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RIN 3201-AA00

GULF COAST ECOSYSTEM RESTORATION COUNCIL

2 CFR Part 5900

RIN 3600-AA03

Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Office of Management and Budget, Executive Office of the President; Department of Health And Human Services; Farm Service Agency, Commodity Credit Corporation, National Institute of Food and Agriculture, Rural Utilities Service, Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, Farm Service Agency, Department of Agriculture; Department of State; Agency for International Development; Department of Veterans Affairs; Department of Energy; Department of Treasury; Department of Defense; Department of Transportation; Department of Commerce; Department of the Interior; Environmental Protection Agency; National Aeronautics and Space Administration; Corporation for National and Community Service; Social Security Administration; Department of Housing And Urban Development; National Science Foundation; National Archives and Records Administration; Small

Business Administration; Department of Justice; Department of Labor; Federal Emergency Management Agency, Department of Homeland Security; Institute of Museum and Library Services; National Endowment for the Arts; National Endowment for the Humanities; Department of Education; Office of National Drug Control Policy, Executive Office of the President; Gulf Coast Ecosystem Restoration Council.

ACTION: Interim final rule.

SUMMARY: This joint interim final rule implements for all Federal award-making agencies the final guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) published by the Office of Management and Budget (OMB) on December 26, 2013. This rule is necessary in order to incorporate into regulation and thus bring into effect the Uniform Guidance as required by OMB. Implementation of this guidance will reduce administrative burden and risk of waste, fraud, and abuse for the approximately \$600 billion per year awarded in Federal financial assistance. The result will be more Federal dollars reprogrammed to support the mission, new entities able to compete and win awards, and ultimately a stronger framework to provide key services to American citizens and support the basic research that underpins the United States economy.

DATES: *Effective date:* This interim final rule is effective on December 26, 2014. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 26, 2014.

Implementation dates: For grants authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, this rule is applicable for emergency or major disaster declarations issued on or after December 26, 2014. For non-Federal entities that are nonprofit organizations or institutions of higher education (IHEs), there is a one-year grace period for implementation of the procurement standards in 2 CFR 200.317 through 200.326. As will be detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation for the procurement standards will need to specify in their documented policies and procedures that they continue to comply with OMB circular A-110 for one additional fiscal year which begins after December 26, 2014.

Comment date: To be assured of consideration, comments must be received by OMB electronically through

www.regulations.gov no later than midnight Eastern Standard Time (E.S.T.) on February 17, 2015.

ADDRESSES: Comments should be submitted to www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For general information, please contact Victoria Collin or Gil Tran at the OMB Office of Federal Financial Management, 175 17th St. NW., Washington, DC 20500, or via telephone at (202) 395-3993. You may submit comments via the Federal eRulemaking Portal at www.regulations.gov, Docket Number OMB-2014-0006. Follow the instructions for submitting comments.

SUPPLEMENTARY INFORMATION:

Background

This joint interim final rule implements for all Federal award-making agencies the final guidance *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* published by the Office of Management and Budget (OMB) on December 26, 2013 in 2 CFR part 200 (Uniform Guidance—available at 78 FR 78589). The Uniform Guidance followed on a Notice of Proposed Guidance issued February 1, 2013 (available at 78 FR 7282), and an Advanced Notice of Proposed Guidance issued February 28, 2012 (available at 77 FR 11778). The final guidance incorporated feedback received from the public in response to those earlier issuances. Additional supporting resources are available from the Council on Financial Assistance Reform at www.cfo.gov/COFAR.

The Uniform Guidance delivered on two presidential directives; Executive Order 13520 on Reducing Improper Payments (74 FR 62201; November 15, 2009), and February 28, 2011 Presidential Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments, (Daily Comp. Pres. Docs.; <http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf>). It reflected more than two years of work by the Council on Financial Assistance Reform to improve the efficiency and effectiveness of Federal financial assistance. For a detailed discussion of the reform and its impacts, please see the **Federal Register** notice for the issuance of the final guidance (78 FR 78589).

With this interim final rule, OMB is amending the uniform guidance to make technical corrections where needed, and Federal awarding agencies are joining together to implement the Uniform Guidance in their respective chapters of title 2 of the CFR. With respect to the

technical corrections that OMB is issuing, these corrections are included only where it has come to the attention of the COFAR that particular language in the final guidance did not match with the COFAR's intent and would result in an erroneous implementation of the guidance. These technical corrections will go into effect at the time of the effective date of this interim final rule.

Among these technical corrections, please note in particular, parts 25, 170, and 180 are amended to reflect that the Central Contractor Registration (CCR) and Excluded Parties List System (EPLS) no longer exist as stand-alone systems; their functionalities are now available in the System of Award Management (SAM).

2 CFR parts 25, 180 and, 200 are revised to remove references to the Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) and replace them with the term 'unique entity identifier'. This change is consistent with Administration priorities to technically refine existing regulations. The specific standard for this unique entity identifier will be in accordance with the requirements of SAM. This revision does not indicate a change in current policy.

References to the Federal Awardee Performance and Integrity Information System (FAPIIS) remain in 2 CFR part 200 reflecting that final guidance for Federal grants and cooperative agreements will be published following the issuance of this interim final rule.

2 CFR 200.110 Effective/applicability date is revised to allow a grace period of one fiscal year for non-Federal entities to implement changes to their procurement policies and procedures in accordance with sections 200.317 through 200.336 Procurement Standards.

Finally, 2 CFR 200.320 Methods of Procurement paragraph (c), the requirement for sealed bids to be advertised and opened "publicly" is limited as was originally intended to state, local and tribal entities. Other requirements in the section remain as originally published.

In addition, throughout the guidance, the COFAR changed the word "should" to "must" to reflect longstanding policies that have been requirements in practice, but which may have been misinterpreted as optional with the usage of the word "should". Other technical corrections are made to eliminate conflicting or unclear language and grammatical inconsistencies or citation errors throughout.

With respect to the implementing regulations that Federal awarding

agencies are issuing, any agencies that have received OMB approval for an exception to the Uniform Guidance have included the resulting language in their regulations. OMB has only approved exceptions to the Uniform Guidance where they are consistent with existing policy. Further, agencies are providing additional language beyond that included in 2 CFR part 200, consistent with their existing policy, to provide more detail with respect to how they intend to implement the policy, where appropriate. Agencies are not making new policy with this interim final rule; all regulatory language included here should be consistent with either the policies in the Uniform Guidance or the agencies' existing policies and practices. Three agencies have requested special accommodation with respect to the format of their implementing language. The National Science Foundation, the Department of Education, and the Department of Health and Human Services have included agency-specific preamble language as follows:

National Science Foundation

The National Science Foundation (NSF) has received approval from OMB to implement 2 CFR part 200 via use of a policy, rather than a regulation. In the interest of establishing a single location for each of the Departments' and Agencies' implementation of the Uniform Guidance, per OMB's request, NSF has provided a link to its policy implementation of OMB's Uniform Guidance in 2 CFR part 2500 for inclusion in this issuance.

Department of Education

The Secretary of the Department of Education takes one exception from the Uniform Guidance and makes one clarification regarding another section of the Uniform Guidance (discussed more fully later in this section of the preamble). The Secretary also describes the technical amendments needed to conform to the guidance in 2 CFR part 200. The Secretary publishes this special section of the joint preamble to provide the basis and purpose for the exception and clarification.

The Secretary also seeks comments on whether any of the requirements imposed under our adoption of the Uniform Guidance conflict with any of the requirements in the Department's statutes and regulations.

Exception and Clarification

An exception to the Uniform Guidance is required because the Secretary lacks authority to delegate functions to the Office of Management and Budget (OMB), as contemplated by

the Uniform Guidance. In particular, 2 CFR 200.102(a) would effectively delegate one of the Secretary's functions—granting exceptions to the regulations as promulgated by the Department—to employees of OMB. Section 412 of the Department of Education Organization Act (20 U.S.C. 3472) permits the Secretary to delegate functions of the Department to officers and employees of the Department, but neither that section or any other statute permits the Secretary to delegate to OMB the authority to grant exceptions to the Department's regulations. The Secretary is therefore modifying the regulation in 2 CFR 200.102(a) to authorize the Secretary to grant exceptions to the regulations after consultation with appropriate officials at OMB. This exception is stated in 2 CFR 3474.5.

The Secretary also clarifies that the Department's authority under 2 CFR 200.207, Specific conditions, also permits the Department to designate grants and grantees as high risk. The Department has long used the authority under 34 CFR 74.14, Special award conditions, and 80.12, Special grant or subgrant conditions for "high-risk" grantees, to impose high-risk conditions on both individual grants and individual grantees. While these two sections did not both use the term "high-risk," they established identical standards for imposing special conditions on grantees. Under these regulations, the Department has imposed high-risk conditions on specific grants and grantees in appropriate circumstances regardless of whether the grantee was subject to part 74 or part 80. The guidance in 2 CFR 200.205 and 200.207 replaces the requirements in 34 CFR 74.14 and 80.12 and authorizes specific conditions under virtually identical standards to those formerly in parts 74 and 80. Because the standards in 2 CFR 200.207 are virtually identical to those in former 34 CFR parts 74 and 80, the Secretary clarifies that the Department will now use the standards in 2 CFR 200.205 and the procedures in 2 CFR 200.207 to impose specific or high risk conditions on grants and grantees, depending on the circumstances in each case.

The current regulations in parts 74 and 80 contain provisions that authorize the Department to impose conditions on grants or grantees if an applicant or grantee (1) Has a history of poor performance; (2) Is not financially stable; (3) Has a management system that does not meet the standards prescribed in this part; (4) Has not conformed to the terms and conditions

of a previous award; or (5) Is not otherwise responsible.

The guidance in 2 CFR 200.205 requires agencies to conduct a risk evaluation whenever making new awards, authorizing agencies to use a risk-based approach, and may consider any items such as the following: (1) Financial stability; (2) Quality of management systems and ability to meet the management standards prescribed in Part 200; (3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards and, if applicable, the extent to which any previously awarded amounts will be expended prior to future awards; (4) Reports and findings from audits performed under Subpart F—Audit Requirements of Part 200 or the reports and findings of any other available audits; and (5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

The standards identified in 2 CFR 200.205 may be used both at the time of the award or after an award is made if the Department discovers new risks posed under a particular grant or by a particular grantee. While the standards in 2 CFR 200.205 provide more detail and are stated in neutral terms, the same underlying reasons apply to the standards used by the Department to impose high-risk conditions under 34 CFR 74.14 and 80.12. Therefore, the Secretary clarifies that the standards in 2 CFR 200.205, which do not mention "high-risk" conditions, can be used in appropriate cases by Department officials to impose high-risk conditions on individual grants or on specific grantees.

Technical Amendments and Removal of Obsolete Parts

These interim final regulations also make technical changes: (1) To the Department's regulations in the Education Department General Administrative Regulations (EDGAR), 34 CFR parts 75, 76, and 77, to conform to the Uniform Guidance in part 2 CFR part 200; and (2) to update program regulations that currently reference 34 CFR parts 74 and 80 or specific sections in those parts. In addition, the Department is removing, rather than updating, the following parts of title 34 of the CFR that reference parts 74 and 80 but that are no longer authorized by statute:

Part 380, Special Projects and Demonstrations for Providing Supported

Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects: previously authorized by section 311(c) of the Rehabilitation Act of 1973 (former 29 U.S.C. 777a(c)); the authority for this program was not retained when Congress reauthorized the Act in 1998 (P.L. 105–220).

Part 426, Cooperative Demonstration Program: previously authorized by section 420A of the Carl D. Perkins Vocational and Applied Technology Act (former 20 U.S.C. 2420a); the authority for this program was not retained when Congress reauthorized the Perkins Act in 1998 (Pub. L. 105–332).

Part 460, Adult Education—General Provisions: previously authorized by the Adult Education Act (former 20 U.S.C. 1201 *et seq.*), which was repealed by section 251(a)(1) of Pub. L. 105–220 (1998).

Part 464, State Literacy Resource Centers Program: previously authorized by section 356 of the Adult Education Act (former 20 U.S.C. 1208aa), which was repealed by section 251(a)(1) of Pub. L. 105–220 (1998).

Part 491, Adult Education for the Homeless Program: previously authorized by section 701 of the McKinney-Vento Homeless Assistance Act (former 42 U.S.C. 11421), which was repealed by section 199(b)(1) of P.L. 105–220 (1998).

Part 535, Bilingual Education: Graduate Fellowship Program: previously authorized by section 7145 of the Elementary and Secondary Education Act of 1965 (ESEA) (former 20 U.S.C. 7475), which was not retained in the 2002 reauthorization of the ESEA (P.L. 107–110).

Part 636, Urban Community Service Program: previously authorized by title XI, part A of the Higher Education Act of 1965 (HEA) (former 20 U.S.C. 1136–1136h), which was repealed by section 202 of P.L. 105–244 (1998).

Part 1100, National Institute for Literacy: Literacy Leader Fellowship Program: previously authorized by section 384(e) of the Adult Education Act (former 20 U.S.C. 1213c(e)), which was repealed by section 251(a)(1) of Pub. L. 105–220 (1998).

Definition of "Grant"

Two of the technical amendments relate to the definitions of "grant" and "award." These terms are defined in 34 CFR parts 74 and 80, as equivalent terms for financial assistance awarded by the Department. The guidance in 2 CFR 200.24 and 200.51 defines "cooperative agreement" and "grant agreement", respectively, and these definitions follow the Federal Grant and

Cooperative Agreement Act (31 U.S.C. 6303–6305) language closely for the treatment of grants and cooperative agreements. However, because Department regulations use the terms “grant” and “award” to refer generally to both grants and cooperative agreements, the Department cannot rely on the definition of “grant agreement” in part 200. Instead, we establish definitions of “grant” and “award” in 34 CFR 77.1(c) to include within their scope cooperative agreements as well as grants. Because part 77 defines terms applicable to all programs of the Department, program regulations can continue to use these terms to refer to both types of awards.

General Education Provisions Act Requirements

Section 437(b) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(b), provides that, immediately following each substantive provision of the Department’s regulations, the Department must provide the citations to the particular section or sections of statutory law or other legal authority on which that provision is based. The substantive provision in these interim final regulations that adopts the guidance in 2 CFR part 200 is 2 CFR 3474.1. Because the authority citations for all of the sections adopted by the Department are the same (unless noted otherwise), the Department provides the authority citation for all of the adopted guidance in paragraph (b) of 3474.1. For other sections in Part 3474, the authority citations are provided at the end of each of those sections.

Rulemaking Considerations

The Department is generally required, under the General Education Provisions Act (GEPA), section 437 (20 U.S.C. 1232) and the APA to take comment on proposed rules before they become effective. Also, under the Higher Education Act of 1965 (HEA), section 492, (20 U.S.C. 1098a), all Department regulations for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements and, under section 482 of the HEA, any title IV regulations that have not been published in final form by November 1 prior to the start of an award year cannot become effective until the beginning of the second award year following the November 1 date. The joint preamble includes waivers of proposed rulemaking and delayed effective date with respect to the APA.

For the same reasons included in the joint preamble, the Secretary has determined that there is good cause to

waive proposed rulemaking and delayed effective date under both GEPA and the HEA.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these interim final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Department of Health and Human Services

The Department of Health and Human Services (HHS) is adapting OMB’s final guidance with certain amendments, based on existing HHS regulations, to supplement the guidance as needed for the Department. HHS’ amendments are described below, and incorporated into HHS’ implementing regulations at 45 CFR part 75. As with NSF, HHS has, in the interest of establishing a single location for each Department’s implementation of the uniform guidance, provided a link to its policy implementation of OMB’s uniform guidance in 2 CFR part 300. The changes described below are categorized as regulation-wide formatting changes, additions, or revisions. The items described as formatting changes have been made throughout the text of the HHS regulation to accommodate the structure and content of the HHS guidance. All other changes are listed in order by section.

As indicated in the common preamble, OMB has afforded ample opportunity for notice and an opportunity for comment on the provisions contained therein. In addition, HHS finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an effective date of December 26, 2014. All of the additions and modifications listed below already exist in codified regulations (45 CFR part 74 or part 92), and thus are currently applicable to HHS grantees. As such, all HHS grantees should already be in compliance with these provisions. Consequently, no changes on the part of grantees are expected. In order to comport with OMB’s timeframe for Federal agency adoption of these regulations, it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective

date for these minor changes that reflect current HHS rules and practice.

HHS is making the rule effective on December 26, 2014, in order to comport with all other Federal agency adoption, and to ensure consistency in all grant-making procedures. Failure to do so could have unpredictable negative effects on grants implementation.

For the above reasons, the Secretary issues this rule as an interim final rule. However, HHS will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

In 45 CFR part 75, HHS incorporates the guidance in 2 CFR part 200 with the following adjustments:

1. Changes “Federal Awarding Agency” to “HHS Awarding Agency” where applicable.
2. Removes titles of sections within the regulatory text to improve readability.
3. Revises the numbering schema to facilitate the inclusion of additional definitions and to facilitate the inclusion of material specific to HHS awards. All such numbering changes are updated throughout the document, including internal references.
4. Includes Appendix IX, “Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals,” with appropriate numbering schema.
5. Renumber sections, especially Subpart D, to facilitate the inclusion of material specific to HHS awards.
6. Changes citations to reflect location in 45 CFR part 75.
7. Inserts reserved sections throughout the regulation to accommodate future changes.
 - (a) HHS adopts 2 CFR 200.0 in 45 CFR 75.1, with the following additional acronyms, added to existing list in appropriate alphabetical order:
 - (1) HHS U.S. Department of Health and Human Services
 - (2) SF 424 Standard Form 424 series and Form Families Application for Federal Assistance
 - (b) HHS adopts the definitions found in 2 CFR 200.2–200.99 in 45 CFR 75.2 with the following changes.
 - (1) Adds the following new definitions:
 - (i) “Awardee.”
 - (ii) “Commercial organization.”
 - (iii) “Departmental Appeals Board.”
 - (iv) “Excess property.”
 - (v) “Expenditure report.”
 - (vi) “Grantee.”
 - (vii) “HHS awarding agency.”
 - (viii) “Principal Investigator/Program Director/(PI/PD).”

- (ix) "Prior approval."
- (x) "Project period."
- (xi) "Surplus property."
- (xii) "Suspension of award activities."
- (xiii) "Total Costs."

(2) Revises the following specific definitions as described below:

(i) Cost sharing or matching to add "This may include the value of allowable third party in-kind contributions, as well as expenditures by the recipient." after the first sentence.

(ii) Indirect cost rate proposal to add "and Appendix IX" after "Appendix VII".

(iii) Personal property to add "such as copyrights, patents, or securities" at the end of the definition.

(iv) Recipient to add "usually but not limited to non-Federal entities," in the first sentence, after "entity,".

(v) Research and Development to replace "non-Federal entities" with "HHS award recipients".

(3) All definitions, including the HHS additions, are in alphabetical order.

(c) HHS adopts 2 CFR 200.104 in 45 CFR 75.104 by adding a new subsection to note the supersession of 45 CFR parts 74 and 92 and renumbers accordingly.

(d) HHS adopts 2 CFR 200.106 in 45 CFR 75.106 and articulates HHS implementation of 2 CFR part 200.

(e) HHS adopts 2 CFR 200.108 in 45 CFR 75.108 and articulates to whom changes for HHS regulations should be addressed.

(f) HHS adopts 2 CFR 200.109 in 45 CFR 75.109 to articulate HHS' review period for its regulations.

(h) HHS adopts 2 CFR 200.112 in 45 CFR 75.112 and articulates HHS' establishment of conflict of interest policies and disclosure criteria.

(i) HHS adopts 2 CFR 200.205 in 45 CFR 75.205 and adds text at the end of subsection (a) to reference suspension and debarment regulations.

(j) HHS adopts 2 CFR 200.206 in 45 CFR 75.206 and amends the section heading and adds new subsections (c) and (d) to specify the forms required.

(k) HHS adopts 2 CFR 200.208 in 45 CFR 75.208 and adds after the introductory language new subsections (a) and (b) to reference 45 CFR part 87 and § 75.206(d)(2).

(l) HHS adopts 2 CFR 200.212 in 45 CFR 75.212 and changes "2 CFR part 180" to read "2 CFR parts 180 and 376".

(m) HHS adds new 45 CFR 75.213 to reference The Metric Conversion Act and HHS' use of Executive Order 12770.

(n) HHS adds new 45 CFR 75.214 to reference lobbying restrictions in 45 CFR part 93.

(o) HHS adds new 45 CFR 75.215 to reference provisions for awards to Commercial Organizations.

(p) HHS adds new 45 CFR 75.216 to reference provisions for awards to Federal Agencies.

(q) HHS adds new 45 CFR 75.217 to reference standards for faith-based organizations in 45 CFR part 87.

(r) HHS adopts 2 CFR 200.305 in 45 CFR 75.305 and adds at the end of subsection (b)(5)(ii) "(See 45 CFR part 30)."

(s) HHS adopts 2 CFR 200.307 in 45 CFR 75.307 with the following changes:

(1) revise subsection (c) to include details concerning the Patent and Trademark Laws Amendments, 34 U.S.C. 200–212, and conditions described under § 75.207 or § 75.215."

(t) HHS adopts 2 CFR 200.308 in 45 CFR 75.308 with the following changes:

(1) Add subsections (c)(9) through (11) to include research patient care costs, subaward relations to Simplified Acquisition Threshold, and the disposition of property and equipment.

(2) add at the end, new subsection (j) to detail the appropriate authorizing personnel for revisions.

(u) HHS adopts 2 CFR 200.309 in 45 CFR 75.309 to articulate the use of funds within the period of performance.

(v) HHS adds 45 CFR 75.316 to articulate HHS' policy on property management standards and procedures.

(w) HHS adopts 2 CFR 200.310 in 45 CFR 75.317 with the insertion of "other" preceding "property owned" in the first sentence.

(x) HHS adopts 2 CFR 200.311 in 45 CFR 75.318 by revising subsection (b):

(1) in subparagraph (b), by inserting subparagraph (1) following "Use.";

(2) by adding subparagraph (b)(2) to articulate the use of real property in other federally-sponsored projects.

(3) in subparagraph (c), after "is no longer needed", adding the phrase "as provided in subsection (b)."

(y) HHS adopts 2 CFR 200.313 in 45 CFR 75.320, by adding, at the end of subsection (c)(4), "subject to the approval of the HHS awarding agency."

(z) HHS adopts 2 CFR 200.315 in 45 CFR 75.322 with the following changes:

(1) The title is amended to read "Intangible property and copyrights.";

(2) Add new subsection (f) to exclude commercial organizations from paragraph (e)(1).

(aa) HHS adopts 2 CFR 200.318 in 45 CFR 75.327, with the following changes:

(1) Add, "In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689. (See 2 CFR part 376.)" at the end of subparagraph (h).

(2) Add, new subparagraph (l) to articulate the appropriateness of the procurement instrument.

(bb) HHS adopts 2 CFR 200.320 in 45 CFR 75.329 and changes the title.

(cc) HHS adopts 2 CFR 200.325 in 45 CFR 75.334, and adds new subparagraph (d) to reference certificates of authority pursuant to 31 CFR part 223.

(dd) HHS adopts 2 CFR 200.338 in 45 CFR 75.371, with the following changes:

(1) in subparagraph (c), add "(suspension of award activities)" after "suspend".

(2) in subparagraph (d) add "at 2 CFR part 376" after "regulations".

(ee) HHS adopts 2 CFR 200.341 in 45 CFR 75.374, with an additional subparagraph (b) to reference additional appeals procedures.

(ff) HHS adopts 2 CFR 200.343 in 45 CFR 75.381, and, in subparagraph (g), changes "one year" to "180 calendar days".

(gg) HHS adopts 2 CFR 200.345 in 45 CFR 75.391, and adds, at the end of subparagraph (b), "(See also HHS Claims Collection regulations at 45 CFR part 30)."

(hh) HHS adopts 2 CFR 200.407 in 45 CFR 75.407, with the additional subparagraphs (b) and (c) to articulate additional prior approval conditions.

(ii) HHS adopts 2 CFR 200.439 in 45 CFR 75.439, and amend subsection (a) to remove definition numbers.

(jj) HHS adds new 45 CFR 75.476 to articulate independent research and development costs.

(kk) HHS adopts 2 CFR 200.501 in 45 CFR 75.501, by adding new subparagraphs (i) and (j) to articulate the audit options and exemptions for commercial organizations.

Additional Outreach and Training

Since the issuance of the Uniform Guidance on December 26, 2013, the COFAR has developed and provided numerous additional resources to assist stakeholders in learning about the guidance. For a complete list and access to these resources, please visit the COFAR Web site at cfo.gov/COFAR. Resources available include a Frequently Asked Questions document, as well as several training webcasts. Please note that the Frequently Asked Questions document will be referenced as additional guidance in the 2015 issuance of Appendix XI to Part 200—Compliance Supplement.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1) (PRA), each agency reviewed its final rule and determined that there are no new

collections of information contained therein. However, the OMB uniform guidance in 2 CFR 200 may have a negligible effect on burden estimates for existing information collections, including recordkeeping requirements for non-Federal entities that receive Federal awards.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This common interim final rule implements OMB final guidance issued on December 26, 2013, and will not have a significant economic impact beyond the impact of the December 2013 guidance.

Executive Order 12866 Determination

Pursuant to Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) has designated this joint interim final rule to be not significant.

Administrative Procedure Act (5 U.S.C. 553)

Waiver of Proposed Rulemaking

In General

Under the Administrative Procedure Act (APA), some of the agencies joining in this issuance are generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, as noted earlier in the joint preamble, OMB offered the public two opportunities to comment on the Uniform Guidance, first through an advanced notice of proposed guidance and, second, through a notice of proposed guidance. OMB considered over 300 comments submitted in response to each of these notices. OMB has directed agencies to adopt the uniform guidance in part 200 without change, except to the extent that an agency can demonstrate that any conflicting agency requirements are required by statute or regulations, or consistent with longstanding practice and approved by OMB. Finally, OMB made clear that the requirements in 2 CFR part 200, including the audit requirements in subpart F, will apply, starting on December 26, 2014, giving recipients of all types of financial assistance advance notice of when the regulations would become effective. Therefore, under 5 U.S.C. 553(b)(B), there is good cause for waiving proposed rulemaking as unnecessary.

Department of Justice

The rule issued by the Department of Justice concerns matters relating to "grants, benefits, or contracts," 5 U.S.C. 553(a)(2), and is therefore exempt from the requirement of prior notice and comment.

Waiver of Delayed Effective Date

In General

Generally, those agencies that are subject to the APA are required to delay the effective date of their final regulations by 30 days after publication, as required under 5 U.S.C. 553(d), unless an exception under subsection (d) applies.

Under 5 U.S.C. 553(d), these agencies may waive the delayed effective date requirement if they find good cause and explain the basis for the waiver in the final rulemaking document or if the regulations grant or recognize an exemption or relieve a restriction. In the present case, there is good cause to waive the delayed effective date for two reasons.

First, OMB informed the public on December 26, 2013, that agencies would be required to adopt the Uniform Guidance and make it effective by December 26, 2014. The public has had significant time to prepare for the promulgation of these interim final regulations.

Second, while these interim final regulations are based on a new, more effective method for establishing government-wide requirements, the substance of the regulations are, in most cases, virtually identical to the requirements that exist in current agency regulations. In virtually all cases where the new regulations depart from prior OMB guidance to agencies, the new regulations reduce burdens on the public, for example, by increasing the threshold for single audits from \$500,000 to \$750,000.

Based on these considerations, those agencies subject to the APA have determined that there is good cause to waive the delayed effective date for these interim final regulations.

Department of Justice

The rule issued by the Department of Justice concerns matters relating to "grants, benefits, or contracts," 5 U.S.C. 553(a)(2), and is therefore exempt from the requirement of a 30-day delay in the effective date of this rule.

Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C.

1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OMB has determined that this joint interim final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, the Federal agencies participating in this joint interim final rule have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 13132 Determination

OMB has determined that this joint interim final rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

2 CFR Parts 1, 25, 170, 180, 200, 300, 400, 415, 416, 418, 422, 600, 700, 802, 910, 1000, 1103, 1201, 1327, 1402, 1800, 2205, 2300, 2400, 2500, 2600, 2701, 2800, 2900, 3002, 3187, 3255, 3374, 3474, 3603, and 5900; CFR Parts 761, 785, 1407, 1485, 1703, 1709, 1710, 1717, 1724, 1726, 1737, 1738, 1739, 1740, 1773, 1774, 1775, 1776, 1778, 1779, 1780, 1782, 1783, 1942, 1944, 1951, 1980, 3015, 3016, 3018, 3019, 3022, 3052, 3400, 3401, 3402, 3403, 3405, 3406, 3407, 3415, 3430, 3431, 3570, 3575, 4274, 4279, 4280, 4284, 4285, and 4290; 10 CFR Parts 600, 602, 605, and 733; 13 CFR Part 143; 14 CFR Parts 1260 and 1273; 15 CFR Parts 14 and 24; 20 CFR Parts 435 and 437; 21 CFR Parts 1403–1405; 22 CFR Parts 135, 145, and 226; 24 CFR Parts 84 and 85; 28 CFR Parts 66 and 70; 34 CFR Parts 74, 75, 76, 77, 80, 101, 206, 222, 225, 226, 270, 280, 299, 300, 303, 350, 361, 363, 364, 365, 367, 369, 370, 373, 377, 380, 381, 385, 396, 400, 426, 460, 464, 491, 535, 606, 607, 608, 609, 611, 614, 628, 636, 637, 642, 643, 644, 645, 646, 647, 648, 650, 654, 655, 661, 662, 663, 664, 682, 692, 694, and 1100; 36 CFR Parts 1206, 1207, and 1210; 38 CFR Parts 41 and 43; 40 CFR Parts 30, 31, 33, 35, 40, 45, 46, and 47; 43 CFR Part 12; 44 CFR Parts 13, 78, 79, 152, 201, 204, 206, 207, 208, 304, 360, and 361; 45 CFR Parts 74, 75, 92, 1235, 2510, 2520, 2541, 2543, 2551, 2552, and 2553; 45 CFR Parts 75, 602, 1157, 1174, 1180, and 1183; 49 CFR Parts 18 and 19

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, Appeal procedures, American Samoa, Auditing, Audit requirements, Bilingual education, Blind, Business and Industry, Broadband, Charter schools, Civil rights, Colleges and universities, Community development, Community facilities, Communications, Copyright, Cost principles, Cooperative agreements, Credit, Credit enhancement, Cultural exchange programs, Direct loan programs, Economic development, Education, Education of disadvantaged, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Employment, Equal educational opportunity, Electric power, Electric power rates, Electric utilities, Energy efficiency improvements, Federally affected areas, Farmers, Federal aid programs, Government contracts, Guam, Home improvement, Homeless, Human research subjects, Hospitals, Indians, Industrial park, Indians—education, Infants and

children, Insurance, Intergovernmental relations, International organizations, Manpower training programs, Nonprofit organizations, State and local governments, Grant programs, Grant programs—digital televisions, Grant programs—education, Grant programs—health, Grant programs housing and community development, Grant programs—social programs, Grants administration, Guaranteed loans, Homeless, Intergovernmental relations, Inventions and patents, Loan programs, Loan programs—agriculture, Loan program—business and industry, Loan programs—communications, Loan programs—energy, Loan programs—housing and community development, Loan security, Migrant labor, Mortgage insurance, Mortgages, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territory, Privacy, Private schools, Renewable energy systems, Reporting and recordkeeping requirements, Research misconduct, Rural areas, Rural housing, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small business, State and local governments, Student aid, Subsidies, Telecommunications, Teachers, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Telephone, Waste treatment and disposal, Waste treatment and disposal—domestic, Water pollution control, Water resources, Water supply, Water supply—domestic, Watersheds, Women.

2 CFR Part 1500

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, Appeal procedures, American Samoa, Auditing, Audit requirements, Bilingual education, Blind, Business and Industry, Broadband, Charter schools, Civil rights, Colleges and universities, Community development, Community facilities, Communications, Copyright, Cost principles, Cooperative agreements, Credit, Credit enhancement, Cultural exchange programs, Direct loan programs, Economic development, Education, Education of disadvantaged, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Employment, Equal educational opportunity, Electric power, Electric power rates, Electric utilities, Energy efficiency improvements, Federally affected areas, Farmers, Federal aid programs, Government contracts, Guam, Home improvement, Homeless, Human research subjects, Hospitals, Indians, Industrial park,

Indians—education, Infants and children, Insurance, Intergovernmental relations, International organizations, Manpower training programs, Nonprofit organizations, State and local governments, Grant programs, Grant programs—digital televisions, Grant programs—education, Grant programs—health, Grant programs housing and community development, Grant programs—social programs, Grants administration, Guaranteed loans, Homeless, Incorporation by reference, Intergovernmental relations, Inventions and patents, Loan programs, Loan programs—agriculture, Loan programs—business and industry, Loan programs—communications, Loan programs—energy, Loan programs—housing and community development, Loan security, Migrant labor, Mortgage insurance, Mortgages, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territory, Privacy, Private schools, Renewable energy systems, Reporting and recordkeeping requirements, Research misconduct, Rural areas, Rural housing, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small business, State and local governments, Student aid, Subsidies, Telecommunications, Teachers, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Telephone, Waste treatment and disposal, Waste treatment and disposal—domestic, Water pollution control, Water resources, Water supply, Water supply—domestic, Watersheds, Women.

Executive Office of the President, Office of Management and Budget

Under the authority of the Chief Financial Officer Act of 1990 (31 U.S.C. 503), the Office of Management and Budget amends 2 CFR parts 1, 25, 170, 180, and 200 by making the following correcting amendments:

TITLE 2 —GRANTS AND AGREEMENTS**CHAPTER I —OFFICE OF MANAGEMENT AND BUDGET GOVERNMENTWIDE GUIDANCE FOR GRANTS AND AGREEMENTS****PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A**

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

■ 2. Revise § 1.215 to read as follows:

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB

circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

Guidance in * * *	On * * *	Previously was in * * *
(a) Chapter I, part 180	Nonprocurement debarment and suspension ..	OMB guidance that conforms with the government-wide common rule (see 60 FR 33036, June 26, 1995).
(b) Chapter I, part 182	Drug-free workplace requirements	OMB guidance (54 FR 4946, January 31, 1989) and a government-wide common rule (as amended at 68 FR 66534, November 26, 2003).
(c) Chapter II, part 200	Uniform administrative requirements, cost principles, and audit requirements for federal awards.	OMB Circulars A-21, "Cost Principles for Educational Institutions" (Chapter II, part 225); A-87, "Cost Principles for State, Local and Indian Tribal Governments" (Chapter II, part 225); A-89, "Federal Domestic Assistance Program Information"; "; A-102 and a government-wide common rule (53 FR 8034, March 11, 1988); A-110, "Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" (Chapter II, part 215); A-122, "Cost Principles for Non-Profit Organizations" (Chapter II, part 230); and A-133 "Audits of States, Local Governments and Non-Profit Organizations".

PART 25—UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT

■ 3. The authority citation for part 25 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

■ 4. Revise the heading of 2 CFR part 25 to read as set forth above.

§§ 25.100 and 25.310 [Amended]

■ 5. Amend §§ 25.100 and 25.310 and Appendix A to Part 25 by removing references to "Central Contractor Registration" wherever they appear, and adding, in their place, "System of Award Management".

§§ 25.100, 25.110, 25.200, 25.205, 25.310, and Appendix A to Part 25 [Amended]

■ 6. Amend §§ 25.100, 25.110, 25.200, 25.205, 25.310, and Appendix A to Part 25 by removing references to "CCR" wherever they appear, and adding, in their place, "SAM".

§§ 25.100, 25.110, 25.200, 25.205, 25.210, 25.215, 25.315, and Appendix A to Part 25 [Amended]

■ 7. Amend §§ 25.100, 25.110, 25.200, 25.205, 25.210, 25.215, 25.315, and Appendix A to Part 25 by removing references to "Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number", "Data Universal Numbering System (DUNS) Number", "DUNS" or "DUNS number" wherever they appear, and adding, in their place, "unique entity identifier".

Appendix A to Part 25 [Amended]

■ 8. Revise Appendix A to Part 25, section I, paragraph c.2. and c.4.b. as follows:

Appendix A to Part 25—Award Term

I. * * *

C. * * *

2. *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities.

* * * * *

4. * * *

4.b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

■ 9. The authority citation for part 170 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

Appendix A to Part 170—[Amended]

■ 10. Amend Appendix A to Part 170—Award Term, section I, paragraph b.2.i. by removing "<http://www.ccr.gov>" and add, in its place, "<https://www.sam.gov>".

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 11. The authority citation for part 180 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 180.25 [Amended]

■ 12. Amend § 180.25 paragraph (a), second sentence by removing "has" and adding, in its place "have".

§§ 180.45, 180.100, 180.155, 180.300, 180.320, 180.430, 180.500, 180.505, 180.510, 180.515, 180.520, 180.525, and 180.645 [Amended]

■ 13. Amend §§ 180.45, 180.100, 180.155, 180.300, 180.320, 180.430, 180.500, 180.505, 180.510, 180.515, 180.520, 180.525, and 180.645 by removing references to "the EPLS", wherever they appear, and adding, in their place "SAM Exclusions".

§ 180.155 and 180.500 [Amended]

■ 14. Amend §§ 180.155 and 180.500 by removing, wherever they appear "EPLS" and adding, in their place "SAM Exclusions".

■ 15. Amend §§ 180.155 and 180.500 by removing, wherever they appear "Excluded Parties List System" and adding, in their place, "System for Award Management Exclusions".

■ 16. Revise the heading of Subpart E to read as follows:

Subpart E—System for Award Management Exclusions**§ 180.505 [Amended]**

■ 17. Amend § 180.505 paragraph (c) by removing "is" and adding, in its place "are".

§ 180.515 [Amended]

■ 18. Amend § 180.515 paragraph (a)(7) by removing "Dun and Bradstreet Number (DUNS), or other similar code" and adding, in its place, "unique entity identifier".

■ 19. Revise § 180.530 to read as follows:

§ 180.530 Where can I find SAM Exclusions?

You may access SAM Exclusions through the Internet, currently at <https://www.sam.gov>.

- 20. Revise § 180.945 to read as follows:

§ 180.945 System for Award Management Exclusions (SAM Exclusions).

System for Award Management Exclusions (SAM Exclusions) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.

CHAPTER II—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE**PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

- 21. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503.

§ 200.0 [Amended]

- 22. Amend § 200.0 as follows:

(a) Remove the acronyms, “D&B Dun and Bradstreet” and “DUNS Data Universal Numbering System”.

(b) Correct the text “Generally Accepted Government Accounting Standards” to read “Generally Accepted Government Auditing Standards”.

(c) Correct the text “General Accounting Office” to read “Government Accountability Office”.

(d) Add the acronym, “PMS Payment Management System” after the acronym “PII Personally Identifiable Information”.

- 23. Revise § 200.7 to read as follows:

§ 200.7 Auditor.

Auditor means an auditor who is a public accountant or a Federal, state, local government, or Indian tribe audit organization, which meets the general

standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

- 24. Revise § 200.19 paragraphs (a), (b), (c) and add a new paragraph (d) to read as follows:

§ 200.19 Cognizant agency for indirect costs.

* * * * *

(a) For IHEs: Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph C.11.

(b) For nonprofit organizations: Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations, paragraph C.12.

(c) For state and local governments: Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans, paragraph F.1.

(d) For Indian tribes: Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposal, paragraph D.1.

§ 200.32 [Removed and Reserved]

- 25. Remove and reserve § 200.32.

§ 200.42 [Amended]

- 26. In § 200.42, paragraph (b), remove “should” and add, in its place, “must”.

§ 200.47 [Amended]

- 27. In § 200.47, paragraph (a), remove “are” and add, in its place, “is”.

§ 200.50 [Amended]

- 28. In § 200.50, add “, also known as the Yellow Book,” after “GAGAS”.

§ 200.56 [Amended]

- 29. In § 200.56, third sentence, remove “should” and add, in its place, “must”.

§ 200.57 [Amended]

- 30. Amend § 200.57 by adding “, and Appendix IX to Part 200—Hospital Cost

Principles” after “this part” at the end of the paragraph.

- 31. Revise § 200.68 to read as follows:

§ 200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

- 32. In § 200.80, revise the first sentence to read as follows:

§ 200.80 Program income.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307 paragraph (f).***

§ 200.90 [Amended]

- 33. In § 200.90, correct the text “Virgin Islands” to read “U.S. Virgin Islands”.

- 34. In § 200.101, revise the table in paragraph (b)(1), paragraph (c), the first sentence of paragraph (d)(1), and paragraphs (e)(1)(iv) through (v); and add paragraph (e)(1)(vi) to read as follows:

§ 200.101 Applicability.

* * * * *

(b) ***

(1) ***

This table must be read along with the other provisions of this section.		
The following portions of the Part:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e)) below:	Are NOT applicable to the following types of Federal Awards:
Subpart A – Acronyms and Definitions	—All.	
Subpart B – General Provisions, except for §§200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures	—All.	
§§200.111 English Language, 200.112 Conflict of Interest, and 200.113 Mandatory Disclosures	—Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subparts C-D, except for Subrecipient Monitoring and Management	—Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management	—All	
Subpart E—Cost Principles	—Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts in accordance with the FAR. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.	—Grant agreements and cooperative agreements providing food commodities. —Fixed amount awards —Agreements for: loans, loan guarantees, interest subsidies, insurance. —Federal awards to hospitals (see Appendix IX Hospital Cost Principles).
Subpart F—Audit Requirements	—All.	

(c) Federal awarding agencies may apply subparts A through E of this part to for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.

(d) * * *

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community

Services, except to the extent that the cost and accounting standards of OMB apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B); * * *

* * * * *

(e) * * *

(1) * * *

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI—AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396–1396w–5) not including the State

Medicaid Fraud Control program authorized by section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children’s Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa–1397mm).

* * * * *

■ 35. In § 200.102, revise paragraph (b) and the first sentence of paragraph (c) to read as follows:

§ 200.102 Exceptions.

* * * * *

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.

(c) The Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when, required by Federal statutes or regulations, except for the requirements in Subpart F—Audit Requirements of this part.

§ 200.104 [Amended]

- 36. Amend § 200.104 paragraph (g) by removing “,” after “Organizations”.
■ 37. In § 200.110, revise paragraph (a) to read as follows:

§ 200.110 Effective/applicability date.

(a) The standards set forth in this part which affect administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final. Federal awarding agencies must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB. For the procurement standards in §§ 200.317–200.326, non-Federal entities may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in § 200.104) for one additional fiscal year after this part goes into effect. If a non-Federal entity chooses to use the previous procurement standards for an additional fiscal year before adopting the procurement standards in this part, the non-Federal entity must document this decision in their internal procurement policies.

- 38. In § 200.200, revise paragraph (a) to read as follows:

§ 200.200 Purpose.

(a) Sections 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts through 200.208 Certifications and representations prescribe instructions and other pre-award matters to be used in the announcement and application process.

- 39. In § 200.201, revise paragraph (b)(1) to read as follows:

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

* * * * *

(b) * * *

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

* * * * *

- 40. In § 200.203, amend paragraph (c)(2) by removing the reference to “paragraph (b)” and adding in its place “paragraph (c)(4)”, and revise paragraph (c)(5) to read as follows:

§ 200.203 Notices of funding opportunities.

* * * * *

(c) * * *

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.204 Federal awarding agency review of merit proposals and 200.205 Federal awarding agency review of risk posed by applicants. See also 2 CFR part 27 (forthcoming at time of publication).

- 41. In § 200.205, revise paragraph (a) to read as follows:

§ 200.205 Federal awarding agency review of risk posed by applicants.

(a) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information, such as SAM Exclusions and “Do Not Pay”. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

* * * * *

- 42. Revise § 200.207 to read as follows:

§ 200.207 Specific conditions.

(a) The Federal awarding agency or pass-through entity may impose additional specific award conditions as needed, in accordance with paragraphs (b) and (c) of this section, under the following circumstances:

(1) Based on the criteria set forth in § 200.205 Federal awarding agency review of risk posed by applicants;

(2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;

(3) When an applicant or recipient fails to meet expected performance goals as described in § 200.210 Information contained in a Federal award; or

(4) When an applicant or recipient is not otherwise responsible.

(b) These additional Federal award conditions may include items such as the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the non-Federal entity to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) The Federal awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable, and

(5) The method for requesting reconsideration of the additional requirements imposed.

(d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

- 43. In § 200.210, revise paragraphs (a)(1) and (a)(2) to read as follows:

§ 200.210 Information contained in a federal award.

* * * * *

(a) * * *

(1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);

(2) Recipient's unique entity identifier;

* * * * *

■ 44. Add § 200.212 to subpart C to read as follows:

§ 200.212 Suspension and debarment.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

■ 45. Amend § 200.301, the first and third sentence, by removing "governmentwide".

■ 46. In § 200.303, revise the second sentence of paragraph (a) and revise paragraphs (c) and (e) to read as follows:

§ 200.303 Internal controls.

* * * * *

(a) * * * These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

* * * * *

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

* * * * *

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

■ 47. In § 200.305, revise paragraphs (b) introductory text, (b)(2)(i), (b)(2)(ii), (b)(6), and (b)(9) to read as follows:

§ 200.305 Payment.

* * * * *

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302 Financial management

paragraph (b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment.

(2) * * *

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

* * * * *

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§ 200.207 Specific Conditions, Subpart D—Post Federal Award Requirements of this part, 200.338 Remedies for Noncompliance, or one or more of the following applies:

* * * * *

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as "addenda records" by Financial Institutions) as that will assist in the timely posting of interested earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:

(i) For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit

Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns*:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

(* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

(iii) For International ACH Returns: Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS) Bank: Citibank N.A. (New York) Swift Code: CITIUS33 Account Number: 36838868 Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency Name (abbreviated when possible) and ALC Agency POC: Michelle Haney, (301) 492–5065

(iv) For recipients that do not have electronic remittance capability, please make check** payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353–0231

(** Please allow 4–6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

(v) Any additional information/instructions may be found on the PMS Web site at <http://www.dpm.psc.gov/>.

■ 48. In § 200.306, revise paragraphs (a), (c), and (d) and add paragraph (k) to read as follows:

§ 200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§ 200.414 Indirect (F&A) costs, 200.203 Notices of funding opportunities, and Appendix I to Part 200—Full Text of Notice of Funding Opportunity.

