States Patent and Trademark office



---

---

---

---

---

---

---

### University Position on Intellectual Property

- Core mission: create and disseminate knowledge for the public good
- University expects to own the IP that they create under sponsored research agreements



**Disclaimer:** please consults your individual institution's specific IP policy

---

---

---

---

---

---

---

### Federal Policies: Intellectual Property Bayh-Dole Act of 1980

#### Before Bayh-Dole

- Grantees restricted from ownership and control of inventions
- Federal government lacked resources to develop patents

#### After Bayh-Dole

- Uniform patent policy among federal agencies
- Grantees, including universities and non-profits, may patent and hold title to their inventions (subject to certain conditions and federal rights)
- Government retain a non-exclusive, non-transferable, irrevocable, paid-up right



---

---

---

---

---

---

---

### Federal Policies: Intellectual Property

NIH, Grants Policy Statement (GPS), 10/11, 8. 2.4 Inventions and Patents

- Report all subject inventions to NIH
- Make efforts to commercialize the subject invention through patent or licensing
- Formally acknowledge the Federal government's support in all patents that arise from the subject invention
- Formally grant the Federal government a limited use license to the subject invention



---

---

---

---

---

---

---

### Federal Policies: Intellectual Property

NIH, Grants Policy Statement (GPS), 10/11, 8. 4.1.6 Invention Reporting

- NIH competing grant application and non-competing continuation progress reports report if there are inventions
- Annual invention utilization report
- iEdison.gov



---

---

---

---

---

---

---

### SRA Provision – Intellectual Property

- Governs the ownership of any inventions that may result during the course of the sponsored research project
- Rights to invention rests with the inventor
- Background IP rights should be left as they were
- Option for a license to university inventions



---

---

---

---

---

---

---

## Intellectual Property: Compare & Compromise

### Original SRA Clause:

- “Any inventions made as a result of Institution’s performance of this Agreement will be disclosed promptly to Sponsor and shall be deemed the property of Sponsor.”

### Revised SRA clause that reflects University Mission:

- “Inventorship shall be determined according to US Patent Law. If institution is legally determined to be the inventor, Sponsor shall have an option to acquire a license, to be negotiated in good faith by the parties.”



---

---

---

---

---

---

---

## Summary

- Research carried out by the University has to reflect our core mission
- SRA provisions have to ensure the fundamental expectations are met and the public interest is served
  - Universities expect rights to the data they create
  - SRA provision must protect rights to publish
  - Rights to invention rests with the inventor



---

---

---

---

---

---

---

**Thank you for your time!**

**Questions?**

**Eugenie Chao, [y-chao@northwestern.edu](mailto:y-chao@northwestern.edu)**



---

---

---

---

---

---

---