FAQs on Technology and Open License Requirements

1. **Are technologies integrated with open textbooks separate from the open textbooks or part of the open textbooks?**

   For the purposes of this grant program, technology-based strategies that improve instruction and/or student learning outcomes are considered separate from the open textbooks themselves. That is, a version of the final open textbooks created with grant funds will be considered a final grant deliverable and should be made accessible to the public apart from the technology-based strategies. In addition, as required by 2 CFR 200.3474.20, grantees and subgrantees should have a plan for broad dissemination of that open textbook.

2. **Are the specific technologies (e.g., software platforms, desktop programs, or mobile applications) that implement the technology-based strategies to be integrated with the open textbooks required to be openly licensed?**

   In general, any new copyrightable works and new modifications to pre-existing works that are separately identifiable and developed with grant funds are subject to the requirements of the open licensing regulation for competitive grant programs in 2 CFR 200.3474.20.

   It is important to note that this rule does not impose a requirement to re-license pre-existing works. The regulation in 2 CFR 3474.20(d)(1)(iv) and (e), provide, respectively, that the rule does not apply to "copyrightable works created by the grantee or subgrantee that are not created with grant funds," or "any copyrightable work incorporated in the grant deliverable that is owned by a party other than the grantee or subgrantee, unless the grantee or subgrantee has acquired the right to provide such a license in that work."

3. **Are technologies developed with grant funding under this grant program required to be openly licensed as described in 2 CFR 3474.20?**

   Yes, see above for additional details.

4. **If grant funding is used to make modifications to existing technologies, are those modifications required to be openly licensed as described in 2 CFR 3474.20?**

   The open licensing regulation does not require that grantees provide access to proprietary computer programs protected under copyright or other laws. We also understand that in many cases, modifications to existing technologies may only be viable within the context of existing commercial software or platforms.

   However, these modifications, particularly when accompanied by any supporting documentation, may benefit other users of the same commercial software or platforms to the extent that these modifications can be separately identified and extracted from the underlying proprietary work. Therefore, if the modifications can be separately identified and extracted from the underlying proprietary work, they are subject to the open licensing rule.

5. **Is an open textbook that is only available through a closed, proprietary delivery mechanism still considered an open textbook for the purposes of this grant program?**

An open textbook that is only available through a closed, proprietary delivery mechanism could meet the definition of open textbooks or the purposes of this grant program. However, open textbooks created through this grant program are considered grant deliverables that are subject to the Department's open licensing requirement in 2 CFR 200.3474.20, which requires that the public be allowed to use final grant deliverables in a royalty-free manner, i.e., at no cost. In addition, the final grant deliverable is required to have a license that is perpetual and irrevocable. Open licenses that are royalty-free, perpetual, and irrevocable allow the public to continuously access the licensed final version of the final grant deliverable for no cost. In this case, this means that the final grant deliverable – the open textbook, would need to be made available to the public at no cost and the grantee or subgrantee would need to provide a plan for broad and efficient dissemination of the textbook.

6. Is source code an exception to the open rule since it is potentially patentable?

Source code is potentially an exception to the open rule, since it contains elements that could be protected under patent laws, and trade secret laws. Under these circumstances, 2 CFR 200.3474.20(d)(1)(viii) expressly provides that the rule does not apply to grantees if compliance with the rule would conflict with, or materially undermine the ability to protect or enforce, other intellectual property rights or obligations of the grantee or subgrantee, in existence or under development, including those provided under 15 U.S.C. 1051, et seq., 18 U.S.C. 1831-1839, and 35 U.S.C. 200, et seq.