* * * * *

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been

charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in Subpart E—Cost Principles. If a Federal awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraphs (d)(1) or (2) of this section.

(k) For IHEs, see also OMB memorandum M–01–06, dated January 5, 2001, Clarification of OMB A–21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

■ 49. In § 200.307, revise paragraphs (d) and (e)(2) and add paragraph (g) to read as follows:

§ 200.307 Program income.

(d) Property. Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of Subpart D—Post Federal Award Requirements of this part, Property Standards §§ 200.311 Real property, 200.313 Equipment, and 200.314 Supplies, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(2) Addition. With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in paragraph (e) of this section) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.

(g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity has no obligation to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements" is applicable.

■ 50. In § 200.308, revise paragraphs (c)(4), (c)(6), and (c)(7); add paragraph (c)(8); and revise paragraphs (d) and (g)(4) to read as follows:

§ 200.308 Revision of budget and program plans.

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, "Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 Exceptions and 200.407 Prior written approval (prior approval).

(8) The need arises for additional Federal funds to complete the project.

(d) Except for requirements listed in paragraph (c)(1) of this section, the Federal awarding agency is authorized, at its option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(g) * * *

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

§ 200.309 [Amended]

■ 51. Amend § 200.309, by adding "(except as described in § 200.461 Publication and printing costs)" after "performance".

§ 200.311 [Amended]

■ 52. Amend § 200.311, paragraphs (c)(1) and (c)(2) by adding "the" before "non-Federal entity".

■ 53. In § 200.312, revise the first sentence of paragraph (c) to read as follows:

§ 200.312 Federally-owned and exempt property.

(c) Exempt federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award.

§ 200.313 [Amended]

■ 54. Amend § 200.313, paragraph (a)(1) by removing "until funding for the project ceases" and adding, in its place, "during the period of performance".

§ 200.315 [Amended]

■ 55. Amend § 200.315, paragraph (e)(1), first sentence by removing "addition, in".

■ 56. Revise § 200.318, paragraphs (a), (c)(1), (h), and (j)(1) to read as follows:

§ 200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest

is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

* * * * *

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.212 Suspension and debarment.

* * * * *

(j) * * *

(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

* * * * *

§ 200.319 [Amended]

■ 57. Amend § 200.319, paragraph (a) by removing “and invitations” and adding, in its place “or invitations”; and paragraph (b) by removing “state or local” and adding, in its place “state, local, or tribal”.

■ 58. Revise § 200.320, paragraphs (a), (c)(2)(i), and (c)(2)(iii) to read as follows:

§ 200.320 Methods of procurement to be followed.

* * * * *

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§ 200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

* * * * *

(c) * * *

(2) * * *

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal

governments, the invitation for bids must be publically advertised;

* * * * *

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

* * * * *

§ 200.322 [Amended]

■ 59. Amend § 200.322, by removing “acquired by” and adding, in its place “acquired during”.

■ 60. In § 200.331, revise paragraphs (a)(1)(i), (a)(1)(ii), (a)(4), (a)(5), (b), and (d)(1) to read as follows:

§ 200.331 Requirements for pass-through entities.

* * * * *

(a) * * *

(1) * * *

(i) Subrecipient name (which must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

* * * * *

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (f) of this part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

* * * * *

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

* * * * *

(d) * * *

(1) Reviewing financial and performance reports required by the pass-through entity.

* * * * *

§ 200.337 [Amended]

■ 61. Amend § 200.337 by removing “state or local” and adding, in its place “state, local, and tribal”.

§ 200.340 [Amended]

■ 62. Amend § 200.340(c) by adding “(forthcoming at time of publication)” after “2 CFR part 77”.

§ 200.341 [Amended]

■ 63. Amend § 200.341 by removing “proceedings which” and adding, in its place “proceedings to which”.

§ 200.343 [Amended]

■ 64. Amend § 200.343 by removing “Federal agency” from the introductory text and adding, in its place “Federal awarding agency”; in paragraph (a) by removing “by or the” and adding, in its place “by the”; and paragraph (d) by removing “that is” and adding, in its place “that are”, and adding “,” after due.

§ 200.344 [Amended]

■ 65. Amend § 200.344, paragraph (a) introductory text by removing “.” and adding, in its place “;” and paragraph (b) by adding “,” after section.

§ 200.400 [Amended]

■ 66. Amend § 200.400, paragraph (f) by adding “(including pre- and post-doctoral staff)” after “employees” and paragraph (g) by removing “expressly” and adding, in its place “explicitly”.

§ 200.404 [Amended]

■ 67. Amend § 200.404, paragraph (b) by adding “, local, tribal,” after “state”.

§ 200.405 [Amended]

■ 68. Amend § 200.405, paragraph (d) by removing “should” and adding, in its place “must”.

§ 200.406 [Amended]

■ 69. Amend § 200.406, paragraph (b) second sentence by removing “should” and adding, in its place “must”.

■ 70. In § 200.407, revise paragraphs (e) through (v) and add paragraphs (w), (x) and (y) to read as follows:

§ 200.407 Prior written approval (prior approval).

* * * * *

(e) § 200.311 Real property;

(f) § 200.313 Equipment;

(g) § 200.332 Fixed amount subawards;

(h) § 200.413 Direct costs, paragraph (c);

(i) § 200.430 Compensation—personal services, paragraph (h);

(j) § 200.431 Compensation—fringe benefits;

(k) § 200.438 Entertainment costs;

(l) § 200.439 Equipment and other capital expenditures;

(m) § 200.440 Exchange rates;

(n) § 200.441 Fines, penalties, damages and other settlements;

- (o) § 200.442 Fund raising and investment management costs;
- (p) § 200.445 Goods or services for personal use;
- (q) § 200.447 Insurance and indemnification;
- (r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) § 200.455 Organization costs;
- (t) § 200.456 Participant support costs;
- (u) § 200.458 Pre-award costs;
- (v) § 200.462 Rearrangement and reconversion costs;
- (w) § 200.467 Selling and marketing costs;
- (x) § 200.470 Taxes (including Value Added Tax); and
- (y) § 200.474 Travel costs.

§ 200.413 [Amended]

- 71. Amend § 200.413, paragraph (f)(5) by adding “See also § 200.442 Fund raising and investment management costs.” after the first sentence.
- 72. In § 200.414, revise paragraphs (e) introductory text, (e)(1), (e)(3), (e)(4), (e)(5); add new paragraph (e)(6); revise the first sentence of paragraph (f); and revise paragraph (g) to read as follows:

§ 200.414 Indirect (F&A) costs.

* * * * *
(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III–VII and Appendix IX as follows:

- (1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
- (3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;
- (4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;
- (5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and
- (6) Appendix IX to Part 200—Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely.***

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time

extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

§ 200.415 [Amended]

- 73. Amend § 200.415, paragraph (b)(1) by adding “, and Appendix IX” after “Appendices III through VII”; and paragraph (c) by removing “corporation” and adding, in its place “nonprofit organization”.

- 74. In § 200.419, revise the second sentence of paragraph (b)(2) to read as follows:

§ 200.419 Cost accounting standards and disclosure statement.

* * * * *

(b) * * *

(2) * * * An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons.* * *

* * * * *

§ 200.430 [Amended]

- 75. Amend § 200.430, paragraph (g) by removing “should” and adding, in its place “must”; and paragraph (h)(1)(ii) by removing “(h)(9)” and adding, in its place “(i)”.

§ 200.431 [Amended]

- 76. Amend § 200.431, paragraph (b)(3)(i) by removing “as indirect costs”; paragraph (e)(3) by removing “and they are allocated as indirect costs”; and paragraph (h)(6) by adding “non-Federal” before “entity”.

§ 200.433 [Amended]

- 77. Amend § 200.433, paragraph (b) by removing “(b)(1)” and adding, in its place “(a)”.

§ 200.434 [Amended]

- 78. Amend § 200.434, paragraph (c) by removing “is no allowable” and adding, in its place “may not be charged to the Federal award”; and paragraph (g)(1) by removing “is not reimbursable” and adding, in its place “may not be charged to the Federal award”.

§ 200.435 [Amended]

- 79. Amend § 200.435, paragraph (b)(1)(ii)(D) by removing “for default”.

§ 200.436 [Amended]

- 80. Amend § 200.436, paragraph (b) by removing “Appendices IV through VIII” and adding, in its place “Appendices III through IX”; paragraph (c) introductory text by removing “For this purpose” and adding, in its place “For the purpose of computing depreciation”; and paragraph (c)(3) by removing “entity, or where” and adding, in its place “entity where”.

- 81. In § 200.439, add a new paragraph (b)(7) to read as follows:

§ 200.439 Equipment and other capital expenditures.

* * * * *

(b) * * *

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436 Depreciation.

- 82. In § 200.440, revise paragraph (a) to read as follows:

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

* * * * *

§ 200.443 [Amended]

- 83. Amend § 200.443, paragraph (b)(3) by removing “46*”.
- 84. In § 200.444, revise paragraph (b) to read as follows:

§ 200.444 General costs of government.

* * * * *

(b) For Indian tribes and Councils of Governments (COGs) (see § 200.64 Local government), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

§ 200.448 [Amended]

- 85. In § 200.448, amend paragraph (b)(3) by removing the word “should” and adding in its place “must”.

§ 200.453 [Amended]

■ 86. In § 200.453, amend paragraph (b) by removing the word “should” and adding in its place “must”.

§ 200.457 [Amended]

■ 87. Amend the first sentence of § 200.457 by removing the text “routine and security to protect” and adding, in its place “protection and security of”.

§ 200.463 [Amended]

■ 88. Amend § 200.463, paragraph (c), the first sentence by removing “as a direct cost”.

§ 200.464 [Amended]

■ 89. Amend § 200.464, paragraph (c), the second sentence by removing “allowed either as a direct or indirect cost” and adding, in its place “charged to a Federal award”.

■ 90. In § 200.474, remove paragraph (c)(3), revise paragraphs (d) and (e), and add paragraph (f) to read as follows:

§ 200.474 Travel costs.

* * * * *

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11, (“Travel and Subsistence Expenses; Mileage Allowances”), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

- (i) Require circuitous routing;
- (ii) Require travel during unreasonable hours;
- (iii) Excessively prolong travel;
- (iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler’s medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal government will generally not question a non-Federal entity’s determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

§ 200.501 [Amended]

■ 91. Amend § 200.501, paragraph (f), by removing “should be considered” and adding, in its place “sets forth the considerations”; and paragraph (h), by removing “should describe” with “must describe”.

§ 200.502 [Amended]

■ 92. Amend § 200.502, paragraph (a), by removing “should be based” and adding, in its place “must be based.”

§ 200.507 [Amended]

■ 93. Amend § 200.507, paragraph (b)(1), by adding “current ” before “program-specific audit guide”.

§ 200.510 [Amended]

■ 94. Amend § 200.510, paragraph (b)(6), by removing “non-Federal entity” and adding, in its place “auditee.”

■ 95. In § 200.512, revise the heading and first sentence of paragraph (b)(2) to read as follows:

§ 200.512 Report submission.

* * * * *

(b) * * *

(2) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section.***

* * * * *

§ 200.513 [Amended]

■ 96. Amend § 200.513, paragraph (c)(5)(i), by removing “requirement of § 200.513 Responsibilities” and adding, in its place “requirements of paragraph (c) of this section”.

§ 200.514 [Amended]

■ 97. Amend § 200.514, paragraph (d)(3), by removing “the auditor should” and adding, in its place “the auditor must”.

§ 200.515 [Amended]

■ 98. Amend § 200.515 as follows:

■ (a) In paragraph (b), remove “Federal statutes, regulations, and the terms and conditions of the Federal award” and add, in its place “provisions of laws, regulations, contracts, and award agreements”.

■ (b) In paragraph (c), remove “report and internal control” and add, in its place “a report on internal control” in the first sentence; and remove “modified opinion” and add, in its place “disclaimer of opinion” in the second sentence.

■ (c) In paragraph (d) (3) (i), remove “should be presented” and add, in its place “must be presented”.

■ (d) In paragraph (d) (3) (ii), remove “should be reported” and add, in its place “must be reported”.

§ 200.518 [Amended]

■ 99. Amend § 200.518 as follows:

■ (a) In paragraph (a), remove “paragraphs (b) through (i)” and add, in its place “paragraphs (b) through (h)”.

■ (b) In paragraph (b)(1), in the table, remove “Equal to \$750,000” and add, in its place “Equal to or exceed \$750,000”.

■ (c) In paragraph (b)(3), remove “loan guarantees (loans) should not result” with “loan guarantees (loans) must not result”.

Appendix I to Part 200 [Amended]

■ 100. Amend Appendix I to Part 200—Full Text of Notice of Funding Opportunity as follows:

■ (a) In the general discussion section, amend the second sentence of the third paragraph by removing “to include in Section I information” and adding, in its place “to include Section A information”.

■ (b) In the general discussion section, amend the last sentence of third paragraph by removing “The format specifies a standard location for that information in Section III.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections I and III.1” and adding, in its place “The format specifies a standard location for that information in Section C.1 but does not preclude repeating the information in Section A or creating a cross reference between Section A and C.1”.

■ (c) In Section B, second paragraph, remove “section D” and add, in its place “Section D”.

■ (d) In Section C.1, fifth sentence, remove “Section IV” and add, in its place “Section D”.

■ (e) In Section C.1, last sentence, remove references, wherever they appear to “Section IV.5” and add, in their place “Section D.6”.

■ (f) In Section D.2.i, remove “Section IV.3” and add, in its place “Section D.4”.

- (g) In the heading of Section D.3, remove “Dun and Bradstreet Universal Numbering System (DUNS) number” and add, in its place “Unique entity identifier”.
- (h) In Section D.3, item (ii), remove “a valid DUNS number” and add, in its place “a valid unique entity identifier”.
- (i) In Section D.3, item (iii), remove “all applicable DUNS” and add, in its place “all applicable unique entity identifier”.
- (j) In Section E.1, second paragraph, remove “Section III.2” and add, in its place “Section C.2”.
- 101. In Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, revise paragraphs (H), (I) and (J); and remove paragraph (K) to read as follows:

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

* * * * *

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

- 102. Amend Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) as follows:
 - (a) In Section A.1.a, add paragraph (3) as set forth below.
 - (b) In Section B.1., remove “this indirect cost requirements” and add, in its place “these indirect cost requirements”.

- (c) In Section C.2., remove “subgrants and subcontracts”.
- (d) In Section C.7.a, first sentence, remove “Federal agencies must use the negotiated rates except as provided in paragraph (e) of § 200.414 Indirect (F&A) costs, must paragraph (b) (1) for indirect (F&A) costs” and add, in its place “Except as provided in paragraph (c)(1) of § 200.414 Indirect (F&A) costs, Federal agencies must use the negotiated rates”
- (e) In Section C.9.a, remove “subsection 1.a” and add, in its place “subsection C.1.a”
- (f) In Section C.10, remove “shall include” and add, in its place “must include”.
- (g) In Section C.11.a.(1), add “Where a non-Federal entity only receives funds as a subrecipient, § 200.331 Requirements for pass-through entities.” after the last sentence.
- (h) In Section C.11.f(1), second sentence, remove “Non-cognizant Federal agencies for indirect costs, which make Federal awards to an educational institution,” and add, in its place “Federal awarding agencies that do not have cognizance for indirect costs”.
- (i) In Section C.12, second paragraph, remove “In order to provide mutually agreed upon information for management purposes” and add, in its place “As provided in section C.10 of this appendix”.
- (j) In Section F.2.a, remove “must” after “a proposed indirect cost rate”.
- (k) Revise F.2.b as set forth below.

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

* * * * *

- A. * * *
- 1. * * *
- a. * * *

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

* * * * *

- F. * * *
- 2. * * *

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified

proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

* * * * *

Appendix IV to Part 200 [Amended]

- 103. Amend Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations as follows:

- (a) In Section B.2.c, remove “such contracts or subawards” and add, in its place “such as subawards”.
- (b) In Section B.3.b.(4), sentence prior to last sentence, remove “” where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity” and add, in its place “as described in § 200.413 Direct Costs”.
- (c) In Section C.2.a., add “Where a non-Federal entity only receives funds as a subrecipient, see the requirements of § 200.331 Requirements for pass-through entities.” after the last sentence.
- (d) In Section D, add section number “1.” before “Required Certification.” and remove “j” in front of “Each indirect cost rate” and add, in its place “2.”.

- 104. In Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans, revise the heading to read as follows:

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

* * * * *

- 105. Amend Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans as follows:

- (a) In Section A.2, the last sentence remove “the Superintendent of Documents, U.S. Government Printing Office” and add, in its place “HHS Cost Allocation Services or at their Web site at <https://rates.psc.gov>”.
- (b) In Section E.2, the first sentence, remove “allocated central service” and add, in its place “allocation central service**”.

■ 106. Amend Appendix VI to Part 200—Public Assistance Cost Allocation Plans as follows:

- (a) In Section A, third sentence, remove “Federal agencies” and add, in its place “Federal awarding agencies”.
- (b) In Section E.1, remove “the funding agencies” and add, in its place “Federal awarding agencies”; and remove “the cognizant audit agency” and add, in its place “the cognizant agency for indirect costs”.
- (c) In Section E.2, remove “one funding agency” and add, in its place “one Federal awarding agency”.
- (d) In Section E.3, remove “two or more funding agencies” and add, in its place “two or more Federal awarding agencies”; and remove “one funding agency” and add, in its place “one Federal awarding agency”.
- (e) In Section E.4, remove “the Federal agencies” and add, in its place “the Federal awarding agencies”.

Appendix VII to Part 200 [Amended]

■ 107. Amend Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals as follows:

- (a) In Section A.3, remove “the Superintendent of Documents, U.S. Government Printing Office” and add, in its place “HHS Cost Allocation Services or at their Web site at <https://rates.psc.gov>”.
- (b) In Section A.5, remove “Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals” and add, in its place “Appendix VI to Part 200—Public Assistance Cost Allocation Plans”.
- (c) In Section B.3, second sentence, remove “Appendix VI” add, in its place “Appendix V.”
- (d) In Section C.3.e, remove “subcontracts” and add, in its place “subawards”.
- (e) In Section D.1.a, last sentence, remove “the Common Rule” and add, in its place “§ 200.333 Retention Requirements for Records”.
- (f) In Section F.2, second sentence, remove “Appendix VI” and add, in its place “Appendix V”.

Appendix IX to Part 200 [Amended]

■ 108. Amend Appendix IX to Part 200—Hospital Cost Principles by removing “Part 74” and adding, in its place “Part 75”.

David Mader,
Controller.

Department of Health and Human Services

For the reasons set forth in the common preamble, under the authority

of 5 U.S.C. 301 and the authorities listed below, Part 200 of Title 2, Chapter III is added and 45 CFR subtitle A is amended as follows:

TITLE 2—GRANTS AND AGREEMENTS

CHAPTER III—DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 1. Add part 300 to read as follows:

PART 300—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301, 2 CFR part 200.

§ 300.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Health and Human Services adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, and has codified the text, with HHS-specific amendments in 45 CFR part 75. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

TITLE 45—PUBLIC WELFARE

■ Subtitle A—Department of Health and Human Services

PART 74 [REMOVED AND RESERVED]

- 2. Remove and reserve 45 CFR part 74.
- 3. Part 75 is added to title 45 to read as follows:

PART 75—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS

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- 75.2 Definitions.

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- 75.101 Applicability.
- 75.102 Exceptions.
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- 75.106 Agency implementation.
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- 75.108 Inquiries.
- 75.109 Review date.
- 75.110 Effective/Applicability date.
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- 75.203 Notices of funding opportunities.
- 75.204 HHS funding agency review of merit of proposals.
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Appendix IX to Part 75—Principles for Determining Costs Applicable to

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Appendix XI to Part 75—Compliance Supplement

Authority: 5 U.S.C. 301.

Subpart A—Acronyms and Definitions

§ 75.1 Acronyms.

The following acronyms apply to this part:

CAS Cost Accounting Standards
CFDA Catalog of Federal Domestic Assistance
CFR Code of Federal Regulations
CMIA Cash Management Improvement Act
COG Councils of Governments
COSO Committee of Sponsoring Organizations of the Treadway Commission
EPA Environmental Protection Agency
ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301–1461)
EUI Energy Usage Index
F&A Facilities and Administration
FAC Federal Audit Clearinghouse
FAIN Federal Award Identification Number
FAR Federal Acquisition Regulation
FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109–282, as amended by § 6202(a) of Public Law 110–252 (31 U.S.C. 6101)
FICA Federal Insurance Contributions Act
FOIA Freedom of Information Act
FR Federal Register
FTE Full-time equivalent
GAAP Generally Accepted Accounting Principles
GAGAS Generally Accepted Government Auditing Standards
GAO Government Accountability Office
GOCO Government owned, contractor operated
GSA General Services Administration
HHS U.S. Department of Health and Human Services
IBS Institutional Base Salary
IHE Institutions of Higher Education
IRC Internal Revenue Code
ISDEAA Indian Self-Determination and Education and Assistance Act
MTC Modified Total Cost
MTDC Modified Total Direct Cost
OMB Office of Management and Budget
PII Personally Identifiable Information
PMS Payment Management System
PRHP Post-retirement Health Plans
PTE Pass-through Entity
REUI Relative Energy Usage Index
SAM System for Award Management
SF 424 Standard Form 424 series and Form Families Application for Federal Assistance
SFA Student Financial Aid
SNAP Supplemental Nutrition Assistance Program
SPOC Single Point of Contact
TANF Temporary Assistance for Needy Families
TFM Treasury Financial Manual
U.S.C. United States Code
VAT Value Added Tax

§ 75.2 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular program or activities. These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP).

Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Audit finding means deficiencies which the auditor is required by § 75.516(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under Subpart F-of this part.

Auditor means an auditor who is a public accountant, or a Federal, state, local government, or Indian Tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Awardee (see *Non-Federal entity*).

Budget means the financial plan for the project or program that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to

the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(1) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

(2) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Catalog of Federal Domestic Assistance (CFDA) number means the number assigned to a Federal program in the CFDA.

CFDA program title means the title of the program under which the Federal award was funded in the CFDA.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

(1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:

- (i) The payment of money in a sum certain;
- (ii) The adjustment or interpretation of the terms and conditions of the Federal award; or
- (iii) Other relief arising under or relating to a Federal award.

(2) A request for payment that is not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal

entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 75.381.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by OMB in the compliance supplement or as designated by a state for Federal awards the state provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a state must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 75.352(a). A cluster of programs must be considered as one program for determining major programs, as described in § 75.518, and, with the exception of R&D as described in § 75.501(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 75.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the FAC Web site.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

- (1) For IHEs: Appendix III to Part 75 C.11.
- (2) For nonprofit organizations: Appendix IV to Part 75 C.1.
- (3) For state and local governments: Appendix V to Part 75 F.1.
- (4) For Indian tribes: Appendix VII to Part 75 D.1.

Commercial organization means an organization, institution, corporation, or other legal entity, including, but not limited to, partnerships, sole proprietorships, and limited liability companies, that is organized or operated for the profit or benefit of its shareholders or other owners. The term includes small and large businesses and

is used interchangeably with "for-profit organization."

Compliance supplement means Appendix XI to Part 75 (previously known as the Circular A-133 Compliance Supplement).

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also *Supplies* and *Information technology systems*.

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see *Subaward*).

Contractor means an entity that receives a contract as defined in *Contract*.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

- (i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or
- (ii) An agreement that provides only:
 - (a) Direct United States Government cash assistance to an individual;
 - (B) A subsidy;
 - (C) A loan;
 - (D) A loan guarantee; or
 - (E) Insurance

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between

the Federal agency and the non-Federal entity. This approach is based upon:

- (1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;
- (2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;
- (3) A focus on current conditions and corrective action going forward;
- (4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and
- (5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in Subpart E of this part. See also *Final cost objective* and *Intermediate cost objective*.

Cost sharing or matching means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). This may include the value of allowable third party in-kind contributions, as well as expenditures by the recipient. See also § 75.306.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

Departmental Appeals Board means the independent office established in the Office of the Secretary with delegated authority from the Secretary

to review and decide certain disputes between recipients of HHS funds and HHS awarding agencies under 45 CFR part 16 and to perform other review, adjudication and mediation services as assigned.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also *Capital assets, Computing devices, General purpose equipment, Information technology systems, Special purpose equipment, and Supplies*.

Excess property means property acquired in whole or in part under the control of any Federal awarding agency that, as determined by the head of the awarding agency or his/her delegate, is no longer required for the agency's needs or the discharge of its responsibilities.

Expenditure report means:

(1) For non-construction awards, the SF-425 Federal Financial Report (FFR) (or other OMB-approved equivalent report);

(2) For construction awards, the SF-271 "Outlay Report and Request for Reimbursement" (or other OMB-approved equivalent report).

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense charged;

(iii) The value of third-party in-kind contributions applied; and

(iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense incurred;

(iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the non-Federal entity for:

(A) Goods and other property received;

(B) Services performed by employees, contractors, subrecipients, and other payees;

(C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency means an "agency" as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

Federal Audit Clearinghouse FAC means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the reporting packages required by Subpart F of this part. The mailing address of the FAC is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132 and the web address is: <http://harvester.census.gov/sac/>. Any future updates to the location of the FAC may be found at the OMB Web site.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)(i) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 75.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 75.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of *Federal financial assistance*, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(4) See also definitions of *Federal financial assistance, grant agreement, and cooperative agreement*.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal financial assistance:

(1) For grants and cooperative agreements, *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:

(1) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance (except assistance listed in paragraph (b) of this section).

(2) For Subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(c) *Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in § 75.502(h) and (i).

Federal interest means, for purposes of § 75.343 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

(1) Federal share of total project costs; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

(1) All Federal awards which are assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) "Other clusters," as described in

the definition of Cluster of Programs

Federal share means the portion of total project costs that are paid by Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also *Cost objective* and *Intermediate cost objective*.

Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 75.201(b) and 75.353.

Foreign organization means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a *Foreign Public Entity*.

Foreign public entity means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment,

reproduction and printing equipment, and motor vehicles. See also *Equipment and Special Purpose Equipment*.

GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

- (i) Direct United States Government cash assistance to an individual;
- (ii) A subsidy;
- (iii) A loan;
- (iv) A loan guarantee; or
- (v) Insurance.

Grantee (see *Recipient*)

HHS awarding agency means any organization component of HHS that is authorized to make and administer awards.

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment:

(1) Means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and

(b) Includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such

payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Indirect (Facilities and Administration or F&A) costs means costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in Appendix III through Appendix VII, and Appendix IX of this part.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also *Computing devices and Equipment*.

Institution of Higher Education (IHE) is defined at 20 U.S.C. 1001.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost

objectives. See also *Cost objective* and *Final cost objective*.

Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (1) Effectiveness and efficiency of operations;
- (2) Reliability of reporting for internal and external use; and
- (3) Compliance with applicable laws and regulations.

Internal control over compliance requirements for Federal awards means a process implemented by a non-Federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for Federal awards:

- (1) Transactions are properly recorded and accounted for, in order to:
 - (i) Permit the preparation of reliable financial statements and Federal reports;
 - (ii) Maintain accountability over assets; and
 - (iii) Demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(2) Transactions are executed in compliance with:

- (i) Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal program; and

(ii) Any other Federal statutes and regulations that are identified in the Compliance Supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of *Program income*.

(1) The term “direct loan” means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term “direct loan obligation” means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term “loan guarantee” means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term “loan guarantee commitment” means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a state, including a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;
- (8) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and
- (13) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 75.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 75.503(e).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity’s small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of

that regulation, but this threshold is periodically adjusted for inflation.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (2) Is not organized primarily for profit; and
- (3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Obligations means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly to a non-Federal entity not assigned a cognizant agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 75.513(b).

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award (see §§ 75.210(a)(5) and 75.352(a)(1)(v)).

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, or securities.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public Web sites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

Principal Investigator/Program Director (PI/PD) means the individual (s) designated by the recipient to direct the project or program being supported by the grant. The PI/PD is responsible and accountable to officials of the recipient organization for the proper conduct of the project, program, or activity.

Prior approval means written approval by an authorized HHS official evidencing prior consent before a

recipient undertakes certain activities or incurs specific costs.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 75.307(f). (See *Period of performance*.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 75.307, § 75.407 and 35 U.S.C. 200–212 (applies to inventions made under Federal awards).

Project costs means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Project period (see *Period of performance*).

Property means real property or personal property.

Protected Personally Identifiable Information (Protected PII) Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. (See also Personally Identifiable Information (PII)).

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient means an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also *Non-Federal entity*.

Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by HHS award recipients. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and in accordance with 41 U.S.C. 1908. See also *Micro-purchase*.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also *Equipment* and *General purpose equipment*.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20

U.S.C. 1070–1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Supplies means all tangible personal property other than those described in *Equipment*. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also *Computing devices* and *Equipment*.

Surplus property (see *Excess property*)

Suspension of award activities means an action by the HHS awarding agency requiring the recipient to cease all activities on the award pending corrective action by the recipient. It is a separate action from suspension under HHS regulations (2 CFR part 376) implementing Executive Orders 12549 and 12689.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

Third-party in-kind contributions means the value of non-cash contributions (*i.e.*, property or services) that:

- (1) Benefit a federally assisted project or program; and
- (2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Total Costs (see § 75.402).

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid

(liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds authorized under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award.

Subpart B—General Provisions

§ 75.100 Purpose.

(a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 75.101. HHS awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 75.102 and 75.210, or unless specifically required by Federal statute, regulation, or Executive Order.

(2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) *Administrative requirements.* Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for HHS awarding agency management of Federal grant programs before the Federal award has been made, and the requirements HHS awarding agencies may impose on non-Federal entities in the Federal award.

(c) *Cost Principles.* Subpart E of this part establishes principles for

determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for HHS awarding agencies and pass-through entities when using the results of these audits.

(e) For OMB guidance to Federal awarding agencies on Challenges and Prizes, please see M–10–11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

§ 75.101 Applicability.

(a) *General applicability to Federal agencies.* The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(b)(1) *Applicability to different types of Federal awards.* The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in Subpart D of this part, §§ 75.351 through 75.353, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

This table must be read along with the other provisions in this section

The following portions of the Part:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e)) below:	Are NOT applicable to the following types of Federal Awards:
Subpart A—Acronyms and Definitions. Subpart B—General Provisions, except for §§ 75.111, 75.112, and 75.113. Sections 75.111, 75.112, and 75.113.	—All —All —Grant agreements and cooperative agreements	—Agreements for: loans, loan guarantees, interest subsidies and insurance —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs
Subparts C–D, except for Subrecipient Monitoring and Management.	—Grant agreements and cooperative agreements	—Agreements for: loans, loan guarantees, interest subsidies and insurance —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management.	—All	
Subpart E—Cost Principles	—Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts in accordance with the FAR. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.	—Grant agreements and cooperative agreements providing food commodities —Fixed amount awards —Agreements for: loans, loan guarantees, interest subsidies and insurance —Federal awards to hospitals (See Appendix IX)
Subpart F—Audit Requirements.	—All	

(2) Federal award of cost-reimbursement contract under the FAR to a non-Federal entity. When a non-Federal entity is awarded a cost-reimbursement contract, only Subpart D of this part, §§ 75.351 through 75.353 (in addition to any FAR related requirements for monitoring Subpart E of this part and Subpart F of this part are incorporated by reference into the contract. However, when the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part except for Subpart F of this part when they are in conflict. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR subpart 31.2 and subpart 31.603 are always unallowable. For requirements other than those covered in Subpart D of this part, §§ 75.351 through 75.353, Subpart E of this part and Subpart F of this part, the terms of the contract and the FAR apply.

(3) With the exception of Subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C. 450–458ddd–2.
 (c) HHS awarding agencies may apply subparts A through E of this part to Federal agencies (see § 75.215), for-profit entities, foreign public entities, or foreign organizations, except where the HHS awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.
 (d) Except for § 75.202 and §§ 75.351 through 75.353 of Subpart D of this part, the requirements in Subpart C of this part, Subpart D of this part, and Subpart

E of this part do not apply to the following programs:
 (1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services, except to the extent that the cost and accounting standards of OMB apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B); Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grant Awards for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary award program) and both the Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant Award (42 U.S.C. 300x–21 to 300x–35 and 42 U.S.C. 300x–51 to 300x64) and the

Mental Health Service for the Homeless Block Grant Award (42 U.S.C. 300x to 300x-9) under the Public Health Service Act.

(2) Federal awards to local education agencies under 20 U.S.C. 7702-7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858)

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858)

(e) Except for § 75.202, the guidance in Subpart C of this part does not apply to the following programs:

(1) Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance for Needy Families (title IV-A of the Social Security Act, 42 U.S.C. 601-619);

(ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Social Security Act, 42 U.S.C. 651-669b);

(iii) Foster Care and Adoption Assistance (title IV-E of the Act, 42 U.S.C. 670-679c);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396w-5) not including the State Medicaid Fraud Control program authorized by § 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa-1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (e)(1) of this section;

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e));

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753),

(ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755),

(iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a),

(iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761), and

(v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772),

(ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773), and

(iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

§ 75.102 Exceptions.

(a) With the exception of Subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances. Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at www.whitehouse.gov/omb.

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the HHS awarding agency or cognizant agency for indirect costs except where otherwise required by law or where OMB or other approval is expressly required by this part. No case-by-case exceptions may be granted to the provisions of Subpart F of this part.

(c) The HHS awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations, except for the requirements in Subpart F of this part. An HHS awarding agency may apply less restrictive requirements when making

fixed amount awards as defined in Subpart A of this part, except for those requirements imposed by statute or in Subpart F of this part.

(d) On a case-by-case basis, OMB will approve new strategies for Federal awards when proposed by the HHS awarding agency in accordance with OMB guidance (such as M-13-17) to develop additional evidence relevant to addressing important policy challenges or to promote cost-effectiveness in and across Federal programs. Proposals may draw on the innovative program designs discussed in M-13-17 to expand or improve the use of effective practices in delivering Federal financial assistance while also encouraging innovation in service delivery. Proposals submitted to OMB in accordance with M-13-17 may include requests to waive requirements other than those in Subpart F of this part.

§ 75.103 Authorities.

This part is issued under the following authorities.

(a) Subpart B of this part through Subpart D of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 31 U.S.C. 1111 (Improving Economy and Efficiency of the United States Government), 41 U.S.C. 1101-1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541, the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507), as well as The Federal Program Information Act (Public Law 95-220 and Public Law 98-169, as amended, codified at 31 U.S.C. 6101-6106).

(b) Subpart E of this part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101-1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503-504); Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

(c) Subpart F of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507).

§ 75.104 Supersession.

As described in § 75.110, this part supersedes:

(a) The following OMB guidance documents and regulations under Title 2 of the Code of Federal Regulations:

(1) A-21, "Cost Principles for Educational Institutions" (2 CFR part 220);

(2) A-87, "Cost Principles for State, Local and Indian Tribal Governments"

(2 CFR part 225) and also **Federal Register** notice 51 FR 552 (January 6, 1986);

(3) A-89, "Federal Domestic Assistance Program Information";

(4) A-102, "Grant Awards and Cooperative Agreements with State and Local Governments";

(5) A-110, "Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" (codified at 2 CFR 215);

(6) A-122, "Cost Principles for Non-Profit Organizations" (2 CFR part 230);

(7) A-133, "Audits of States, Local Governments and Non-Profit Organizations, and

(8) Those sections of A-50 related to audits performed under Subpart F of this part.

(b) This part also supersedes HHS' regulations at 45 CFR parts 74 and 92.

§ 75.105 Effect on other issuances.

For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part are superseded upon implementation of this part by the HHS awarding agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 75.102.

§ 75.106 Agency implementation.

HHS is implementing the language in 2 CFR part 200 in these codified regulations.

§ 75.107 OMB responsibilities.

OMB will review HHS agency regulations and implementation of 2 CFR part 200, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 75.108 Inquiries.

Inquiries concerning 2 CFR part 200 may be directed to the Office of Federal Financial Management, Office of Management and Budget, in Washington, DC. Inquiries concerning 45 CFR part 75 should be addressed to the HHS awarding agency, cognizant agency for indirect costs, cognizant agency for oversight agency for audit, or pass-through entity as appropriate.

§ 75.109 Review date.

OMB will review 2 CFR part 200 and HHS will review 45 Part 75 at least

every five years after December 26, 2013.

§ 75.110 Effective/Applicability date.

(a) The standards set forth in this part which affect administration of Federal awards issued by Federal agencies become effective December 26, 2014.

For the procurement standards in 2 CFR 200.317-200.326, non-Federal entities previously subject to OMB Circular A-110 may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in 2 CFR 200.104) for one additional fiscal year after this part goes into effect. If an entity chooses to remain with the previous procurement standards for an additional fiscal year before adopting the procurement standards in this part, they must document this decision in their internal procurement policies, in accordance with the guidance in Appendix XI to this part.

(b) The standards set forth in Subpart F of this part and any other standards which apply directly to HHS agencies will be effective December 26, 2013, and will apply to audits of fiscal years beginning on or after December 26, 2014.

§ 75.111 English language.

(a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the HHS awarding agency receives applications in another currency, the HHS awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.

(b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

§ 75.112 Conflict of interest.

(a) HHS awarding agencies must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the respective HHS awarding agency or pass-through entity

in accordance with applicable HHS awarding agency's policy. As a general matter, HHS awarding agencies' conflict of interest policies must:

(1) Address conditions under which outside activities, relationships, or financial interests are proper or improper;

(2) Provide for advance notification of outside activities, relationships, or financial interests, and a process of review as appropriate; and

(3) Outline how financial conflicts of interest may be addressed.

(b) Agencies with Public Health Service (PHS) funded research will ensure that any conflict of interest policies are aligned with the requirements of 42 CFR part 50, subpart F.

§ 75.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the HHS awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 75.371, including suspension or debarment. (See also 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 75.200 Purpose.

(a) Sections 75.201 through 75.208 prescribe instructions and other pre-award matters to be used in the announcement and application process.

(b) Use of §§ 75.203, 75.204, 75.205, and 75.207, is required only for competitive Federal awards, but may also be used by the HHS awarding agency for non-competitive awards where appropriate or where required by Federal statute.

§ 75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The HHS awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.*, grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08).

(b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, HHS awarding agencies, or pass-through entities as permitted in § 75.353, may use fixed amount awards (see § 75.2 *Fixed amount awards*) to which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The HHS awarding agency or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the "milestone" or event triggering the payment also agreed upon in advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the HHS awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the HHS awarding agency or pass-through entity.

§ 75.202 Requirement to provide public notice of Federal financial assistance programs.

(a) The HHS awarding agency must notify the public of Federal programs in the Catalog of Federal Domestic Assistance (CFDA), maintained by the General Services Administration (GSA).

(1) The CFDA, or any OMB-designated replacement, is the single, authoritative, government-wide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the HHS awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission.

(3) The HHS awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the CFDA as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the HHS awarding agency must submit the following information to GSA:

(1) Program Description, Purpose, Goals and Measurement. A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the HHS awarding agency's performance plan and should support the HHS awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11;

(2) Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(3) Projected total amount of funds available for the program. Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) Anticipated Source of Available Funds: The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (e.g., Treasury Account Symbol(s));

(5) General Eligibility Requirements: The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g., type of non-Federal entity); and

(6) Applicability of Single Audit Requirements as required by Subpart F of this part.

§ 75.203 Notices of funding opportunities.

For competitive grants and cooperative agreements, the HHS awarding agency must announce specific funding opportunities by

providing the following information in a public notice:

(a) *Summary Information in Notices of Funding Opportunities.* The HHS awarding agency must display the following information posted on the OMB-designated government-wide Web site for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) HHS Awarding Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if applicable). If the HHS awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Catalog of Federal Domestic Assistance (CFDA) Number(s);

(6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant HHS awarding agency.

(b) The HHS awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The HHS awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the HHS awarding agency head or delegate.

(c) *Full Text of Funding Opportunities.* The HHS awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to Appendix I of this part.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 75.414(c)(4)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 75.204 and 75.205. See also 2 CFR part 27 (forthcoming at time of publication).

(6) Federal Award Administration Information. See also § 75.210.

§ 75.204 HHS funding agency review of merit of proposals.

For competitive grants or cooperative agreements, unless prohibited by Federal statute, the HHS awarding agency must design and execute a merit review process for applications. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this part.) See also § 75.203.

§ 75.205 HHS awarding agency review of risk posed by applicants.

(a) Prior to making a Federal award, the HHS awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of government-wide eligibility qualification or financial integrity information, such as SAM Exclusions, and “Do Not Pay.” See also suspension and debarment requirements at 2 CFR part 180 as well as HHS suspension and debarment regulations at 2 CFR part 376.

(b) In addition, for competitive grants or cooperative agreements, the HHS awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant’s eligibility or the quality of its application. If the HHS awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 75.203.

(c) In evaluating risks posed by applicants, the HHS awarding agency may use a risk-based approach and may consider any items such as the following:

- (1) Financial stability;
- (2) Quality of management systems and ability to meet the management standards prescribed in this part;
- (3) History of performance. The applicant’s record in managing Federal awards, if it is a prior recipient of

Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(4) Reports and findings from audits performed under Subpart F of this part or the reports and findings of any other available audits; and

(5) The applicant’s ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(d) In addition to this review, the HHS awarding agency must comply with the guidelines on government-wide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

§ 75.206 Standard application requirements, including forms for applying for HHS financial assistance, and state plans.

(a) Paperwork clearances. The HHS awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB’s implementing regulations in 5 CFR part 1320. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) If applicable, the HHS awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

(c) Forms for applying for HHS financial assistance. HHS awarding agencies should use the Standard Form 424 (SF-424 Application for Federal Assistance) series (or its successor) and its program narrative whenever possible. Alternative mechanisms may be used for formula grant programs which do not require applicants to apply for funds on a project basis.

(1) Applicants shall use the SF-424 series or those forms and instructions prescribed by the HHS awarding agency.

(2) For Federal programs covered by Executive Order 12372, as amended by Executive Order 12416, the applicant shall complete the appropriate sections of the SF-424 indicating whether the application was subject to review by the State Single Point of Contact (SPOC).

The name and address of the SPOC for a particular State can be obtained from the HHS awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. (See also 45 CFR part 100.)

(3) HHS awarding agencies that do not use the SF-424 series will indicate on the application form they prescribe whether the application is subject to review by the State under Executive Order 12372.

(4) This section does not apply to applications for subawards.

(5) Except where otherwise noted, or granted by HHS deviation, HHS awarding agencies shall direct applicants to apply for HHS financial assistance through Grants.gov, an OMB-designated Web site for Find and Apply.

(d) State plans. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing Executive Order 12372.

(1) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(2) *Assurances.* In each plan, the State will include an assurance that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in this plan, the State may:

(i) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(ii) Repeat the assurance language in the statutes or regulations, or

(iii) Develop its own language to the extent permitted by law.

(3) *Amendments.* A State will amend a plan whenever necessary to reflect:

(i) New or revised Federal statutes or regulations, or

(ii) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 75.207 Specific award conditions.

(a) The HHS awarding agency or pass-through entity may impose additional

specific award conditions as needed in accordance with paragraphs (b) and (c) of this section, under the following circumstances:

- (1) Based on the criteria set forth in § 75.205;
 - (2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;
 - (3) When an applicant or recipient fails to meet expected performance goals as described in § 75.210, or;
 - (4) When the applicant or recipient is not otherwise responsible.
- (b) These additional Federal award conditions may include items such as the following:
- (1) Requiring payments as reimbursements rather than advance payments;
 - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
 - (3) Requiring additional, more detailed financial reports;
 - (4) Requiring additional project monitoring;
 - (5) Requiring the non-Federal entity to obtain technical or management assistance; or
 - (6) Establishing additional prior approvals.
- (c) The HHS awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:
- (1) The nature of the additional requirements;
 - (2) The reason why the additional requirements are being imposed;
 - (3) The nature of the action needed to remove the additional requirement, if applicable;
 - (4) The time allowed for completing the actions if applicable, and
 - (5) The method for requesting reconsideration of the additional requirements imposed.
- (d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

§ 75.208 Certifications and Representations.

Unless prohibited by Federal statutes or regulations, each HHS awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

- (a) The funds governed under this part shall be administered in

compliance with the standards set forth in 45 CFR part 87.

- (b) For assurances under State plans, see § 75.206(d)(2).

§ 75.209 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 75.458.

§ 75.210 Information contained in a Federal award.

A Federal award must include the following information:

- (a) *General Federal Award Information.* The HHS awarding agency must include the following general Federal award information in each Federal award:
 - (1) Recipient name (which must match the name associated with their unique entity identifier as defined in 2 CFR 25.315);
 - (2) Recipient's unique entity identifier;
 - (3) Unique Federal Award Identification Number (FAIN);
 - (4) Federal Award Date (see § 75.2 Federal award date);
 - (5) Period of Performance Start and End Date;
 - (6) Amount of Federal Funds Obligated by this action,
 - (7) Total Amount of Federal Funds Obligated;
 - (8) Total Amount of the Federal Award;
 - (9) Budget Approved by the HHS Awarding Agency;
 - (10) Total Approved Cost Sharing or Matching, where applicable;
 - (11) Federal award project description (to comply with statutory requirements (e.g., FFATA));
 - (12) Name of HHS awarding agency and contact information for awarding official,
 - (13) CFDA Number and Program Name;
 - (14) Identification of whether the award is R&D; and
 - (15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 75.414).
- (b) *General Terms and Conditions* (1) HHS awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:
 - (i) Administrative requirements implemented by the HHS awarding agency as specified in this part.
 - (ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 75.300.

(2) The Federal award must include wording to incorporate, by reference, the applicable set of general terms and conditions. The reference must be to the Web site at which the HHS awarding agency maintains the general terms and conditions.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the HHS awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the HHS awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(c) HHS Awarding Agency, Program, or Federal Award Specific Terms and Conditions. The HHS awarding agency may include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the HHS awarding agency's general terms and conditions. Whenever practicable, these specific terms and conditions also should be shared on a public Web site and in notices of funding opportunities (as outlined in § 75.203) in addition to being included in a Federal award. See also § 75.206.

(d) Federal Award Performance Goals. The HHS awarding agency must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with HHS awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The HHS awarding agency may include program-specific requirements, as applicable. These requirements should be aligned with agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Part 6 for definitions of strategic objectives and performance goals.

(e) Any other information required by the HHS awarding agency.

§ 75.211 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the HHS awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated government-wide Web site (at time of publication, www.USAspending.gov).

(b) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C. 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 75.212 Suspension and Debarment.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR parts 180 and 376. These regulations restrict awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 75.213 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205, declares that the metric system is the preferred measurement system for United States trade and commerce. HHS awarding agencies will follow the provisions of Executive Order 12770.

§ 75.214 Disclosure of Lobbying Activities.

Recipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93.

§ 75.215 Special Provisions for Awards to Commercial Organizations as Recipients.

(a) This section contains provisions that apply to awards to commercial organizations. These provisions are in addition to other applicable provisions of this part, or they make exceptions from other provisions of this part for awards to commercial organizations.

(b) Prohibition against profit. Except for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs (15 U.S.C. 638), no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

(c) Program Income. Except for grants for research, program income earned by

a commercial organization may not be used to further eligible project or program objectives except in the SBIR and STTR programs.

(d)(1) Commercial organizations that receive awards (including for-profit hospitals) have two options regarding audits:

(i) A financial related audit of a particular award in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States, in those cases where the commercial organization receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all awards in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States; or

(ii) An audit that meets the requirements contained in subpart F.

(2) Commercial organizations that receive annual awards totaling less than the audit requirement threshold in subpart F are exempt from HHS audit requirements for that year, but records must be available for review by appropriate officials of Federal agencies or the Government Accountability Office. (See § 75.501).

§ 75.216 Special Provisions for Awards to Federal Agencies.

(a) In order for an HHS awarding agency to make a Federal award to a Federal agency, the HHS awarding agency must have statutory authority that makes such Federal agency explicitly eligible for a Federal award.

(b) All provisions of this part and other HHS regulations apply to Federal entities receiving Federal awards, except for the following:

(1) Except for grants for research, any program income earned by a Federal institution must be used under the deduction alternative. Any program income earned after the end of grant support should be returned to the United States Treasury.

(2) No salary or fringe benefit payments may be made from HHS awarding agency grant funds to support career, career-conditional, or other Federal employees (civilian or uniformed services) without permanent appointments at a Federal institution receiving a grant. While the level of effort required for the project must be allowed by the recipient as part of each individual's official duties, salary costs associated with an individual participating in an official capacity as a Federal employee under a grant to that Federal institution are not allowable

costs under an HHS awarding agency grant.

(3) Federal agencies may not be reimbursed for indirect costs under Federal awards.

§ 75.217 Participation by faith-based organizations.

The funds provided under this part must be administered in compliance with the standards set forth in 45 CFR part 87.

Subpart D—Post Federal Award Requirements**Standards for Financial and Program Management****§ 75.300 Statutory and national policy requirements.**

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: Including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 and 2 CFR part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2324 and 2409, and 41 U.S.C. 4304, 4310, and 4712.

§ 75.301 Performance measurement.

The HHS awarding agency must require the recipient to use OMB approved standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the HHS awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit

cost data). The recipient's performance should be measured in a way that will help the HHS awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The HHS awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in § 75.210. Performance reporting frequency and content should be established to not only allow the HHS awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the HHS awarding agency's program and performance decisions are made.

§ 75.302 Financial management and standards for financial management systems.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 75.450.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 75.361, 75.362, 75.363, 75.364, and 75.365):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the HHS awarding agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 75.341 and 75.342. If an HHS awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system.

This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand.

Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 75.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 75.305.

(7) Written procedures for determining the allowability of costs in accordance with Subpart E of this part and the terms and conditions of the Federal award.

§ 75.303 Internal controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of the United States or the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the HHS awarding agency or pass-through entity designates as

sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

§ 75.304 Bonds.

The HHS awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the HHS awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government.

(b) The HHS awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest.

(c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

§ 75.305 Payment.

(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR part 205 and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 75.302(b)(6). Except as noted elsewhere in these part, Federal agencies must require recipients to use only OMB-approved standard government-wide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual,

immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the HHS awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the HHS awarding agency sets a specific condition per § 75.207, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the HHS awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the HHS awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the HHS awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the HHS awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the HHS awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing

cycle. Thereafter, the HHS awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§ 75.207, Subpart D of this part, 75.371, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A–129. Under such conditions, the HHS awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated. (See 45 CFR part 30).

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 75.375.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to

escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows:

(i) The HHS awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than \$120,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest bearing accounts.

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as "addenda records" by Financial Institutions) as that will assist in the timely posting of interest earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:

For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN
For Fedwire Returns*:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal

Reserve Bank Treas NYC/Funds

Transfer Division New York, NY

(* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)

Bank: Citibank N.A. (New York)

Swift Code: CITIUS33

Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency Name (abbreviated when possible) and ALC Agency POC: Michelle Haney, (301) 492-5065

For recipients that do not have electronic remittance capability, please make check** payable to:

“The Department of Health and Human Services”

Mail Check to Treasury approved lockbox:

HHS Program Support Center

P.O. Box 530231

Atlanta, GA 30353-0231

(** Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

Any additional information/instructions may be found on the PMS Web site at <http://www.dpm.psc.gov/>.

§ 75.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with HHS awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. See also §§ 75.414, 75.203, and Appendix I to this part.

(b) For all Federal awards, any shared costs or matching funds and all

contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the non-Federal entity's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for accomplishment of project or program objectives;

(4) Are allowable under Subpart E of this part;

(5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the HHS awarding agency; and

(7) Conform to other provisions of this part, as applicable.

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in Subpart E. If an HHS awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraphs (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the HHS awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (1) of this section at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program.

Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated indirect cost rate or, a rate in accordance with § 75.414(f), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the HHS awarding agency has approved the charges. See also § 75.420.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the

non-Federal entity, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24.

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

(k) For IHEs, see also OMB memorandum M–01–06, dated January 5, 2001, Clarification of OMB A–21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 75.307 Program income.

(a) *General.* Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

(b) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(c) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or HHS awarding agency regulations as program income.

(1) The Patent and Trademark Laws Amendments, 34 U.S.C. 200–212, apply to inventions made under an award for performance of experimental, developmental, or research work.

(2) Unless the terms and conditions for the Federal award provide

otherwise, recipients shall have no obligation to HHS with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award. However, no scholarship, fellowship, training grant, or other funding agreement made primarily to a recipient for educational purposes will contain any provision giving the HHS awarding agency rights to inventions made by the recipient.

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies, are not program income; such proceeds will be handled in accordance with the requirements of Subpart D of this part, §§ 75.318, 75.320, and 75.321, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) *Use of program income.* If the HHS awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the HHS awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply unless the recipient is subject to conditions under § 75.207 or § 75.215. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the HHS awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the HHS awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.

(1) *Deduction.* Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the HHS awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.

(2) *Addition.* With prior approval of the HHS awarding agency (except for IHEs and nonprofit research institutions, as described in paragraph (e) of this section), program income may be added to the Federal award by the Federal agency and the non-Federal

entity. The program income must be used for the purposes and under the conditions of the Federal award.

(3) *Cost sharing or matching.* With prior approval of the HHS awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.

(f) *Income after the period of performance.* There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the HHS awarding agency regulations or the terms and conditions of the award provide otherwise. The HHS awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 75.381.

(g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity has no obligation to the HHS awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts and Cooperative Agreements” is applicable.

§ 75.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see § 75.2 *Federal share*) or only the Federal share, depending upon HHS awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from HHS awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from HHS awarding agencies for one or more of the following program or budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the HHS awarding agency, of costs that require prior approval in accordance with Subpart E of this part or Appendix IX of this part, or 48 CFR part 31, as applicable.

(5) The transfer of funds budgeted for participant support costs as defined in § 75.2 *Participant support costs* to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 75.102 and 75.407.

(8) A fixed amount subaward as described in § 75.353.

(9) The inclusion of research patient care costs in research awards made for the performance of research work.

(10) The provision of subawards by a pass-through entity on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 75.201. See § 75.353.

(11) The recipient wishes to dispose of, replace, or encumber title to real property, equipment, or intangible property that are acquired or improved with a Federal award. See §§ 75.318, 75.320, 75.322, and 75.323.

(12) The need arises for additional Federal funds to complete the project.

(d) Except for requirements listed in paragraph (c)(1) of this section, the HHS awarding agencies are authorized, at their option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the HHS awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the HHS awarding agency. All costs incurred before the HHS awarding agency makes the Federal award are at the recipient's risk (*i.e.*, the HHS awarding agency is under no obligation to reimburse such

costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 75.458.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the HHS awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior HHS awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent periods of performance.

(4) For Federal awards that support research, unless the HHS awarding agency provides otherwise in the Federal award or in the HHS awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.

(e) The HHS awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the HHS awarding agency. The HHS awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 75.407).

(g) For construction Federal awards, the recipient must request prior written approval promptly from the HHS awarding agency for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Subpart E of this part.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When an HHS awarding agency makes a Federal award that provides support for construction and non-construction work, the HHS awarding agency may require the recipient to obtain prior approval from the HHS awarding agency before making any fund or budget transfers between the two types of work supported.

(h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the HHS awarding agency indicates a letter of request suffices.

(i) Within 30 calendar days from the date of receipt of the request for budget revisions, the HHS awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the HHS awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

(j) All approvals granted in keeping with the provisions of this section shall not be valid unless they are in writing, and signed by at least one of the following HHS officials:

(1) The Head of the HHS awarding agency that made the award or subordinate official with proper delegated authority from the Head, including the Head of the Regional Office of the HHS awarding agency that made the award; or

(2) The responsible Grants Officer of the HHS awarding agency that made the award or an individual duly authorized by the Grants Officer.

§ 75.309 Period of performance and availability of funds.

(a) A non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance (except as described in § 75.461) and any costs incurred before the HHS awarding agency or pass-through entity made the Federal award that were authorized by the Federal awarding agency or pass-through entity.

Funds available to pay allowable costs during the period of performance include both Federal funds awarded and carryover balances.

(b) A non-Federal entity must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the final Federal Financial Report (FFR). This deadline may be extended with prior written approval from the HHS awarding agency.

§ 75.310–§ 75.315 [Reserved]

Property Standards

§ 75.316 Purpose of property standards.

Sections 75.317 through 75.323 set forth uniform standards governing management and disposition of property furnished by HHS or whose cost was charged directly to a project supported by an HHS award. The HHS awarding agency may not impose additional requirements, unless specifically required to do so by Federal statute. The recipient may use its own property management standards and procedures provided they meet the provisions of these sections.

§ 75.317 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to other property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

§ 75.318 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) *Use.* (1) Except as otherwise provided by Federal statutes or by the HHS awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(2) The non-Federal entity shall obtain written approval from the HHS awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored

projects (*i.e.*, awards) or programs that have purpose consistent with those authorized for support by the HHS awarding agency.

(c) *Disposition.* When real property is no longer needed as provided in subsection (b), the non-Federal entity must obtain disposition instructions from the HHS awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the HHS awarding agency. The amount paid to the HHS awarding agency will be computed by applying the HHS awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the HHS awarding agency. The amount due to the HHS awarding agency will be calculated by applying the HHS awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the HHS awarding agency or to a third party designated/ approved by the HHS awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

§ 75.319 Federally-owned and exempt property.

(a) Title to Federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of Federally-owned property in its custody to the HHS awarding agency. Upon completion of the Federal award or when the property is no longer

needed, the non-Federal entity must report the property to the HHS awarding agency for further Federal agency utilization.

(b) If the HHS awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the HHS awarding agency has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999). The HHS awarding agency must issue appropriate instructions to the non-Federal entity.

(c) Exempt Federally-owned property means property acquired under a Federal award where the HHS awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award. The HHS awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt Federally-owned property acquired under the Federal award remains with the Federal Government.

§ 75.320 Equipment.

See also § 75.439.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the HHS awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the HHS awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the HHS awarding agency, in the following order of priority:

(i) Activities under a Federal award from the HHS awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other HHS awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make the equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by the HHS awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 75.307 to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property subject to the approval of the HHS awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a HHS awarding agency, except as otherwise provided in Federal statutes, regulations, or HHS awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the HHS awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with HHS awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the HHS awarding agency.

(2) Except as provided in § 75.319(b), or if the HHS awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The HHS awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the HHS awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the HHS awarding agency may permit the non-Federal entity to deduct and retain

from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the HHS awarding agency may direct the non-Federal entity to take disposition actions.

§ 75.321 Supplies.

See also § 75.453.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 75.320(e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§ 75.322 Intangible property and copyrights.

(a) Title to intangible property (see § 75.2 *Intangible property*) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the HHS awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 75.320(e).

(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The HHS awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the

work for Federal purposes, and to authorize others to do so.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401.

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data

(e) Freedom of Information Act (FOIA).

(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the HHS awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the HHS awarding agency obtains the research data solely in response to a FOIA request, the HHS awarding 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 Federal agency and the non-Federal entity. This fee is in addition to any fees the HHS awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(i) Research findings are published in a peer-reviewed scientific or technical journal; or

(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) Research data means 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. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(f) The requirements set forth in paragraph (e)(1) of this section do not apply to commercial organizations

§ 75.323 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The HHS awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

§ 75.324—§ 75.325 [Reserved]

Procurement Standards

§ 75.326 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 75.331 and ensure that every purchase order or other contract includes any clauses required by § 75.335. All other non-Federal entities, including subrecipients of a state, will follow §§ 75.327 through 75.335.

§ 75.327 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and

administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing

new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689. (See 2 CFR part 376.)

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to,

source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The HHS awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, tribal, state, or Federal authority having proper jurisdiction.

(l) The type of procuring instruments used must be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved.

§ 75.328 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms,

given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§ 75.329 Procurement procedures.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (*See micro-purchase*). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified

Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, for state, local, and tribal governments, the bids must be opened publically;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when

conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The HHS awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

§ 75.330 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 75.331 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 75.332 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make

independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 75.333 HHS awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the HHS awarding agency or pass-through entity, technical specifications on proposed procurements where the HHS awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the HHS awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the HHS awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the HHS awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the HHS awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the HHS awarding agency's right to survey the system. Under a self-certification procedure, the HHS awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 75.334 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the HHS awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the HHS awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(d) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223.

§ 75.335 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part.

§ 75.336–§ 75.340 [Reserved]

Performance and Financial Monitoring and Reporting

§ 75.341 Financial reporting.

Unless otherwise approved by OMB, the HHS awarding agency may solicit only the standard, OMB-approved government-wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

§ 75.342 Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 75.352.

(b) *Non-construction performance reports.* The HHS awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the HHS awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the HHS awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the HHS awarding agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved government-wide standard information collections when providing performance information. As appropriate in accordance with the above-mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the HHS awarding agency program, the HHS awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by HHS awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The HHS awarding agency may require additional performance reports only when considered necessary.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the HHS awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The HHS awarding agency may make site visits as warranted by program needs.

(f) The HHS awarding agency may waive any performance report required by this part if not needed.

§ 75.343 Reporting on real property.

The HHS awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the HHS awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or an HHS awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

§ 75.344–§ 75.350 [Reserved]

Subrecipient Monitoring and Management

§ 75.351 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with HHS awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The HHS awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 75.2 *Subaward*. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See § 75.2 *Contract*. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 75.352 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal Award Identification.

(i) Subrecipient name (which must match the name associated with their unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see § 75.2 Federal award date);

(v) Subaward Period of Performance Start and End Date;

(vi) Amount of Federal Funds Obligated by this action;

(vii) Total Amount of Federal Funds Obligated to the subrecipient;

(viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of HHS awarding agency, pass-through entity, and contact information for awarding official,

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 75.414).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the HHS awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in § 75.414(f).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of HHS awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a HHS awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 75.207.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that

subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by § 75.521.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in § 75.425.

(f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 75.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 75.371 and in program regulations.

§ 75.353 Fixed amount subawards.

With prior written approval from the HHS awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 75.201.

§ 75.354–§ 75.360 [Reserved]

Record Retention and Access

§ 75.361 Retention requirements for records.

Financial records, supporting documents, statistical records, and all

other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the HHS awarding agency or pass-through entity in the case of a subrecipient. HHS awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the HHS awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the HHS awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 75.362 Requests for transfer or records.

The HHS awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the HHS awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 75.363 Methods for collection, transmission and storage of information.

In accordance with Executive Order 13642, the HHS awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The HHS awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the HHS awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 75.364 Access to records.

(a) Records of non-Federal entities. The HHS awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of

interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the HHS awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the HHS awarding agency or delegate.

(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. HHS awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 75.365 Restrictions on public access to records.

No HHS awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the HHS awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the HHS awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 75.322. Unless required by Federal, state, local, or tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

§ 75.366–§ 75.370 [Reserved]

Remedies for Noncompliance

§ 75.371 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award, the HHS awarding agency or pass-through entity may impose additional conditions, as described in § 75.207. If the HHS awarding agency or

pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the HHS awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the HHS awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend (suspension of award activities) or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and HHS awarding agency regulations at 2 CFR part 376 (or in the case of a pass-through entity, recommend such a proceeding be initiated by a HHS awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

§ 75.372 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the HHS awarding agency or pass-through entity, if a non-Federal entity fails to comply with terms and conditions of a Federal award;

(2) By the HHS awarding agency or pass-through entity for cause;

(3) By the HHS awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the non-Federal entity upon sending to the HHS awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the HHS awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the HHS awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When a Federal award is terminated or partially terminated, both the HHS awarding agency or pass-

through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 75.381 and 75.386.

§ 75.373 Notification of termination requirement.

(a) The HHS awarding agency or pass-through entity must provide to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.

(c) Upon termination of a Federal award, the HHS awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

§ 75.374 Opportunities to object, hearings, and appeals.

(a) Upon taking any remedy for non-compliance, the HHS awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the HHS awarding agency. The HHS awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

(b) See also:

(1) 42 CFR part 50, subpart D for the Public Health Service Appeals Procedures,

(2) 45 CFR part 16 for the Procedures of the Departmental Appeals Board, and

(3) 45 CFR part 95, subpart A for the time limits for states to file claims.

(4) 45 CFR part 95, subpart E for the State cost allocation plan disapprovals.

§ 75.375 Effects of suspension and termination.

Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not

allowable unless the HHS awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

§ 75.376–§ 75.380 [Reserved]

Closeout

§ 75.381 Closeout.

The HHS awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and HHS awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The HHS awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.

(b) Unless the HHS awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The HHS awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the HHS awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see § 75.391 for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the HHS awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 75.317 through 75.323 and 75.343.

(g) The HHS awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than 180 calendar days after receipt and acceptance of all required final reports.

§ 75.382–§ 75.385 [Reserved]

Post-Closeout Adjustments and Continuing Responsibilities

§ 75.386 Post-Closeout Adjustments and Continuing Responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the HHS awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The HHS awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in Subpart F of this part.

(4) Property management and disposition requirements in §§ 75.317 through 75.323.

(5) Records retention as required in §§ 75.361 through 75.365.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the HHS awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

§ 75.387–§ 75.390 [Reserved]

Collection of Amounts Due

§ 75.391 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the HHS awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the HHS awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal. (See also HHS Claims Collection regulations at 45 CFR part 30.)

Subpart E—Cost Principles

General Provisions

§ 75.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles

and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See § 75.2 *Indirect (facilities & administrative (F&A)) costs*.

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 75.307.

§ 75.401 Application.

(a) *General.* These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

(3) Fixed amount awards. See also § 75.2 *Fixed amount awards* and 75.201.

(4) Federal awards to hospitals (see Appendix IX to Part 75).

(5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

(b) *Federal Contract.* Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting

Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this Subpart E with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (e.g., CAS 414–48 CFR 9904.414, and CAS 417–48 CFR 9904.417), apply rather the allowability provisions of § 75.449. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in Appendix VIII to Part 75. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

Basic Considerations

§ 75.402 Composition of Costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 75.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both

federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 75.306(b).

(g) Be adequately documented. See also §§ 75.300 through 75.309.

§ 75.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

§ 75.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal

award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis.

Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 75.317 through 75.323 and 75.439.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

§ 75.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 75.436 and 75.468, for areas of potential application in the matter of Federal financing of activities.)

§ 75.407 Prior written approval (prior approval).

(a) Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or non-allocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the HHS awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

- (1) § 75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (2) § 75.306 Cost sharing or matching;
- (3) § 75.307 Program income;
- (4) § 75.308 Revision of budget and program plans;
- (5) § 75.309 Period of performance and availability of funds;
- (6) § 75.318 Real property;
- (7) § 75.320 Equipment;
- (8) § 75.353 Fixed amount subawards;

(9) § 75.413 Direct costs, paragraph (c);

(10) § 75.430 Compensation—personal services, paragraph (h);

(11) § 75.431 Compensation—fringe benefits;

(12) § 75.438 Entertainment costs;

(13) § 75.439 Equipment and other capital expenditures;

(14) § 75.440 Exchange rates;

(15) § 75.441 Fines, penalties, damages and other settlements;

(16) § 75.442 Fund raising and investment management costs;

(17) § 75.445 Goods or services for personal use;

(18) § 75.447 Insurance and indemnification;

(19) § 75.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(20) § 75.455 Organization costs;

(21) § 75.456 Participant support costs;

(22) § 75.458 Pre-award costs;

(23) § 75.462 Rearrangement and reconversion costs;

(24) § 75.467 Selling and marketing costs;

(25) § 75.470 Taxes (including Value Added Tax) paragraph (c); and

(26) § 75.474 Travel costs.

(b) A request by a subrecipient for prior approval will be addressed in writing to the recipient. The recipient will promptly review such request and shall approve or disapprove the request in writing. A recipient will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal-award to the recipient. If the revision, requested by the subrecipient would result in a change to the recipient's approved project which requires Federal prior approval, the recipient will obtain the HHS awarding agency's approval before approving the subrecipient's request.

(c) For cost-reimbursement contracts under the FAR, the recipient shall obtain prior written approval in accordance with FAR 52.244-2.

§ 75.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 75.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subpart, certain

sections in this subpart describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§ 75.412 through 75.415);

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 75.416 and 75.417); and

(c) Special Considerations for Institutions of Higher Education (§§ 75.418 and 75.419).

§ 75.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the HHS awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D of this part, §§ 75.300 through 75.309.

§ 75.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the

rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

Direct and Indirect (F&A) Costs

§ 75.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§ 75.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 75.405.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility

consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

(2) Individuals involved can be specifically identified with the project or activity;

(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and

(4) The costs are not also recovered as indirect costs.

(d) *Minor items.* Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

(1) Include the salaries of personnel,

(2) Occupy space, and

(3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 75.454.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 75.454 and 75.450.

(3) Promotion, lobbying, and other forms of public relations. See also §§ 75.421 and 75.450.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 75.432.

(5) Maintenance, protection, and investment of special funds not used in

operation of the non-Federal entity. See also § 75.442.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 75.431.

§ 75.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses.

"Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for institutions of higher education, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 75.C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations.

Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also § 75.306.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. An HHS awarding agency may

use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The HHS awarding agency head or delegate must notify OMB of any approved deviations.

(3) The HHS awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under § 75.203(c), the HHS awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved. See also Appendix I.C.2 and D.6 of this part. As appropriate, the HHS agency should incorporate discussion of these policies into their outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 75.352(a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III–VII, and Appendix IX as follows:

(1) Appendix III to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 75—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 75—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 75—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 75—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to part 75 (D)(1)(b) may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As

described in § 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

§ 75.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).”

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices

III through VII, and Appendix IX. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 75.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by non-profit organizations as appropriate that they did not meet the definition of a major non-profit organization as defined in § 75.414(a).

(d) See also § 75.450 for another required certification.

Special Considerations for States, Local Governments and Indian Tribes

§ 75.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal-awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards; and

(2) The costs of central governmental services distributed through the central

service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices IV, V and VI to this part.

§ 75.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to this part.

Special Considerations for Institutions of Higher Education

§ 75.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of §§ 75.402 through 75.411;

(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 75.419 Cost accounting standards and disclosure statement.

(a) An IHE that receives aggregate Federal awards totaling \$50 million or more in Federal awards subject to this part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR parts 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

(b) *Disclosure statement.* An IHE that receives aggregate Federal awards totaling \$50 million or more subject to this part during its most recently

completed fiscal year must disclose its cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to part 75. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$50 million or more in Federal awards.

(1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.

(2) An IHE is responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the six months period. Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.

(3) *Cost and funding adjustments.* Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) *Overpayments.* Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess

amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable HHS agency regulations.

(5) *Compliant cost accounting practice changes.* Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) *Responsibilities.* The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected HHS awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.

(iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.

General Provisions for Selected Items of Cost

§ 75.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of §§ 75.402 through 75.411. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 75.402 through 75.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 75.403 must be applied in determining allowability. See also § 75.102.

§ 75.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and

corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 75.463);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 75.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying

exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

§ 75.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the HHS awarding agency or as an indirect cost where allocable to Federal awards. See § 75.444, applicable to states, local governments and Indian tribes.

§ 75.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 75.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 75.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and Subpart F of this part—have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and Subpart F of this part because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity’s fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with Subpart D of this part, §§ 75.351 through 75.353) which are exempted from the requirements of the Single Audit Act and Subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

(1) Conducted in accordance with GAGAS attestation standards;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 75.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 75.428.

§ 75.427 Bonding costs.

(a) Bonding costs arise when the HHS awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: Bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 75.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 75.305.

§ 75.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in Appendix III.B.9, as student activity costs.

§ 75.430 Compensation—personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for

personal services may also include fringe benefits which are addressed in § 75.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) *Professional activities outside the non-Federal entity.* Unless an arrangement is specifically authorized by an HHS awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the HHS awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) *Unallowable costs.* (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis

that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) *Nonprofit organizations.* For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) *Institutions of higher education (IHEs).* (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special

lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the HHS awarding agency.

(2) Salary basis. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the HHS awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) Intra-Institution of Higher Education (IHE) consulting. Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the HHS awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation

policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) Periods outside the academic year. (i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) Part-time faculty. Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) Sabbatical leave costs. Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct

charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) Salary rates for non-faculty members. Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) *Standards for Documentation of Personnel Expenses* (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) of this section for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (*i.e.*, estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into

the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal awards based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (i)(1) of this section if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy

Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (i)(5)(i) of this section may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved HHS awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent

documentation that support the records as required in this section.

§ 75.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 75.447); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of

employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 75.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension Plan Costs.* Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-Retirement Health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the Federal Government's contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period

exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) *Severance Pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by law, employer-employee agreement, established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the HHS awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the HHS awarding agency.

(j)(1) *For IHEs only.* Fringe benefits in the form of tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions for undergraduate education under IRC Section 117(d) as amended, provided that the benefit does not discriminate in favor of highly compensated employees. Federal reimbursement of tuition or remission of tuition is also limited to the institution for which the employee works. See § 75.466, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 75.402 through 75.411;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 75.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The HHS awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 75.438, 75.456, 75.474, and 75.475.

§ 75.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the HHS awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the HHS awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§ 75.300 through 75.309 of Subpart D of this part and 75.403); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be

verifiable from the non-Federal entity's records.

(c) Payments made by the HHS awarding agency to the non-Federal entity's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 75.431 and 75.447.

§ 75.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 75.306). Depreciation on donated assets is permitted in accordance with § 75.436, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 75.306.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in § 75.306.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§ 75.300 through 75.309 of subpart D of this part. The value of the donations must be determined in accordance with §§ 75.300 through 75.309. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

§ 75.435 Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringements.

(a) Definitions for the purposes of this section.

(1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729–3732) or the Anti-kickback Act (41 U.S.C. 1320a–7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs*. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or

administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the HHS awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal

official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the HHS awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final HHS agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally

withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

§ 75.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity, where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that

the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

§ 75.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 75.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the HHS awarding agency.

§ 75.439 Equipment and other capital expenditures.

(a) See § 75.2 for the definitions of *Capital expenditures*, *Equipment*, *Special purpose equipment*, *General purpose equipment*, *Acquisition cost*, and *Capital assets*.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the HHS awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5,000 or more have the prior written approval of the HHS awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the HHS awarding

agency, or pass-through entity. See § 75.436 for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 75.465.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the HHS awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the HHS awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

§ 75.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The HHS awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the HHS awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

§ 75.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of

the HHS awarding agency. See also § 75.435.

§ 75.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 75.460.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund raising and investment activities must be allocated an appropriate share of indirect costs under the conditions described in § 75.413.

§ 75.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 75.436 and 75.439.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 75.447.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or

other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 75.317 through 75.323.

§ 75.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 75.474). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 75.435); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see § 75.2 *Local government*), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

§ 75.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to

the employees. In addition, to be allowable direct costs must be approved in advance by an HHS awarding agency.

§ 75.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable,

provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 75.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the HHS awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 75.431). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal

award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate

allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (*e.g.*, general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

§ 75.448 Intellectual Property.

(a) *Patent costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 75.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto,

necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title there.

§ 75.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)(1) Capital assets are defined in § 75.2 *Capital assets.* An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all non-Federal entities.* (1) The non-Federal entity uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length

transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to

allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5) of this section) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after September 23, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to "full coverage" under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), and CAS 417 (48 CFR 9904.417).

§ 75.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on

Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) *Executive lobbying costs.* Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, IRC secs. 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by IRC sec. 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 75.413.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 75.415.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 75.302 with respect to lobbying costs during any particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The HHS awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

§ 75.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A)

costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 75.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 75.439). These costs are only allowable to the extent not paid through rental or other agreements.

§ 75.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

§ 75.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the HHS awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 75.450.

§ 75.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the HHS awarding agency.

§ 75.456 Participant support costs.

Participant support costs are defined in § 75.2. Participant support costs are allowable with the prior approval of the HHS awarding agency.

§ 75.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 75.439.

§ 75.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the HHS awarding agency.

§ 75.459 Professional services costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 75.435.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative.

However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-Federal entity's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

§ 75.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 75.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(c) The non-Federal entity may charge the Federal award before closeout for the costs of publication as prescribed in paragraphs (a) or (b) of this section or sharing of research results if the costs are not incurred during the period of performance of the Federal award.

§ 75.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the HHS awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§ 75.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-

Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 75.464.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

(1) Be critical and necessary for the conduct of the project;

(2) Be allowable under the applicable cost principles;

(3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and

(4) Meet the definition of "direct cost" as described in the applicable cost principles.

§ 75.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new

permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location must be considered travel costs in accordance with § 75.474, and not § 75.464, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

§ 75.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) and (c) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: Rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under "less-than-arm's-length" leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this

purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 75.449.

Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

§ 75.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the

purpose of the Federal award is to provide training to selected participants and the charge is approved by the HHS awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 75.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 75.431.

§ 75.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 75.421) are unallowable, except as direct costs, with prior approval by the HHS awarding agency when necessary for the performance of the Federal award.

§ 75.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 75.406.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

§ 75.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§ 75.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the HHS awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the non-Federal entity

directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the HHS awarding agency makes available the necessary exemption certificates,

(ii) Special assessments on land which represent capital improvements, and

(iii) Federal income taxes.

(2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the HHS awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the HHS awarding agency.

§ 75.471 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence

that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the HHS awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the HHS awarding agency (see also § 75.320(d)), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased

property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see Subpart D of this part, §§ 75.371 through 75.375); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 75.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§ 75.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 75.473 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

§ 75.474 Travel costs.

(a) *General.* Travel costs are the expenses for transportation, lodging,

subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies.

Notwithstanding the provisions of § 75.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and
(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the HHS awarding agency. See also § 75.432.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11, or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must

apply to travel under Federal awards (48 CFR 31.205–46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

§ 75.475 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 75.474.

HHS Selected Items of Cost

§ 75.476 Independent research and development costs.

Independent research and development is research and development which is conducted by an organization, and which is not sponsored by Federal or non-Federal awards, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The cost of independent research and development, including their proportionate share of indirect costs, are unallowable.

Subpart F—Audit Requirements**General****§ 75.500 Purpose.**

This part sets forth standards for obtaining consistency and uniformity among HHS agencies for the audit of non-Federal entities expending Federal awards.

Audits**§ 75.501 Audit requirements.**

(a) *Audit required.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 75.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 75.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 75.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as

a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 75.351 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 75.352.

(i) Recipients and subrecipients that are commercial organizations (including for-profit hospitals) have two options regarding audits:

(1) A financial related audit (as defined in the Government Auditing Standards, GPO Stock #020-000-00-265-4) of a particular award in accordance with Government Auditing Standards, in those cases where the recipient receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all HHS awards in accordance with Government Auditing Standards; or

(2) An audit that meets the requirements contained in this subpart.

(j) Commercial organizations that receive annual HHS awards totaling less

than \$750,000 are exempt from requirements for a non-Federal audit for that year, but records must be available for review by appropriate officials of Federal agencies.

(k) See also § 75.215.

§ 75.502 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the audit period; plus

(2) Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at IHEs.* When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when the Federal statutes, regulations, and the terms and conditions of Federal awards

pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by the HHS agency.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a state requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

§ 75.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) Notwithstanding paragraph (a) of this section, a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity

to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) Federal agency to pay for additional audits. A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Request for a program to be audited as a major program. An HHS awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the HHS awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the HHS awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 75.518 and, if not, the estimated incremental cost. The HHS awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this HHS awarding agency request, and the HHS awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use

the provisions of this paragraph for a subrecipient.

§ 75.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period.

(a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ 75.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 75.371.

§ 75.506 Audit costs.

See § 75.425.

§ 75.507 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including HHS awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting

policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 75.511(b), and a corrective action plan consistent with the requirements of § 75.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of § 75.514(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of § 75.514(d) for a major program;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 75.511, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 75.516.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal

program in a format consistent with § 75.515(d)(1) and findings and questioned costs consistent with the requirements of § 75.515(d)(3).

(c) *Report submission for program-specific audits.* (1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with § 75.512(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 75.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

(1) § 75.500 through § 75.503(d);

(2) § 75.504 through § 75.506;

(3) § 75.508 through § 75.509;

(4) § 75.511;

(5) § 75.512(e) through (h);

(6) § 75.513;

(7) § 75.516 through § 75.517;

(8) § 75.521, and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

Auditees

§ 75.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this part in accordance with § 75.509, and ensure it

is properly performed and submitted when due in accordance with § 75.512.

(b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 75.510.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 75.511(b) and § 75.511(c), respectively.

(d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

§ 75.509 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 75.326 through 75.335 of Subpart D of this part or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in § 75.330, or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ 75.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 75.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 75.502. While not required, the auditee may choose to provide information requested by HHS awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

(1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available. For a cluster of programs also provide the total for the cluster.

(4) Include the total amount provided to subrecipients from each Federal program.

(5) For loan or loan guarantee programs described in § 75.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to

including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in § 75.414.

§ 75.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 75.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason

for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 75.516, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

§ 75.512 Report submission.

(a) *General.* (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data Collection.* The FAC is the repository of record for Subpart F of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit required data elements described in Appendix X to part 75, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the

audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state comptroller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a Web site.

(2) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(1)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 75.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 75.511(b);

(3) Auditor's report(s) discussed in § 75.515; and

(4) Corrective action plan discussed in § 75.511(c).

(d) *Submission to FAC.* The auditee must electronically submit to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) *Requests for management letters issued by the auditor.* In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 75.507(c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing.* Nothing in this part must preclude electronic submissions to the FAC in such manner as may be approved by OMB.

Federal Agencies

§ 75.513 Responsibilities.

(a)(1) Cognizant agency for audit responsibilities. A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2009, 2014, 2019 and every fifth year

thereafter. For example, audit cognizance for periods ending in 2011 through 2015 will be determined based on Federal awards expended in 2009.

(3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a government-wide project to determine the quality of single audits by providing a statistically reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. This government-wide audit quality project must be performed once every 6 years beginning in 2018 or at such other interval as determined by OMB, and the results must be public.

(iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.

(iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.

(v) Advise the auditor, HHS awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable HHS awarding agencies and

pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate state licensing agencies and professional bodies for disciplinary action.

(vi) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon rather than duplicate audits performed in accordance with this part.

(vii) Coordinate a management decision for cross-cutting audit findings (as defined in § 75.2 *Cross-cutting audit finding*) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

(viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(ix) Provide advice to auditees as to how to handle changes in fiscal years.

(b) Oversight agency for audit responsibilities. An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 75.2 *Oversight agency for audit*. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) HHS awarding agency responsibilities. The HHS awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 75.210):

(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(2) Provide technical advice and counsel to auditees and auditors as requested.

(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the HHS awarding agency must:

(i) Issue a management decision as prescribed in § 75.521;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see § 75.2 *Cooperative audit resolution*) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by HHS awarding agencies in making award decisions.

(4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the HHS awarding agency who must be:

(i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison who must:

(i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the HHS awarding agency's program management personnel related to the single audit process.

(iv) Promote the HHS awarding agency's use of cooperative audit resolution mechanisms.

(v) Coordinate the HHS awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.

(vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one HHS awarding agency.

(vii) Ensure the HHS awarding agency provides annual updates of the compliance supplement to OMB.

(viii) Support the HHS awarding agency's single audit accountable official's mission.

Auditors

§ 75.514 Scope of audit.

(a) *General*. The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements*. The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control*. (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 75.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.

(4) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 75.511(b), and report, as a current year audit finding, when the auditor

concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data Collection Form.* As required in § 75.512(b)(3), the auditor must complete and sign specified sections of the data collection form.

§ 75.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, or award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (*i.e.*, unmodified

opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance for major programs (*i.e.*, unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 75.516(a);

(vii) An identification of major programs by listing each individual major program; however in the case of a cluster of programs only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 75.518(b)(1), or (b)(3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 75.520.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 75.516(a).

(i) Audit findings (*e.g.*, internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 75.512(b) when

allowed by GAGAS and Appendix X to Part 75.

§ 75.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures)

and the known questioned costs are greater than \$25,000, then the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 75.511(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the

condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable Federal award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 75.512(b) to allow for easy referencing of the audit findings during follow-up.

§ 75.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting

an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities

consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

§ 75.518 Major program determination.

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: Current and prior audit experience, oversight by Federal

agencies and pass-through entities, and the inherent risk of the Federal this program. The process in paragraphs (b) through (h) of this section must be followed.

(b) *Step one.* (1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
(i) Equal to or exceed \$750,000 but less than or equal to \$25 million ...	\$750,000.
(ii) Exceed \$25 million but less than or equal to \$100 million	Total Federal awards expended times .03.
(iii) Exceed \$100 million but less than or equal to \$1 billion	\$3 million.
(iv) Exceed \$1 billion but less than or equal to \$10 billion	Total Federal awards expended times .003.
(v) Exceed \$10 billion but less than or equal to \$20 billion	\$30 million.
(vi) Exceed \$20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 75.502.

(4) For biennial audits permitted under § 75.504, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) *Step two.* (1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in § 75.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit

periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

(i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 75.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 75.515(c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve an HHS awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the HHS awarding agency to comply with 31 U.S.C. 3515. The HHS awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three.* (1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in § 75.519. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in § 75.519(b)(1), (b)(2), and (c)(1), a single

criteria in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).

(2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* If the auditee meets the criteria in § 75.520, the auditor need only audit the major programs identified in Step 4 (paragraph (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section)

and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

§ 75.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when

the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of § 75.430, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 75.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be

eligible for reduced audit coverage in accordance with § 75.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 75.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 75.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 75.515(c); or

(3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

Management Decisions

§ 75.521 Management Decision.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial

statements which are required to be reported in accordance with GAGAS.

(b) *Federal agency*. As provided in § 75.513(a)(3)(vii), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 75.513(c)(3), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

(c) *Pass-through entity*. As provided in § 75.352(d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements*. The HHS awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers*. Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 75.516(c).

Appendix I to Part 75—Full Text of Notice of Funding Opportunity

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is an HHS awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that an HHS awarding agency would include in that section of an actual announcement.

An HHS awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if an HHS awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, an HHS awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, an HHS awarding agency may want to include in Section A information about the types of

non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section C.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections A and C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the HHS awarding agency's funding priorities or the technical or focus areas in which the HHS awarding agency intends to provide assistance. As appropriate, it may include any program history (*e.g.*, whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (*e.g.*, if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the HHS awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the HHS awarding agency expects to award through the announcement; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (*e.g.*, grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the "substantial involvement" that the HHS awarding agency expects to have or should reference where the potential applicant can find that information (*e.g.*, in the funding opportunity description in section A, or Federal award administration information in Section D. If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the

eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. HHS agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the HHS awarding agency returning the application without review or, even though an application may be reviewed, will preclude the HHS awarding agency from making a Federal award. Key elements to be addressed are:

1. *Eligible Applicants—Required*.

Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (*e.g.*, open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D, specifying documentation that must be submitted to support an eligibility determination (*e.g.*, proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.6.

2. *Cost Sharing or Matching—Required*.

Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.*, provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (*e.g.*, in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in § 75.306. This section should refer to the appropriate portion(s) of section D, stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

3. *Other—Required, if applicable*. If there are other eligibility criteria (*i.e.*, criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as

applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. Application and Submission Information

1. Address to Request Application

Package—Required. Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. Content and Form of Application

Submission—Required. This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

i. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.

iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to

human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4370h).

3. Unique Entity Identifier and System for Award Management (SAM)—Required.

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:

(i) Be registered in SAM before submitting its application;

(ii) provide a valid unique entity identifier in its application; and

(iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times—Required.

Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 75.203).

Each type of submission should be designated as encouraged or required and, if required, any deadline date (or dates, if the Federal awarding agency plans more than one cycle of application submission, review, and Federal award under the announcement) should be specified. The announcement must state (or provide a reference to another document that states):

i. Any deadline in terms of a date and local time. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

ii. What the deadline means (e.g., whether it is the date and time by which the Federal awarding agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).

iii. The effect of missing a deadline (e.g., whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

iv. How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgment of receipt. This information should be displayed in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission.

5. Intergovernmental Review—Required, if applicable.

If the funding opportunity is subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” the notice must say so. In alerting applicants that they must contact their state’s Single Point of Contact (SPOC) to find out about and comply with the state’s process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget’s Web site. www.whitehouse.gov/omb/grants/spoc.html.

6. Funding Restrictions—Required. Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.

7. Other Submission Requirements—Required. This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.¹

¹With respect to electronic methods for providing information about funding

opportunities or accepting applicants' submissions of information, each HHS awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

E. Application Review Information

1. Criteria—Required. This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. Review and Selection Process—Required. This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The HHS awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the HHS awarding agency or HHS awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (e.g., an external panel advising internal HHS awarding agency personnel who make final

recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each HHS awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the HHS awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. Anticipated Announcement and Federal Award Dates—Optional. This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the HHS awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a "rolling" basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the HHS awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 75.210.

2. Administrative and National Policy Requirements—Required. This section must identify the usual administrative and national policy requirements the HHS awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or

Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some specific terms and conditions that differ from the HHS awarding agency's usual (sometimes called "general") terms and conditions, this section should highlight those specific terms and conditions. Doing so will alert applicants that have received Federal awards from the HHS awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. Reporting—Required. This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the HHS awarding agency's Federal awards usually require.

G. HHS Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the HHS awarding agency should consider approaches such as giving:

1. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).
2. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
3. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

1. Indicate whether this is a new program or a one-time initiative.
2. Mention related programs or other upcoming or ongoing HHS awarding agency funding opportunities for similar activities.
3. Include current Internet addresses for the HHS awarding agency Web sites that may be useful to an applicant in understanding the program.
4. Alert applicants to the need to identify proprietary information and inform them about the way the HHS awarding agency will handle it.
5. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award

as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

Appendix II to Part 75—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the HHS agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, as amended by Executive Order 11375, and implementing regulations at 41 CFR part 60.

D. Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR part 5). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal

entity must report all suspected or reported violations to the Federal awarding agency.

E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR part 401 and any implementing regulations issued by the awarding agency.

G. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid

for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

J. See § 75.331 Procurement of recovered materials.

Appendix III to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education

A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution’s accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 75.468 of this part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide

for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:

(1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

(3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.

(5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within

practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.*

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.

(2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.

(3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:

(a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsections B.4.c may be used in the recovery of utility costs.

e. *Order of distribution.*

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be

allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. Identification and Assignment of Indirect (F&A) Costs

1. Definition of Facilities and Administration

See § 75.414 which provides the basis for these indirect cost requirements.

2. Depreciation

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 75.436.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:

(1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation on buildings, capital improvements and equipment related to space (*e.g.*, individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.

(4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in § 75.449, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:

(1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.

(2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the "effective square footage" described in subsection (c)(2)(ii) of this section.

(ii) "Effective square footage" allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.

A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory "Labs for the 21st Century" benchmarking tool <http://labs21benchmarking.lbl.gov/CompareData.php> and the US Department of Energy "Buildings Energy Databook" and <http://buildingsdatabook.eren.doe.gov/CBECS.aspx>) were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB Web site.

labs21benchmarking.lbl.gov/CompareData.php and the US Department of Energy "Buildings Energy Databook" and <http://buildingsdatabook.eren.doe.gov/CBECS.aspx>) were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB Web site.

5. General Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; *i.e.*, solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental Administration Expenses

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration

expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (*e.g.*, chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 75.413(c) and 75.468.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored Projects Administration

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

8. Library Expenses

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 75.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category

may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

c. Amount allocated in paragraph b of this section must be assigned further as follows:

(1) The amount in the student category must be assigned to the instruction function of the institution.

(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

9. Student Administration and Services

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Subpart E of this part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

1. Indirect (F&A) Cost Pools

a. (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B of this paragraph C.1-, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to

arrive at a single indirect (F&A) cost rate for each function.

(2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2, and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect (F&A) costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group of Federal awards performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. If a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect (F&A) costs, provisions should be made for a separate indirect (F&A) cost pool applicable to such work. The separate indirect (F&A) cost pool should be developed during the regular course of the rate determination process and the separate indirect (F&A) cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect (F&A) cost rate differs significantly from that which would have been obtained under subsection a, and (2) the volume of work to which such rate would apply is material in relation to other Federal awards at the institution.

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 75.2. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Rates for Indirect (F&A) Costs

Public Law 87-638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the "indirect costs" (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

5. Negotiated Fixed Rates and Carry-Forward Provisions

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected

indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and Final Rates for Indirect (F&A) Costs

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed Rates for the Life of the Sponsored Agreement

a. Except as provided in paragraph (c)(1) of § 75.414 Federal agencies must use the negotiated rates for indirect (F&A) costs in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. "Negotiated rates" per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in § 75.414, when an educational institution does not have a negotiated rate with the Federal Government

at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, Identification and assignment of indirect (F&A) costs, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative Method for Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the "Administration" portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the "Administration" portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs.

However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as well as by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. Negotiation and Approval of Indirect (F&A) Rate

a. Cognizant agency for indirect costs is defined in § 75.2.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see the requirements of § 75.352.

(2) After cognizance is established, it must continue for a five-year period.

b. Acceptance of rates. See § 75.414.

c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by

reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:

(1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (*i.e.*, a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.

g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.

h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of work covered by this part 75 at an institution does not exceed \$10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in

determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

2. Simplified Procedure—Salaries and Wages Base

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a. from the amount of salaries and wages included under subsection b.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

3. Simplified Procedure—Modified Total Direct Cost Base

a. Establish the total costs incurred by the institution for the base period.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student

administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section C.2, that consists of all institution's direct functions.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB Web site here: http://www.whitehouse.gov/omb/grants_forms.

F. Certification

1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729–3733 and 3801–3812)".

2. Certification of Indirect (F&A) Costs

a. *Policy.* Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of Indirect (F&A) Costs set forth in subsection F.2.c

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. *Certificate.* The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:

Signature:

Name of Official:

Title:

Date of Execution:

Appendix IV to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in § 75.413(d). After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be

allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

“Major nonprofit organizations” are defined in § 75.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.

b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

2. Simplified Allocation Method

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in § 75.413(e).

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such contracts or subawards for \$25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 75.2.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than \$10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in section A.3 of this Appendix, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (*i.e.*, Facilities or Administration) is of the distribution base identified with that category.

3. Multiple Allocation Base Method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.

b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: “Facilities” and “Administration,” as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 75.436.

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with § 75.449.

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items

as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in § 75.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards. The results of special cost

studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

(a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in § 75.2, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 75.2).

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: "Facilities" and "Administration," as described in section A.3 of this Appendix.

4. Direct Allocation Method

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be

computed in the same manner as that described in section B.2 of this Appendix.

5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

C. Negotiation and Approval of Indirect Cost Rates

1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

a. *Cognizant agency for indirect costs* means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. *Provisional rate or billing rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the

reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards with an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 75.414.) Where a non-Federal entity only receives funds as a subrecipient, see the requirements of § 75.352.

b. Except as otherwise provided in § 75.414(e), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with § 75.414(f), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

1. **Required Certification.** No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the non-profit organization using the Certificate of Indirect (F&A) Costs set forth in subsection b., below. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

2. **Certificate.** Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with Subpart E of part 75.

(3) This proposal does not include any costs which are unallowable under Subpart E of part 75 such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization:

Signature:

Name of Official:

Title:

Date of Execution:

Appendix V to Part 75—State/Local Governmentwide Central Service Cost Allocation Plans

A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government." A copy of this brochure may be obtained from the HHS' Cost Allocation Services at <https://rates.psc.gov>.

B. Definitions

1. *Agency or operating agency* means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Billed central services* means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

4. *Cognizant agency for indirect costs* is defined in § 75.2. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

5. *Major local government* means local government that receives more than \$100 million in direct Federal awards subject to this part.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: An organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocated central service, the plan must also include the following: A brief description of the service,* an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

a. *General.* The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. *Internal service funds.*

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan must include: The fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan must include: A listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit:

Signature:

Name of Official:

Title:

Date of Execution:

F. Negotiation and Approval of Central Service Plans

1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following

Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

Department of the Interior—Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor—State and local labor departments.

Department of Education—School districts and state and local education agencies.

Department of Agriculture—State and local agriculture departments.

Department of Transportation—State and local airport and port authorities and transit districts.

Department of Commerce—State and local economic development districts.

Department of Housing and Urban Development—State and local housing and development districts.

Environmental Protection Agency—State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) Are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the

option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the

following adjustment methods: (a) A cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in Subpart D of part 75.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix VI to Part 75—Public Assistance Cost Allocation Plans

A. General

Federally-financed programs administered by state public assistance agencies are funded predominantly by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid for Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. *State public assistance agency* means a state agency administering or supervising the

administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in section E, Review of Implementation of Approved Plans, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.

2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR part 16. Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.

4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) A cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

Appendix VII to Part 75—States and Local Government and Indian Tribe Indirect Cost Proposals

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation*

Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the HHS' Cost Allocation Services at <https://rates.psc.gov>.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to part 75.

B. Definitions

1. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.

4. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. *Predetermined rate* means an indirect cost rate, applicable to a specified current or

future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of

allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subawards in excess of \$25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) It can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of \$25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a "restricted rate" is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in § 75.361.

b. A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the

proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required Certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted

herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this 45 CFR part 75. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit:

Signature:

Name of Official:

Title:

Date of Execution:

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in § 75.420 of this part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (*i.e.*, the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (*e.g.*, computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit) should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix VIII to Part 75—Nonprofit Organizations Exempted from Subpart E of Part 75

Advance Technology Institute (ATI), Charleston, South Carolina
 Aerospace Corporation, El Segundo, California
 American Institutes of Research (AIR), Washington, DC
 Argonne National Laboratory, Chicago, Illinois
 Atomic Casualty Commission, Washington, DC
 Battelle Memorial Institute, Headquartered in Columbus, Ohio
 Brookhaven National Laboratory, Upton, New York
 Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
 CNA Corporation (CNAC), Alexandria, Virginia
 Environmental Institute of Michigan, Ann Arbor, Michigan
 Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
 Hanford Environmental Health Foundation, Richland, Washington
 IIT Research Institute, Chicago, Illinois
 Institute of Gas Technology, Chicago, Illinois
 Institute for Defense Analysis, Alexandria, Virginia
 LMI, McLean, Virginia
 Mitre Corporation, Bedford, Massachusetts
 Noblis, Inc., Falls Church, Virginia
 National Radiological Astronomy Observatory, Green Bank, West Virginia
 National Renewable Energy Laboratory, Golden, Colorado
 Oak Ridge Associated Universities, Oak Ridge, Tennessee
 Rand Corporation, Santa Monica, California
 Research Triangle Institute, Research Triangle Park, North Carolina
 Riverside Research Institute, New York, New York
 South Carolina Research Authority (SCRA), Charleston, South Carolina
 Southern Research Institute, Birmingham, Alabama
 Southwest Research Institute, San Antonio, Texas
 SRI International, Menlo Park, California
 Syracuse Research Corporation, Syracuse, New York
 Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
 Urban Institute, Washington DC
 Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
 Other non-profit organizations as negotiated with Federal awarding agencies

Appendix IX to Part 75—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals

A. Purpose and Scope

1. Objectives

This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the

Department of Health and Human Services. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and non-profit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

2. Policy Guides

The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Health and Human Services as to their scope, applicability and interpretation. It is recognized that:

a. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

b. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

c. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

d. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

e. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers) Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to program differences. Therefore, both the direct and indirect costs of research programs must be identified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

3. Application

All operating agencies within the Department of Health and Human Services that sponsor research and development work in hospitals will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

B. Definition of Terms

1. *Organized research* means all research activities of a hospital that may be identified whether the support for such research is from a federal, non-federal or internal source.

2. *Departmental research* means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

3. *Research agreement* means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

4. *Instruction and training* means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

5. *Other hospital activities* means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See paragraph C.4 below.) Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in paragraph E.1.) are properly allocable.

6. *Patient care* means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in paragraph I.2.w, it means the cost of these services applicable to patients involved in research programs.

7. *Allocation* means the process by which the indirect costs are assigned as between:

- a. Organized research,
- b. Patient care including departmental research.
- c. Instruction and training, and
- d. Other hospital activities.

8. *Cost center* means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

9. *Cost finding* is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

10. *Step down* is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce

revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

11. *Scatter bed* is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

12. *Discrete bed* is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

C. Basic Considerations

1. Composition of Total Costs

The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See paragraph C.5.)

2. Factors Affecting Allowability of Costs

The tests of allowability of costs under these principles are:

- a. They must be reasonable.
- b. They must be assigned to research agreements under the standards and methods provided herein.
- c. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See paragraph A.2.e.) and
- d. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. Reasonable Costs

A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

- a. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,
- b. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,
- c. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and
- d. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the

hospital generally, including Government research.

4. Allocable Costs

a. A cost is allocable to a particular cost center (*i.e.*, a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. Applicable Credits

a. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in paragraph E.1. Typical examples of such transactions are: Purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

b. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, *i.e.*, patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

D. Direct Costs

1. General

Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in paragraph VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

2. Application to Research Agreements

Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see paragraph E.2.d(2)); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

E. Indirect Costs

1. General

Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

2. Criteria for Distribution

a. *Base period.*

A base period for distribution of indirect costs is the period during which such costs

are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. Need for cost groupings.

The overall objective of the allocation process is to distribute the indirect costs described in paragraph F. to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in paragraph E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in 2.c. below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, paragraph H. provides an alternate method which may be used under certain conditions.

c. Selection of distribution method.

Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under 2.b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

(1) It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

(2) It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause

and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

d. General consideration on cost groupings.

The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in 2.b. and 2.c. above.

(2) Where any types of expense ordinary treated as indirect cost as outlined in paragraph are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in B.5.) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

(6) Where the hospital is affiliated with a medical school or some other institution which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also paragraph.)

e. Materiality.

Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

3. Administration of Limitations on Allowances for Indirect Costs

a. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

(1) The terms and amount authorized in each case conform with the provisions of paragraphs C, E, and I of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

(2) The amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

b. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in 3.a. above, such alternative amounts should be determined in accordance with the following guides:

(1) The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

(2) The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

c. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

F. Identification and Assignment of Indirect Costs

1. Depreciation or Use Charge

a. The expenses under this heading should include depreciation (as defined in paragraph I.2.i(1)) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation (See paragraph I.2.)

b. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in paragraph E.2., on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable

estimates will suffice as a means for effecting distribution of the amounts involved.

2. Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, *i.e.*, solely to patient care, organized research, instruction and training, or other hospital activities.

b. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in paragraph E.2.

3. Operation of Plant

a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

b. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in paragraph E.2., on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

(1) Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

(3) Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

4. Maintenance of Plant

a. The expenses under this heading should include:

(1) All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

(2) All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

(3) Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

b. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

(1) Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

(3) Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

5. Laundry and Linen

a. The expenses under this heading should include:

(1) Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

(2) Supplies used in connection with the laundry operation and all linens purchased; and

(3) Amounts paid to outside concerns for purchased laundry and/or linen service.

b. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

(1) Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

6. Housekeeping

a. The expenses under this heading should include:

(1) All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

(2) All supplies used in carrying out the housekeeping functions; and

(3) Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that

gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

(1) Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

(3) Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

7. Dietary

a. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

b. The reasonable operating loss of a subsidized cafeteria operation should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to number of employees.

8. Maintenance (Housing) of Personnel

a. The expenses under this heading should include:

(1) The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

(2) All supplies used in connection with the operation of such dormitories; and

(3) Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to employee utilization of housing facilities. The allocation should be developed as follows:

(1) Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

(2) A net cost per housed employee may then be computed; and

(3) Allocation should be made on a departmental basis based on the number of housed employees in each respective department.

9. Medical Records and Library

a. The expenses under this heading should include:

(1) The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

(2) All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

G. Determination and Application of Indirect Cost Rate or Rates

1. Indirect Cost Pools

a. Subject to b. below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that:

(1) Such indirect cost rate differs significantly from that which would have obtained under a. above; and

(2) The volume of research work to which such rate would apply is material in relation to other government research at the institution.

c. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost

categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

2. The Distribution Base

Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to paragraph G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

3. Negotiated Lump Sum for Overhead

A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Overhead Rates

The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable conclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

H. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in paragraph H.2. below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately

available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

b. The rigid formula approach provided under the abbreviated procedure has limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

c. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

2. Abbreviated Procedure

a. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in paragraph I.2.d. and unallowable costs as defined under various headings in paragraph I. and paragraph C.5.

b. Total expenditures as adjusted under the foregoing will then be distributed among (1) expenditures applicable to administrative and general overhead functions, (2) expenditures applicable to all other overhead functions, and (3) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in paragraphs F.2. and 7. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and training, and other hospital activities as defined under paragraph B.5. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in paragraph E. shall be considered as expenditures for all other purposes.

c. The expenditures distributed to the first two groups in paragraph H.2.b. should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in paragraph C.5.a.

d. In applying the procedures in paragraphs H.2.a and 2.b, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital.

When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

e. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under paragraphs H.2.b and 2.c. above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All Other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under paragraphs H.2.b. and 2.c. above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under paragraph H.2.b.

I. General Standards for Selected Items of Cost

1. General

This section provides standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the

research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

- a. Facilities costs, such as;
 - (1) Depreciation
 - (2) Rental
 - (3) Use charges for fully depreciated assets
 - (4) Idle facilities and idle capacity
 - (5) Plant reconversion
 - (6) Extraordinary or deferred maintenance and repair
 - (7) Acquisition of automatic data processing equipment.
- b. Pre-award costs
- c. Non-hospital professional activities
- d. Self-insurance
- e. Support services charged directly (computer services, printing and duplicating services, etc.)
- f. Employee compensation, travel, and other personnel costs, including:
 - (1) Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation;
 - (2) Morale, health, welfare, and food service and dormitory costs.
 - (3) Training and education costs.
 - (4) Relocation costs, including special or mass personnel movement.

2. Selected Items

a. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for:

- (1) The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in paragraph I.2.hh;
- (2) The procurement of scarce items for the performance of the research agreement; or
- (3) The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraphs D. and E. are observed.

b. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after

exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

c. *Bonding costs.*

(1) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital. They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(2) Costs of bonding required pursuant to the terms of the research agreement are allowable.

(3) Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

d. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

e. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

f. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

g. *Compensation for personal services.*

(1) General

Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see paragraph I.2.j.), and pension plan costs (see paragraph I.2.y.). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less

than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike. However, where special circumstances so dictate a contractual clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

(2) Payroll Distribution

Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hospital payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in paragraph (3) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (i) Patient care; (ii) organized research; (iii) instruction and training; (iv) indirect activities as defined in paragraph E.1.; or (v) other hospital activities as defined in paragraph B.5.

(3) Reporting Time or Effort

Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

(4) Preparation of Estimates of Effort

Where required under paragraph (3) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (2) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures

about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

(5) Application of Budget Estimates

Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

(6) Non-Hospital Professional Activities

A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (i) hospital activities, and (ii) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

(7) Salary Rates for Part-Time Appointments

Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

h. Contingency provisions.

Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

i. Depreciation and use allowances.

(1) Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

(2) Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the

government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

(3) Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (4) below, is an allowable element of research cost provided that the amount thereof is computed:

i. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

ii. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

iii. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

(a) The straight line method;

(b) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (a) above;

(c) The sum of the years-digits method; and

(d) Any other consistent method

productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (b) above.

(4) Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(5) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

(6) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(7) Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Pub. L. 89-97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966-67, with such percentage being uniformly reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, *Operating Costs* means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. *Allowable Costs* means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federally-sponsored research is determined.

A hospital which elects to use this procedure under Pub. L. 89-97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Health and Human Services.

(8) Where the use allowance method is followed, the use allowance for buildings and

improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

(9) Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

j. *Employee morale, health, and welfare costs and credits.*

The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance with the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

k. *Entertainment costs.*

Except as pertains to j. above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

l. *Equipment and other facilities.*

The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

m. *Fines and penalties.*

Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

n. *Insurance and indemnification.*

(1) Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

(2) Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (i) Types and

extent and cost of coverage must be in accordance with sound institutional practice; (ii) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (iii) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

(3) Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

(4) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

o. *Interest, fund raising and investment management costs.*

(1) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(2) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

(3) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

(4) Costs related to the physical custody and control of monies and securities are allowable.

p. *Labor relations costs.*

Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

q. *Losses on research agreements or contracts.*

Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hospital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

r. *Maintenance and repair costs.*

(1) Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

i. Normal maintenance and repair costs are allowable;

ii. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

(2) Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

s. Material costs.

Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

t. Memberships, subscriptions and professional activity costs.

(1) Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

(2) Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

(3) Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

u. Organization costs.

Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (1) organization or reorganization of a hospital, or (2) raising capital, are unallowable.

v. Other business expenses.

Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

w. Patient care.

The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

(1) Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

(2) Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR-EKG, etc.

(3) Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used to determine reimbursable costs under Pub. L. 89-97 (Medicare Program) as defined under the "Principles of Reimbursement For Provider Costs" published by the Social Security Administration of the Department of Health and Human Services. The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, *i.e.* using either the departmental method or the combination method, as those methods are defined by the Social Security Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Social Security Administration has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with paragraph w.(3).ii.

(4) Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

x. Patent costs.

Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also paragraph I.2.jj.)

y. Pension plan costs.

Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the hospital.

z. Plan security costs.

Necessary expenses incurred to comply with government security requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

aa. Pre-research agreement costs.

Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

bb. Professional services costs.

(1) Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (2) and (3) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

(2) Factors to be considered in determining the allowability of costs in a particular case include (i) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (ii) the nature and scope of managerial services expected of the institution's own organizations; and (iii) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government research agreements.

(3) Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

cc. Profits and losses on disposition of plant equipment, or other assets.

Profits or losses of any nature arising from the sale or exchange of plant, equipment, or

other capital assets, including sales or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

dd. *Proposal costs.*

Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

ee. *Public information services costs.*

Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

ff. *Rearrangement and alteration costs.*

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

gg. *Reconversion costs.*

Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

hh. *Recruiting costs.*

(1) Subject to (2), (3), and (4) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(2) In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

(3) Costs of help wanted advertising, special emoluments; fringe benefits, and

salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

(4) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

ii. *Rental costs (including sale and lease-back of facilities).*

(1) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

(2) Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

(3) Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

jj. *Royalties and other costs for use of patents.*

Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

kk. *Severance pay.*

(1) Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

(2) Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

(3) Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

ll. *Specialized service facilities operated by a hospital.*

(1) The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (2) or (3) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under paragraph C.5.

(2) The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (i) are designed to recover only actual costs of providing such services, and (ii) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

(3) In the absence of an acceptable arrangement for direct costing as provided in (2) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

mm. *Special administrative costs.*

Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

nn. *Staff and/or employee benefits.*

(1) Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

(2) Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see paragraph I.2.v.), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with

established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

oo. *Taxes.*

(1) In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (i) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal Income Taxes.

(2) Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

pp. *Transportation costs.*

Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

qq. *Travel costs.*

(1) Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

(2) Travel costs are allowable subject to (3) and (4) below when they are directly

attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

(3) The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(4) Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

rr. *Termination costs applicable to contracts.*

(1) Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

(2) The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

(3) If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

(4) Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (i) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (ii) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (iii) the loss of useful value as to any one terminated contract is

limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

(5) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (ii) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

(6) Settlement expenses including the following are generally allowable: (i) Accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (ii) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

(7) Subcontractor claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

ss. *Voluntary services.*

The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

Appendix X to Part 75—Data Collection Form (SF-SAC)

The Data Collection Form SF-SAC is available on the FAC Web site <https://harvester.census.gov/facweb/Default.aspx>.

Appendix XI to Part 75—Compliance Supplement

The compliance supplement is available on the OMB Web site: (<http://www.whitehouse.gov/omb/circulars/>)

PART 92 [REMOVED AND RESERVED]

■ 4. Remove and reserve 45 CFR part 92.

Ellen Murray,

Assistant Secretary for Financial Resources.

Department of Agriculture

For the reasons stated in the common preamble, under the authority of 5

U.S.C. 301, 7 CFR 2.28(a)(13)(iii), and the authorities listed below, USDA adds Parts 400, 415, 416, 418 and 422 to Title 2 of the CFR and removes Parts 3015, 3016, 3018, 3019, 3022 and 3052 from Title 7 of the CFR as follows:

TITLE 2—GRANTS AND AGREEMENTS

CHAPTER IV—DEPARTMENT OF AGRICULTURE

■ 1. Title 2 of the Code of Federal Regulations is amended by adding Part 400 to read as follows:

PART 400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

400.1 What does this part do?
400.2 Conflict of interest.

Authority: 31 U.S.C. 503.

PART 400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

§ 400.1 What does this part do?

This part adopts the OMB guidance in subparts A through F of 2 CFR part 200, as supplemented by this part, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part.

§ 400.2 Conflict of interest.

(a) Each USDA awarding agency must establish conflict of interest policies for its Federal awards.

(b) Non-Federal entities must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity.

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award and administration of Federal awards. No employee, officer or agent may participate in the selection, award, or administration of a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a non-Federal entity considered for

a Federal award. The non-Federal entity may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of the relationships with a parent company, affiliate, or subsidiary organization, is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization.

■ 2. Title 2 of the Code of Federal Regulations is amended by adding Part 415 to read as follows:

PART 415—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS

Subpart A—Application for Federal Assistance

Sec.

415.1 Competition in the awarding of discretionary grants and cooperative agreements.

Subpart B—Miscellaneous

415.2 Acknowledgement of Support on Publications and Audiovisuals.

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

415.3 Purpose.

415.4 Definitions.

415.5 Applicability.

415.6 Secretary's general responsibilities.

415.7 Federal interagency coordination.

415.8 State selection of programs and activities.

415.9 Communication with State and local elected officials.

415.10 State comments on proposed Federal financial assistance and direct Federal development.

415.11 Processing comments.

415.12 Accommodation of intergovernmental concerns.

415.13 Interstate situations.

415.14 Simplification, consolidation, or substitution of State plans.

415.15 Waivers.

Authority: 5 U.S.C. 301.

Subpart A—Application for Federal Assistance

§ 415.1 Competition in the awarding of discretionary grants and cooperative agreements.

(a) *Standards for competition.* Except as provided in paragraph (d) of this section, awarding agencies shall enter into discretionary grants and cooperative agreements only after competition. An awarding agency's competitive award process shall adhere to the following standards:

(1) Potential applicants must be invited to submit proposals through publications such as the **Federal Register**, OMB-designated governmentwide Web site as described in 2 CFR 200.203, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation. In so doing, awarding agencies should consider the broadest dissemination of project solicitations in order to reach the highest number of potential applicants.

(2) Proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth by the awarding agency. Reviewers should make written comments, as appropriate, on each application. Independent reviewers may be from the private sector, another agency, or within the awarding agency, as long as they do not include anyone who has approval authority for the applications being reviewed or anyone who might appear to have a conflict of interest in the role of reviewer of applications. A conflict of interest might arise when the reviewer or the reviewer's immediate family members have been associated with the applicant or applicant organization within the past two years as an owner, partner, officer, director, employee, or consultant; has any financial interest in the applicant or applicant organization; or is negotiating for, or has any arrangement, concerning prospective employment.

(3) An unsolicited application, which is not unique and innovative, shall be competed under the project solicitation it comes closest to fitting. Awarding agency officials will determine the solicitation under which the application is to be evaluated. When the awarding agency official decides that the unsolicited application does not fall under a recent, current, or planned solicitation, a noncompetitive award may be made, if appropriate to do so under the criteria of this section. Otherwise, the application should be returned to the applicant.

(b) *Project solicitations.* A project solicitation by the awarding agency shall include or reference the following, as appropriate:

- (1) A description of the eligible activities which the awarding agency proposes to support and the program priorities;
- (2) Eligible applicants;
- (3) The dates and amounts of funds expected to be available for awards;
- (4) Evaluation criteria and weights, if appropriate, assigned to each;
- (5) Methods for evaluating and ranking applications;
- (6) Name and address where proposals should be mailed or emailed and submission deadline(s);
- (7) Any required forms and how to obtain them;
- (8) Applicable cost principles and administrative requirements;
- (9) Type of funding instrument intended to be used (grant or cooperative agreement); and
- (10) The Catalog of Federal Domestic Assistance number and title.

(c) *Approval of applications.* The final decision to award is at the discretion of the awarding/approving official in each agency. The awarding/approving official shall consider the ranking, comments, and recommendations from the independent review group, and any other pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the award decision shall be handled by the awarding agency using existing agency appeal procedures or good administrative practice and sound business judgment.

(d) *Exceptions.* The awarding/approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program. Reasons for considering noncompetitive awards may include, but are not necessarily limited to, the following:

- (1) Nonmonetary awards of property or services;
- (2) Awards of less than \$75,000;
- (3) Awards to fund continuing work already started under a previous award;
- (4) Awards which cannot be delayed due to an emergency or a substantial danger to health or safety;
- (5) Awards when it is impracticable to secure competition; or
- (6) Awards to fund unique and innovative unsolicited applications.

Subpart B—Miscellaneous

§ 415.2 Acknowledgement of USDA Support on Publications and Audiovisuals.

(a) *Definitions.*

(1) “Audiovisual” means a product containing visual imagery or sound or both. Examples of audiovisuals are motion pictures, live or prerecorded radio or television programs, slide shows, filmstrips, audio recordings, and multimedia presentations.

(2) “Production of an audiovisual” means any of the steps that lead to a finished audiovisual, including design, layout, script-writing, filming, editing, fabrication, sound recording or taping. The term does not include the placing of captions for the hearing impaired on films or videotapes not originally produced for use with the hearing impaired.

(3) “Publication” means a published book, periodical, pamphlet, brochure, flier, or similar item. It does not include any audiovisuals.

(b) *Publications.* Recipients shall have an acknowledgement of USDA awarding agency support placed on any publications written or published with grant support and, if feasible, on any publication reporting the results of, or describing, a grant-supported activity.

(c) *Audiovisuals.* Recipients shall have an acknowledgement of USDA awarding agency support placed on any audiovisual which is produced with grant support and which has a direct production cost to the recipient of over \$5,000. Unless the other provisions of the grant award make it apply, this requirement does not apply to:

(1) Audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the general public.

(2) [Reserved]

(d) *Waivers.* USDA awarding agencies may waive any requirement of this section.

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

§ 415.3 Purpose.

(a) The regulations in this part implement Executive Order 12372, “Intergovernmental Review of Federal Programs”, issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership

and a strengthened Federalism by relying on State processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) The regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 415.4 Definitions.

As used in this part, the following definitions apply:

Department means the U.S. Department of Agriculture.

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled Intergovernmental Review of Federal Programs.

Secretary means the Secretary of the U.S. Department of Agriculture or an official or employee of the Department acting for the Secretary under a delegation of authority.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.

§ 415.5 Applicability.

The Secretary publishes in the **Federal Register** a list of the Department’s programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 415.6 Secretary’s general responsibilities.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

- (1) Uses the State process to determine official views of State and local elected officials;
- (2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 415.7 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 415.8 State selection of programs and activities.

(a) A State may select any program or activity published in the **Federal Register** in accordance with § 415.5 for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the secretary of the Department's programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 415.9 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the **Federal Register** or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. All communications should be sent to the Office of the Chief Financial Officer, Room 143-W, 1400 Independence Avenue SW., Washington, DC 20250, Attention: E.O. 12372.

§ 415.10 State comments on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 415.11 Processing comments.

(a) The Secretary follows the procedures in § 415.12 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under § 415.8.

(b)(1) The single point of contact is not obligated to transmit comments

from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 415.12.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 415.12, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

§ 415.12 Accommodation of intergovernmental concerns.

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendations;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with a written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of

this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 415.13 Interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to § 415.12, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 415.12 if a State process provides a State process recommendation to the Department through a single point of contact.

§ 415.14 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) Simplify means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) Consolidate means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and the planning period for the consolidated plan.

(3) Substitute means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

§ 415.15 Waivers.

In an emergency, the Secretary may waive any provision in Subpart C—Intergovernmental Review of

Department of Agriculture Programs and Activities, 2 CFR 415.3 to 415.14.

■ 3. Title 2 of the Code of Federal Regulations is amended by adding Part 416 to read as follows:

PART 416—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Authority: 5 U.S.C. 301.

§ 416.1 Special Procurement Provisions.

(a) In order to ensure objective contractor performance and eliminate unfair competitive advantage, a prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, request for proposals, contract term and conditions or other documents for use by a State in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.101(e)(4) through (6) shall be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide States with specification information related to a State procurement under the USDA entitlement programs specified in 2 CFR 200.101(e)(4) through (6) and still compete for the procurement if the State, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement.

(b) Procurements by States under USDA entitlement programs specified in 2 CFR 200.101(e)(4) through (6) shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences except as provided for in 2 CFR 200.319(b).

■ 4. Title 2 of the Code of Federal Regulations is amended by adding part 418 to read as follows:

PART 418—NEW RESTRICTIONS ON LOBBYING

Sec.

Subpart A—General

- 418.100 Conditions on use of funds.
- 418.105 Definitions.
- 418.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 418.200 Agency and legislative liaison.
- 418.205 Professional and technical services.
- 418.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 418.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 418.400 Penalties.
- 418.405 Penalty procedures.
- 418.410 Enforcement.

Subpart E—Exemptions

- 418.500 Secretary of Defense.

Subpart F—Agency Reports

- 418.600 Semi-annual compilation.
- 418.605 Inspector General report.

APPENDIX A TO PART 418—CERTIFICATION REGARDING LOBBYING

APPENDIX B TO PART 418—DISCLOSURE FORM TO REPORT LOBBYING

Authority: 31 U.S.C. 1352; 5 U.S.C. 301.

Subpart A—General

§ 418.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any

payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 418.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action*. (1) Covered Federal action means any of the following Federal actions:

(i) The awarding of any Federal contract;

(ii) The making of any Federal grant;

(iii) The making of any Federal loan;

(iv) The entering into of any cooperative agreement; and,

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan

insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the

normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 418.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b)(1) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(i) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(ii) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(2) Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person shall file a certification, and a disclosure form, if required, to the next tier above who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the

erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C of this part.

Subpart B—Activities by Own Employees

§ 418.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 418.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 418.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly

and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 418.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 418.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 418.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For

example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 418.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 418.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C.s 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 418.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.'

Subpart E—Exemptions

§ 418.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 418.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May

31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 418.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

Appendix A to Part 418—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Appendix B to Part 418—Disclosure Form To Report Lobbying

BILLING CODE 6050-28-4210-67-4910-9X-3280-F5-4410-18-4710-24-3510-17-9110-9J-9111-23-6450-01-7537-01-6560-50-6560-58-7036-01-7515-01-7536-01-6116-01-4334-12-8320-01-4150-24-7555-01-5001-06-7510-13-8025-01-4191-02-4810-25-3410-KS-3410-22-3410-15-3410-05-4000-01-4510-FM-3110-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

<p>1. Type of Federal Action:</p> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<p>2. Status of Federal Action:</p> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<p>3. Report Type:</p> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known:	<p>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</p> Congressional District, if known:	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> CFDA Number, if applicable: _____	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> \$ _____	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> (attach Continuation Sheet(s) SF-LLLA, if necessary)	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> (attach Continuation Sheet(s) SF-LLLA, if necessary)	
<p>11. Amount of Payment (check all that apply):</p> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<p>13. Type of Payment (check all that apply):</p> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<p>12. Form of Payment (check all that apply):</p> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> (attach Continuation Sheet(s) SF-LLLA, if necessary)		
<p>15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<p>Federal Use Only:</p>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

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■ 5. Title 2 of the Code of Federal Regulations is amended by adding part 422 to read as follows:

CHAPTER IV

**PART 422—RESEARCH INSTITUTIONS
CONDUCTING USDA-FUNDED
EXTRAMURAL RESEARCH;
RESEARCH MISCONDUCTS**

Sec.

- 422.1 Definitions.
- 422.2 Procedures.
- 422.3 Inquiry, investigation, and adjudication.

- 422.4 USDA Panel to determine appropriateness of research misconduct policy.
- 422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.
- 422.6 Notification of USDA of allegations of research misconduct.
- 422.7 Notification of ARIIO during an inquiry of investigation.
- 422.8 Communication of research misconduct policies and procedures.
- 422.9 Documents required.

- 422.10 Reporting to USDA.
 422.11 Research records and evidence.
 422.12 Remedies for noncompliance.
 422.13 Appeals.
 422.14 Relationship to other requirements.

Authority: 5 U.S.C. 301; Office of Science and Technology Policy (65 FR 76260); USDA Secretary's Memorandum (SM) 2400-007; and USDA OIG, 7 CFR 2610.1(c)(4)(ix).

PART 422—RESEARCH INSTITUTIONS CONDUCTING USDA FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT

§ 422.1 Definitions.

The following definitions apply to this part:

Adjudication. The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined.

Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

Agency Research Integrity Officer (ARIO). The individual appointed by a USDA agency that conducts research and who is responsible for:

- (1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;
- (2) Informing OIG and the USDA RIO and the research institution associated with the alleged research misconduct, of allegations of research misconduct in the event it is reported to the USDA agency;
- (3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;
- (4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;
- (5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;
- (6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an independent, unbiased, and equitable process;

(7) Immediately notifying OIG, the USDA RIO, and the applicable research institution if:

- (i) Public health or safety is at risk;
 - (ii) USDA's resources, reputation, or other interests need protecting;
 - (iii) Research activities should be suspended;
 - (iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;
 - (v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;
 - (vi) The scientific community or the public should be informed; or
 - (vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;
- (8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings;

(9) Other duties relating to research misconduct proceedings as assigned.

Allegation. A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

Applied research. Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

Assistant Inspector General for Investigations. The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through a headquarters office and the six regional offices.

Basic research. Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

Extramural research. Research conducted by any research institution other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

Fabrication. Making up data or results and recording or reporting them.

Falsification. Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of research misconduct. The conclusion, proven by a preponderance

of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

Inquiry. The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

Intramural research. Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

Investigation. The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

Office of Inspector General (OIG). The Office of Inspector General of the United States Department of Agriculture.

Office of Science and Technology Policy (OSTP). The Office of Science and Technology Policy of the Executive Office of the President.

Plagiarism. The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Research. All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

Research institution. All organizations using Federal funds for research, including, for example, colleges and universities, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes.

Research misconduct. Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

Research record. The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals,

research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

USDA. United States Department of Agriculture.

USDA Research Integrity Officer (USDA RIO). The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

- (1) Overseeing USDA agency responses to allegations of research misconduct;
- (2) Ensuring that agency research misconduct procedures are consistent with this part;
- (3) Receiving and assigning allegations of research misconduct reported by the public;
- (4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;
- (5) Monitoring the progress of all research misconduct cases; and
- (6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

§ 422.2 Procedures.

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

- (a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;
- (b) Objectivity;
- (c) Due process;
- (d) Whistleblower protection;
- (e) Confidentiality. To the extent possible and consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know; and
- (f) Timely resolution.

§ 422.3 Inquiry, investigation, and adjudication.

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines that the

allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

- (a) Initiate an inquiry into any suspected or alleged research misconduct;
- (b) Conduct a subsequent investigation, if warranted;
- (c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and
- (d) Take action to ensure the following:
 - (1) The integrity of research;
 - (2) The rights and interests of the subject of the investigation and the public are protected;
 - (3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and
 - (4) Appropriate safeguards for subjects of allegations, as well as informants (see § 422.6). These safeguards should include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct, if any.

§ 422.4 USDA Panel to determine appropriateness of research misconduct policy.

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policies and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a Web site address where such policies and procedures can be accessed. The ARIO to whom the policies and procedures were made available shall convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the National Institute of Food and Agriculture. The Panel will review the research institution's policies and procedures for compliance with the OSTP Policy and render a decision

regarding the research institution's ability to adequately resolve research misconduct allegations. The ARIO will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient. If the Panel determines that the research institution does not have sufficient policies and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIO will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

§ 422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIO believes, in his or her sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

- (1) Did not adhere to its own research misconduct procedures;
 - (2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or
 - (3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.
- (b) Additionally, USDA reserves the right to conduct its own inquiry,

investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIO considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's conducting the extramural research at issue. This right is subject to paragraph (c) of this section.

(c) In cases where the USDA RIO or ARIO believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIO shall reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIO will immediately notify the research institution in question. The research institution must then promptly provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

§ 422.6 Notification of USDA of allegations of research misconduct.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct involving USDA funds when the institution inquiry into the allegation warrants the institution moving on to an investigation.

(b) Individuals at research institutions who suspect research misconduct at the institution should report allegations in accordance with the institution's research misconduct policies and procedures. Anyone else who suspects that researchers or research institutions performing Federally-funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(1) OIG may be notified using any of the following methods:

(i) Via the OIG Hotline: Telephone: (202) 690-1622, (800) 424-9121, (202) 690-1202 (TDD).

(ii) Email: usda_hotline@oig.usda.gov.

(iii) U.S. Mail: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026-3399.

(2) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; telephone: 202-720-5923; Email: researchintegrity@usda.gov.

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

§ 422.7 Notification of ARIO during an inquiry or investigation.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIO should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

(4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(6) The scientific community or the public should be informed; or

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

§ 422.8 Communication of research misconduct policies and procedures.

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staffs policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

§ 422.9 Documents required.

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any response to such a statement by the subject of the original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least 3 years following the final adjudication of the alleged research misconduct.

§ 422.10 Reporting to USDA.

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the

ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, the adjudicating official's determination, the institution's corrective action taken or planned, and the written response of the individual who is the subject of the allegation to any recommendations.

§ 422.11 Research records and evidence.

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution shall be inventoried and stored in a secure place and manner. Research records involving raw data shall include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records have when the data or records reside on the instruments or devices. Such copies of data or records shall be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or instruments, the instruments or devices need not be maintained as evidence.

§ 422.12 Remedies for noncompliance.

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) that engaged in the research misconduct,

proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. The agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowingly conducted, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

§ 422.13 Appeals.

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures identify the appeal process when a finding of research misconduct is elevated to the agency.

§ 422.14 Relationship to other requirements.

Some of the research covered by this part also may be subject to regulations of other governmental agencies (e.g., a university that receives funding from a USDA agency and also under a grant from another Federal agency). If more than one agency of the Federal Government has jurisdiction, USDA will cooperate with the other agency(ies) in designating a lead agency. When USDA is not the lead agency, it will rely on the lead agency following its policies and procedures in determining whether there is a finding of research misconduct. Further, USDA may, in consultation with the lead agency, take action to protect the health and safety of the public, to promote the integrity of the USDA-supported research and research process, or to conserve public funds. When appropriate, USDA will seek to resolve allegations jointly with the other agency or agencies.

TITLE 7—Agriculture

CHAPTER XXX—OFFICE OF THE CHIEF FINANCIAL OFFICER, DEPARTMENT OF AGRICULTURE

PARTS 3015, 3016, 3018, 3019, 3022, and 3052—[REMOVED]

- 6. Remove 7 CFR parts 3015, 3016, 3018, 3019, 3022, and 3052.

Farm Service Agency

For the reasons discussed above in the common preamble, FSA amends 7 CFR

chapter VII and CCC amends 7 CFR chapter XIV as follows:

CHAPTER VII—FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 761—GENERAL PROGRAM ADMINISTRATION

- 1. The authority citation for 7 CFR 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 761.5 [Amended]

- 2. Amend 761.5 by removing the reference to “7 CFR part 3018” and adding the reference to “2 CFR part 418” in its place.

PART 785—CERTIFIED STATE MEDIATION PROGRAM

- 3. The authority citation for 7 CFR 785 continues to read as follows:

Authority: 5 U.S.C. 301; 7 as follows: U.S.C. 1989; and 7 U.S.C. 5104.

§ 785.4 [Amended]

- 4. Amend § 785.4 as follows:
 - a. In paragraph (c)(1), remove “as set forth or referenced in § 3016.22 of this title” and add “in 2 CFR part 200, subpart E” in its place, and
 - b. In paragraph (c)(2)(iii), remove “OMB Cost Principles found in part 3015, subpart T, of this title and OMB Circular No. A–87” and add “2 CFR part 200, subpart E” in its place.
- 5. Revise § 785.8(b) to read

§ 785.8 Reports by qualifying States receiving mediation grants.

* * * * *

(b) *Audits.* Any qualifying State receiving a grant under this part is required to submit an audit report in compliance with 2 CFR part 200, subpart F.

- 6. In § 785.9, revise the introductory text to read as follows:

§ 785.9 Access to program records.

The regulations in 2 CFR 200.333 through 200.337 provide general record retention and access requirements for records pertaining to grants. In addition, the State must maintain and provide the Government access to pertinent records regarding services delivered by the certified State mediation program for purposes of evaluation, audit and monitoring of the certified State mediation program as follows:

* * * * *

§ 785.11 [Amended]

- 7. Amend § 785.11(b) by removing “part 3017 of this title” and adding “2 CFR parts 180 and 417” in its place.

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

PART 1407—DEBARMENT AND SUSPENSION

- 8. The authority citation for 7 CFR 1407 continues to read as follows:

Authority: 15 U.S.C. 714b.

§ 1407.2 [Amended]

- 9. Amend § 1407.2(a) by removing “7 CFR part 3017” and adding “2 CFR parts 180 and 417” in its place.

PART 1485—GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES

- 10. The authority citation for 7 CFR 1485 continues to read as follows:

Authority: 7 U.S.C. 5623, 5662–5664 and sec. 1302, Pub. L. 103–66, 107 Stat. 330.

- 11. Amend § 1485.10 as follows:

- a. Revise paragraph (b)(1)(iv);
 ■ b. Remove paragraphs (b)(1)(v) and (vii) through (x);
 ■ c. Redesignate paragraph (b)(1)(vi) and (xi) as (b)(1)(v) and (viii) respectively; and
 ■ d. Add paragraphs (b)(1)(vi) and (vii).
 The revision and additions read as follows:

§ 1485.10 General purpose and scope.

* * * * *

(b)(1) * * *

(iv) 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

* * * * *

(vi) 2 CFR part 418—New Restrictions on Lobbying

(vii) 2 CFR part 421—Requirements for Drug-Free Workplace (Financial Assistance)

* * * * *

§ 1485.19 [Amended]

- 12. Amend § 1485.19 as follows:

- a. In paragraph (b), first sentence, by removing “set forth in the applicable parts of this title (e.g., 7 CFR parts 3015, 3016, and 3019)” and adding “in 2 CFR part 200” in their place.
 ■ b. In paragraph (c), second sentence, by removing “in the applicable parts of this title apply (e.g., 7 CFR parts 3015, 3016, and 3019)” and adding “in 2 CFR part 200” in their place.

§ 1485.21 [Amended]

- 13. Amend § 1485.21(a) by removing “set forth in the applicable parts of this title (e.g., 7 CFR parts 3015, 3016, and 3019)” and adding “in 2 CFR part 200” in its place.

§ 1485.22 [Amended]

- 14. Amend § 1485.22(e), first sentence, by removing “OMB Circular A–133 audit in accordance with 7 CFR part 3052” and adding “audit in accordance with 2 CFR part 200” in its place.

§ 1485.23 [Amended]

- 15. Amend § 1485.23(d), introductory text, fifth sentence, by removing “e.g., 7 CFR parts 3015, 3016, and 3019” and adding “for example, 2 CFR part 200” in its place.

§ 1485.27 [Amended]

- 16. Amend § 1485.27(b) by removing “in the applicable parts of this title (e.g., 7 CFR parts 3015, 3016, and 3019)” and adding “in 2 CFR part 200” in its place.

§ 1485.28 [Amended]

- 17. Amend § 1485.28(a), third sentence, by removing “in the applicable parts of this title (e.g., 7 CFR parts 1485, 3015, 3016, 3018, 3021, 3019, and 3052)” and adding “in 2 CFR parts 200 and 421 and this part” in its place.

§ 1485.29 [Amended]

- 18. Amend § 1485.29 as follows:
 ■ a. In paragraph (b), first sentence, remove “e.g., 7 CFR parts 3015, 3016, and 3019” and add “for example, 2 CFR part 200” in its place, and in the second sentence, remove “7 CFR part 3019” and add “2 CFR part 200” in its place, and
 b. In paragraph (d), seventh sentence, remove “set forth in the applicable parts of this title (e.g., 7 CFR parts 3015, 306, 3019)” and add “in 2 CFR part 200” in its place.

§ 1485.34 [Amended]

- 19. Amend § 1485.34, first sentence by removing “set forth in the applicable parts of this title (e.g., 7 CFR parts 3015, 3016, and 3019)” and adding “in 2 CFR part 200” in their place.
 ■ 20. Revise § 1485.35 to read as follows:

§ 1485.35 Suspension, termination, and closeout of agreements.

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in 2 CFR part 200. If an agreement is terminated, the applicable regulations in 2 CFR part 200 will apply to the closeout of the agreement.

Department of Agriculture

National Institute of Food and Agriculture (NIFA)

For the reasons stated in the preamble, NIFA amends 7 CFR Part Chapter XXXIV as follows:

TITLE 7—AGRICULTURE

CHAPTER XXXIV—NATIONAL INSTITUTE OF FOOD AND AGRICULTURE

PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

- 1. The authority for part 3400 continues to read as follows:

Authority: 7 U.S.C. 450i(c).

§ 3400.6 [Amended]

- 2. In § 3400.6(a) remove the words “the Department’s Uniform Federal Assistance Regulations” and add in their place “2 CFR part 200.”
 ■ 3. Revise § 3400.8 to read as follows:

§ 3400.8 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (“OMB”) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB’s guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department’s policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department’s programs and activities.”

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment and Suspension.

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR

part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3401—RANGELAND RESEARCH GRANTS PROGRAM

■ 4. The authority citation for part 3401 continues to read as follows:

Authority: Section 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316).

§ 3401.8 [Amended]

■ 5. In the last sentence of § 3401.8(a) remove the words “the Department’s Uniform Federal Assistance Regulations” and add in their place “2 CFR part 200.”

■ 6. Revise § 3401.10 to read as follows:

§ 3401.10 Other Federal Statutes and Regulations that Apply.

(a) The Office of Management and Budget (“OMB”) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB’s guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department’s policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department’s programs and activities.”

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines To Agencies On Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

■ 7. In § 3401.14, add a sentence at the end of the section to read as follows:

§ 3401.14 Conflicts of interest.

* * * Administration of the peer review group must be in accordance with the Department’s conflict of interest policy, 2 CFR 400.2.

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE AND POSTGRADUATE FELLOWSHIP GRANTS PROGRAM

■ 8. The authority citation for part 3402 continues to read as follows:

Authority: 7 U.S.C. 3316.

§ 3402.19 [Amended]

■ 9. In the last sentence of § 3402.19, remove the words “the Department’s Uniform Federal assistance regulations (parts 3015 and 3019 of 7 CFR)” and add in their place “2 CFR part 200.”

■ 10. Revise § 3402.20 to read as follows:

§ 3402.20 Other Federal Statutes and Regulations that Apply.

(a) The Office of Management and Budget (“OMB”) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB’s guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department’s policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for

the Department’s programs and activities.

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

■ 11. The authority citation for part 3403 continues to read as follows:

Authority: 15 U.S.C. 638.

§ 3403.1 [Amended]

■ 12. In the last sentence of § 3403.1(a), remove the words “the Office of Extramural Programs,” before “NIFA.”

§ 3403.12 [Amended]

■ 13. In the last sentence of § 3403.12, remove the words “the Department’s Uniform Federal Assistance Regulations (7 CFR part 3015)” and add in their place “2 CFR part 200.”

■ 14. Revise § 3403.15 to read as follows:

§ 3403.15 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (“OMB”) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB’s guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department’s policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department’s programs and activities.”

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures to Implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3405—HIGHER EDUCATION CHALLENGE GRANTS PROGRAM

■ 15. The authority citation for part 3405 continues to read as follows:

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

§ 3405.9 [Amended]

■ 16. In the second sentence of § 3405.9, remove the words “OMB Circular No. A–21” and add in their place “2 CFR part 200.”

§ 3405.11 [Amended]

■ 17. In § 3405.11(g)(2)(v), remove the words “OMB Circulars A–110, ‘Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,’ and A–21 ‘Cost Principles for Educational Institutions’” and add in their place “2 CFR part 200 and Part 400.”

§ 3405.17 [Amended]

■ 18. In § 3405.17(a), remove the words “the Department’s Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (7CFR part 3019)” and replace with “2 CFR part 200.”

■ 19. Revise § 3405.20 to read as follows:

§ 3405.20 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (“OMB”) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB’s guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department’s policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department’s programs and activities.”

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment and Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures To Implement The National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3406—1890 INSTITUTION CAPACITY BUILDING GRANTS PROGRAM

■ 20. The authority citation for part 3406 continues to read as follows:

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

§ 3406.10 [Amended]

■ 21. In § 3406.10, remove the words “OMB Circular No. A–21” and add in their place “2 CFR part 200”.

§ 3406.24 [Amended]

■ 22. In § 3406.24(a), remove the words “the Department’s Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations(7 CFR part 3019)” and add in their place “2 CFR part 200 and Part 400.”

■ 23. Revise § 3406.27 to read as follows:

§ 3406.27 Other Federal Statutes and Regulations that Apply.

(a) The Office of Management and Budget (“OMB”) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB’s guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department’s policies and procedures for uniform

administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities."

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines To Agencies On Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular A-129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3407—IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT

■ 24. The authority citation for part 3407 continues to read as follows:

Authority: National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*; E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR parts 1500–1508; and 7 CFR part 1b.

§ 3407.4 [Amended]

■ 25. In the introductory text of § 3407.4, correct the word "responsible" to read "responsible".

PART 3415—BIOTECHNOLOGY RISK ASSESSMENT RESEARCH GRANTS PROGRAM

■ 26. The authority citation for part 3415 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 5921.

§ 3415.6 [Amended]

■ 27. In § 3415.6(a), remove the words "and the Department's assistance regulations (part 3015 and part 3016 of this title)" and add in their place "2 CFR part 200."

■ 28. Revise § 3415.8 to read as follows:

§ 3415.8 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget ("OMB") issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities."

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment And Suspension (Nonprocurement) and USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A-129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures To Implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination

based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVISIONS

■ 29. The authority citation for part 3430 continues to read as follows:

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

§ 3430.1 [Amended]

■ 30. In § 3430.1(a), remove the words "7 CFR parts 3016 (State, local, and tribal governments), 3019 (institutions of higher education, hospitals, and nonprofits), and 3015 (all others)" and add in their place "2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

§ 3430.2 [Amended]

■ 31. In § 3430.2, remove the definitions of the terms "State" and "Third party in-kind contributions."

■ 32. Revise § 3430.4 to read as follows:

§ 3430.4 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget ("OMB") issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities."

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-

Wide Debarment and Suspension
(Nonprocurement) and USDA
Nonprocurement Debarment and
Suspension

7 CFR part 1c—USDA

Implementation of the Federal Policy for
the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of
Freedom of Information Act.

7 CFR part 3—USDA Implementation
of OMB Circular A-129 Regarding Debt
Collection.

7 CFR part 15, subpart A—USDA
implementation of Title VI of the Civil
Rights Act of 1964.

7 CFR part 3407—NIFA Procedures to
Implement the National Environmental
Policy Act;

29 U.S.C. 794 (section 504,
Rehabilitation Act of 1973) and 7 CFR
part 15B (USDA implementation of
statute)—prohibiting discrimination
based upon physical or mental handicap
in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act,
controlling allocation of rights to
inventions made by employees of small
business firms and domestic nonprofit
organizations, including universities, in
Federally assisted programs
(implementing regulations are contained
in 37 CFR part 401).

§ 3430.12 [Amended]

■ 33. In § 3430.12(a), remove the words
“the Office of Management and Budget
(OMB) policy directive 68 FR 37370–
37379 (June 23, 2003)” and replace with
“Appendix I to 2 CFR part 200”.

§ 3430.41 [Amended]

■ 34. In § 3430.41:

■ a. In paragraph (a), remove the words
“parts 3015, 3016, 3019 of 7 CFR” and
add in their place “2 CFR part 200.”

■ b. In paragraph (b) introductory text,
remove “including, at a minimum, the
following:” and add in its place “noted
in section 210 of 2 CFR part 200.”

■ c. Remove paragraphs (b)(1) through
(10).

§ 3430.54 [Amended]

■ 35. In § 3430.54, remove the words
“the applicable assistance regulations
and cost principles” and add in their
place “2 CFR part 200”.

§ 3430.59 [Amended]

■ 36. Amend § 3430.59 as follows:

■ a. Remove all references to “the Office
of Extramural Programs” or “OEP” and
add in their place “NIFA.”

■ b. In the last sentence of paragraph (c),
remove the words “subject to 7 CFR part
3052” and add in their place “2 CFR
200.521.”

■ c. In paragraph (e), remove all
references to “OEP Assistant Director”

and add in their place “Office of Grants
and Financial Management (OGFM)
Deputy Director.”

§ 3430.62 [Amended]

■ 37. In § 3430.62(c), remove all
references to “OEP Assistant Director”
and add in their place “Office of Grants
and Financial Management (OGFM)
Deputy Director.”

**PART 3431—VETERINARY MEDICINE
LOAN REPAYMENT PROGRAM**

■ 38. The authority citation for part
3431 continues to read as follows:

Authority: 7 U.S.C. 3151a; Pub. L. 106–
107 (31 U.S.C. 6101 note).

§ 3431.20 [Amended]

■ 39. In § 3431.20, in the first sentence
remove the words “Office of Extramural
Programs (OEP)” after “NIFA,” and in
the second sentence remove “OEP” and
add in its place “NIFA.”

Department of Agriculture

Rural Development

For the reasons set forth in the
common preamble, chapters XVII, XVIII,
XXXV and XLII of Subtitle B, title 7,
Code of Federal Regulations are
amended as follows:

**CHAPTER XVII—RURAL UTILITIES
SERVICE, DEPARTMENT OF
AGRICULTURE**

PART 1703—RURAL DEVELOPMENT

■ 1. The authority citation for part 1703
continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa
et seq.

**Subpart D—Distance Learning and
Telemedicine Loan and Grant
Program—General**

■ 2. Amend § 1703.106 by revising
paragraph (a) to read as follows:

**§ 1703.106 Disbursement of loans and
grants.**

(a) For financial assistance of
\$100,000 or greater, prior to the
disbursement of a grant and a loan, the
recipient, if it is not a unit of
government, will provide evidence of
fidelity bond coverage as required by 2
CFR part 200, which is adopted by
USDA through 2 CFR part 400.

* * * * *

■ 3. Amend § 1703.108 by revising
paragraph (b) to read as follows:

§ 1703.108 Audit requirements.

* * * * *

(b) If the recipient is a State or local
government, or non-profit organization,
the recipient shall provide an audit in

accordance with subpart F of 2 CFR part
200, as adopted by USDA through 2 CFR
part 400.

**Subpart E—Distance Learning and
Telemedicine Grant Program**

■ 4. Amend § 1703.125 by revising
paragraphs (i)(5), (i)(6), (i)(7) and (l) to
read as follows:

§ 1703.125 Completed application.

(i) * * *

(5) Drug-Free Workplace Act of 1998
(41 U.S.C. 8101 *et seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment
and Suspension, 2 CFR part 180, which
is adopted by USDA through 2 CFR part
417;

(7) Byrd Anti-Lobbying Amendment
(31 U.S.C. 1352), 2 CFR part 418.

* * * * *

(l) *Federal debt certification.* The
applicant must provide a certification
that it is not delinquent on any
obligation owed to the government (31
U.S.C. 3720B).

* * * * *

■ 5. Amend § 1703.127 by revising
paragraph (g) to read as follows:

**§ 1703.127 Application selection
provisions.**

* * * * *

(g) Grantees shall comply with all
applicable provisions of 2 CFR part 200,
as adopted by USDA through 2 CFR part
400.

**Subpart F—Distance Learning and
Telemedicine Combination Loan and
Grant Program**

■ 6. Amend § 1703.134 by revising
paragraphs (g)(5), (g)(6), (g)(7) and (j) to
read as follows:

§ 1703.134 Completed application.

* * * * *

(g) * * *

(5) Drug-Free Workplace Act of 1998
(41 U.S.C. 8101 *et seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment
and Suspension, 2 CFR part 180, which
is adopted by USDA through 2 CFR part
417;

(7) Byrd Anti-Lobbying Amendment
(31 U.S.C. 1352), 2 CFR part 418.

* * * * *

(j) *Federal debt certification.* The
applicant must provide evidence that it
is not delinquent on any obligation
owed to the government (31 U.S.C.
3720B).

* * * * *

Subpart G—Distance Learning and Telemedicine Loan Program

■ 7. Amend § 1703.144 by revising paragraphs (g)(5), (g)(6), (g)(7) and (j) to read as follows:

§ 1703.144 Completed application.

* * * * *

(g) * * *

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et. seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

* * * * *

(j) *Federal debt certification.* The applicants must provide a certification that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

* * * * *

PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

■ 8. The authority citation for part 1709 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*

Subpart A—General Requirements

■ 9. Amend § 1709.12 by revising the introductory text to read as follows:

§ 1709.12 Reporting requirements.

To support Agency monitoring of project performance and use of grant funds, Grantees shall file periodic reports, required under 2 CFR part 200, as adopted by USDA through 2 CFR part 400, as provided in this part, and the grant agreement as follows:

* * * * *

■ 10. Amend § 1709.13 by revising the second sentence to read as follows:

§ 1709.13 Grant administration.

* * * Administration of RUS grants is governed by the provisions of this subpart and subpart B of this part, the terms of the grant agreement and, as applicable, the provisions of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

■ 11. Amend § 1709.16 by revising the second sentence to read as follows:

§ 1709.16 Performance reviews.

* * * If the grantee does not comply with or does not meet the performance criteria set out in the grant agreement, the Administrator may require amendment of the grant agreement, or may suspend or terminate the grant pursuant to 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

■ 12. Amend § 1709.19 by revising paragraph (a) through (e) and removing paragraph (f), to read as follows:

§ 1709.19 Other USDA regulations.

* * * * *

(a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200, as adopted by USDA through 2 CFR part 400;

(b) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et. seq.*), 2 CFR part 421;

(c) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(d) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418; and

(e) Subpart F of 2 CFR 200, as adopted by USDA through 2 CFR 400.

■ 13. Amend § 1709.21 by revising paragraph (b) to read as follows:

§ 1709.21 Audit requirements.

* * * * *

(b) If the grantee is a State or local government, or a non-profit corporation (other than an RUS Electric or Telecommunication Borrower), the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

Subpart B—RUS High Cost Energy Grant Program

■ 14. Amend § 1709.102 by revising paragraph (a) to read as follows:

§ 1709.102 Policy.

(a) All high energy cost grants will be awarded competitively subject to the limited exceptions in 2 CFR 415.1(d).

* * * * *

Subpart G—Recovery of Financial Assistance Used for Unauthorized Purposes

■ 15. Amend § 1709.601 by revising the last sentence to read as follows:

§ 1709.601 Policy.

* * * The Agency shall make full use of available authority and procedures, including but not limited to those available under 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 16. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart C—Loan Purposes and Basic Policies

■ 17. Revise § 1710.123 to read as follows:

§ 1710.123 Debarment and Suspension.

Borrowers are required to comply with certain requirements on debarment and suspension as set forth in 2 CFR part 180, as adopted by USDA through 2 CFR part 417.

■ 18. Revise § 1710.125 to read as follows:

§ 1710.125 Restrictions on lobbying.

Borrowers are required to comply with certain requirements with respect to restrictions on lobbying activities. See 2 CFR part 418.

■ 19. Revise § 1710.127 to read as follows:

§ 1710.127 Drug free workplace.

Borrowers are required to comply with the Drug Free Workplace Act of 1988 (41 U.S.C. 8101 *et. seq.*) and the Act's implementing regulations (2 CFR part 421) when a borrower receives a Federal grant or enters into a procurement contract awarded pursuant to the provisions of the Federal Acquisition Regulation (title 48 CFR) to sell to a Federal agency property or services having a value of \$25,000 or more.

Subpart I—Application Requirements and Procedures for Loans

■ 20. Amend § 1710.501 by revising paragraphs (a)(10) and (a)(12) to read as follows:

§ 1710.501 Loan applications documents.

(a) * * *

(10) *Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.* This statement certifies that the borrower will comply with certain regulations on debarment and suspension required by Executive Order 12549, Debarment and Suspension (3 CFR, 1986 Comp., p. 189). See 2 CFR 417, and § 1710.123.

* * * * *

(12) *Lobbying.* The following information on lobbying is required pursuant to 2 CFR 418, and § 1710.125. Borrowers applying for both insured and guaranteed financing should consult RUS before submitting this information.

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 21. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

■ 22. Amend § 1717.855 by revising paragraph (k) to read as follows:

§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, sub-transmission and headquarters facilities, and certain other community infrastructure.

* * * * *

(k) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 2 CFR part 180, as adopted by USDA through 2 CFR part 417;

* * * * *

■ 23. Amend § 1717.857 by revising paragraph (c)(7) to read as follows:

§ 1717.857 Refinancing of existing secured debt—distribution and power supply borrowers.

(c) * * *

(7) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 2 CFR part 417:

* * * * *

■ 24. Amend § 1717.858 by revising paragraph (c)(9) to read as follows:

§ 1717.858 Lien subordination for rural development investments.

(c) * * *

(9) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 2 CFR part 180, as adopted by USDA through 2 CFR part 417;

* * * * *

■ 25. Amend § 1717.860 by revising paragraph (c)(2)(vi)(C) to read as follows:

§ 1717.860 Lien accommodations and subordinations under section 306E of the RE Act.

(c) * * *

(2) * * *

(vi) * * *

(C) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 2

CFR part 180, adopted by USDA through 2 CFR part 417;

* * * * *

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

■ 26. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart A—General

■ 27. Revise § 1724.7 to read as follows:

§ 1724.7 Debarment and suspension.

Borrowers shall comply with the requirements on debarment and suspension in connection with procurement activities set forth in 2 CFR part 180, as adopted by USDA through 2 CFR part 417, particularly with respect to lower tier transactions, *e.g.*, procurement contracts for goods or services.

■ 28. Revise § 1724.8 to read as follows:

§ 1724.8 Restrictions on lobbying.

Borrowers shall comply with the restrictions and requirements in connection with procurement activities as set forth in 2 CFR part 418.

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 29. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

■ 30. Revise § 1726.16 to read as follows:

§ 1726.16 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities set forth in 2 CFR part 180, as adopted by USDA through 2 CFR part 417, particularly with respect to lower tier transactions, *e.g.*, procurement contracts for goods or services.

■ 31. Revise § 1726.17 to read as follows:

§ 1726.17 Restrictions on lobbying.

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in 2 CFR part 418.

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS

■ 32. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart C—The Loan Application

■ 33. Amend § 1737.22 by revising paragraph (b)(6) to read as follows:

§ 1737.22 Supplementary information.

* * * * *

(b) * * *

(6) Executed copy of Form AD–1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.”

* * * * *

Subpart E—Interim Financing of Construction of Telephone Facilities

■ 34. Amend § 1737.41 by revising paragraph (b)(2)(vi) to read as follows:

§ 1737.41 Procedure for obtaining approval.

* * * * *

(b) * * *

(2) * * *

(vi) Executed copy of Form AD–1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.”

* * * * *

Subpart F—Review of Application Procedures

■ 35. Amend § 1737.50 by revising paragraphs (a)(2) and (b) to read as follows:

§ 1737.50 Loan approval requirements.

(a) * * *

(2) A completed certification Form AD–1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions;”

* * * * *

(b) RUS shall review the completed loan application, particularly noting subscriber data, grades of service, extended area service (EAS), connecting company commitments, commercial facilities, system and exchange boundaries, and proposed acquisitions. RUS shall review the LD to determine that the system design is acceptable to RUS, that the design is technically correct, that the cost estimates are reasonable, and that the design provides

for area coverage service. RUS shall also review the population and incorporation status of all communities served or to be served by the borrower to determine if any nonrural areas are served and if municipal franchises are required. Any RUS lending for nonrural areas must be in accordance with 7 CFR part 1735. RUS shall also check the "List of Parties Excluded from Federal Procurement of Nonprocurement Programs", compiled, maintained and distributed by General Services Administration, to determine whether the borrower is debarred, suspended, ineligible, or voluntarily excluded (see 2 CFR 180.430).

* * * * *

PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

■ 36. The authority citation for part 1738 continues to read as follows:

Authority: Pub. L. 107–171, 7 U.S.C. 901 *et seq.*

Subpart D—Direct Loan Terms

■ 37. Amend § 1738.156 to revise paragraphs (a)(10) and (11) to read as follows:

§ 1738.156 Other Federal requirements.

* * * * *

(a) * * *

(10) The regulations implementing E.O. 12549, Debarment and Suspension (2 CFR part 180, which is adopted by USDA through 2 CFR part 417, including subpart C of 2 CFR part 417, "Responsibilities of Participants Regarding Transactions," and 2 CFR 417.332.

(11) The requirements regarding lobbying for Contracts, Grants, Loans and Cooperative Agreements in 31 U.S.C. 1352 (2 CFR part 418).

* * * * *

PART 1739—BROADBAND GRANT PROGRAM

■ 38. The authority citation for part 1739 continues to read as follows:

Authority: Title III, Pub. L. 108–199, 118 Stat. 3.

Subpart A—Community Connect Grant Program

■ 39. Amend § 1739.15 as follows:

- a. Revise the first sentence of the introductory text;
- b. Revise paragraph (l)(2);
- c. Revise paragraph (l)(4);

The revisions read as follows:

§ 1739.15 Completed application.

Applications should be prepared in conformance with the provisions of this part and all applicable regulations, including 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

(l) * * *

(2) 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

(4) 2 CFR part 418—New Restrictions on Lobbying;

* * * * *

■ 40. Amend § 1739.20 by revising paragraph (b) to read as follows:

§ 1739.20 Audit requirements.

* * * * *

(b) If the recipient is a Tribal, State or local government, or non-profit organization, the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM

■ 41. The authority citation for part 1740 continues to read as follows:

Authority: Consolidated Appropriations Act, 2005; Title III: Rural Development Programs; Rural Utilities Service; Distance Learning, Telemedicine, and Broadband Program; Public Law 108–447.

Subpart A—Public Television Station Digital Transition Grant Program

■ 42. Amend § 1740.9 by revising paragraphs (j)(5), (j)(6), and (j)(7) to read as follows:

§ 1740.9 Grant application.

* * * * *

(j) * * *

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et seq.*), 2 CFR part 421;

(6) Executive Orders 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417; and

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

* * * * *

PART 1773—POLICY ON AUDITS OF RUS BORROWERS

■ 43. The authority citation for part 1773 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart B—RUS Audit Requirements

■ 44. Amend § 1773.3 by revising paragraphs (d) and (e) to read as follows:

§ 1773.3 Annual audit.

* * * * *

(d) A borrower that qualifies as a unit of state or local government or Indian tribe as such terms are defined in the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*), the Single Audit Act Amendments of 1996 (31 U.S.C. 7505 *et seq.*) and OMB Circular A–133, Audits of States and Local Government, and Non Profit Organizations (which applies for audits of fiscal years beginning prior to December 26, 2014) and Subpart F of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as adopted by USDA through 2 CFR 400 (which applies for fiscal years beginning on or after December 26, 2014) must comply with this part as follows:

(1) A borrower that expends \$500,000 under OMB Circular A–133 (for audits of fiscal years beginning prior to December 26, 2014) and \$750,000 under Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 (for audits for fiscal years beginning after December 26, 2014) or more in a year in Federal awards must have an audit performed and submit an auditor's report meeting the requirements of the respective Single Audit Act requirements

(2) An entity with loans less than \$500,000 under OMB Circular A–133 (for audits of fiscal years beginning prior to December 26, 2014) and \$750,000 under Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 (for audits for fiscal years beginning on or after December 26, 2014) in Federal awards during the year must have an audit performed in accordance with the requirements of this part.

(3) A borrower must notify RUS, in writing, within 30 days of the as of audit date, of the total Federal awards expended during the year and must state whether it will have an audit performed in accordance with OMB Circular A–133 (for audits of fiscal years beginning prior to December 26, 2014) or Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 (for audits for fiscal years beginning on or after December 26, 2014) or this part.

(i) A borrower that elects to comply with this part must select a CPA that meets the qualifications set forth in § 1773.5.

(ii) If an audit is performed in accordance with OMB Circular A–133 (for audits of fiscal years beginning prior to December 26, 2014) or Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 (for audits for fiscal years beginning after December 26, 2014), an auditor's report that meets

the requirements of the respective single Audit Act requirements, will be sufficient to satisfy that borrower's obligations under this part.

(e) OMB Circular A-133 and Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 do not apply to audits of RUS electric and telecommunications cooperatives and commercial telecommunications borrowers.

PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

■ 45. The authority citation for part 1774 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(C)

Subpart A—General Provisions

■ 46. Amend § 1774.8 by revising paragraphs (f) through (j) and removing paragraphs (k) and (l) to read as follows:

§ 1774.8 Other Federal Statutes.

* * * * *

(f) 2 CFR part 200, as adopted by USDA through 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal.

(g) 2 CFR part 180, as adopted by USDA through 2 CFR part 417, Nonprocurement Debarment and Suspension, implementing Executive Order 12549 on debarment and suspension.

(h) 2 CFR part 418, New Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(i) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance), implementing the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101 et. seq.).

(j) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

Subpart B—Grant Application Processing

■ 47. Amend § 1774.13 by revising paragraph (g) to read as follows:

§ 1774.13 Limitations.

* * * * *

(g) Pay for any other costs that are not allowable under 2 CFR part 200, as

adopted by USDA through 2 CFR part 400.

* * * * *

PART 1775—TECHNICAL ASSISTANCE GRANTS

■ 48A. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Provisions

■ 48B. Amend § 1775.5 by revising paragraph (h) to read as follows:

§ 1775.5 Limitations.

* * * * *

(h) Pay for any other costs that are not allowable under 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

■ 49. Amend § 1775.8 by revising paragraphs (f) and (h) through (j), and by removing and reserving paragraphs (g) and (k) to read as follows:

§ 1775. 8 Other Federal statutes.

(f) 2 CFR part 200, as adopted by USDA through 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal.

(g) [Reserved]

(h) 2 CFR part 180, as implemented by USDA through 2 CFR part 417, Nonprocurement Debarment and Suspension, implementing Executive Order 12549 on debarment and suspension.

(i) 2 CFR part 418, New Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(j) 2 CFR 421, Requirements for Drug-Free Workplace (Financial Assistance), implementing the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

(k) [Reserved]

* * * * *

Subpart B—Grant Application Processing

■ 50. Amend § 1775.10 by revising paragraph (c)(9) to read as follows:

§ 1775.10 Applications.

* * * * *

(c) * * *

(9) Indirect cost documentation such as cost rate proposals, cost allocation plans, or other election for indirect costs and appropriate certification of indirect costs in accordance with Cost Principles

in 2 CFR 200, subpart E, as adopted by USDA through 2 CFR part 400.

* * * * *

■ 51. Amend § 1775.20 by revising paragraphs (b) and (c) to read as follows:

§ 1775.20 Reporting.

* * * * *

(b) SF-425, "Federal Financial Report," and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each calendar quarter.

(c) A final project performance report will be required with the last SF-425 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

* * * * *

■ 52. Amend § 1775.21 by revising paragraphs (a) and (b) as follows:

§ 1775.21 Audit or financial statement.

* * * * *

(a) Grantees expending \$750,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400. The audit will be submitted with 9 months of the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

(b) Grantees expending less than \$750,000 will provide annual financial statement covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statement will be submitted within 90 days after the grantees fiscal year.

PART 1776—HOUSEHOLD WATER WELL SYSTEM GRANT PROGRAM

■ 53. The authority citation for part 1776 continues to read as follows:

Authority: 7 U.S.C. 1926e.

■ 54. Revise § 1776.2 to read as follows:

§ 1776.2 Uniform Federal Assistance Provisions.

This program is subject to the general provisions that apply to all grants made by USDA and that are set forth in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as adopted by USDA through 2 CFR part 400.

■ 55. Amend § 1776.13 by revising paragraph (d) to read as follows:

§ 1776.13 Administrative expenses.

* * * * *

(d) Allowability of administrative expense costs shall be determined in accordance with 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

PART 1778—EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS

■ 56. The authority citation for part 1778 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 57. Amend § 1778.14 by revising paragraphs (e) and (f) to read as follows:

§ 1778.14 Other considerations.

* * * * *

(e) *Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free work place.* All projects must comply with the requirements set forth in the U.S. Department of Agriculture regulations 2 CFR part 417, 2 CFR part 421, and RD Instruction 1940–M.

(f) *Intergovernmental review.* All projects funded under this part are subject to Executive Order 12372 (3 CFR, 1983 Comp., p. 197), which requires intergovernmental consultation with State and local officials. These requirements are found at 2 CFR part 415, subpart C, “Intergovernmental Review of Department of Agriculture Programs and Activities” and RD Instruction 1970–I, ‘Intergovernmental Review,’ available in any Agency office or on the Agency’s Web site.

PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEE LOANS

■ 58. The authority citation for part 1779 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 59. Amend § 1779.42 by revising paragraph (e) to read as follows:

§ 1779.42 Design and construction requirements.

* * * * *

(e) *Administrative.* When the Agency reviews the preliminary architectural and engineering reports or plans, they must also consider all applicable Federal laws such as the seismic requirements of Executive Order 12699 (55 FR 835, 3 CFR, 1990 Comp., p. 269), the debarment requirements of 2 CFR part 417, and the Copeland Anti-Kickback Act (18 U.S.C. 874).

■ 60. Amend § 1779.63 by adding a sentence to the end of paragraph (b) to read as follows:

§ 1779.69 Loan servicing.

* * * * *

(b) * * * Additionally, when applicable, the lender will require an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 61. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

■ 62. Amend § 1780.1 by adding paragraph (l) and (m) to read as follows:

§ 1780.1 General.

* * * * *

(l) Applicants for grant assistance will be required to comply with the following requirements as applicable:

(1) 2 CFR part 200, as adopted by USDA through 2 CFR part 400, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”.

(2) 2 CFR part 415—General Program Administrative Regulations.

(3) 2 CFR part 416—General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments.

(4) 2 CFR part 417—Nonprocurement Debarment and Suspension.

(5) 2 CFR part 418—New Restrictions on Lobbying.

(m) Applicants for loan assistance will be required to comply with Subpart F of 2 CFR part 200, “Audit Requirements.”

■ 63. Amend § 1780.47 by revising paragraphs (d) and (g) as follows:

§ 1780.47 Borrower accounting methods, management reporting and audits.

* * * * *

(d) *Audits.* All audits are to be performed in accordance with the latest revision of the generally accepted government auditing standards (GAGAS), issued by the Comptroller General of the United States. In addition, the audits are also to be performed in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400. The type of audit each borrower is required to submit will be designated by RUS. Further guidance on preparing an acceptable audit can be obtained from RUS. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws.

To the extent feasible, the audit work should be done in conjunction with those audits. Audits must be performed annually except as allowed under the provisions for biennial audits provided in subpart F of 2 CFR part 200. Audits are to be submitted to the processing office as soon as possible after receipt of the auditor’s report but no later than nine months after the end of the audit period

* * * * *

(g) *Substitute for management reports.* When RUS loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State program official may authorize an annual audit to substitute for other management reports if the audit is received within nine months after the end of the audit period.

PART 1782—SERVICING OF WATER AND WASTE PROGRAMS

■ 64. The authority citation for part 1782 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 65. Revise § 1782.7 to read as follows:

§ 1782.7 Grants.

Servicing actions relating to Agency grants are governed by the provisions of several regulations and executive orders, including, but not limited to, 2 CFR part 200 as adopted by 2 CFR part 400, and 2 CFR parts 415, 416, 417, and 418 and Executive Order (E.O.) 12803. Grantees remain responsible for property acquired with grant funds in accordance with terms of a grant agreement and applicable regulations.

■ 66. Revise § 1782.10 to read as follows:

§ 1782.10 Audit requirements.

Audits for loans will be required in accordance with § 1780.47 of this chapter. If the borrower becomes delinquent or is experiencing problems, the servicing official will require an audit or other documentation deemed necessary to resolve the delinquency. The provisions of Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400, address audit requirements for recipients of Federal assistance.

PART 1783—REVOLVING FUNDS FOR FINANCING WATER AND WASTEWATER PROJECTS (REVOLVING FUND PROGRAM)

■ 67. The authority citation for part 1783 continues to read as follows:

Authority: 7 U.S.C. 1926 (a)(2)(B).

■ 68. Revise § 1783.2 to read as follows:

§ 1783.2 What Uniform Federal Assistance Provisions apply to the Revolving Fund Program?

(a) This program is subject to the general provisions that apply to all grants made by USDA and that are set forth in 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

(b) This program is subject to the uniform administrative requirements that apply to all grants made by USDA to non-profit organizations and that are set forth in 2 CFR part 415.

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVES SERVICE, RURAL UTILITIES SERVICE AND FARM SERVICE AGENCY

PART 1942—ASSOCIATIONS

■ 69. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Facility Loans

■ 70. Amend § 1942.1 by adding paragraph (e) to read as follows:

§ 1942.1 General.

* * * * *

(e) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200 as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

■ 71. Amend § 1942.2 by revising the paragraph (a)(1)(iii) to read as follows:

§ 1942.2 Processing applications.

(a) * * *

(1) * * *

(iii) State intergovernmental review comments and recommendations (clearinghouse comments), as outlined in 2 CFR part 400, if applicable.

* * * * *

■ 72. Amend § 1942.5 by revising paragraph (b)(1)(ii)(B) to read as follows:

§ 1942.5 Application review and approval.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Applicable State Intergovernmental Review comments, if the program or activity has been selected under the State. RD Instruction 1970–I, available in any Rural Development office.

* * * * *

■ 73. Amend § 1942.17 by revising paragraphs (j)(3)(iii) and (n)(2)(xi); adding paragraph (j)(3)(ii)(C); and revising paragraph (q) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(j) * * *

(3) * * *

(ii) * * *

(C) Fidelity bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies doing Business with the United States."

(iii) *Insurance.* The following types of coverage must be maintained if appropriate for the type of project and entity involved. Insurance must be in amounts acceptable to the Agency and at least equivalent to coverage for real property and equipment acquired without Federal funds.

* * * * *

(n) * * *

(2) * * *

(xi)(A) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds must be deposited and maintained in insured accounts whenever possible. Funds must be maintained in interest bearing accounts, unless the following apply:

(1) The borrower receives less than \$120,000 in Federal awards per year;

(2) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances;

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources; and,

(4) A foreign government or banking system prohibits or precludes interest bearing accounts.

(B) Interest earned on Federal payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense.

* * * * *

(q) *Borrower accounting methods, management reporting and audits.* (1) *Annual financial statements.* Borrowers

are required to provide the Agency with annual financial statements for the life of the loan as outlined in the Letter of Conditions issued by the Agency. The financial statements are the responsibility of the borrower's governing body. The type of statement required is dependent on the amount of Federal financial assistance received during the borrower's fiscal year. Federal financial assistance includes Federal assistance that a non-Federal entity received or administered during the entity's fiscal year in the form of grants, loans, and loan guarantees. A Federal award is Federal financial assistance a non-Federal entity received directly from Federal awarding agencies or indirectly from pass-through entities. Federal awards expended generally pertain to events that require the non-Federal entity to comply with Federal Statutes, regulations, and terms and conditions of federal awards, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to sub-recipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(2) *Method of accounting and preparation of financial statements.* Annual organization-wide financial statements must be prepared on the accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP), unless State statute, tribal law or regulatory agencies provide otherwise, or an exception is granted by the Agency. An organization may maintain its accounting records on a basis other than accrual accounting, and make the necessary adjustments so that annual financial statements are presented on the accrual basis.

(3) *Record retention.* Each Applicant will retain all records, books, and supporting material for 3 years after the issuance of the audit or management reports, or for a time period required by other agencies or common business practice, whichever is longer. Upon request, this material will be made available to Rural Development, OIG, USDA, the Comptroller General, or to their assignees.

(4) *Audits.* Any applicant that expends \$750,000 or more in Federal financial assistance during their fiscal

year must submit an audit report conducted in accordance with 2 CFR part 200, subpart F, "Audit Requirements." Applicants expending less than \$750,000 in Federal financial assistance per fiscal year are exempt from 2 CFR part 200 audit requirements. All audits are to be performed in accordance with the latest revision of the Generally Accepted Government Accounting Standards (GAGAS), developed by the Comptroller General of the United States. Further guidance on preparing an acceptable audit can be obtained from any Agency office. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. Audits should be supplied to the Processing Official within the timeframes stated in paragraph (f) of this section. OMB Circulars and Agency Compliance Supplements are available in any USDA/Agency office or OMB's Web site. Any state, local government, or Indian tribe that is required by constitution or state statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(a). This requirement must still be in effect for the biennial period. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(b). All biennial audits must cover both years within the biennial period.

(5) *Exemption from audits.* Except as noted in 2 CFR 200.503, Relation to other audit requirement, public bodies or nonprofits expending less than \$750,000 in Federal awards during its fiscal year, whose payments are current, and are having no signs of operational or financial difficulty may submit a management report. A management report, at a minimum, will include a balance sheet and income and expense statement. Financial information may be reported on Form RD 442-2, "Statement of Budget, Income and Equity" and RD Form 442-3, "Balance Sheet", or similar. The following management data will be submitted by the borrower to the servicing office. Records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(i) *Annual management reports.* Thirty days prior to the beginning of

each fiscal year the following will be submitted to the Servicing Official:

(A) One copy of the proposed annual budget. The borrower will submit two copies of Form RD 442-2, or equivalent, Statement of Budget, Income and Equity, Schedule 1, page 1; and Schedule 2, Projected Cash Flow. The only data required at this time is Schedule 1, page 1, Column 3, annual budget, and all of Schedule 2, Projected Cash Flow.

(B) An annual audit report may be submitted in lieu of Forms RD 442-2 and 442-3.

(ii) [Reserved]

(6) *Deadlines for submitting audits and management reports.* In accordance with 2 CFR part 200, audits must be submitted no later than 9 months after the end of the fiscal year or 30 days after the borrower's receipt of the auditor's reports, whichever is earlier. Management reports must be submitted no later than 2 months after the end of the borrower's fiscal year.

(7) *Additional information to be submitted with audits and management reports.* (i) *Insurance.* Agency borrowers will maintain adequate insurance coverage as required by the loan resolution and § 1942.17(j)(3). The servicing official is required to monitor insurance annually after the initial insurance verification.

(ii) *Reserve account(s).* Borrowers will provide documentation that the Agency required reserve account(s) is properly funded;

(iii) *Property tax information.* If applicable, documentation that property taxes have been paid and are current.

(iv) *A list of directors and officers.*

(8) *Quarterly reports.* A quarterly management report will be required for the first full year of operations for new borrowers, and existing borrowers operating a new facility, starting a new type of operation or proposing a significant expansion of an existing facility. Borrowers should submit the following to the Servicing Official:

(i) One copy of Form RD 442-2, or equivalent, Schedule 1, page 1, columns 4-6, as appropriate, and page 2. This information should be received in the Servicing Office 30 days after the end of each of the first three quarters of the fiscal year.

(ii) The Servicing Office may request a borrower experiencing financial or management problems to submit quarterly copies of Form RD 442-2, or equivalent, Schedule 1, pages 1 and 2.

■ 74A. Amend § 1942.18 by revising paragraph (k)(1) to read as follows:

§ 1942.18 Community Facilities—Planning, Bidding, Contracting, Constructing.

* * * * *

(k) * * *

(1) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property, costing in the aggregate not more than the Simplified Acquisition Threshold. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

* * * * *

Subpart B—Housing Application Packaging Grants

■ 74B. Amend § 1944.66 by revising paragraphs (b), (d), (e)(1), (e)(2), and (f) to read as follows:

§ 1944.66 Administrative requirements.

* * * * *

(b) The policies and regulations contained in RD Instruction 1940-Q (available in any Agency office), Departmental Regulation 2400-5, 2 CFR part 200 as adopted by USDA through 2 CFR part 400 apply to grantees under this subpart.

* * * * *

(d) The grantee will retain records for 3 years from the date Standard Form (SF)-269A, "Financial Status Report (Short Form)," is submitted. These records will be accessible to RHS and other Federal officials in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(e) * * *

(1) States, State agencies, or units of general local government will complete an audit in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400 and OMB Circular A-128.

(2) Nonprofit organizations will complete an audit in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(f) Performance reports, as required, will be submitted in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

Subpart G—RBEG and Television Demonstration Grants

■ 75. Amend § 1942.304 by adding the definition for "Conflict of interest" in alphabetical order to read as follows:

§ 1942.304 Definitions.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that

involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

■ 76. Amend § 1942.310 by revising paragraphs (d), (f), and (i) and adding paragraphs (j) and (k) to read as follows:

§ 1942.310 Other considerations.

* * * * *

(d) *Project Management.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under and are subject to 2 CFR part 200, subpart D, as codified in 2 CFR 400.1 and established Rural Development guidelines.

* * * * *

(f) *Uniform Relocation and Real Property Acquisition Policies Act.* All projects must comply with the requirements set forth in Title 49 CFR part 24, which are the implementing regulations for the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) and are referenced by 7 CFR part 21.

* * * * *

(i) *Close Out.* The award will be closed out in accordance with 2 CFR part 200 as codified in 2 CFR part 400. When the project purpose is for revolving loan funds, the grantee must maintain the fund into perpetuity. Once the grantee has provided loan assistance to projects, in an amount equal to the grant provided by Rural Development, the Agency will no longer consider the eligibility of new projects thereafter financed from the revolving fund as required by § 1942.313(b).

(j) *Intergovernmental Review.* RBE/ Television Demonstration grant projects are subject to the provisions of Executive Order 12372 and 2 CFR 415, Subpart C, which requires intergovernmental consultation with State and local officials.

(k) *Conflict of Interest Policy for Non-Federal Entities.* In accordance with 2

CFR 400.2 (b), the non-Federal entities (recipients) must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity and maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest.

■ 77. Amend § 1942.311 by revising paragraph (a)(1) to read as follows:

§ 1942.311 Application processing.

(a) * * *

(1) The application review and approval procedures outlined in § 1942.2 will be followed as appropriate. The applicant shall use Standard Form (SF) 424, "Application for Federal Assistance," and SF 424-A, "Budget Information for Non-Construction Programs," and SF 424-B, "Assurance Agreement for Non-Construction Programs," or SF 424-C, "Budget Information for Construction Programs," and SF 424-D, "Assurance Agreement for Construction Programs," as applicable, when requesting financial assistance under this program.

* * * * *

■ 78. Amend § 1942.314 by adding paragraphs (f)(4) and (f)(5) to read as follows:

§ 1942.314 Grants to provide financial assistance to third parties, television demonstration projects, and technical assistance programs.

* * * * *

(f) * * *

(4) Form RD 400-1, "Equal Opportunity Agreement."

(5) Form RD 400-4, "Assurance Agreement (Under Title VI, Civil Rights Act of 1966)."

* * * * *

■ 79. Amend § 1942.315 by revising paragraph (b) to read as follows:

§ 1942.315 Docket preparation and Letter of Conditions.

* * * * *

(b) The State Director or the State Director's designated representative will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to assure that the proposed development is completed in accordance with approved plans and specifications, that grant funds are expended for authorized purposes, and that the terms of the Scope of Work and requirements as prescribed in the Grant Agreement and Departmental Regulations, as currently codified in 2 CFR parts 400, 415, 417, 418, and 421 are complied with. The Letter of Conditions will be addressed to the applicant, signed by the State Director

or other designated Rural Development representative, and mailed or handed to appropriate applicant officials. Each Letter of Conditions will contain the following paragraphs.

"This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application."

"This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed \$ _____."

"Please complete and return the attached Form RD 1942-46, 'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application."

Form RD 400-1, "Equal Opportunity Agreement," if applicable.

Form RD 400-4, "Assurance Agreement (Under Title VI, Civil Rights Act of 1966)."

■ 80. Amend § 1942.316 by revising the section heading and adding paragraph (d) to read as follows:

§ 1942.316 Grant approval, fund obligation, third party financial assistance and grant servicing.

* * * * *

(d) *Grant servicing.* Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O and the Departmental Grants and Agreements Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421. The only exception is that the delegation of post-award servicing does not require the prior approval of the Administrator.

PART 1944—HOUSING

■ 81. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C 1480.

Subpart I—Self-Help Technical Assistance Grants

■ 82. Amend § 1944.406 by revising paragraph (d) to read as follows:

§ 1944.406 Prohibited use of grant funds.

* * * * *

(d) Paying for training of an employee as authorized by 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

■ 83. Amend § 1944.410 by revising paragraphs (a)(6) and (e)(8) to read as follows:

§ 1944.410 Processing preapplications, applications, and completing grant dockets.

(a) * * *

(6) A proposed budget which will be prepared on SF-424A, "Budget

Information (Non-Construction Programs)” will be completed to address applicable assurances as outlined in 2 CFR part 200 as adopted by USDA through 2 CFR part 400. State and local Government will include an assurance that the grantee shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. The State and local governments shall also comply with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

(e) * * *

(8) Indirect or direct cost policy and proposed indirect cost rate developed in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

■ 84. Amend § 1944.411 by revising paragraphs (c) and (e) to read as follows:

§ 1944.411 Conditions for approving a grant.

* * * * *

(c) The grantee furnishes a signed statement that it complies with the requirements of the Departmental Regulations found in 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(d) * * *

(e) The grantee has fidelity bonding as covered in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 if a nonprofit organization or, if a State or local government, to the extent required in 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

■ 85. Amend § 1944.422 by revising the introductory text and paragraphs (a), (b) introductory text, (b)(1) and (b)(2) to read as follows:

§ 1944.422 Audit and other report requirements.

The grantee must submit an audit to the appropriate Rural Development District Office annually (or biennially if a State or local government with authority to do a less frequent audit requests it) and within 90 days of the end of the grantee’s fiscal year, grant period, or termination of the grant. The audit, conducted by the grantee’s auditors, is to be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS), using the publication “Standards for Audit of Governmental Organizations, Programs, Activities and Functions” developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are

also to be performed in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400 and Rural Development requirements as specified in this subpart. Audits of borrower loan funds will be required. The number of borrower accounts audited will be determined by the auditor. In incidences where it is difficult to determine the appropriate number of accounts to be audited, auditors should be authorized by the State Director to audit the lesser of 10 loans or 10 percent of total loans.

(a) *Nonprofit organizations and others.* If determined necessary, these organizations are to be audited in accordance with Rural Development requirements in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. These requirements also apply to public hospitals, public colleges, and universities if they are excluded from the audit requirements of paragraph (b) of this section.

* * * * *

(b) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and 2 CFR part 200 as adopted by USDA through 2 CFR part 400. The grantee will forward completed audits to the appropriate Federal Cognizant agency and a copy to the Rural Development District Director.

“Cognizant agency” for audits is defined at 2 CFR 200.18 as the Federal agency designated to carry out the responsibilities described in § 200.513 Responsibilities, paragraph (a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the FAC Web site. Within USDA, the OIG shall fulfill cognizant agency responsibilities. Smaller grantees not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that Rural Development provided the major portion of Federal financial assistance, the State Director will contact the appropriate USDA OIG Regional Inspector General. Rural Development and the borrower shall coordinate all proposed audit plans with the appropriate USDA OIG.

(1) State and local governments and Indian tribes that receive \$25,000 or more a year in Federal financial assistance shall have an audit made in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(2) State and local and Indian tribes that receive less than \$25,000 a year in Federal financial assistance shall be exempt from 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

■ 86. Amend § 1944.426 by revising paragraph (c) to read as follows:

§ 1944.426 Grant closeout.

* * * * *

(c) *Grant suspension.* When the grantee has failed to comply with the terms of the agreement, the District Director will promptly report the facts to the State Director. The State Director will consider termination or suspension of the grant usually only after a Grantee has been classified as “high risk” in accordance with § 1944.417(b)(2). When the State Director determines that the grantee has a reasonable potential to correct deficiencies the grant may be suspended. The State Director will request written authorization from the National Office to suspend a grantee. The suspension will adhere to 2 CFR part 200 as adopted by USDA through 2 CFR part 400. The grantee will be notified of the grant suspension in writing by the State Director. The State Director will also promptly inform the grantee of its rights to appeal the decision by use of Exhibit B–3 of Subpart B of part 1900 of this chapter.

* * * * *

■ 87. Amend Exhibit A to subpart I of part 1944 by revising paragraph (i) to read as follows:

Exhibit A to Subpart I of Part 1944—Self-Help Technical Assistance Grant Agreement.

* * * * *

(i) Acquisition and disposal of personal, equipment and supplies should comply with Subpart R of 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

Subpart K—Technical and Supervisory Assistance Grants

■ 88. Amend § 1944.526 by revising paragraph (c)(2) to read as follows:

§ 1944.526 Preapplication procedure.

(c) * * *

(2) Within 30 days of the closing date for receipt of preapplications as published in the **Federal Register**, the State Director will forward to the National Office the original preapplication(s) and supporting documents of the selected applicant(s), including any comments received in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I available in any Rural Development Office and

the comments and recommendations of the County Office(s), District Office(s), and the State Office. The State Office will submit the preapplication(s) in accordance with the annual notice provided for by § 1944.525 (b).

* * * * *

■ 89. Amend § 1944.529 by revising paragraph (b)(9) to read as follows:

§ 1944.529 Project selection.

(b) * * *

(9) Any comments received in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I, available in any Rural Development Office.

* * * * *

■ 90. Amend § 1944.531 by revising paragraph (c)(3) to read as follows:

§ 1944.531 Applications submission.

(c) * * *

(3) Any comments received in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I, available in any Rural Development Office.

* * * * *

■ 91. Amend Exhibit A to subpart K of part 1944 by revising paragraph (Part B)(8)(a), (Part C) (1), and (Part C) (14) to read as follows:

Exhibit A to Subpart K of Part 1944—Grant Agreement—Technical and Supervisory Assistance

Part-B Terms of agreement.

* * * * *

(8) * * *

(a) In accordance with Treasury Circular 1075 (fourth revision) Part 205, Chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by Rural Development as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the Grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 for State and local governments and 2 CFR part 200 as adopted by USDA through 2 CFR part 400 for nonprofit organizations.

* * * * *

Part—C Grantee Agrees.

(1) To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A–102 or Attachment N of 2 CFR part 200 as adopted by USDA through 2 CFR part 400 for State and local governments or nonprofit organizations respectively. “Personal property” means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical

existence, such as patents, inventions, and copyrights. “Nonexpendable personal property” means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. “Expendable personal property” refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall vest in the Grantee subject to the following conditions:

* * * * *

(14) That the Grantee shall abide by the policies promulgated in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment and other services with Federal grant funds.

* * * * *

Subpart N—Housing Preservation Grants

■ 92–93. Amend § 1944.658 by revising paragraph (a)(3) to read as follows:

§ 1944.658 Applicant eligibility.

(a) * * *

(3) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of this regulation, the grant agreement, and 2 CFR part 200 as adopted by USDA through 2 CFR part 400 (available in any Rural Development or its successor agency under Public Law 103–354 office), as appropriate, and comply with the grant agreement and Rural Development or its successor agency under Public Law 103–354 regulations; and

* * * * *

■ 94. Amend § 1944.666 by revising paragraph (e) to read as follows:

§ 1944.666 Administrative activities and policies.

* * * * *

(e) The policies, guidelines and requirements of 2 CFR part 200, as adopted by USDA through 2 CFR part 400, apply to the acceptance and use of HPG funds.

■ 95. Amend § 1944.670 by revising paragraph (a) to read as follows:

§ 1944.670 Project income.

(a) Project income during the grant period from loans made to homeowners, owners of rental properties, and co-ops is governed by 2 CFR part 200 as adopted by USDA through 2 CFR part 400. All income during the grant period, including amounts recovered by the

grantee due to breach of agreements between the grantee and the HPG recipient, must be used under (and in accordance with) the requirements of the HPG program.

* * * * *

■ 96. Amend § 1944.676 by revising paragraph (b)(1)(x) to read as follows:

§ 1944.676 Preapplication procedures.

* * * * *

(b) * * *

(1) * * *

(x) A copy of an indirect cost proposal as required in 2 CFR part 200 as adopted by USDA through 2 CFR part 400, when the applicant has another source of federal funding in addition to the Rural Development or its successor agency under Public Law 103–354 HPG program;

* * * * *

■ 97. Amend § 1944.688 by revising paragraph (e) to read as follows:

§ 1944.688 Grant evaluation, closeout, suspension, and termination.

* * * * *

(e) The grantee will have an audit performed upon termination or completion of the project in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

■ 98. Amend § 1944.689 by revising paragraph (a)(3) to read as follows:

§ 1944.689 Long-term monitoring by grantee.

(a) * * *

(3) All requirements noted in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 during the effective period of the grant agreement.

* * * * *

■ 99. Amend Exhibit A of subpart N of part 1944 by revising paragraphs (Part A)(3), (Part B)(9), (Part B)(18)(a)(ii), and (Part C)(13) to read as follows:

Exhibit A to Subpart N of Part 1944—Housing Preservation Grant Agreement

* * * * *

*Part A * * **

(3) *Disallowed costs* are those charges to a grant which Rural Development or its successor agency under Public Law 103–354 determines cannot be authorized in accordance with applicable Federal cost principles contained in Treasury Circular 74–4, “Cost Principles Applicable to Grants and Contracts with State and Local Governments,” OMB Circular A–87, “Cost Principles for State and Local Governments,” OMB Circular A–122, “Cost Principles for Nonprofit Organizations,” and other conditions contained in this Agreement and OMB Circular A–102 “Uniform Requirements

for Grants to State and Local Governments,” and OMB Circular A-110, “Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, Uniform Administrative Requirements,” as appropriate, and 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

Part B * * *

(9) In accordance with Treasury Circular 1075 (fourth revision) part 205, chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by Rural Development or its successor agency under Public Law 103-354 as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated to OMB Circular A-102 (42 FR 45828, September 12, 1977) for State and local governments and OMB Circular A-110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

* * * * *

(18) * * *

(a) * * *

(ii) The grantee will furnish to Rural Development or its successor agency under Public Law 103-354 within 90 calendar days after the date of completion of the grant an SF-269 and all financial, performance, and other reports required as a condition of the grant, including an audit report.

* * * * *

Part C * * *

* * * * *

(13) That the grantee shall abide by the policies promulgated in OMB Circular A-102, Attachment O, or OMB Circular A-110, Attachment O, as applicable, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

PART 1951—SERVICING AND COLLECTIONS

■ 100. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Insured Business Program Loans and Grants

■ 101. Amend § 1951.215 by revising paragraph (a) introductory text and removing paragraph (a)(3) to read as follows:

§ 1951.215 Grants.

* * * * *

(a) *Applicability of requirements.* Servicing actions relating to Rural Development or its successor agency under Public Law 103-354 grants are governed by the provisions of this

subpart, the terms of the Grant Agreement and, if applicable, the provisions of 2 CFR parts 200, 400, 415, 417, 418, and 421.

* * * * *

Subpart R—Rural Development Loan Servicing

■ 102. Add § 1951.872 to read as follows:

§ 1951.872 Other regulatory requirements.

Intergovernmental consultation. The RDLF program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the loan funds for the ultimate recipient. Prior to Rural Development's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with the requirements set forth in U.S. Department of Agriculture regulations 2 CFR part 415, subpart C, and RD Instruction 1970-I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

PART 1980—GENERAL

■ 103. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart E—Business and Industrial Loan Program

■ 104. Amend § 1980.445 by revising paragraphs (a) and (e) to read as follows:

§ 1980.445 Periodic financial statements and audits.

* * * * *

(a) *Audited financial statements.* Except as provided in paragraphs (d) and (e) of this section, all borrowers with a total principal and interest loan balance for loans under this subpart, at the end of the borrower's fiscal year, of more than \$1 million must submit annual audited financial statements. The audit must be performed in

accordance with generally accepted accounting principles (GAAP) and any other requirements specified in this subpart.

* * * * *

(e) *Public bodies and nonprofit corporations.* Notwithstanding other provisions of this section, any public body or nonprofit corporation that receives a guarantee of a loan that meets the thresholds established by 2 CFR part 200, subpart F, as codified by 2 CFR 400.1, must provide an audit for the fiscal year of the borrower in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation required by this paragraph will be considered adequate to meet the requirements of this section for that year.

■ 105. Amend § 1980.451 by revising paragraph (f)(8) to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(f) * * *
(8) Intergovernmental consultation should be carried out in accordance with 2 CFR part 415, subpart C, "Intergovernmental Review of Department of Agriculture Programs and Activities."

* * * * *

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

PART 3570—COMMUNITY PROGRAMS

■ 106. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B—Community Facilities Grant Program

■ 107. Amend § 3570.51 by revising paragraph (g) and adding paragraph (j) to read as follows:

§ 3570.51 General.

* * * * *

(g). Grants made under this subpart will be administered under, and are subject to, 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as appropriate.

* * * * *

(j). The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2

CFR part 200 on December 26, 2013. In 2 CFR part 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Departments' policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

* * * * *

■ 108–109. Amend § 3570.70 by revising paragraphs (b) and (c) to read as follows:

§ 3570.70 Other considerations.

* * * * *

(b). Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace are applicable to CFG grants and grantees. See 2 CFR part 180, as implemented by USDA through 2 CFR part 417, and RD Instruction 1940–M for further guidance.

(c). Restrictions on lobbying. Grantees must comply with the lobbying restrictions set forth in 2 CFR part 418 subpart A.

* * * * *

■ 110. Amend § 3570.80 by revising paragraph (c) to read as follows:

§ 3570.80 Grant closing and delivery of funds.

* * * * *

(c) Approval officials may require applicants to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 as subsequently modified.

* * * * *

■ 111. Amend § 3570.83 by revising paragraph (a) to read as follows:

§ 3570.83 Audits.

(a). An audit will be conducted in accordance with 2 CFR part 200 subpart F, as adopted by USDA through 2 CFR part 400, except as provided in this section. The audit requirements apply only to the years in which grant funds are expended.

* * * * *

■ 112. Revise § 3570.84 to read as follows:

§ 3570.84 Grant servicing.

Grants will be serviced in accordance with RD Instructions 1951–E and 1951–O and 2 CFR part 200 as applicable.

■ 113. Revise § 3570.87 to read as follows:

§ 3570.87 Grant suspension, termination, and cancellation.

Grants may be suspended or terminated for cause or convenience in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable.

■ 114. Revise § 3570.91 to read as follows:

§ 3570.91 Regulations.

Grants under this part will be in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable, and any conflicts between those parts and this part will be resolved in favor of applicable 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

■ 115. Add § 3570.92 to read as follows:

§ 3570.92 Grant agreement.

Form RD 3570–3 is a Grant Agreement which contains the procedures for making and servicing grants made under this part. Any property acquired or improved with CFG funds may have use and disposition conditions which apply to the property as provided by 2 CFR 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.

PART 3575—GENERAL

■ 116. The authority citation for part 3575 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—Community Programs Guaranteed Loans

■ 117. Amend § 3575.1 by adding paragraph (c) to read as follows:

§ 3575.1 General.

* * * * *

(c) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR part 400, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Departments' policies and procedures for uniform administrative requirement, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

■ 118. Amend § 3575.2 by revising the definition of "State" to read as follows:

§ 3575.2 Definitions.

* * * * *

State. Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and an agency or instrumentality thereof exclusive of local governments.

* * * * *

■ 119. Amend § 3575.27 by revising paragraph (b) to read as follows:

§ 3575.27 Eligible lenders.

* * * * *

(b) *Conflict of interest.* The lender and borrower must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award and administration of Federal awards. No employee, officer or agent may participate in the selection, award or administration of a Federal award if they have a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in or a tangible personal benefit from a non-Federal entity considered for a Federal award. The lender may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards must provide for disciplinary actions to be applied for violations of such standards. If the lender has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the lender or borrower, written standards of conduct covering organizational conflict of interest must also be maintained. Organizational conflicts of interest means that because of the relationships with a parent company, affiliate, or subsidiary organization, the lender or borrower is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization. The lender or borrower must disclose such business or ownership relationships in writing. The Agency will determine if such relationships are likely to result in a conflict of interest. This does not preclude lender officials from being on the borrower's board of directors.

* * * * *

■ 120. Revise § 3575.37 to read as follows:

§ 3575.37 Insurance and fidelity bonds.

The lender must provide evidence that the borrower has adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage must be maintained for the life of the loan and is subject to Agency review and approval. Insurance is required in amounts at least equal to coverage for real property and equipment that was obtained without an Agency guarantee.

■ 121. Amend § 3575.64 by adding paragraph (f) to read as follows:

§ 3575.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

* * * * *

(f) *Cancellation of obligation.* If the conditions for the loan are rejected, cannot be met after completion of any appeal, or funds are, in whole or in part, no longer needed, the State Director will cancel the obligation. This can be done using the State Office terminal. Requests for partial cancellation must be in writing and include a reason for the partial cancellation, the effective date, and the portion to be cancelled.

* * * * *

CHAPTER XLII—RURAL BUSINESS—COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4274—DIRECT AND INSURED LOANMAKING

■ 122. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program

■ 123. Amend § 4274.302 by adding a definition for “Conflict of interest” in alphabetical order to read as follows:

§ 4274.302 Definitions and abbreviations.

* * * * *

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the

project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

■ 124. Amend § 4274.338 by revising paragraphs (b)(4)(i)(B) and (b)(4)(ii)(C) to read as follows:

§ 4274.338 Loan Agreements between the Agency and the intermediary.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by 2 CFR part 200, subpart F, as codified in 2 CFR 400.1, should submit audits made in accordance with that regulation.

(ii) * * *

(C) The reports will be submitted through the Agency approved electronic system and includes information on the intermediary's lending activity, income and expenses, financial condition and a summary of applicable information of the ultimate recipients the intermediary has financed.

* * * * *

■ 125. Amend § 4274.343 by revising paragraph (a)(13) to read as follows:

§ 4274.343 Applications.

(a) * * *

(13) A statement on a form provided by the Agency (Appendix B to Part 418—Disclosure Form to Report Lobbying) regarding lobbying, as required by 2 CFR part 418.

* * * * *

PART 4279—GUARANTEED LOANMAKING

■ 126. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

Subpart A—General

■ 127. Amend § 4279.43 by revising paragraph (g)(1)(v) to read as follows:

§ 4279.43 Certified Lender Program.

* * * * *

(g) * * *

(1) * * *

(v) Intergovernmental consultation comments in accordance with 2 CFR part 415, subpart C; and

* * * * *

■ 128. Revise § 4279.71 to read as follows:

§ 4279.71 Public bodies and nonprofit corporations.

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by 2 CFR part 200, subpart F, as codified by 2 CFR 400.1, must provide an audit for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with paragraph will be considered adequate to meet the audit requirements of the B&I program for that year.

Subpart B—Business and Industry Loans

■ 129. Amend § 4279.161 by revising paragraph (b)(5) to read as follows:

§ 4279.161 Filing preapplications and applications.

* * * * *

(b) * * *

(5) Intergovernmental consultation comments in accordance with 2 CFR part 415, subpart C.

* * * * *

Subpart C—Biorefinery Assistance Loans

■ 130. Amend § 4279.261 by revising paragraph (l) to read as follows:

§ 4279.261 Application for loan guarantee content.

* * * * *

(l) *Intergovernmental consultation.* Intergovernmental consultation comments in accordance with RD Instruction 1940–J and 7 CFR part 415, subpart C.

* * * * *

PART 4280—LOANS AND GRANTS

■ 131. The authority citation for part 4280 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 940c; 7 U.S.C. 8107.

Subpart A—Rural Economic Development Loan and Grant Programs

■ 132. Amend § 4280.3 by adding a definition of “Conflict of interest” in alphabetical order to read as follows:

§ 4280.3 Definitions.

* * * * *

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

■ 133. Revise § 4280.19 to read as follows:

§ 4280.19 REDG Grants.

Intermediaries receiving Grants must partially finance a Revolving Loan Fund that the Intermediary will operate and administer, by providing supplemental funds of at least 20 percent of the Grant. Grants are subject to 2 CFR parts 200, 400, 415, 417, 418, 421 as applicable.

■ 134. Amend § 4280.23 by revising paragraph (f) to read as follows:

§ 4280.23 Requirements for lending from Revolving Loan Fund.

* * * * *

(f) *Termination for cause.* Rural Development will terminate the Fund and require repayment of the Grant funds if Rural Development determines that the Fund is not being operated according to the approved Revolving Loan Fund Plan, this subpart, or for other good cause determined by Rural Development, such as questionable prepayment of initial loans. As applicable, Rural Development will follow remedies for noncompliance, closeout and post-closeout adjustments and continuing responsibilities in accordance with 2 CFR 200.338–200.344 as codified by 2 CFR 400.1.

* * * * *

■ 135. Amend § 4280.30 by revising paragraph (a) to read as follows:

§ 4280.30 Restrictions on the use of REDL or REDG funds.

(a) *Conflict of interest.* The Intermediary must not own or manage any Ultimate Recipient Project, unless the Project is acquired as a result of servicing a loan made from the Revolving Loan Fund. Conflicts of interest and all appearances of a conflict of interest are not permitted. The intermediary must also disclose in writing any potential conflicts of interest to the USDA awarding agency and maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest in accordance with 2 CFR 400.2(b).

* * * * *

■ 136. Amend § 4280.36 by revising paragraphs (f), (g), (h), (i) and (n) to read as follows:

§ 4280.36 Other laws that contain compliance requirements for these Programs.

* * * * *

(f) *Drug-free workplace.* Grants made under these Programs are subject to the requirements contained in 2 CFR part 421 which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101 *et seq.*). An Intermediary requesting a REDG Grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(g) *Debarment and suspension.* The requirements of 2 CFR part 180 and Departmental Regulations 2 CFR part 417, Nonprocurement Debarment, and Suspension are applicable to these Programs.

(h) *Intergovernmental review of Federal programs.* These Programs are subject to the requirements of Executive Order 12372 (3 CFR 1982 Comp., p. 197) and 2 CFR part 415, subpart C, which implements Executive Order 12372. Proposed Projects are subject to the State and local government review process contained in 2 CFR part 415, subpart C.

(i) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, and 2 CFR part 418, are applicable to these Programs.

* * * * *

(n) *Audits.* These Programs are subject to 2 CFR part 200, subpart F, as codified in 2 CFR part 400.1.

* * * * *

■ 137. Amend § 4280.50 by revising paragraphs (c) introductory text and (c)(2) to read as follows:

§ 4280.50 Disbursement of Zero-Interest Loan funds.

* * * * *

(c) For a REDG loan, Rural Development will disburse Grant funds to the Intermediary in accordance with 2 CFR 200 as adopted by USDA in 2 CFR part 400 as applicable. Specifically, Rural Development will disburse the Grant funds in advance if the following requirements are met:

* * * * *

(2) The management system of the Intermediary meets the requirements of 2 CFR part 200 as adopted by USDA in 2 CFR part 400, as applicable;

* * * * *

■ 138. Amend § 4280.55 by revising paragraph (c) to read as follows:

§ 4280.55 Monitoring responsibilities.

* * * * *

(c) Rural Development will review and monitor Grants in accordance with 2 CFR part 200, as adopted by USDA in 2 CFR parts 400, 415, 417, 418, and 421 as applicable.

* * * * *

■ 139. Amend § 4280.56 by revising paragraphs (a) introductory text, (b) and (c) to read as follows:

§ 4280.56 Submission of reports and audits.

* * * * *

(a) In addition to any reports and audits required by 2 CFR part 200 and Subpart F as adopted by USDA in 2 CFR part 400, the Intermediary must submit the following monitoring reports to Rural Development:

* * * * *

(b) If the Intermediary does not have an existing loan with RUS, the Intermediary will submit a copy of its annual audit to Rural Development within 90 days of its completion. All REDL audits must be conducted in accordance with Generally Accepted Government Auditing Standards or Generally Accepted Accounting Principles and REDG audits in accordance with 2 CFR part 200 as adopted by USDA in 2 CFR part 400.

(c) Rural Development may require Ultimate Recipients that receive loans financed with Grant funds provided under the REDG Program to submit annual audits to comply with Federal audit regulations. In accordance with 2 CFR part 200, as adopted by USDA in 2 CFR part 400, Ultimate Recipients that are nonprofit entities, or a State or local government, may be required to submit an audit subject to the threshold established in 2 CFR part 200, as adopted by in 2 CFR part 400.

Subpart B—Rural Energy for America Program

■ 140. Amend § 4280.103 by revising the definition of “Departmental regulations” to read as follows:

§ 4280.103 Definitions.

* * * * *

Departmental regulations. The Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, 421,.

* * * * *

Subpart D—Rural Microentrepreneur Assistance Program

■ 141. Amend § 4280.302 by adding the definition of “Conflict of interest” in alphabetical order to read as follows:

§ 4280.302 Definitions and abbreviations.

* * * * *

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or a tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

■ 142. Amend § 4280.311 by revising paragraph (h)(1)(i), removing paragraph (h)(1)(ii), and redesignating paragraph (h)(1)(iii) as paragraph (h)(1)(ii) to read as follows:

§ 4280.311 Loan provisions for Agency loans to microlenders.

* * * * *

- (h) * * *
- (1) * * *

(i) Quarterly reports, using an Agency-approved automation system, containing such information as the Agency may require, and in accordance with 2 CFR part 200 as adopted by USDA in 2 CFR part 400, to ensure that funds provided are being used for the purposes for which the loan to the

microlender was made. At a minimum, these reports must identify each microborrower under this program and should include a discussion reconciling the microlender’s actual results for the period against its goals, milestones, and objectives as provided in the application package; and

* * * * *

■ 143. Amend § 4280.320 by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows and remove (a)(1)(iii):

§ 4280.320 Grant administration.

* * * * *

- (a) * * *
- (1) * * *

(i) A program performance report required by 2 CFR part 200 as adopted by USDA in 2 CFR part 400. This report will include information on the microlender’s technical assistance, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information; and

- (ii) As appropriate, SF–270.

* * * * *

■ 144. Amend § 4280.321 by revising paragraph (a) to read as follows:

§ 4280.321 Grant and loan servicing.

* * * * *

(a) *Grants.* Grants will be serviced in accordance with the Department of Agriculture regulations including, but not limited to 7 CFR part 1951, subparts E and O and 2 CFR parts 400, 415, 417, 418, and 421; and

* * * * *

■ 145. Amend § 4280.323 by revising paragraph (m) to read as follows:

§ 4280.323 Ineligible microloan purposes and uses.

* * * * *

(m) Any lobbying activities as described in 2 CFR part 418.

* * * * *

PART 4284—GRANTS

■ 146. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart F also issued under 7 U.S.C. 1932(e). Subpart G also issued under 7 U.S.C. 1926(a)(11). Subpart J also issued under 7 U.S.C. 1621 note. Subpart K also issued under 7 U.S.C. 1621 note.

Subpart A—General Requirements for Cooperative Services Grant Program

■ 147. Amend § 4284.3 by removing the definition “Agriculture Producer Group,” adding the definition “Conflict of Interest” in alphabetical order, revising the definition “Matching

Funds,” and removing the definition “Emerging Markets,” to read as follows:

§ 4284.3 Definitions.

* * * * *

Conflict of interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or a tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. In cases of tribally-owned businesses, to avoid a conflict of interest, any business assisted by a tribe must be held through a separate entity, such as a tribal corporation. The separate entity may be owned by the tribe and distribute profits to the tribe. However, the entity’s governing board must be independent from the tribal government and be elected or appointed for a specific time period. These board members must not be subject to removal without cause by the tribal government. The entity’s board members must not, now or in the future, make up the majority of members of the tribal council or be members of the tribal council or other governing board of the tribe.

* * * * *

Matching Funds—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Unless otherwise provided, in-kind contributions that conform to the provisions of 2 CFR part 200 as adopted by USDA in 2 CFR part 400 can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, not less than the pro-rata portion of matching funds shall have been expended prior to submitting the request for reimbursement. Matching

funds are subject to the same use restrictions as grant funds.

* * * * *
 ■ 148. Revise § 4284.8 to read as follows:

§ 4284.8 Grant approval and obligation of funds.

The following statement will be entered in the comment section of the Request for Obligation of Funds, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in the applicable 7 CFR part 4284 and the Grants and Agreements Departmental Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421, in effect on the date of grant approval, and the approved Letter of Conditions.

■ 149. Revise § 4284.9 to read as follows:

§ 4284.9 Grant disbursement.

The Agency will determine, based on 2 CFR part 200 as adopted by USDA in 2 CFR part 400 whether disbursement of a grant will be by advance or reimbursement.

■ 150. Amend § 4284.11 by revising paragraphs (a) and (b) to read as follows:

§ 4284.11 Award requirements.

* * * * *

(a) Enter into an Agency-approved grant agreement with RBS;

(b) Disclose in writing any potential conflicts of interest and maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest in accordance with 2 CFR 400.2;

* * * * *

■ 151. Amend § 4284.12 by revising paragraph (a) to read as follows:

§ 4284.12 Reporting requirements.

* * * * *

(a) A “Financial Status Report” listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end as identified in the grant agreement or applicable program attachment. Reports are due 30 days after the reporting period ends. Failure to submit the required reports within the specified time frame is considered cause for suspension or termination of the grant.

* * * * *

■ 152. Revise § 4284.14 to read as follows:

§ 4284.14 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O

and the Departmental Grants and Agreements Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421. The only exception is that the delegation of post-award servicing does not require the prior approval of the Administrator. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee’s activities shall be made available to the general public on an equal basis.

■ 153. Amend § 4284.16 by revising paragraph (c) to read as follows:

§ 4284.16 Other considerations.

* * * * *

(c) *Other USDA regulations.* The grant programs under this part are subject to the provisions of the following regulations, as applicable:

(1) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(2) 2 CFR part 415, General Program Administrative Regulations;

(3) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(4) 2 CFR part 418, New Restrictions on Lobbying; and

(5) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance).

■ 154. Revise § 4284.18 to read as follows:

§ 4284.18 Audit requirements.

Grantees must comply with the audit requirements of 2 CFR part 200 as adopted by USDA in 2 CFR part 400. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

Subpart G—Rural Business Opportunity Grants

■ 155. Amend § 4284.630 by revising paragraph (c) to read as follows:

§ 4284.630 Other considerations.

* * * * *

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable:

(1) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(2) 2 CFR part 415, General Program Administrative Regulations;

(3) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(4) 2 CFR part 418, New Restrictions on Lobbying; and

(5) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance).

■ 156. Amend § 4284.638 by revising paragraph (a)(2)(vi) to read as follows:

§ 4284.638 Application processing.

(a) * * *

(2) * * *

(vi) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372 and 2 CFR part 415, subpart C.

* * * * *

■ 157. Revise § 4284.647 to read as follows:

§ 4284.647 Grant approval and obligation of funds.

(a) The following statement will be entered in the comment section of the Request For Obligation of Funds, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those contained in 7 CFR part 4284, subparts A and G, and the Grants and Agreements Departmental Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421, in effect on the date of grant approval; and the approved Letter of Conditions.

(b) The Agency and the grantee must enter into an Agency-approved grant agreement prior to the advance of funds.

■ 158. Revise § 4284.648 to read as follows:

§ 4284.648 Fund disbursement.

The Agency will determine, based on 2 CFR part 200 as adopted by USDA in 2 CFR part 400, whether disbursement of a grant will be by advance or reimbursement. A Request for Advance or Reimbursement, (available in any Agency office) must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

■ 159. Revise § 4284.657 to read as follows:

§ 4284.657 Audit requirements.

Grantees must provide an annual audit in accordance with 2 CFR part 200, as adopted by USDA in 2 CFR part 400. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished that will be paid for with grant funds.

Subpart J—Value-Added Producer Grant Program

■ 160. Amend § 4284.902 by revising the definition for “Departmental regulations” to read as follows:

§ 4284.902 Definitions.

* * * * *

Departmental regulations. The Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, and 421.

* * * * *

■ 161. Revise § 4284.908 to read as follows:

§ 4284.908 Compliance with other regulations.

(a) Departmental regulations. Applicants must comply with the Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, and 421.

(b) Cost principles. Applicants must comply with the applicable cost principles found in 2 CFR part 200, as adopted by USDA in 2 CFR part 400 and in 48 CFR 31.2.

(c) Definitions. If a term is defined differently in the Departmental Regulations, 2 CFR part 200, or 48 CFR 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

■ 162. Amend § 4284.921 by revising paragraph (a) to read as follows:

§ 4284.921 Ineligible applicants.

(a) Consistent with the Departmental regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and 2 CFR part 180, as adopted by USDA in 2 CFR part 417.

* * * * *

■ 163. Amend § 4284.924 by revising paragraph (j) to read as follows:

§ 4284.924 Ineligible uses of grant and matching funds.

* * * * *

(j) Fund any activities prohibited by the Departmental Regulations, 2 CFR part 200, as adopted by USDA in 2 CFR part 400 and 48 CFR 31.2.

* * * * *

PART 4285—COOPERATIVE AGREEMENTS

■ 164. The authority citation for part 4285 continues to read as follows:

Authority: 7 U.S.C. 1623; Public Law 103-111, 107 Stat. 1046; 7 U.S.C. 2201; USDA Secretary's Memorandum 1020-39, dated September 30, 1993; and Public Law 103-211, 108 Stat. 3.

Subpart A—Federal-State Research on Cooperatives Program

■ 165. Amend § 4285.81 by revising paragraph (a) to read as follows:

§ 4285.81 Cooperative agreement awards.

(a) General. Within the limit of funds available for such purpose, the awarding official shall make awards for cooperative agreements to those applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Assistant Administrator for Cooperative Services as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this part shall be expended solely in accordance with the methods identified in approved application and budget, the regulations of this part, the terms and conditions of the award, the Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, and 421.

* * * * *

■ 166. Amend § 4285.93 by revising paragraphs (e), (f), (g), (h), (i), (j), and (k) to read as follows:

§ 4285.93 Other Federal statutes and regulations that apply.

* * * * *

(e) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(f) 2 CFR part 415, General Program Administrative Regulations;

(g) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(h) 2 CFR part 418, New Restrictions on Lobbying;

(i) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance);

(j) 7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions; 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

(k) 35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

■ 167. Revise § 4285.94 to read as follows:

§ 4285.94 Other conditions.

Post-award requirements. Upon awarding the cooperative agreement, the post-award and audit requirements of 2 CFR part 200, as adopted by USDA in 2 CFR part 400 apply.

PART 4290—RURAL BUSINESS INVESTMENT COMPANY ("RBIC") PROGRAM

■ 168. The authority citation for part 4290 continues to read as follows:

Authority: 7 U.S.C. 1989 and 2009cc et seq.

Subpart B—Definition of Terms Used in Part 4290

■ 169. Amend § 4290.50 by adding the definition for "Conflict of interest" in alphabetical order to read as follows:

§ 4290.50 Definition of terms.

* * * * *

Conflict of interest means a situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or a tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

■ 170. Amend § 4290.600 by revising paragraph (d) to read as follows:

§ 4290.600 General requirement for RBIC to maintain and preserve records.

* * * * *

(d) Additional requirement. You must comply with the recordkeeping and record retention requirements set forth in 2 CFR part 200, as adopted by USDA in 2 CFR part 400.

■ 171. Amend § 4290.660 by revising paragraph (e) to read as follows:

§ 4290.660 Other items required to be filed by RBIC with the Secretary.

* * * * *

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in 2 CFR part 200, subpart D, as codified in 2 CFR 400.1 and any grant award document executed between you and the Secretary.

* * * * *

Subpart M—Miscellaneous

■ 172. Amend § 4290.1940 by revising paragraphs (a) and (f) to read as follows:

§ 4290.1940 Integration of this part with other regulations applicable to USDA's programs.

(a) *Intergovernmental review.* To the extent applicable to this part, the Secretary will comply with 2 CFR part 415, subpart C, "Intergovernmental Review of Department of Agriculture Programs and Activities." The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45.

* * * * *

(f) *Conflict of interest.* To the extent applicable to this part, the Secretary will comply with 2 CFR 400.2, subpart D of 7 CFR part 1900, and RD Instruction 2045–BB. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45.

* * * * *

Jon M. Holladay,
Chief Financial Officer.

Department of State

For the reasons set forth in the common preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR Chapter VI and 22 CFR Chapter I are amended as follows:

Title 2—Grants and Agreements

CHAPTER VI—DEPARTMENT OF STATE

■ 1. Part 600 is added to Title 2, Chapter XI of the Code of Federal Regulations to read as follows:

PART 600—THE UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.
600.101 Applicability.
600.205 Federal awarding agency review of risk posed by applicants.
600.315 Intangible property.
600.407 Prior written approval (prior approval).

Authority: 5 U.S.C. 301; 22 U.S.C 2651a, 22 U.S.C. 2151, 22 U.S.C. 2451, 22 U.S.C. 1461, 2 CFR part 200.

§ 600.101 Applicability.

Under the authority listed above, the Department of State adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for:

(a) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 (Subparts A through F) shall apply to all non-Federal entities, except as noted below.

(b) Subparts A through E of 2 CFR part 200 shall apply to all foreign organizations not recognized as Foreign Public Entities and Subparts A through D of 2 CFR part 200 shall apply to all U.S. and foreign for-profit entities, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government. The Federal Acquisition Regulation (FAR) at 48 CFR part 30, Cost Accounting Standards, and Part 31 Contract Cost Principles and Procedures takes precedence over the cost principles in Subpart E for Federal awards to U.S. and foreign for-profit entities. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

§ 600.205 Federal awarding agency review of risk posed by applicants.

Use of 2 CFR 200.205 (the DOS review of risk posed by applicants) is required for all selected competitive and non-competitive awards.

§ 600.315 Intangible property.

If the DOS obtains research data solely in response to a FOIA request, the DOS may charge the requester fees consistent with the FOIA and applicable DOS regulations and policies.

§ 600.407 Prior written approval (prior approval).

The non-Federal entity must seek the prior written approval for indirect or special or unusual costs prior to incurring such costs where DOS is the cognizant agency.

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

PART 135—[REMOVED]

■ 2. 22 CFR part 135 is removed.

PART 145—[REMOVED]

■ 3. 22 CFR part 145 is removed.

Corey Rindner,
Procurement Executive.

Agency for International Development

For the reasons stated in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below Title 2, Chapter VII and Title 22, Chapter II of the Code of Federal Regulations are amended as follows:

Title 2—Grants and Agreements

CHAPTER VII—AGENCY FOR INTERNATIONAL DEVELOPMENT

■ 1. Part 700 is added to read as follows:

PART 700—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

Subpart A—Acronyms and Definitions

700.1 Definitions

Subpart B—General Provisions

700.2 Adoption of 2 CFR part 200
700.3 Applicability
700.4 Exceptions
700.5 Supersession

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

700.6 Metric system of measurement
700.7 Advance Payment

Subpart D—Post Federal Award Requirements

700.8 Payment.
700.9 Property standards.
700.10 Cost sharing or matching.
700.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
700.12 Contract provisions.
700.13 Additional Provisions for Awards to Commercial Organizations.

Remedies for Noncompliance

700.14 Termination.
700.15 Disputes.

USAID-Specific Requirements

700.16 Marking.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat 445, (22 U.S.C. 2381) as amended, E.O. 12163, Sept 29, 1979, 44 FR 56673; 2 CFR 1979 Comp., p. 435.

Subpart A—Acronyms and Definitions

§ 700.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

(a) *Activity* mean a set of actions through which inputs—such as commodities, technical assistance, training, or resource transfers—are mobilized to produce specific outputs, such as vaccinations given, schools built, microenterprise loans issued, or policies changed. Activities are undertaken to achieve objectives that have been formally approved and notified to Congress.

(b) *Agreement Officer* means a person with the authority to enter into, administer, terminate and/or closeout assistance agreements subject to this part, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly authorized warrant or other valid delegation of authority. The term “Agreement Officer” includes persons warranted as “Grant Officers.” It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer.

(c) *Apparently successful applicant(s)* means the applicant(s) for USAID funding recommended for an award after technical evaluation, but who has not yet been awarded a grant, cooperative agreement or other assistance award by the Agreement Officer. Apparently successful applicants will be requested by the Agreement Officer to submit a Branding Strategy and Marking Plan. Apparently successful applicant status confers no right and constitutes no USAID commitment to an award, which still must be executed by the Agreement Officer.

(d) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants, cooperative agreements and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(e) *Branding strategy* means a strategy the apparently successful applicant submits at the specific request of a USAID Agreement Officer after technical evaluation of an application for USAID funding, describing how the program, project, or activity is named and positioned, as well as how it is promoted and communicated to

beneficiaries and cooperating country citizens. It identifies all donors and explains how they will be acknowledged. A Branding Strategy is required even if a Presumptive Exception is approved in the Marking Plan.

(f) *Commodities* mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient's internal use in administration of the USAID funded grant, cooperative agreement, or other agreement or subagreement.

(g) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which USAID sponsorship ends.

(h) *Marking plan* means a plan that the apparently successful applicant submits at the specific request of a USAID Agreement Officer after technical evaluation of an application for USAID funding, detailing the public communications, commodities, and program materials and other items that will visibly bear the USAID Identity. Recipients may request approval of Presumptive Exceptions to marking requirements in the Marking Plan.

(i) *Program* mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

(j) *Public communications* are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences and the like.

(k) *Suspension* means an action by USAID that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award. Suspension of an award is a separate action from

suspension under USAID regulations implementing E.O.'s 12549 and 12689, “Debarment and Suspension.” See 2 CFR part 780.

(l) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(m) *USAID* means the United States Agency for International Development.

(n) *USAID Identity* (Identity) means the official marking for the United States Agency for International Development (USAID) comprised of the USAID logo or seal and new brandmark with the tagline that clearly communicates our assistance is “from the American people.” In exceptional circumstances, upon a written determination by the USAID Administrator, the definition of the USAID Identity may be amended to include additional or substitute use of a logo or seal and tagline representing a presidential initiative or other high level interagency federal initiative that requires consistent and uniform branding and marking by all participating agencies. The USAID Identity (including any required presidential initiative or related identity) is available on the USAID Web site at <http://www.usaid.gov/branding> and is provided without royalty, license or other fee to recipients of USAID funded grants or cooperative agreements or other assistance awards.

Subpart B—General Provisions

§ 700.2 Adoption of 2 CFR part 200.

Under the authority listed above the Agency for International Development adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by this part, as the Agency for International Development (USAID) policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part.

§ 700.3 Applicability.

Uniform administrative requirements and cost principles (Subparts A through E of 2 CFR part 200 as supplemented by this part) apply to for-profit entities.

§ 700.4 Exceptions.

(a) Consistent with 2 CFR 200.102(b):
(1) Exceptions on a case-by-case basis for individual non-Federal entities may

be authorized by USAID's Senior Deputy Assistant Administrator, Bureau for Management, except where otherwise required by law or where OMB or other approval is expressly required by this Part. No case-by-case exceptions may be granted to the provisions of Subpart F—Audit Requirements of this Part.

(2) USAID's Senior Deputy Assistant Administrator, Bureau for Management is also authorized to approve exceptions, on a class or an individual case basis, to USAID program specific assistance regulations other than those which implement statutory and executive order requirements.

(3) The Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, required by Federal statutes or regulations except for the requirements in Subpart F—Audit Requirements of this part. A Federal awarding agency may apply less restrictive requirements when making awards at or below the simplified acquisition threshold, or when making fixed amount awards as defined in Subpart A—Acronyms and Definitions of this part, except for those requirements imposed by statute or in Subpart F—Audit Requirements of this part.

§ 700.5 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under Title 22 of the Code of Federal Regulations: 22 CFR part 226, "Administration of Assistance Awards To U.S. Non-Governmental Organizations."

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 700.6 Metric system of measurement.

(a) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce.

(b) Wherever measurements are required or authorized, they must be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the agreement officer in writing when it has been found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the

traditional equivalent units, provided the metric units are listed first.

§ 700.7 Advance payment.

(a) Advance payment mechanisms include, but are not limited to, Letter of Credit, Treasury check and electronic funds transfer and should comply with applicable guidance in 31 CFR part 208.

Subpart D—Post Federal Award Requirements

§ 700.8 Payment.

(a) Use of resources before requesting advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments. This paragraph is not applicable to such earnings which are generated as foreign currencies.

(b) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows:

(1) Except for situations described in paragraph (b)(2) of this section, USAID does not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for receipt, obligation and expenditure of funds.

(2) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

§ 700.9 Property standards.

(a) *Real property.* Unless the agreement provides otherwise, title to real property will vest in accordance with 2 CFR 200.311.

(b) *Equipment.* Unless the agreement provides otherwise, title to equipment will vest in accordance with 2 CFR 200.313.

§ 700.10 Cost sharing or matching.

Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which would have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

§ 700.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises. To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the award, the recipient must to the maximum extent possible provide the following information to the Office of Small Disadvantaged Business Utilization (OSDBU), USAID Washington, DC 20523, at least 45 days prior to placing any order or contract in excess of the simplified acquisition threshold:

- (1) Brief general description and quantity of goods or services;
 - (2) Closing date for receiving quotations, proposals or bids; and
 - (3) Address where solicitations or specifications can be obtained.
- (b) [Reserved]

§ 700.12 Contract provisions.

(a) The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

(b) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by the non-Federal entity must include a provision to the effect that the non-Federal Entity, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

§ 700.13 Additional Provisions for Awards to Commercial Organizations.

(a) This paragraph contains additional provisions that apply to awards to commercial organizations. These provisions supplement and make exceptions for awards to commercial organizations from other provisions of this part.

(1) Prohibition against profit. No funds will be paid as profit to any non-Federal entity that is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

(2) [Reserved]

(b) [Reserved]

Remedies for Noncompliance

§ 700.14 Termination.

If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate the award in whole or in part and prohibit the recipient from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension. If a suspension is put into effect and the situation causing the suspension continues for 60 calendar days or more, then USAID may terminate the award in whole or in part on written notice to the recipient and cancel any portion of the award which has not been disbursed or irrevocably committed to third parties.

§ 700.15 Disputes.

(a) Any dispute under or relating to a grant or agreement will be decided by the USAID Agreement Officer. The Agreement Officer must furnish the recipient a written copy of the decision.

(b) Decisions of the USAID Agreement Officer will be final unless, within 30 calendar days of receipt of the decision, the recipient appeals the decision to USAID's Senior Deputy Assistant Administrator, Bureau for Management. Appeals must be in writing with a copy concurrently furnished to the Agreement Officer.

(c) In order to facilitate review of the record by the USAID's Senior Deputy Assistant Administrator, Bureau for Management, the recipient will be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) Decisions by the Senior Deputy Assistant Administrator, Bureau for Management, will be final.

USAID—Specific Requirements

§ 700.16 Marking.

(a) USAID policy is that all programs, projects, activities, public communications, and commodities, specified further at paragraphs (c)–(f) of this section, partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward must be marked appropriately overseas with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's or any other third party's identity or logo.

(1) USAID reserves the right to require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant; any such requirement will be on a case-by-case basis depending on the audience, program goals and materials produced.

(2) USAID reserves the right to request pre-production review of USAID funded public communications and program materials for compliance with the approved Marking Plan.

(3) USAID reserves the right to require marking with the USAID Identity in the event the recipient does not choose to mark with its own identity or logo.

(4) To ensure that the marking requirements "flow down" to subrecipients of subawards, recipients of USAID funded grants and cooperative agreements or other assistance awards are required to include a USAID-approved marking provision in any USAID funded subaward, as follows: As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity.

(b) Subject to § 700.15 (a), (h), and (j), program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management), must be marked with the USAID Identity. Temporary signs or plaques should be erected early in the construction or implementation phase. When construction or implementation is complete, a permanent, durable sign, plaque or other marking must be installed.

(c) Subject to § 700.15 (a), (h), and (j), technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID must be marked with the USAID Identity.

(1) Any "public communications" as defined in § 700.1, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.

(2) The recipient must provide the Agreement Officer's Representative (AOR) or other USAID personnel designated in the grant or cooperative agreement with at least two copies of all program and communications materials produced under the award. In addition, the recipient must submit one electronic and/or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

(d) Subject to § 700.15(a), (h), and (j), events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, must be marked appropriately with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials such as signs and banners with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, recipients are encouraged otherwise to acknowledge USAID and the American people's support.

(e) Subject to § 700.15(a), (h), and (j), all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies and other materials funded by USAID, and their export packaging, must be marked with the USAID Identity.

(f) After technical evaluation of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Branding Strategy, defined in § 700.1. The proposed Branding Strategy will not be evaluated competitively. The Agreement Officer will review for adequacy the proposed Branding Strategy, and will negotiate, approve and include the Branding Strategy in the award. Failure to submit or negotiate a Branding Strategy within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award.

(g) After technical evaluation of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Marking Plan, defined in § 700.1. The Marking Plan may include requests for approval of Presumptive Exceptions, paragraph (h) of this

section. All estimated costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events, promotional materials, and the like, must be included in the total cost estimate of the grant or cooperative agreement or other assistance award, and are subject to revision and negotiation with the Agreement Officer upon submission of the Marking Plan. The Marking Plan will not be evaluated competitively. The Agreement Officer will review for adequacy the proposed Marking Plan, and will negotiate, approve and include the Marking Plan in the award. Failure to submit or negotiate a Marking Plan within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award. Agreement Officers have the discretion to suspend the implementation requirements of the Marking Plan if circumstances warrant. Recipients of USAID funded grant or cooperative agreement or other assistance award or subaward should retain copies of any specific marking instructions or waivers in their project, program or activity files. Agreement Officer's Representatives will be assigned responsibility to monitor marking requirements on the basis of the approved Marking Plan.

(h) *Presumptive exceptions:* (1) The above marking requirements in § 700.15(a) through (e) may not apply if marking would:

(i) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; public service announcements or public opinion polls and surveys.

(ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent.

(iii) Undercut host-country government "ownership" of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as "by" or "from" a cooperating country ministry or government official.

(iv) Impair the functionality of an item, such as sterilized equipment or spare parts.

(v) Incur substantial costs or be impractical, such as items too small or

other otherwise unsuited for individual marking, such as food in bulk.

(vi) Offend local cultural or social norms, or be considered inappropriate on such items as condoms, toilets, bed pans, or similar commodities.

(vii) Conflict with international law.

(2) These exceptions are presumptive, not automatic and must be approved by the Agreement Officer. Apparently successful applicants may request approval of one or more of the presumptive exceptions, depending on the circumstances, in their Marking Plan. The Agreement Officer will review requests for presumptive exceptions for adequacy, along with the rest of the Marking Plan. When reviewing a request for approval of a presumptive exception, the Agreement Officer may review how program materials will be marked (if at all) if the USAID identity is removed. Exceptions approved will apply to subrecipients unless otherwise provided by USAID.

(i) In cases where the Marking Plan has not been complied with, the Agreement Officer will initiate corrective action. Such action may involve informing the recipient of a USAID grant or cooperative agreement or other assistance award or subaward of instances of noncompliance and requesting that the recipient carry out its responsibilities as set forth in the Marking Plan and award. Major or repeated non-compliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 2 CFR 200.338 through 2 CFR 200.342, and 2 CFR 700.13.

(j)(1) USAID Principal Officers, defined for purposes of this provision at § 700.1, may at any time after award waive in whole or in part the USAID approved Marking Plan, including USAID marking requirements for each USAID funded program, project, activity, public communication or commodity, or in exceptional circumstances may make a waiver by region or country, if the Principal Officer determines that otherwise USAID required marking would pose compelling political, safety, or security concerns, or marking would have an adverse impact in the cooperating country. USAID recipients may request waivers of the Marking Plan in whole or in part, through the AOR. No marking is required while a waiver determination is pending. The waiver determination on safety or security grounds must be made in consultation with U.S. Government security personnel if available, and must consider the same information that applies to determinations of the safety

and security of U.S. Government employees in the cooperating country, as well as any information supplied by the AOR or the recipient for whom the waiver is sought. When reviewing a request for approval of a waiver, the Principal Officer may review how program materials will be marked (if at all) if the USAID Identity is removed. Approved waivers are not limited in duration but are subject to Principal Officer review at any time due to changed circumstances. Approved waivers "flow down" to recipients of subawards unless specified otherwise. Principal Officers may also authorize the removal of USAID markings already affixed if circumstances warrant. Principal Officers' determinations regarding waiver requests are subject to appeal to the Principal Officer's cognizant Assistant Administrator. Recipients may appeal by submitting a written request to reconsider the Principal Officer's waiver determination to the cognizant Assistant Administrator.

(2) *Non-retroactivity.* Marking requirements apply to any obligation of USAID funds for new awards as of January 2, 2006. Marking requirements also will apply to new obligations under existing awards, such as incremental funding actions, as of January 2, 2006, when the total estimated cost of the existing award has been increased by USAID or the scope of effort is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements will apply from the date forward that the waiver is rescinded. In the event a waiver is rescinded after the period of performance as defined in 2 CFR 200.77 but before closeout as defined in 2 CFR 200.16., the USAID mission or operating unit with initial responsibility to administer the marking requirements must make a cost benefit analysis as to requiring USAID marking requirements after the date of completion of the affected programs, projects, activities, public communications or commodities.

(k) The USAID Identity and other guidance will be provided at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. Additional costs associated with marking requirements will be met by USAID if reasonable, allowable, and allocable under 2 CFR part 200, subpart E. The standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward must be followed when applying for reimbursement of additional marking costs.

Title 22—Foreign Relations**CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT****PART 226—[REMOVED]**

- 1. Remove part 226.

Angelique M. Crumbly,
Agency Regulatory Official.

Department of Veterans Affairs

For the reasons set out in the preamble, under the authority of 5 U.S.C. 301; 38 U.S.C. 501, the Department of Veterans Affairs amends 2 CFR part 802 and 38 CFR parts 41 and 43 as follows:

Title 2—Grants and Agreements**CHAPTER VIII—DEPARTMENT OF VETERANS AFFAIRS**

- 1. Add 2 CFR part 802 to read as follows:

PART 802—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301; 38 U.S.C. 501, 2 CFR part 200, and as noted in specific sections.

§ 802.101 Applicable regulations.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to the Department of Veterans Affairs.

Title 38—Pensions, Bonuses, and Veterans' Relief**CHAPTER I—DEPARTMENT OF VETERANS AFFAIRS****PART 41—[REMOVED]**

- 1. Remove Part 41.

PART 43—[REMOVED]

- 2. Remove Part 43.

Jose D. Riojas,
Chief of Staff.

Department of Energy

For the reasons set forth in the common preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter IX and 10 CFR chapters II and III are amended as follows:

- 1. Part 910 of Title 2, Chapter IX of the Code of Federal Regulations is added to read as follows:

PART 910—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—[Reserved]**Subpart B—General Provisions**

Sec.

- 910.120 Adoption of 2 CFR part 200.
- 910.122 Applicability.
- 910.124 Eligibility.
- 910.126 Competition.
- 910.128 Disputes and appeals.
- 910.130 Cost sharing (EPACT).
- 910.132 Research misconduct.

Subpart C [Reserved]**Subpart D—Post Award Federal Requirements for For-Profit Entities**

- 910.350 Applicability of 2 CFR part 200.
- 910.352 Cost principles.
- 910.354 Payments.
- 910.356 Audits.
- 910.358 Profit or fee for SBIR/STTR.
- 910.360 Real property and equipment.
- 910.362 Intellectual property.

Appendix A to Subpart D—Patents and Data Provisions for For-Profit Organizations**Subpart E—Cost Principles**

- 910.401 Application to M&O's.

Subpart F—Audit Requirements for For-Profit Entities**General**

- 910.500 Purpose.

Audits

- 910.501 Audit requirements.
- 910.502 Basis for determining DOE awards expended.
- 910.503 Relation to other audit requirements.
- 910.504 Frequency of audits.
- 910.505 Sanctions.
- 910.506 Audit costs.
- 910.507 Program-specific audits.

Auditees

- 910.508 Auditee responsibilities.
- 910.509 Auditor selection.
- 910.510 Financial statements.
- 910.511 Audit findings follow-up.
- 910.512 Report submission.

Federal Agencies

- 910.513 Responsibilities.

Auditors

- 910.514 Scope of audit.
- 910.515 Audit reporting.
- 910.516 Audit findings.
- 910.517 Audit documentation.
- 910.518 Major program determination. (Not applicable).
- 910.519 Criteria for Federal program risk.
- 910.520 Criteria for a low-risk auditee.

Management Decisions

- 910.521 Management decision.

Authority: 42 U.S.C. 7101, *et seq.*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.*; 2 CFR part 200.

Subpart A—[Reserved]**Subpart B—General Provisions****§ 910.120 Adoption of 2 CFR part 200.**

(a) Under the authority listed above, the Department of Energy adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, with the following additions. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

(b) The additions include: Expanding the definition of non-Federal entity for DOE to include For-profit entities; adding back additional coverage from 10 CFR part 600 required by DOE statute; adding back coverage specific for For-Profit entities which existed in 10 CFR part 600 which still applies.

§ 910.122 Applicability.

(a) For DOE, unless otherwise noted in Part 910, the definition of Non-Federal entity found in 2 CFR 200.69 is expanded to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit not reinvested into the business as profit or dividends to its employees or shareholders.

§ 910.124 Eligibility.

(a) *Purpose and scope.* This section implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

(b) *Definitions.* The definitions in Subpart A of 2 CFR part 200, including the definition of the term “Federal financial assistance,” are applicable to this section. In addition, as used in this section:

Act means the Energy Policy Act of 1992.

Company means any business entity other than an organization of the type described in section 501(c) (3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)).

Covered program means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is

maintained and published by the Department of Energy.)

Parent company means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company's voting securities, or indirectly, by control over a majority of that company's voting securities through one or more intermediate subsidiary companies or otherwise, and

(2) Is not itself subject to the ultimate ownership control of another company.

United States means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-owned company means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

Voting security has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

(c) *What must DOE determine.* A company shall be eligible to receive an award of financial assistance under a covered program only if DOE finds that—

(1) Consistent with § 910.124(d), the company's participation in a covered program would be in the economic interest of the United States; and

(2) The company is either—

(i) A United States-owned company; or

(ii) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(A) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(B) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(C) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(d) *Determining the economic interest of the United States.* In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under § 910.124(c)(1), DOE may consider any evidence showing that a financial assistance award would be in the economic

interest of the United States including, but not limited to—

(1) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(2) Significant contributions to employment in the United States by the applicant company and its affiliates; and

(3) An agreement by the applicant company, with respect to any technology arising from the financial assistance being sought—

(i) To promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry); and

(ii) To procure parts and materials from competitive suppliers.

(e) Information an applicant must submit.

(1) Any applicant for Federal financial assistance under a covered program shall submit with the application for Federal financial assistance, or at such later time as may be specified by DOE, evidence for DOE to consider in making findings required under § 910.124 (c)(1) and findings concerning ownership status under § 910.124(c)(2).

(2) If an applicant for Federal financial assistance is submitting evidence relating to future undertakings, such as an agreement under § 910.124(d)(3) to promote manufacture in the United States of products resulting from a technology developed with financial assistance or to procure parts and materials from competitive suppliers, the applicant shall submit a representation affirming acceptance of these undertakings. The applicant should also briefly describe its plans, if any, for any manufacturing of products arising from the program-supported research and development, including the location where such manufacturing is expected to occur.

(3) If an applicant for Federal financial assistance is claiming to be a United States-owned company, the applicant must submit a representation affirming that it falls within the definition of that term provided in § 910.124(b).

(4) DOE may require submission of additional information deemed necessary to make any portion of the determination required by § 910.124(b) 2.

(f) Other information DOE may consider.

In making the determination under § 910.124(c)(2)(ii), DOE may—

(1) Consider information on the relevant international and domestic law obligations of the country of incorporation of the parent company of an applicant;

(2) Consider information relating to the policies and practices of the country of incorporation of the parent company of an applicant with respect to:

(i) The eligibility criteria for, and the experience of United States-owned company participation in, energy-related research and development programs;

(ii) Local investment opportunities afforded to United States-owned companies; and

(iii) Protection of intellectual property rights of United States-owned companies;

(3) Seek and consider advice from other federal agencies, as appropriate; and

(4) Consider any publicly available information in addition to the information provided by the applicant.

§ 910.126 Competition.

(a) *General.* DOE shall solicit applications for Federal financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) *Restricted eligibility.* If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the notice of funding opportunity or, program rule. Such restriction of eligibility shall be:

(1) Supported by a written determination initiated by the program office and;

(2) Concurred in by legal counsel and the Contracting Officer.

(c) *Noncompetitive Federal financial assistance.* DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the follow selection criteria:

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be

supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach that would not be eligible for financial assistance under a recent, current, or planned notice of funding opportunity, and if, as determined by DOE, a competitive notice of funding opportunity would not be appropriate.

(d) *Approval requirements.* Determinations of noncompetitive awards shall be:

- (1) Documented in writing;
- (2) Concurred in by the responsible program technical official and local legal counsel; and
- (3) Approved, prior to award, by the Contracting Officer and an approver at least one level above the CO.

(e) *Definitions.* For purposes of this section, the following definitions are applicable:

Continuation Award—A financial assistance award authorizing a second or subsequent budget period within an existing project period.

Renewal Award—A financial assistance award authorizing the first budget period of an extended project period.

§ 910.128 Disputes and appeals.

(a) *Informal dispute resolution.* Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of Federal financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures, to the extent practicable.

(b) *Alternative dispute resolution (ADR).* Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the

use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) *Final determination.* Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by DOE and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(d) *Right of appeal.* Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the cognizant Senior Procurement Executive (SPE) for either DOE or the National Nuclear Security Administration (NNSA). The appeal must be received by DOE within 90 days of the receipt of the final determination. The mailing address for the DOE SPE is Office of Acquisition and Project Management, 1000 Independence Ave., SW., Washington, DC 20585. The mailing address for the NNSA SPE is Office of Acquisition Management, National Nuclear Security Administration (NNSA), 1000 Independence Ave. SW., Washington, DC 20585.

(e) *Effect of appeal.* The filing of an appeal with the SPE shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the SPE, or to preserve its ability to provide relief in the event the SPE decides in favor of the appellant.

(f) *Review on appeal.* (1) The SPE shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to 2 CFR 200.207 Specific Conditions ;

(ii) DOE denial of a request for an Exception under 2 CFR 200.102;

(iii) DOE denial of a request for a budget revision or other change in the approved project under 2 CFR 200.308

or 200.403 or under another term or condition of the award;

(iv) Any DOE action authorized under 2 CFR 200.338, Remedies for Noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under 2 CFR 200.324 or under another term or condition of the award;

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the SPE shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award, in whole or in part, by DOE under 2 CFR 200.339 (a)(1)–(2);

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the SPE shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the SPE shall be the final decision of DOE.

§ 910.130 Cost sharing (EPACT).

In addition to the requirements of 2 CFR 200.306 the following requirements apply to research, development, demonstration and commercial application activities:

(a) Cost sharing is required for most financial assistance awards for research, development, demonstration and commercial applications activities initiated after the enactment of the Energy Policy Act of 2005 on August 8, 2005. This requirement does not apply to:

(1) An award under the small business innovation research program (SBIR) or the small business technology transfer program (STTR); or

(2) A program with cost sharing requirements defined by other than Section 988 of the Energy Policy Act of 2005 including other sections of the 2005 Act and the Energy Policy Act of 1992.

(b) A cost share of at least 20 percent of the cost of the activity is required for

research and development except where:

(1) A research or development activity of a basic or fundamental nature has been excluded by an appropriate officer of DOE, generally an Under Secretary; or

(2) The Secretary has determined it is necessary and appropriate to reduce or eliminate the cost sharing requirement for a research and development activity of an applied nature.

(c) A cost share of at least 50 percent of the cost of a demonstration or commercial application activity is required unless the Secretary has determined it is necessary and appropriate to reduce the cost sharing requirements, taking into consideration any technological risk relating to the activity.

(d) Cost share shall be provided by non-Federal funds unless otherwise authorized by statute. In calculating the amount of the non-Federal contribution:

(1) Base the non-Federal contribution on total project costs, including the cost of work where funds are provided directly to a partner, consortium member or subrecipient, such as a Federally Funded Research and Development Center;

(2) Include the following costs as allowable in accordance with the applicable cost principles:

(i) Cash;

(ii) Personnel costs;

(iii) The value of a service, other resource, or third party in-kind contribution determined in accordance with Subpart E—Cost Principles—of 2 CFR part 200. For recipients that are for-profit organizations as defined by 2 CFR 910.122, the Cost Principles which apply are contained in 48 CFR 31.2. See § 910.352 for further information;

(iv) Indirect costs or facilities and administrative costs; and/or

(v) Any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act);

(3) Exclude the following costs:

(i) Revenues or royalties from the prospective operation of an activity beyond the time considered in the award;

(ii) Proceeds from the prospective sale of an asset of an activity; or

(iii) Other appropriated Federal funds.

(iv) Repayment of the Federal share of a cost-shared activity under Section 988 of the Energy Policy Act of 2005 shall not be a condition of the award.

(e) For purposes of this section, the following definitions are applicable:

Demonstration means a project designed to determine the technical feasibility and economic potential of a

technology on either a pilot or prototype scale.

Development is defined in 2 CFR 200.87.

Research is also defined in 2 CFR 200.87.

§ 910.132 Research misconduct.

(a) A recipient is responsible for maintaining the integrity of research of any kind under an award from DOE including the prevention, detection, and remediation of research misconduct, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this section.

(b) For purposes of this section, the following definitions are applicable:

Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of Research Misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation means the formal examination and evaluation of the relevant facts.

Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(c) Unless otherwise instructed by the Contracting Officer, the recipient must conduct an initial inquiry into any allegation of research misconduct. If the recipient determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer and, unless otherwise instructed, the recipient must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) Inform the Contracting Officer if an initial inquiry supports an investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the recipient will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the recipient's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response to the recommendations (if any).

(3) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(d) DOE may elect to act in lieu of the recipient in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that:

(1) The research organization is not prepared to handle the allegation in a manner consistent with this section;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,

(4) The allegation involves possible criminal misconduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the recipient's

good faith administration of this section and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) In conducting the activities in paragraph (c) of this section, the recipient and DOE, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) *Safeguards for information and subjects of allegations.* The recipient shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the recipient without suffering retribution. Safeguards include: Protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The recipient shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) *Objectivity and expertise.* The recipient shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) *Timeliness.* The recipient shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations

and informants should be limited to those with a need to know.

(5) *Remediation and sanction.* If the recipient finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The recipient must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The recipient must coordinate remedial actions with the Contracting Officer. The recipient must also consider whether personnel sanctions are appropriate. Any such sanction must be consistent with any applicable personnel laws, policies, and procedures, and must take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(g) By executing this agreement, the recipient provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements and definitions of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of allegations of research misconduct.

(h) The recipient must insert or have inserted the substance of this section, including paragraph (g), in subawards at all tiers that involve research.

Subpart C—[RESERVED]

Subpart D—Post Award Federal Requirements for For-Profit Entities

§ 910.350 Applicability of 2 CFR part 200.

(a) As stated in 2 CFR 910.122, unless otherwise noted in part 910, the definition of Non-Federal entity found in 2 CFR 200.69 is expanded for DOE to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit not reinvested into the business as profit or dividends to its employees or shareholders.

(c) Subpart D of 2 CFR part 910 contains specific changes to 2 CFR part 200 that apply only to For-Profit Recipients and, unless otherwise

specified, subrecipients. In some cases, the coverage in Subpart D will replace the language in a specific section of 2 CFR part 200.

§ 910.352 Cost Principles.

For For-Profit Entities, the Cost Principles contained in 48 CFR 31.2 (Contracts with Commercial Organizations) must be followed in lieu of the Cost principles contained in 2 CFR 200.400 through 200.475, except that patent prosecution costs are not allowable unless specifically authorized in the award document. This applies to For-Profit entities whether they are recipients or subrecipients.

§ 910.354 Payment.

(a) For-Profit Recipients are an exception to 2 CFR 200.305(b)(1) which requires that non-Federal entities be paid in advance as long as certain conditions are met.

(b) For For-Profit Recipients who are paid directly by DOE, reimbursement is the preferred method of payment. Under the reimbursement method of payment, the Federal awarding agency must reimburse the non-Federal entity for its actual cash disbursements. When the reimbursement method is used, the Federal awarding agency must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency reasonably believes the request to be improper.

§ 910.356 Audits.

See Subpart F of this part (Sections 910.500 through 910.521) for specific DOE regulations which apply to audits of DOE's For-Profit Recipients. For-Profit entities are an exception to the Single Audit requirements contained in Subpart F of 2 CFR 200 and therefore the regulations contained in 2 CFR 910 Subpart F apply instead.

§ 910.358 Profit or fee for SBIR/STTR.

(a) As authorized by 2 CFR 200.400 (g), DOE may expressly allow non-federal entities to earn a profit or fee resulting from Federal financial assistance.

(b) DOE allows a profit or fee to be paid under two of its financial assistance programs only: Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR).

(c) Awards under these programs will contain a specific provision which allows a profit or fee to be paid.

(d) Profit or Fee is unallowable for all other DOE programs which award grants and cooperative agreements.

§ 910.360 Real property and equipment.

(a) *Prior approvals for acquisition with Federal funds.* Recipients may purchase real property or equipment in whole or in part with Federal funds under an award only with the prior approval of the contracting officer.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient subject to the conditions that the recipient:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project;

(2) Not encumber the property without approval of the contracting officer; and

(3) Use and dispose of the property in accordance with paragraphs (d) and (e) of this section.

(c) *Federal interest in real property or equipment offered as cost-share.* A recipient may offer the full value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching, subject to the requirements in 2 CFR 200.306 and 2 CFR 910.360. If a resulting award includes such property as a portion of the recipient's cost share, the Government has a financial interest in the property, (*i.e.*, a share of the property value equal to the Federal participation in the project). The property is considered as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section and to the provisions of 2 CFR 200.313(d)(1) through (3).

(d) *Insurance.* Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with DOE funds as provided to property owned by the recipient.

(e) *Use.* If real property or equipment is acquired in whole or in part with Federal funds under an award and the award does not specify that title vests unconditionally in the recipient, the real property or equipment is subject to the following:

(1) During the time that the real property or equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on

other projects is subject to the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(2) After Federal funding for the project ceases or if the real property or equipment is no longer needed for the purposes of the project, the recipient may use the real property or equipment for other projects, insofar as:

(i) There are Federally sponsored projects for which the real property or equipment may be used. If the only use for the real property or equipment is for projects that have no Federal sponsorship, the receipt must proceed with disposition of the real property or equipment, in accordance with paragraph (f) of this section.

(ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded, Federal award.

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(f) *Disposition.* If an item of real property or equipment is no longer needed for Federally sponsored projects, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than \$5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property that is no longer needed is equipment (rather than real property), the recipient may wish to replace it with an item that is needed currently for the project by trading in or selling to offset the costs of the replacement equipment, subject to the approval of the contracting officer.

(iii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The contracting officer's options for disposition are to direct the recipient to:

(i) Transfer title to the real property or equipment to the Federal Government or to an eligible third party provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred.

(ii) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the responsible agency fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (f)(2)(ii)(B) of this section.

§ 910.362 Intellectual property.

(a) *Scope.* This section sets forth the policies with regard to disposition of rights to data and to inventions conceived or first actually reduced to practice in the course of, or under, a grant or cooperative agreement made to a For-Profit entity by DOE.

(b) *Patents right—small business concerns.* In accordance with 35 U.S.C. 202, if the recipient is a small business concern and receives a grant, cooperative agreement, subaward, or contract for research, developmental, or demonstration activities, then, unless there are "exceptional circumstances" as described in 35 U.S.C. 202(e), the award must contain the standard clause in appendix A to this subpart, entitled "Patents Rights (Small Business Firms and Nonprofit Organizations)" which provides to the recipient the right to

elect ownership of inventions made under the award.

(c) *Patent rights—other than small business concerns, e.g., large businesses—*

(1) *No Patent Waiver.* Except as provided by paragraph (c)(2) of this section, if the recipient is a for-profit organization other than a small business concern, as defined in 35 U.S.C. 201(h) and receives an award or a subaward for research, development, and demonstration activities, then, pursuant to statute, the award must contain the standard clause in appendix A to this subpart, entitled “Patent Rights (Large Business Firms)—No Waiver” which provides that DOE owns the patent rights to inventions made under the award.

(2) *Patent Waiver Granted.* Paragraph (c)(1) of this section does not apply if:

(i) DOE grants a class waiver for a particular program under 10 CFR part 784;

(ii) The applicant requests and receives an advance patent waiver under 10 CFR part 784; or

(iii) A subaward is covered by a waiver granted under the prime award.

(3) *Special Provision.* Normally, an award will not include a background patent and data provision. However, under special circumstances, in order to provide heightened assurance of commercialization, a provision providing for a right to require licensing of third parties to background inventions, limited rights data and/or restricted computer software, may be included. Inclusion of a background patent and/or a data provision to assure commercialization will be done only with the written concurrence of the DOE program official setting forth the need for such assurance. An award may include the right to license the Government and third party contractors for special Government purposes when future availability of the technology would also benefit the government, e.g., clean-up of DOE facilities. The scope of any such background patent and/or data licensing provision is subject to negotiation.

(d) *Rights in data—general rule.* (1) Subject to paragraphs (d)(2) and (3) of this section, and except as otherwise provided by paragraphs (e) and (f) of this section or other law, any award under this subpart must contain the standard clause in appendix A to this subpart, entitled “Rights in Data—General”.

(2) Normally, an award will not require the delivery of limited rights data or restricted computer software. However, if the contracting officer, in consultation with DOE patent counsel

and the DOE program official, determines that delivery of limited rights data or restricted computer software is necessary, the contracting officer, after negotiation with the applicant, may insert in the award the standard clause as modified by Alternates I and/or II set forth in appendix A to this subpart.

(3) If software is specified for delivery to DOE, or if other special circumstances exist, e.g., DOE specifying “open-source” treatment of software, then the contracting officer, after negotiation with the recipient, may include in the award special provisions requiring the recipient to obtain written approval of the contracting officer prior to asserting copyright in the software, modifying the retained Government license, and/or otherwise altering the copyright provisions.

(e) *Rights in data—programs covered under special protected data statutes.*

(1) If a statute, other than those providing for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, provides for a period of time, typically up to five years, during which data produced under an award for research, development, and demonstration may be protected from public disclosure, then the contracting officer must insert in the award the standard clause in appendix A to this subpart entitled “Rights in Data—Programs Covered Under Special Protected Data Statutes” or, as determined in consultation with DOE patent counsel and the DOE program official, a modified version of such clause which may identify data or categories of data that the recipient must make available to the public.

(2) An award under paragraph (e)(1) of this section is subject to the provisions of paragraphs (d)(2) and (3) of this section.

(f) *Rights in data—SBIR/STTR programs.* If an applicant receives an award under the SBIR or STTR program, then the contracting officer must insert in the award the standard data clause in the General Terms and Conditions for SBIR Grants, entitled “Rights in Data—SBIR Program”.

(g) *Authorization and consent.* (1) Work performed by a recipient under a grant is not subject to authorization and consent to the use of a patented invention, and the Government assumes no liability for patent infringement by the recipient under 28 U.S.C. 1498.

(2) Work performed by a recipient under a cooperative agreement is subject to authorization and consent to the use of a patented invention consistent with

the principles set forth in 48 CFR 27.201–1.

(3) The contracting officer, in consultation with patent counsel, may also include clauses in the cooperative agreement addressing other patent matters related to authorization and consent, such as patent indemnification of the Government by recipient and notice and assistance regarding patent and copyright infringement. The policies and clauses for these other patent matters will be the same or consistent with those in 48 CFR part 927.

Appendix A to Subpart D—Patent and Data Provisions

1. Patent Rights (Small Business Firms and Nonprofit Organizations)
2. Patent Rights (Large Business Firms)—No Waiver
3. Rights in Data—General
4. Rights in Data—Programs Covered Under Special Protected Data Statutes

1. Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization is defined in 2 CFR 200.70.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85–536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

(b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to

each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain Title

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times

specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any

decision concerning the revocation or modification of its license.

(f) Recipient Action To Protect Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention."

(g) Subaward/Contract

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by 2 CFR 910.362(c).

(3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

(h) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the Agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

(k) Special Provisions for Awards With Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take effective steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

(m) Electronic Filing

Unless otherwise specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

(End of clause)

2. Patent Rights (Large Business Firms)—No Waiver

(a) Definitions

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 10 CFR part 784.

Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the awarding activity.

Subject invention, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement.

(b) Allocations of Principal Rights

(1) Assignment to the Government. The Recipient agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Recipient under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulation. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum Rights Acquired by the Government

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government: A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); "march-in rights" as set forth in 37 CFR 401.14(a)(J)); preference for U.S. industry as set forth in 37 CFR 401.14(a)(I); periodic reports upon request, no more frequently than annually, on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c)(50); and such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum Rights to the Recipient

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Recipient fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any,

within the corporate structure of which the Recipient is a part and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention Identification, Disclosures, and Reports

(1) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Recipient shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or any on sale or public use planned by the

Recipient. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that it was not so made.

(3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions, and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.

(4) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under subaward/contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of Records Relating to Inventions

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether—(i) Any such inventions are subject inventions; (ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; (iii) The Recipient and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subaward/Contract

(1) The recipient shall include the clause PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS) (suitably modified to

identify the parties) in all subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subaward/contract is subject to an Exceptional Circumstances Determination by DOE. In all other subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Recipient shall include this clause (suitably modified to identify the parties), or an alternate clause as directed by the contracting officer. The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.

(2) In the event of a refusal by a prospective subrecipient/contractor to accept such a clause the Recipient: (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and (ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.

(3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.

(4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.

(5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(h) Atomic Energy

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

(i) Publication

It is recognized that during the course of the work under this agreement, the Recipient

or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(j) Forfeiture of Rights in Unreported Subject Inventions

(1) The Recipient shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Recipient fails to report to Patent Counsel within six months after the time the Recipient: (i) Files or causes to be filed a United States or foreign patent application thereon; or (ii) Submits the final report required by subparagraph (e)(3) of this clause, whichever is later.

(2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph (e)(2) of this clause, the Recipient: (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer, or (ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy of the Contracting Officer; or (iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), the Recipient shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

3. Rights in Data—General

(a) Definitions

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the

computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this agreement;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that

constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Recipient shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take over appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any

copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this award, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter

either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery or such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording

the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at any time during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The recipient agrees, except as may be otherwise specified in this award for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this award, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 2 CFR 910.362(d)(1), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I:

(g)(2) Notwithstanding paragraph (g)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

Limited Rights Notice

(a) These data are submitted with limited rights under Government agreement No. ___ (and subaward/contract No. ___, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This “limited rights data” may be disclosed for evaluation purposes under the restriction that the “limited rights data” be retained in confidence and not be further disclosed;

(3) This “limited rights data” may be disclosed to other contractors participating in the Government’s program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the “limited rights data” be retained in confidence and not be further disclosed;

(4) This “limited rights data” may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the “limited rights data” be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II:

(g)(3)(i) Notwithstanding paragraph (g)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following “Restricted Rights Notice” to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice.

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Agreement No. ____ (and subaward/contract ____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copies for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer or which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Recipients in accordance with paragraph (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated, in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice

Use, reproduction, or disclosure is subject to restrictions set forth in agreement No. ____ (and subaward/contract ____, if appropriate) with ____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: “Unpublished—rights reserved under the Copyright Laws of the United States.”

(End of clause)

4. Rights in Data—Programs Covered Under Special Data Statutes

(a) Definitions

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means

(i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and

(ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

Protected data, as used in this clause, means technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4) and which data is marked as being protected data by a party to the award.

Protected rights, as used in this clause, mean the rights in protected data set forth in the Protected Rights Notice of paragraph (g) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this agreement as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for protected data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.

(2) The Recipient shall have the right to—

(i) Protect rights in protected data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;

(iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data are computer software, the Government shall acquire a copyright license as set forth in paragraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise

provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination become final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of

Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Rights to Protected Data

(1) The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

Protected Rights Notice

These protected data were produced under agreement no. _____ with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until (Note:) The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:

(a) For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or

(b) To subcontractors or other team members performing work under the Government's (insert name of program or other applicable activity) program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data.

(a) At the end of the protected period;

(b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;

(c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or

(d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data. (Note: It is expected that this paragraph will specify certain types of mutually agreed upon data that will be available to the public and will not be asserted by the recipient/contractor as limited rights or protected data).

(5) The Government's sole obligation with respect to any protected data shall be as set forth in this paragraph (g).

(h) Protection of Limited Rights Data

When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(i) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subaward/contract award without further authorization.

(j) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the

Contracting Officer may, at any time during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(k) The Recipient agrees, except as may be otherwise specified in this agreement for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 2 CFR 910.362(e)(2), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I

(h)(2) Notwithstanding paragraph (h)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

Limited Rights Notice

(a) These data are submitted with limited rights under Government agreement No. _____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(3) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(4) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II

(h)(3)(i) Notwithstanding paragraph (h)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (d) and (e) of this clause, in accordance with the Notice:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (c) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copies for use in a backup computer if any computer for which it was acquired is inoperative

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by Federal support service Contractors in accordance with paragraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copies for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice:

“Unpublished—rights reserved under the Copyright Laws of the United States.”

(End of clause)

Subpart E—Cost Principles

§ 910.401 Application to M&O's.

In accordance with 48 CFR 970.3002–1 and 970.3101–00–70, a Federally Funded Research Center (FFRDC) which is also a designated DOE Management and Operating (M&O) contract must follow the cost accounting standards (CAS) contained in 48 CFR part 30 and must follow the appropriate Cost Principles contained in 48 CFR part 31.

Subpart F—Audit Requirements for For-Profit Entities

General

§ 910.500 Purpose.

This Part follows the same format as 2 CFR 200.500. We purposely did not renumber the paragraphs within this part so that auditors and recipients can compare this to the single audit requirements contained in 2 CFR 200.500.

Audits

§ 910.501 Audit requirements.

(a) *Audit required.* A for-profit entity that expends \$750,000 or more during the non-Federal entity's fiscal year in DOE awards must have a compliance audit conducted for that year in

accordance with the provisions of this Part.

(b) *Compliance audit.* (1) If a for-profit entity has one or more DOE awards with expenditures of \$750,000 or more during the for-profit entity's fiscal year, they must have a compliance audit for each of the awards with \$750,000 or more in expenditures. The remaining awards do not require, individually or in the aggregate, a compliance audit.

(2) If a for-profit entity receives more than one award from DOE with a sum total of expenditures of \$750,000 or more, but does not have any single award with expenditures of \$750,000 or more; the entity must determine whether any or all of the awards have common compliance requirements (*i.e.*, are considered a cluster of awards) and determine the total expenditures of the awards with common compliance requirements. A compliance audit is required for the largest cluster of awards (if multiple clusters of awards exist) or the largest award not in a cluster of awards, whichever corresponding expenditure total is greater. The remaining awards do not require, individually or in the aggregate, a compliance audit;

(3) If a for-profit entity receives one or more awards from DOE with a sum total of expenditures less than \$750,000, no compliance audit is required;

(4) If the for-profit entity is a sub-recipient, 2 CFR 200.501(h) requires that the pass-through entity establish appropriate monitoring and controls to ensure the sub-recipient complies with award requirements. These compliance audits must be conducted in accordance with 2 CFR 200.514 Scope of audit

(c) *Program-specific audit election.* Not applicable.

(d) *Exemption when Federal awards expended are less than \$750,000.* A for-profit entity that expends less than \$750,000 during the for-profit's fiscal year in DOE awards is exempt from DOE audit requirements for that year, except as noted in § 910.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this Part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient are subject to audit under

this Part. The payments received for goods or services provided as a contractor are not Federal awards. Section 2 CFR 200.330 Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this Part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients to DOE Federal award requirements. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 2 CFR 200.331 Requirements for pass-through entities.

§ 910.502 Basis for determining DOE awards expended.

Determining DOE awards expended. The determination of when a DOE award is expended should be based on when the activity related to the DOE award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of DOE awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement

of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the for-profit entity to an interest subsidy; and the period when insurance is in force.

(a) *Loan and loan guarantees (loans).* Loan and loan guarantees issued by the DOE Loan Program Office corresponding to Title XVII of the Energy Policy Act of 2005, as amended, 42 U.S.C. 16511–16516 (“Title XVII”) are exempt from these provisions.

(1) Not applicable.

(2) Not applicable.

(3) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) *Endowment funds.* The cumulative balance of DOE awards for endowment funds that are federally restricted are considered DOE awards expended in each audit period in which the funds are still restricted.

(e) *Free rent.* Free rent received by itself is not considered a DOE award expended under this Part. However, free rent received as part of a DOE award to carry out a DOE program must be included in determining DOE awards expended and subject to audit under this Part.

(f) *Valuing non-cash assistance.* DOE non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by DOE.

(g) Not applicable.

(h) Not applicable.

(i) Not applicable.

§ 910.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this Part must be in lieu of any financial audit of DOE awards which a for-profit entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides DOE with the information it requires to carry out its responsibilities under Federal statute or regulation, DOE must rely upon and use that information.

(b) Notwithstanding paragraph (a) of this section, DOE, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this Part do not authorize any for-profit entity to constrain, in any manner, DOE from carrying out or

arranging for such additional audits, except that DOE must plan such audits to not be duplicative of other audits of DOE. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this Part do not limit the authority of DOE to conduct, or arrange for the conduct of, audits and evaluations of DOE awards, nor limit the authority of any Federal agency Inspector General or other Federal official.

(d) DOE to pay for additional audits. If DOE conducts or arranges for additional audits it must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Not applicable.

§ 910.504 Frequency of audits.

Audits required by this Part must be performed annually.

(a) Not applicable.

(b) Not applicable.

§ 910.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this Part, DOE and pass-through entities must take appropriate action as provided in 2 CFR 200.338 Remedies for noncompliance.

§ 910.506 Audit costs.

See 2 CFR 200.425 Audit services.

§ 910.507 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including Federal awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(1) *Program-specific audit guide not available.* When a program-specific audit guide is not available, the auditee and auditor must conduct the compliance audit in accordance with GAAS and GAGAS.

(2) If audited financial statements are available, for-profit recipients should

submit audited financial statements to DOE as a part of the compliance audit. (If the recipient is a subsidiary for which separate financial statements are not available, the recipient may submit the financial statements of the consolidated group.)

(3) The auditor must:

(i) Not applicable.

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the DOE program consistent with the requirements of § 910.514 Scope of audit.

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of DOE awards that could have a direct and material effect on the DOE program consistent with the requirements of § 910.514 Scope of audit.

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 910.511 Audit findings follow-up, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 910.516 Audit findings.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this Part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) (if available) of the DOE program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the DOE program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of DOE awards which could have a direct and material effect on the DOE program; and

(iv) A schedule of findings and questioned costs for the DOE program that includes a summary of the auditor's results relative to the DOE program in a format consistent with § 910.515 Audit reporting, paragraph (d)(1) and findings and questioned costs consistent with the

requirements of § 910.515 Audit reporting, paragraph (d)(3).

(5) *Report submission for program-specific audits.* The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(6) When a program-specific audit guide is available, the compliance audits must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(7) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The compliance audit must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(b) Other sections of this Part may apply. Program-specific audits are subject to:

(1) 910.500 Purpose through 910.503 Relation to other audit requirements, paragraph (d);

(2) 910.504 Frequency of audits through 910.506 Audit costs;

(3) 910.508 Auditee responsibilities through 910.509 Auditor selection;

(4) 910.511 Audit findings follow-up;

(5) 910.512 Report submission, paragraphs (e) through (h);

(6) 910.513 Responsibilities;

(7) 910.516 Audit findings through 910.517 Audit documentation;

(8) 910.521 Management decision, and

(9) Other referenced provisions of this Part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

Auditees

§ 910.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this Part in accordance with § 910.509 Auditor selection, and ensure it is properly performed and submitted when due in accordance with § 910.512 Report submission.

(b) Submit appropriate financial statements (if available).

(c) Submit the schedule of expenditures of DOE awards in accordance with § 910.510 Financial statements.

(d) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 910.511 Audit findings follow-up, paragraph (b) and § 910.511 Audit findings follow-up, paragraph (c), respectively.

(e) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this Part.

§ 910.509 Auditor selection.

(a) *Auditor procurement.* When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the for-profit entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in 2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this Part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting

indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this Part if they comply fully with the requirements of this Part.

§ 910.510 Financial statements.

(a) *Financial statements.* If available, the auditee must submit financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this Part. However, for-profit entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 910.514 Scope of audit, paragraph (a) and prepare separate financial statements.

(b) *Schedule of expenditures of DOE awards.* The auditee must prepare a schedule of expenditures of DOE awards for the period covered by the auditee's fiscal year which must include the total DOE awards expended as determined in accordance with § 910.502 Basis for determining DOE awards expended. While not required, the auditee may choose to provide information requested by DOE and pass-through entities to make the schedule easier to use. For example, when a DOE program has multiple DOE award years, the auditee may list the amount of DOE awards expended for each DOE award year separately. At a minimum, the schedule must:

(1) List individual DOE programs. For a cluster of programs, provide the cluster name, list individual DOE programs within the cluster of programs. For R&D, total DOE awards expended must be shown by individual DOE award and major subdivision within DOE. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) Not applicable.

(3) Provide total DOE awards expended for each individual DOE program and the CFDA number. For a cluster of programs also provide the total for the cluster.

(4) Not applicable.

(5) Not applicable.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the for-profit entity elected to use the 10% de minimis cost

rate as covered in 2 CFR 200.414 Indirect (F&A) costs.

§ 910.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 910.516 Audit findings, paragraph (c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in DOE's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to DOE;

(ii) DOE is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 910.516 Audit findings, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

§ 910.512 Report submission.

(a) *General.* (1) The audit must be completed and the reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* See paragraph (b)(1) of this section:

(1) A senior level representative of the auditee (e.g., director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the reporting package that says that the auditee complied with the requirements of this Part, the reporting package does not include protected personally identifiable information, and the information included in its entirety is accurate and complete.

(2) Not applicable.

(3) Not applicable.

(c) *Reporting package.* The reporting package must include the:

(1) Financial statements (if available) and schedule of expenditures of DOE awards discussed in § 910.510 Financial statements, paragraphs (a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 910.511 Audit findings follow-up, paragraph (b);

(3) Auditor's report(s) discussed in § 910.515 Audit reporting; and
(4) Corrective action plan discussed in § 910.511 Audit findings follow-up, paragraph (c).

(d) *Submission to DOE.* The auditee must electronically submit the compliance reporting package described in paragraph (c) of this section compliance audits must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(e) *Requests for management letters issued by the auditor.* In response to requests by a Federal agency, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to DOE.

(g) Not applicable.

(h) Not applicable.

Federal Agencies

§ 910.513 Responsibilities.

(a)(1) Not applicable.

(2) Not applicable.

(3) Not applicable.

(i) Not applicable.

(ii) Not applicable.

(iii) Not applicable.

(iv) Not applicable.

(v) Not applicable.

(vi) Not applicable.

(vii) Not applicable.

(viii) Not applicable.

(ix) Not applicable.

(b) Not applicable

(1) Not applicable

(2) Not applicable

(c) *DOE responsibilities.* DOE must perform the following for the awards it makes (See also the requirements of 2 CFR 200.210 Information contained in a Federal award):

(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this Part.

(2) Provide technical advice and counsel to auditees and auditors as requested.

(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the DOE must:

(i) Issue a management decision as prescribed in § 910.521 Management decision;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see 2 CFR 200.25 Cooperative audit resolution) to improve DOE program outcomes through better audit resolution, follow-up, and corrective action; and

(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the DOE's process to follow-up on audit findings and on the effectiveness of Compliance Audits in improving non-Federal entity accountability and their use by DOE in making award decisions.

(4) Not applicable.

(5) Not applicable:

(i) Not applicable

(ii) Not applicable

(6) Not applicable

(7) Not applicable

(i) Not applicable

(ii) Not applicable.

(iii) Not applicable.

(iv) Not applicable

(v) Not applicable

(vi) Not applicable

(vii) Not applicable.

(viii) Not applicable

Auditors

§ 910.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered DOE awards during such audit period, provided that each such audit must encompass the schedule of expenditures of DOE awards for each such department, agency, and other organizational unit, which must be considered to be a for-profit entity. The financial statements (if available) and schedule of expenditures of DOE awards must be for the same audit period.

(b) *Financial statements.* If financial statements are available, the auditor must determine whether the schedule of expenditures of DOE awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(1) *Internal control.* The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control— Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS the auditor must perform procedures to obtain an understanding of internal control over DOE programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance to support a low assessed level of control risk for the assertions relevant to the compliance requirements.

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 910.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(5) *Compliance.* In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect.

(6) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(7) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this Part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should follow the compliance supplement's guidance for programs not included in the supplement.

(8) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(c) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 910.511 Audit findings follow-up paragraph (b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures.

§ 910.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this Part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements (if available) are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of DOE awards is fairly stated in all material respects in relation to the financial statements (if available) as a whole.

(b) A report on internal control over financial reporting and compliance with Federal statutes, regulations, and the terms and conditions of the DOE award, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance and report and internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or modified opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of DOE awards which could have a direct and material effect and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued (if applicable) on whether the financial statements (if available)

audited were prepared in accordance with GAAP (*i.e.*, unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements (if available);

(iii) A statement (if applicable) as to whether the audit disclosed any noncompliance that is material to the financial statements (if available) of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance (*i.e.*, unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 910.516 Audit findings paragraph (a);

(vii) Not applicable.

(viii) Not applicable.

(ix) Not applicable.

(2) Findings relating to the financial Statements (if available) which are required to be reported in accordance with GAGAS.

(i) Findings and questioned costs for DOE awards which must include audit findings as defined in § 910.516 Audit findings, paragraph (a). Audit findings (*e.g.*, internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue should be presented as a single audit finding.

(ii) Audit findings that relate to both the financial statements (if available) and DOE awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this Part precludes combining of the audit reporting required by this section with the reporting required by § 910.512 Report submission, paragraph (b) Data Collection when allowed by GAGAS.

§ 910.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major

programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of DOE awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of DOE awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than \$25,000 for a DOE program, which is not audited as a major program. Except for audit follow-up, the auditor is not required under this Part to perform audit procedures for such a DOE program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a DOE program that is not audited as a major program (*e.g.*, as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$25,000, then the auditor must report this as an audit finding.

(5) Not applicable.

(6) Known or likely fraud affecting a DOE award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for DOE awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal

proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 910.511 Audit findings follow-up, paragraph (b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for DOE to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, and Federal award identification number and year. When information, such as the CFDA title and number or DOE award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the DOE awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and DOE to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable DOE award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 910.512 Report submission, paragraph (b) to allow for easy referencing of the audit findings during follow-up.

§ 910.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by DOE or the cognizant agency for indirect costs to extend the retention period. When the auditor is aware that the Federal agency or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant agency for indirect cost, DOE, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this Part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

§ 910.518 [Reserved]

§ 910.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the DOE program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to

discuss a particular DOE program with auditee management and DOE.

(1) *Current and prior audit experience.* Weaknesses in internal control over DOE programs would indicate higher risk. Consideration should be given to the control environment over DOE programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of DOE awards and the competence and experience of personnel who administer the DOE programs.

(i) A DOE program administered under multiple internal control structures may have higher risk. The auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a DOE program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a DOE program or have not been corrected.

(3) DOE programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(4) *Oversight exercised by DOE.* Oversight exercised by DOE could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(5) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(6) *Inherent risk of the Federal program.* The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of 2 CFR 200.430 Compensation—personal services, but otherwise be at low risk.

(7) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(8) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(9) Programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 910.520 Criteria for a low-risk auditee.

(a) An auditee that meets all of the following conditions for each of the preceding two audit periods may qualify as a low-risk auditee and be eligible for reduced audit coverage. Compliance audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form to DOE within the timeframe specified in § 910.512 Report submission. A for-profit entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements (if available) were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of DOE awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the DOE programs had audit findings from any of the following in either of the preceding two audit periods:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control as required under § 910.515 Audit reporting, paragraph (c);

(2) Not applicable.

(3) Not applicable.

Management Decisions

§ 910.521 Management decision.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected

auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, DOE agency may also issue a management decision on findings relating to the financial statements (if they were available) which are required to be reported in accordance with GAGAS.

(b) As provided in § 910.513 Responsibilities, paragraph (c)(3), DOE is responsible for issuing a management decision for findings that relate to DOE awards it makes to for-profit entities.

(c) Not applicable.

(d) *Time requirements.* DOE must issue a management decision within six months of acceptance of the audit report. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 910.516 Audit findings paragraph (c).

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 602—EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

■ 1. The authority citation for part 602 continues to read as follows:

Authority: 42 U.S.C. 2051; 42 U.S.C. 5817; 42 U.S.C. 5901–5920; 42 U.S.C. 7254 and 7256; and 31 U.S.C. 6301–6308.

§ 602.1 [Amended]

■ 2. Section 602.1 is amended to remove “Office of Health, Safety, and Security” in the first sentence and add in its place “Office of Environment, Health, Safety, and Security”.

§ 602.2 [Amended]

■ 3. Section 602.2 (b) is amended to remove “10 CFR part 600 (DOE Financial Assistance Rules)” and add in its place “2 CFR part 200 as amended by 2 CFR part 910 (DOE Financial Assistance Regulation)”.

§ 602.3 [Amended]

■ 4. Section 602.3 is amended to remove “10 CFR part 600” in the introductory

text and add in its place “2 CFR part 200 and 2 CFR part 910”.

■ 5. Amend § 602.4 as follows:

■ a. Revise the section heading.

■ b. Remove “deviations” from paragraph (a) and add in its place “exceptions”.

■ c. Remove “Health, Safety, and Security” from paragraph (a) and add in its place “Environment, Health, Safety, and Security”.

■ d. Remove “10 CFR part 600” and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

The revision reads as follows:

§ 602.4 Exceptions.

* * * * *

§ 602.5 [Amended]

■ 6. Section 602.5(a) is amended to remove “Office of Health, Safety, and Security” in the first sentence and add in its place “Office of Environment, Health, Safety, and Security”.

§ 602.8 [Amended]

■ 7. Section 602.8 (b)(4)(ii) is amended to remove “10 CFR part 600” and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

§ 602.9 [Amended]

■ 8. Amend § 602.9 as follows:

■ a. Remove “Office of Health, Safety, and Security” from paragraph (g) and add in its place “Office of Environment, Health, Safety, and Security”.

■ b. Remove “10 CFR part 600” from paragraph (b) and add in its place “2 CFR 200 as amended by 2 CFR 910”.

■ c. Remove “Office of Health, Safety, and Security” from the second sentence of paragraph (b) and add in its place “Office of Environment, Health, Safety, and Security”.

§ 602.14 [Amended]

■ 9. Amend § 602.14 as follows:

■ a. Remove “10 CFR part 600” wherever it appears and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

§ 602.18 [Amended]

■ 10. Section 602.18 (c) is amended to remove “in accordance with the applicable provisions of 10 CFR part 600”.

PART 605—THE OFFICE OF SCIENCE FINANCIAL ASSISTANCE PROGRAM

■ 11. The authority citation for part 605 continues to read as follows:

Authority: Section 31 of the Atomic Energy Act, as amended, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Nonnuclear Energy Research and

Development Act of 1974, Pub. L. 93–577, 88 Stat. 1878 (42 U.S.C. 5901 *et seq.*); secs. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

■ 12. The heading of part 605 is revised to read as set forth above.

§ 605.1 [Amended]

■ 13. Section 605.1(d) is amended to remove “Office of Energy Research (ER) and the Science and Technology Advisor (STA) Organization” and add in its place “Office of Science (SC)”.

§ 605.2 [Amended]

■ 14. Section 605.2(b) is amended to remove “10 CFR part 600” and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

§ 605.3 [Amended]

■ 15. Amend § 605.3 as follows:

■ a. Remove “10 CFR part 600” and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

■ b. Remove “ER/STA” in the definition of *Related conference* and add in its place “SC”.

■ 16. Amend § 605.4 as follows:

■ a. The section heading is revised.

■ b. Remove “deviations” in the first sentence and add in its place “exceptions”.

■ c. Remove “ER” in the first sentence and add in its place “SC”.

■ d. Remove “deviation” wherever it appears and add in its place “exception”.

■ e. Remove “10 CFR part 600” in the third sentence and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

The revision reads as follows:

§ 605.4 Exceptions.

* * * * *

■ 17. Amend § 605.5 as follows:

■ a. Revise the section heading.

■ b. Remove “Energy Research” in paragraph (a) and add in its place “Science”.

■ c. Remove “ER” in paragraph (c) and add in its place “SC”.

The revision reads as follows:

§ 605.5 The Office of Science Financial Assistance Program.

* * * * *

§ 605.8 [Amended]

■ 18. Amend § 605.8 as follows:

■ a. Remove “Energy Research, ER–64” in paragraph (c) and add in its place “Science, SC”.

■ b. Remove “Energy Research” in the introductory text of paragraph (d) and add in its place “Science”.

§ 605.9 [Amended]

- 19. Amend § 605.9 as follows:
 - a. Remove “10 CFR part 600” wherever it appears and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.
 - b. Remove “10 CFR parts 600 and 605” in paragraph (b)(5) and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

§ 605.10 [Amended]

- 20. Amend § 605.10 as follows:
 - a. Remove “10 CFR part 600” in paragraph (b) and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.
 - b. Remove “ER’s” in the first sentence of paragraph (g) and add in its place “SC’s”.

§ 605.12 [Amended]

- 21. Section 605.12(b) is amended to remove “ER” and add in its place “SC”.

§ 605.15 [Amended]

- 22. Amend § 605.15 as follows:
 - a. Remove “10 CFR part 600” wherever it appears and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.
 - b. Remove “ER” in paragraph (a)(2) and add in its place “SC”.
 - c. Remove “deviation” in paragraph (a) introductory text and add in its place “exception”.

§ 605.18 [Amended]

- 23. Section 605.18 is amended to remove “ER’s” in the first sentence and add in its place “SC’s”.

§ 605.19 [Amended]

- 24. Section 605.19(a)(1) is amended to remove “ER” in the second sentence and add in its place “SC”.

§ 605.20 [Amended]

- 25. Section 605.20(c) is amended to remove “10 CFR part 600” and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

Appendix A to Part 605 [Amended]

- 26. Amend Appendix A to Part 605 as follows:
 - a. Remove “ER” in paragraph 2.(a) and add in its place “SC”.
 - b. Remove “Energy Research” in paragraph 2.(a) and add in its place “Science”.

CHAPTER III—DEPARTMENT OF ENERGY**PART 733—ALLEGATIONS OF RESEARCH MISCONDUCT**

- 27. The authority citation for part 733 continues to read as follows:

Authority: 42 U.S.C. 2201; 7254; 7256; 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

- 28. Amend § 733.3 as follows:

- a. Revise the definition for Contract.
- b. In the definition for Financial assistance agreement, remove “10 CFR part 600” and add in its place “2 CFR part 200 as amended by 2 CFR part 910”.

The revision reads as follows:

§ 733.3 Definitions.

* * * * *

Contract is defined in 2 CFR 200.22.

* * * * *

Paul Bosco,

Director, Office of Acquisition and Project Management.

Department of Treasury

For the reasons stated in the preamble, the Department of the Treasury amends Title 2 to add chapter X of the Code of Federal Regulations to read:

Title 2—Grants and Agreements**CHAPTER X—DEPARTMENT OF TREASURY****PART 1000—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS****Sec.**

- 1000.10 Applicable regulations.
- 1000.306 Cost sharing or matching.
- 1000.336 Access to records.

Authority: 5 U.S.C. 301; 31 U.S.C. 301; 2 CFR part 200.

§ 1000.10 Applicable regulations.

Except for the deviations set forth elsewhere in this Part, the Department of the Treasury adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth at 2 CFR part 200.

§ 1000.306 Cost sharing or matching.

Notwithstanding 2 CFR 200.306(e), Low Income Taxpayer Clinic grantees may use the rates found in 26 U.S.C. 7430 so long as:

- (a) The grantee is funded to provide controversy representation;
- (b) The services are provided by a qualified representative, which includes any individual, whether or not an attorney, who is authorized to represent taxpayers before the Internal Revenue Service or an applicable court;
- (c) The qualified representative is not a student; and
- (d) The qualified representative is acting in a representative capacity and is advocating for a taxpayer.

§ 1000.336 Access to records.

The right of access under 2 CFR 200.336 shall not extend to client information held by attorneys or federally authorized tax practitioners under the Low Income Taxpayer Clinic program.

Nani Coloretti,

Assistant Secretary for Management.

Department of Defense,

Office of the Secretary

For the reasons set forth in the common preamble, Part 1103 of Title 2, Chapter XI of the Code of Federal Regulations is added to read as follows:

PART 1103—INTERIM GRANTS AND COOPERATIVE AGREEMENTS IMPLEMENTATION OF GUIDANCE IN 2 CFR PART 200, “UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS”**Subpart A—Interim Implementation of Guidance in 2 CFR Part 200****Sec.**

- 1103.100 Applicability of 2 CFR part 200 to requirements for recipients in DoD Components’ terms and conditions.

Subpart B—Pre-Existing Policies Continuing in Effect During Interim Implementation

- 1103.200 Exception for small awards.
- 1103.205 Timing of payments made using the reimbursement method.
- 1103.210 Management of federally owned property for which a recipient is accountable.
- 1103.215 Intangible property developed or produced under an award or subaward.
- 1103.220 Debarment and suspension requirements related to recipients’ procurements.
- 1103.225 Debt collection.

Subpart C—Definitions of Terms Used in This Part

- 1103.300 DoD Components.
- 1103.305 DoD Grant and Agreement Regulations.
- 1103.310 Small award.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—Interim Implementation of Guidance in 2 CFR Part 200**§ 1103.100 Applicability of 2 CFR part 200 to requirements for recipients in DoD Components’ terms and conditions.**

Effective December 26, 2014, and on an interim basis pending update of the DoD Grant and Agreement Regulations to implement Office of Management and Budget (OMB) guidance published in 2 CFR part 200:

- (a) The guidance in 2 CFR part 200 as modified and supplemented by

provisions of Subpart B of this part governs the administrative requirements, cost principles, and audit requirements to be included in terms and conditions of DoD Components' new grant and cooperative agreement awards to:

(1) Institutions of higher education, hospitals, and other nonprofit organizations included in the definition of "recipient" in part 32 of the DoD Grant and Agreement Regulations (32 CFR part 32).

(2) States, local governments, and Indian tribal governments.

(b) The following class deviations from selected provisions of the DoD Grant and Agreement Regulations therefore are approved for DoD Components' new grant and cooperative agreement awards made on or after December 26, 2014:

(1) Awards to institutions of higher education, hospitals, and other nonprofit organizations included in the definition of "recipient" in part 32 of the DoD Grant and Agreement Regulations (32 CFR part 32) are not subject to the administrative requirements, cost principles, and audit requirements specified in 32 CFR part 32.

(2) Awards to States, local governments, and Indian tribal governments are not subject to the administrative requirements, cost principles, and audit requirements specified in part 33 of the DoD Grant and Agreement Regulations (32 CFR part 33).

(3) References in other parts of the DoD Grant and Agreement Regulations that cite part 32 or part 33 as the source of administrative requirements, cost principles, and audit requirements for awards to the types of recipient entities described in paragraphs (b)(1) and (2) of this section therefore do not apply to those new awards.

(c) Provisions of the DoD Grant and Agreement Regulations other than those listed in paragraph (b) of this section continue to be in effect, with applicability as stated in those provisions.

Subpart B—Pre-Existing Policies Continuing in Effect During Interim Implementation

§ 1103.200 Exception for small awards.

For small awards to institutions of higher education, hospitals, and other nonprofit organizations, DoD Components' terms and conditions may apply less restrictive requirements to recipients than the OMB guidance in 2 CFR part 200 specifies, except for requirements that are statutory. This

exception maintains long-standing policy established in 32 CFR 32.4.

§ 1103.205 Timing of payments made using the reimbursement method.

In DoD Components' awards to institutions of higher education, hospitals, and other nonprofit organizations, the terms and conditions implementing the provisions of 2 CFR 200.305(b)(3) concerning timing of payments when the reimbursement method is used must specify that the DoD payment office generally makes payment within 30 calendar days after receipt of the request for reimbursement by the office designated to receive the request, unless the request is reasonably believed to be improper. This substitution of "generally makes payment" for "must make payment" maintains long-standing policy established in 32 CFR 32.22(e)(1).

§ 1103.210 Management of federally owned property for which a recipient is accountable.

In award terms and conditions implementing the guidance in 2 CFR 200.313(d) on procedural requirements for a recipient's equipment management system, DoD Components must:

(a) For any award to an institution of higher education, hospital, or other nonprofit organization, broaden the requirements of 2 CFR 200.313(d) to also apply to any federally owned property for which the recipient is accountable under its award. Doing so maintains long-standing policy established in 32 CFR 32.34(f).

(b) For any award to a State, local government, or Indian tribal government (as defined in 32 CFR part 33), specify that the recipient must manage federally owned equipment in accordance with the DoD Components' rules and procedures. Doing so maintains long-standing policy established in 32 CFR 33.32(f).

§ 1103.215 Intangible property developed or produced under an award or subaward.

In DoD Components' awards to institutions of higher education, hospitals, and other nonprofit organizations, the award terms and conditions implementing the guidance in 2 CFR 200.315(a) on intangible property must exclude intangible property developed or produced under an award or subaward. Doing so maintains long-standing policy established in 32 CFR 32.36(e).

§ 1103.220 Debarment and suspension requirements related to recipients' procurements.

In award terms and conditions implementing the guidance in 2 CFR

200.318(h) on awarding contracts only to responsible entities, DoD Components must require recipients to comply with DoD's implementation in 2 CFR part 1125 of OMB guidance on nonprocurement debarment and suspension (2 CFR part 180). Doing so maintains long-standing policy established in 2 CFR parts 180 and 1125 and in 32 CFR 32.44(d), as well as compliance with Executive Orders 12549 and 12689.

§ 1103.225 Debt collection.

In award terms and conditions implementing the guidance in 2 CFR 200.345 on collection of amounts due, DoD Components must inform recipients that DoD post-award administration offices follow procedures set forth in 32 CFR 22.820 for issuing demands for payment and transferring debts for collection, and that a recipient will be informed about specific procedures and timeframes affecting it through the written notices of grants officers' decisions and demands for payment. Doing so maintains long-standing policy established in 32 CFR 32.73(c).

Subpart C—Definitions of Terms Used in This Part

§ 1103.300 DoD Components.

The Office of the Secretary of Defense, the Military Departments, and all Defense Agencies, DoD Field Activities, and other entities within the Department of Defense that are authorized to award or administer grants, cooperative agreements, and other non-procurement transactions subject to the DoD Grants and Agreement Regulations.

§ 1103.305 DoD Grant and Agreement Regulations.

The regulations in Chapter I, Subchapter C of Title 32, Code of Federal Regulations, and Chapter XI of Title 2, Code of Federal Regulations.

§ 1103.310 Small award.

An award not exceeding the simplified acquisition threshold.

Patricia L. Toppings,

Office of the Secretary of Defense, Federal Register Liaison Officer, Department of Defense.

Department of Transportation

Office of the Secretary

For the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, 49 U.S.C. 322, and the authorities listed below, Part 1201 of title 2 of the Code of Federal Regulations is added, and Parts 18 and

19 of title 49 of the Code of Federal Regulations are removed, as follows:

Title 2—Grants and Agreements

CHAPTER XII—DEPARTMENT OF TRANSPORTATION

■ 1. Add Part 1201 to read as follows:

PART 1201—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

- 1201.1 What does this part do?
- 1201.2 Definitions.
- 1201.80 Program income.
- 1201.102 Exceptions.
- 1201.106 DOT Component implementation.
- 1201.107 DOT Headquarters responsibilities.
- 1201.108 Inquiries.
- 1201.109 Review date.
- 1201.112 Conflict of interest.
- 1201.206 Standard application requirements.
- 1201.313 Equipment.
- 1201.317 Procurements by States.
- 1201.319 Competition.
- 1201.327 Financial reporting.
- 1201.330 Subrecipient and contractor determinations.

Authority: 49 U.S.C. 322(a); 2 CFR 200.106.

§ 1201.1 What does this part do?

Except as otherwise provided in this part, the Department of Transportation adopts the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). This part supersedes and repeals the requirements of the Department of Transportation Common Rules (49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR part 19—Uniform Administrative Requirements—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), except that grants and cooperative agreements executed prior to December 26, 2014 shall continue to be subject to 49 CFR parts 18 and 19 as in effect on the date of such grants or agreements. New parts with terminology specific to the Department of Transportation follow.

§ 1201.2 Definitions.

Throughout this part, the term “DOT Component” refers to any Division, Office, or Mode (e.g., the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety

Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Office of Inspector General (OIG), Office of the Secretary of Transportation (OST), Pipeline and Hazardous Materials Safety Administration (PHMSA), St. Lawrence Seaway Development Corporation (SLSDC), and the Surface Transportation Board (STB)) within the Department of Transportation awarding Federal financial assistance. In addition, the term “DOT Headquarters” refers to the Secretary of Transportation or any office designated by the Secretary to fulfill headquarters’ functions within any office under the Secretary’s immediate supervision.

§ 1201.80 Program income.

Notwithstanding 2 CFR 200.80, *program income* means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. (See 2 CFR 200.77 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a grantee and subgrantee, and interest earned on any of them.

§ 1201.102 Exceptions.

DOT Headquarters may grant exceptions to Part 1201 on a case-by-case basis. Such exceptions will be granted only as determined by the Secretary of Transportation.

§ 1201.106 DOT Component implementation.

The specific requirements and responsibilities for grant-making DOT Components are set forth in this part. DOT Components must implement the language in this part unless different provisions are required by Federal statute or are approved by DOT Headquarters. DOT Components making Federal awards to non-Federal entities

must implement the language in the Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards of this Part through Subpart F—Audit Requirements of this Part in codified regulations unless different provisions are required by Federal statute or are approved by DOT Headquarters.

§ 1201.107 DOT Headquarters responsibilities.

DOT Headquarters will review DOT Component implementation of this part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by DOT Headquarters. Exceptions will only be made in particular cases where adequate justification is presented.

§ 1201.108 Inquiries.

Inquiries regarding Part 1201 should be addressed to the DOT Component making the award, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entities as appropriate. DOT Components will, in turn, direct the inquiry to the Office of Chief Financial Officer, Department of Transportation.

§ 1201.109 Review date.

DOT Headquarters will review this part at least every five years after December 26, 2014.

§ 1201.112 Conflict of interest.

The DOT Component making a financial assistance award must establish conflict of interest policies for Federal awards, including policies from DOT Headquarters. The non-Federal entity must disclose in writing any potential conflict of interest to the DOT Component or pass-through entity in accordance with applicable Federal awarding agency policy.

§ 1201.206 Standard application requirements.

The requirements of 2 CFR 200.206 do not apply to formula grant programs, which do not require applicants to apply for funds on a project basis.

§ 1201.313 Equipment.

Notwithstanding 2 CFR 200.313, subrecipients of States shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award.

§ 1201.317 Procurements by States.

Notwithstanding 2 CFR 200.317, subrecipients of States shall follow such policies and procedures allowed by the

State when procuring property and services under a Federal award.

§ 1201.327 Financial reporting.

Notwithstanding 2 CFR 200.327, recipients of FHWA and NHTSA financial assistance may use FHWA, NHTSA or State financial reports.

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation

PART 18—[REMOVED AND RESERVED]

- 2. Remove and reserve part 18.

PART 19—[REMOVED AND RESERVED]

- 3. Remove and reserve part 19.

Anthony R. Foxx,

Secretary of Transportation.

Department of Commerce

Office of the Secretary

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, Part 1327 of Title 2, Chapter XIII of the Code of Federal Regulations is added, and Parts 14 and 24 of Title 15, Subtitle A of the Code of Federal Regulations are amended, as follows:

Title 2—Grants and Agreements

CHAPTER XIII—DEPARTMENT OF COMMERCE

- 1. Add Part 1327, consisting of § 1327.101, to Chapter XIII to read as follows:

PART 1327—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301; 38 U.S.C. 501; 2 CFR part 200.

§ 1327.101 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Commerce adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

Title 15—Commerce and Foreign Trade

Subtitle A—Office of the Secretary of Commerce

PART 14—[REMOVED AND RESERVED]

- 2. Remove and reserve part 14.

PART 24—[REMOVED AND RESERVED]

- 3. Remove and reserve part 24.

Barry Berkowitz,

Director of Acquisition Management.

Department of the Interior

Office of the Secretary

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. part 301 and the authorities listed below, part 1402 in Chapter XIV of title 2 is added, and part 12 of title 43 of the Code of Federal Regulations is amended, as follows:

Title 2—Grants and Agreements

CHAPTER XIV—DEPARTMENT OF THE INTERIOR

- 1. Add Part 1402 to Chapter XIV to read as follows:

PART 1402—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

1402.100 Purpose.

1402.101 To whom does this part apply?

1402.102 Do DOI financial assistance policies include any exceptions to 2 CFR part 200?

1402.103 Does DOI have any other policies or procedures award recipients must follow?

Authority: 5 U.S.C. 301; 38 U.S.C. 501, 2 CFR part 200.

§ 1402.100 Purpose.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 apply to the Department of the Interior. This part adopts, as the Department of the Interior (DOI) policies and procedures, the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in 2 CFR part 200. The Uniform guidance applies in full except as stated in §§ 1402.102 and 1402.103.

§ 1402.101 To whom does this part apply?

This part, and through it 2 CFR part 200, subparts A through E, applies to any non-Federal entity that applies for, receives, operates, or expends funds from a DOI Federal financial assistance award, cooperative agreement or grant after the effective date of December 26, 2014.

§ 1402.102 Do DOI financial assistance policies include any exceptions to 2 CFR part 200?

This chapter applies to Federally recognized Indian tribal governments, except for those awards made pursuant to the authority of the Indian Self-Determination and Education Assistance Act (P.L. 93–638, 88 Stat. 2204), as amended. However, Sec. 9 of P.L. 93–638 does provide for use of a grant agreement or cooperative agreement when mutually agreed to by the Secretary of the Interior and the tribal organization involved.

§ 1402.103 Does DOI have any other policies or procedures award recipients must follow?

Award recipients must follow bureau/office program specific or technical merit policies and procedures that will be published in the **Federal Register**, Grants.gov, or bureau Web site.

Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior

PART 12—[REMOVED AND RESERVED]

- 2. Remove and reserve part 12.

Kristen J. Sarri,

Principal Assistant Secretary for Policy, Management and Budget.

Environmental Protection Agency

For the reasons stated in the preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR part 1500 and 40 CFR parts 33, 35, 40, 45, 46 and 47 are amended as follows:

Title 2—Grants and Agreements

CHAPTER XV—ENVIRONMENTAL PROTECTION AGENCY

- 1. Part 1500 is added to chapter XV to read as follows:

PART 1500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions [Reserved]

Subpart B—General Provisions

- 1500.1 Adoption of 2 CFR part 200.
- 1500.2 Applicability.
- 1500.3 Exceptions.
- 1500.4 Supersession.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

1500.5 Fixed Amount Awards.

Subpart D—Post Federal Award Requirements.

Standards for Financial and Program Management

- 1500.6 Retention requirements for records.
1500.7 Program Income.
1500.8 Revision of budget and program plans.

Procurement Standards

- 1500.9 General Procurement Standards.
1500.10 Use of the same architect or engineer during construction.

Performance and Financial Monitoring and Reporting

- 1500.11 Quality Assurance.

Subpart E—Disputes.

- 1500.12 Purpose and scope of this subpart.
1500.13 Definitions.
1500.14 Submission of Appeal.
1500.15 Notice of receipt of Appeal to Affected Entity.
1500.16 Determination of Appeal.
1500.17 Request for review.
1500.18 Notice of receipt of request for review.
1500.19 Determination of request for review.

Authority: 42 U.S.C. 241, 242b, 243, 246, 1857 *et seq.*, 33 U.S.C. 1251 *et seq.*, 42 U.S.C. 7401 *et seq.*, 42 U.S.C. 6901 *et seq.*, 42 U.S.C. 300f *et seq.*, 7 U.S.C. 136 *et seq.*, 15 U.S.C. 2601 *et seq.*, 42 U.S.C. 9601 *et seq.*, 20 U.S.C. 4011 *et seq.*, and 33 U.S.C. 1401 *et seq.*; 2 CFR 200.

Subpart A—Acronyms and Definitions [Reserved]

Subpart B—General Provisions

§ 1500.1 Adoption of 2 CFR Part 200.

Under the authority listed above the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR part 200), as supplemented by this part, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part. EPA also has programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

§ 1500.2 Applicability.

Uniform administrative requirements and cost principles (Subparts A through E of 2 CFR part 200 as supplemented by

this part) apply to foreign public entities or foreign organizations, except where EPA determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.

§ 1500.3 Exceptions.

Consistent with 2 CFR 200.102(b):
(a) In the EPA, the Director, Office of Grants and Debarment or designee, is authorized to grant exceptions on a case-by-case basis for non-Federal entities.

(b) The EPA Director or designee is also authorized to approve exceptions, on a class or an individual case basis, to EPA program specific assistance regulations other than those which implement statutory and executive order requirements.

§ 1500.4 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under Title 40 of the Code of Federal Regulations:

(a) 40 CFR part 30, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations.”

(b) 40 CFR part 31, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 1500.5 Fixed Amount Awards.

In the EPA, programs awarding fixed amount awards will do so in accordance with guidance issued from the Office of Grants and Debarment. (See 2 CFR 200.201(b)).

Subpart D—Post Federal Award Requirements.

Standards for Financial and Program Management

§ 1500.6 Retention requirements for records.

(a) In the EPA, some programs require longer retention requirements for records by statute.

(b) When there is a difference between the retention requirements for records of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200.333) and the applicable statute, the non-federal entity will follow to the retention requirements for records in the statute.

§ 1500.7 Program Income.

(a) Governmental revenues. Permit fees are governmental revenue and not program income. (See 2 CFR 200.307(c))

(b) Use of Program Income. The default use of program income for EPA awards is addition. The program income shall be used for the purposes and under the conditions of the assistance agreement. (See 2 CFR 200.307(e)(2))

(c) Brownfields Revolving Loan. To continue the mission of the Brownfields Revolving Loan fund, recipients may use grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.

§ 1500.8 Revision of budget and program plans.

Pre-award Costs. EPA award recipients may incur allowable project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of EPA. All costs incurred before EPA makes the award are at the recipient's risk. EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs.

Procurement Standards

§ 1500.9 General Procurement Standards.

(a) *Payment to consultants.* EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (Recipient's may, however, pay consultants more than this amount with non EPA funds.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices. Contracts with firms for services which are awarded using the procurement standards in Subpart D of 2 CFR part 200 are not affected by this limitation.

(b) Subawards with firms for services which are awarded using the procurement standards in 2 CFR

200.317 through 2 CFR 200.326 are not affected by this limitation.

§ 1500.10 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(1) The recipient received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(2) The award official approves noncompetitive procurement under 2 CFR 200.320(f) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(3) The recipient attests that:

(i) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subaward for services during construction; and

(ii) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(iii) No employee, officer or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subawards.

(b) However, if the recipient uses the procedures in paragraph (a) of this section to retain an architect or engineer, any Step 3 subawards between the architect or engineer and the grantee must meet all of the other procurement provisions in 2 CFR 200.317 through 200.326.

Performance and Financial Monitoring and Reporting

§ 1500.11 Quality Assurance.

(a) Quality assurance applies to all assistance agreements that involve environmentally related data operations, including environmental data collection, production or use.

(b) Recipients shall develop a written quality assurance system commensurate with the degree of confidence needed for the environmentally related data operations.

(c) If the recipient complies with EPA's quality policy, the system will be presumed to be in compliance with the quality assurance system requirement. The recipient may also comply with the quality assurance system requirement by complying with American National Standard ANSI/ASQ E4:2014: Quality management systems for environmental information and technology programs.

(d) The recipient shall submit the written quality assurance system for EPA review. Upon EPA's written approval, the recipient shall implement the EPA-approved quality assurance system.

(e) EPA Quality Policy is available at: <http://www.epa.gov/quality>.

(f) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

The material is available for inspection at the Environmental Protection Agency's Headquarters Library, Room 3340, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20004, (202) 566-0556. A copy is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibrlocations.html.

(1) American Society for Quality, 600 North Plankinton Avenue, Milwaukee, WI 53201, 1-800-248-1946, <http://asq.org>.

(i) American National Standard ANSI/ASQ E4:2014: Quality management systems for environmental information and technology programs—Requirements with guidance for use, approved February 4, 2014.

(ii) Reserved.

(2) Reserved.

Subpart E—Disputes

§ 1500.12 Purpose and scope of this subpart.

(a) This section provides the process for the resolution of pre-award and post-award assistance agreement disputes as described in § 1500.13, except for:

(1) Assistance agreement competition-related disputes; and

(2) Any appeal process relating to an award official's determination that an entity is not qualified for award that may be developed pursuant to guidance implementing Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417, as amended).

(b) Pre-award and post-award disagreements between affected entities

and EPA related to an assistance agreement should be resolved at the lowest level possible. If an agreement cannot be reached, absent any other applicable statutory or regulatory dispute provisions, affected entities must follow the dispute procedures outlined in this subpart.

(c) Determinations affecting assistance agreements made under other Agency decision-making processes are not subject to review under the procedures in this Subpart or the Agency's procedures for resolving assistance agreement competition-related disputes. These determinations include, but are not limited to:

(1) Decisions on requests for exceptions under § 1500.3;

(2) Bid protest decisions under 2 CFR 200.318(k)

(3) National Environmental Policy Act decisions under 40 CFR part 6;

(4) Policy decisions of the EPA Internal Audit Dispute Resolution Process (formerly known as Audit Resolution Board); and

(5) Suspension and Debarment Decisions under 2 CFR parts 180 and 1532.

§ 1500.13 Definitions.

As used in this subpart:

(a) *Action Official (AO)* is the EPA official who authors the Agency Decision to the Affected Entity regarding a pre-award or post-award matter.

(b) *Affected Entity* is an entity that applies for and/or receives Federal financial assistance from EPA including but not limited to: State and local governments, Indian Tribes, Intertribal Consortia, Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and Individuals.

(c) *Agency Decision* is the Agency's initial pre-award or post-award determination. The Agency Decision is sent by the Action Official (AO) to the Affected Entity electronically and informs them of their dispute rights including appealing the Agency Decision to the DDO. Assistance Agreement Appeal (or Appeal) is the letter an Affected Entity submits to the DDO to challenge an Agency Decision.

(d) *Dispute* is a disagreement by an Affected Entity with a specific Agency Decision regarding a pre-award or post-award action.

(e) *Disputes Decision Official (DDO)* is the designated agency official responsible for issuing a decision resolving an Appeal.

(1) The DDO for a Headquarters Assistance Agreement Appeal is the Director of the Grants and Interagency Agreement Management Division in the

Office of Grants and Debarment or designee. To help provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Headquarters DDO and the DDO cannot serve as the Review Official for the Appeal decision.

(2) The DDO for a Regional Assistance Agreement Appeal is the official designated by the Regional Administrator to issue the written decision resolving the Appeal. To help provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Regional DDO and the DDO cannot serve as the Review Official for the Appeal decision. Request for Review is the letter an Affected Entity submits to the designated Review Official to challenge the DDO's Appeal decision.

(f) *Review Official* is the EPA official responsible for issuing a decision resolving an Affected Entity's request for review of a DDO's Appeal decision.

(1) For a Headquarters DDO Appeal decision, the Review Official is the Director of the Office of Grants and Debarment or designee.

(2) For a Regional DDO Appeal decision, the Review Official is the Regional Administrator or designee.

§ 1500.14 Submission of Appeal.

An Affected Entity or its authorized representative may dispute an Agency Decision by electronically submitting an Appeal to the DDO identified in the Agency Decision. In order for the DDO to consider the Appeal, it must satisfy the following requirements:

(a) *Timeliness*. The DDO must receive the Appeal no later than 30 calendar days from the date the Agency Decision is electronically sent to the Affected Entity. The DDO will dismiss any Appeal received after the 30-day period unless the DDO grants an extension of time to submit the Appeal. The Affected Entity must submit a written request for extension to the DDO before the expiration of the 30-day period. The DDO may grant a one-time extension of up to 30 calendar days when justified by the situation, which may include the unusual complexity of the Appeal or because of exigent circumstances.

(b) *Method of submission*. The Affected Entity must submit the Appeal electronically via email to the DDO, with a copy to the AO, using the email addresses specified in the Agency Decision within the 30-day period stated in paragraph (a) of this section.

(c) *Contents of Appeal*. The Appeal submitted to the DDO must include:

(1) A copy of the disputed Agency Decision;

(2) A detailed statement of the specific legal and factual grounds for the Appeal, including copies of any supporting documents;

(3) The specific remedy or relief the Affected Entity seeks under the Appeal; and

(4) The name and contact information, including email address, of the Affected Entity's designated point of contact for the Appeal.

§ 1500.15 Notice of receipt of Appeal to Affected Entity.

Within 15 calendar days of receiving the Appeal, the DDO will provide the Affected Entity a written notice, sent electronically, acknowledging receipt of the Appeal.

(a) *Timely Appeals*. If the Appeal was timely submitted, the notice of acknowledgement may identify any additional information or documentation that is required for a thorough consideration of the Appeal. The notice should provide no more than 30 calendar days for the Affected Entity to provide the requested information. If it is not feasible to identify such information or documentation in the notice the DDO may request it at a later point in time prior to Appeal resolution.

(b) *Untimely Appeals*. If the DDO did not receive the Appeal within the required 30-day period, or any extension of it, the DDO will notify the Affected Entity that the Appeal is being dismissed as untimely and the Agency Decision of the AO becomes final. The notification will also identify the Review Official. The dismissal of an untimely Appeal constitutes the final agency action, unless further review is sought in accordance with the requirements of § 1500.16. In limited circumstances, the DDO may, as a matter of discretion, consider an untimely Appeal if doing so would be in the interests of fairness and equity.

§ 1500.16 Determination of Appeal.

(a) *Record on Appeal*. In determining the merits of the Appeal, the DDO will consider the record related to the Agency Decision, any documentation that the Affected Entity submits with its Appeal, any additional documentation submitted by the Affected Entity in response to the DDO's request under § 1500.14(a), and any other information the DDO determines is relevant to the Appeal provided the DDO gives notice of that information to the Affected Entity. The Affected Entity may not on its own initiative submit any additional documents.

(b) *Appeal decision*. The DDO will issue the Appeal decision within 180 calendar days from the date the Appeal

is received by the DDO unless a longer period is necessary based on the complexity of the legal, technical and factual issues presented. The DDO will notify the Affected Entity if the expected decision will not be issued within the 180 day period and if feasible will indicate when the decision is expected to be issued. The Appeal decision will also identify the Review Official. The DDO will issue the Appeal decision electronically. The DDO's decision will constitute the final agency action unless the Affected Entity files a timely request for review in accordance with the Request for Review procedures in § 1500.17.

§ 1500.17 Request for review.

An Affected Entity may file an electronic written request for review of the DDO's Appeal decision to the appropriate Review Official within 15 calendar days from the date the Appeal decision is electronically sent to the Affected Entity. The request for review must comply with the following requirements:

(a) *Submission of request for review*. The request must be submitted to the Review Official identified in the Appeal decision as follows:

(1) If a Headquarters DDO issued the Appeal decision, the request must be electronically submitted to the Director of the Office of Grants and Debarment, or designee, at the email address identified in the Appeal decision, with a copy to the DDO.

(2) If the Appeal decision was issued by a DDO located in an agency Regional Office, the request for review must be electronically submitted to the Regional Administrator, or designee, at the email address identified in the Appeal decision, with a copy to the DDO.

(b) *Contents and grounds of request for review*. The request for review must include a copy of the DDO's Appeal decision and provide a detailed statement of the factual and legal grounds warranting reversal or modification of the Appeal decision. The only ground for review of a DDO's Appeal decision is that there was a clear and prejudicial error of law, fact or application of agency policy in deciding the Appeal.

(c) *Conducting the review*. In reviewing the Appeal decision, the Review Official will only consider the information that was part of the Appeal decision unless:

(1) The Affected Entity provides new information in the request for review that was not available to the DDO for the Appeal decision; and

(2) The Review Official determines that the new information is relevant and

should be considered in the interests of fairness and equity.

§ 1500.18 Notice of receipt of request for review.

Timeliness. The Review Official will provide the Affected Entity electronic written notice acknowledging receipt of the review request within 15 calendar days of receiving the request. The Review Official will further provide a copy of the notice to the DDO.

(a) If the request was submitted in accordance with § 1500.17, the notice of acknowledgment will also advise the Affected Entity that the Review Official expects to issue a decision within 45 calendar days from the date they received the request.

(b) If the request for review was not submitted within the required 15 calendar day period, or does not allege reviewable grounds consistent with § 1500.17, the Review Official will notify the Affected Entity that the request is denied as untimely and/or for failing to state a valid basis for review. In limited circumstances, the Review Official may, as a matter of discretion, consider an untimely review if doing so would be in the interest of fairness and equity.

§ 1500.19 Determination of request for review.

(a) Within 15 calendar days of receiving a copy of the notice acknowledging the receipt of a timely and reviewable Request for Review, the DDO will submit the Appeal record to the Review Official.

(b) The Review Official will issue a final written decision within 45 calendar days of the submission of the request for review unless a longer period is necessary based on the complexity of the legal, technical and factual issues presented.

(1) The Review Official will notify the Affected Entity if the expected decision will not be issued within the 45-day period and if feasible will indicate when the decision is expected to be issued.

(2) The Review Official's decision constitutes the final agency action and is not subject to further review within the agency.

Title 40—Environmental Protection

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 30—[Removed]

- 1. Remove part 30.

PART 31—[Removed]

- 2. Remove part 31.

PART 33—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

- 3. The authority citation for part 33 is revised to read as follows:

Authority: 15 U.S.C. 637 note; 42 U.S.C. 4370d, 7601 note, 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198, 2 CFR part 200.

- 4. Section 33.103 is amended by revising the first sentence of the introductory text and the definition for “Equipment” to read as follows:

§ 33.103 What do the terms in this part mean?

* * * Terms not defined below shall have the meaning given to them in 2 CFR part 200 and 1500, and 40 CFR part 35 as applicable. * * *

* * * * *

Equipment means items procured under a financial assistance agreement as defined by 2 CFR 200.33.

- 5. Section 33.105 is amended by revising the introductory text to read as follows:

§ 33.105 What are the compliance and enforcement provisions of this part?

If a recipient fails to comply with any of the requirements of this part, EPA may take remedial action under 2 CFR 200.338, Remedies for noncompliance, or 40 CFR part 35, as appropriate, or any other action authorized by law, including, but not limited to, enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*). Examples of the remedial actions under 2 CFR 200.338 or 40 CFR part 35 include, but are not limited to:

- * * * * *
- 6. Section 33.303 is amended by revising the second sentence to read as follows:

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

* * * This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 2 CFR part 200 Subpart D—Post Federal Award Requirements, Procurement Standards, or 40 CFR part 35 subpart O, as applicable.

- 7. Section 33.502 is amended by revising the second sentence to read as follows:

§ 33.502 What are the reporting requirements of this part?

* * * Recipients of Continuing Environmental Program Grants under 40 CFR part 35, subpart A, recipients of Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B; General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements, will report on MBE and WBE participation on an annual basis. * * *

PART 35—STATE AND LOCAL ASSISTANCE

- 8. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997), 2 CFR 200.

- 9. Section 35.001 is amended by revising the second sentence to read as follows:

§ 35.001 Applicability.

* * * These provisions supplement the EPA general assistance regulations in 2 CFR parts 200 and 1500.

Subpart A—Environmental Program Grants

- 10. Section 35.100 is amended by revising the second sentence to read as follows:

§ 35.100 Purpose of the subpart.

* * * These provisions supplement the EPA general assistance regulations in 2 CFR parts 200 and 1500. * * *

- 11. Section 35.104 is amended by revising paragraph (a) to read as follows:

§ 35.104 Components of a complete application.

* * * * *

(a) Meet the requirements in 2 CFR part 200, subpart C.

- * * * * *
- 12. Section 35.111 is amended by revising paragraph (a)(1) to read as follows:

§ 35.111 Criteria for approving an application.

(a) * * *

(1) The application meets the requirements of this subpart and 2 CFR part 200, subpart C.

- * * * * *
- 13. Section 35.113 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.113 Reimbursement for pre-award costs.

(a) Notwithstanding the requirements of 2 CFR parts 200 and 1500, EPA may reimburse recipients for pre-award costs incurred from the beginning of the funding period established in the grant agreement if such costs would have been allowable if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. * * *

§ 35.114 [Amended]

- 14. Section 35.114 introductory text is amended by removing the first sentence.
- 15. Section 35.115 is amended by revising paragraph (a) third sentence and paragraph (c) to read as follows:

§ 35.115 Evaluation of performance.

(a) * * * The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 2 CFR 200.328.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 2 CFR 200.338. The recipient may request review of the Regional Administrator's decision under the dispute processes in 2 CFR part 1500, subpart E.

- 16. Section 35.360 is amended by revising paragraph (a) second sentence to read as follows:

§ 35.360 Purpose.

(a) * * * These sections do not govern Water Quality Cooperative Agreements to other entities eligible under section 104(b)(3).

- 17. Section 35.380 is amended by revising paragraph (a) second sentence to read as follows:

§ 35.380 Purpose.

(a) * * * These sections do not govern Water Quality Cooperative Agreements to other entities eligible under section 104(b)(3).

Subpart B—Environmental Program Grants for Tribes

- 18. Section 35.500 is amended by revising the second sentence to read as follows:

§ 35.500 Purpose of this subpart.

* * * These provisions supplement the EPA general assistance regulations in 2 CFR parts 200 and 1500. * * *

- 19. Section 35.503 is revised to read as follows:

§ 35.503 Deviation from this subpart.

EPA will consider and may approve requests for an official deviation from non-statutory provisions of this regulation in accordance with 2 CFR 1500.3.

- 20. Section 35.505 is amended by revising paragraph (a) to read as follows:

§ 35.505 Components of a complete application.

(a) Meet the requirements in 2 CFR part 200, subpart C.

- 21. Section 35.511 is amended by revising paragraph (a)(1) to read as follows:

§ 35.511 Criteria for approving an application.

(1) The application meets the requirements of this subpart and 2 CFR part 200, subpart C.

- 22. Section 35.513 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.513 Reimbursement for pre-award costs.

(a) Notwithstanding the requirements of 2 CFR parts 200 and 1500, EPA may reimburse recipients for pre-award costs incurred from the beginning of the funding period established in the grant agreement if such costs would have been allowable if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. * * *

§ 35.514 [Amended]

- 23. Section 35.514 is amended by removing the first sentence of the introductory text.
- 24. Section 35.515 is amended by revising paragraph (a) third sentence, and paragraph (c) to read as follows:

§ 35.515 Evaluation of performance.

(a) * * * The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 2 CFR 200.328.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator

and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 2 CFR 200.338. The recipient may request review of the Regional Administrator's decision under the dispute processes in 2 CFR part 1500, subpart E.

- 25. Section 35.588 is amended by revising paragraph (a)(1) to read as follows:

§ 35.588 Award limitations.

(1) All monitoring and analysis activities performed by the Tribe or Intertribal Consortium meets the applicable quality assurance and quality control requirements in 2 CFR 1500.11.

- 26. Section 35.600 is amended by revising paragraph (a) second sentence to read as follows:

§ 35.600 Purpose.

(a) * * * These sections do not govern Water Quality Cooperative Agreements under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502.

- 27. Section 35.610 is amended by revising paragraph (a) to read as follows:

§ 35.610 Purpose.

(a) *Purpose of section.* Sections 35.610 through 35.615 govern wetlands development grants to Tribes and Intertribal Consortia under section 104(b)(3) of the Clean Water Act. These sections do not govern wetlands development grants under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502.

Subpart E—[RESERVED]

- 28. Remove and reserve part 35 subpart E.

Subpart H—[RESERVED]

- 29. Remove and reserve part 35 subpart H.

Subpart I—Grants for Construction of Treatment Works

- 30. Section 35.2000 is amended by revising paragraph (b) first sentence, and paragraph (c) to read as follows:

§ 35.2000 Purpose and policy.

(b) This subpart supplements EPA's Uniform Relocation and Real Property

Acquisition Policies Act regulation (part 4 of this chapter), its National Environmental Policy Act (NEPA) regulation (part 6 of this chapter), its public participation regulation (part 25 of this chapter), its intergovernmental review regulation (part 29 of this chapter), its general grant regulation (2 CFR parts 200 and 1500), and its debarment regulation (2 CFR part 1532), and establishes requirements for Federal grant assistance for the building of wastewater treatment works. * * *

(c) EPA's policy is to delegate administration of the construction grants program on individual projects to State agencies to the maximum extent possible. Throughout this subpart we have used the term Regional Administrator. To the extent that the Regional Administrator delegates review of projects for compliance with the requirements of this subpart to a State agency under a delegation agreement (§ 35.1030), the term Regional Administrator may be read State agency. * * *

■ 31. Section 35.2005 is amended by revising paragraph (a) to read as follows:

§ 35.2005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 2 CFR part 200, subpart A—Acronyms and Definitions. * * *

■ 32. Section 35.2035 is amended by revising paragraph (c) to read as follows:

§ 35.2035 Rotating biological contractor (RBC) replacement grants.

(c) The modification/replacement project meets all requirements of EPA's construction grant and other applicable regulations, including 40 CFR part 35, and 2 CFR parts 200, 1500 and 1532. * * *

■ 33. Section 35.2036 is amended by revising paragraphs (a)(4), (b)(1) and (b)(3) to read as follows:

§ 35.2036 Design/build project grants.

(a) * * * (4) The grantee obtains bonds from the contractor in an amount the Regional Administrator determines adequate to protect the Federal interest in the treatment works (see 2 CFR 200.325); * * *

(b) * * * (1) Grantee procurement for developing or supplementing the facilities plan to prepare the pre-bid package, as well as for designing and building the project and performing construction management and contract administration, will be in accordance with the procurement standards at 2

CFR 200.317 through 200.326 and 2 CFR 1500.9 through 1500.10. * * *

(3) The grantee may use the same architect or engineer that prepared the facilities plan to provide any or all of the pre-bid, construction management, and contract and/or project administration services provided the initial procurement met EPA requirements (see 2 CFR 1500.10). * * *

■ 34. Section 35.2040 is amended by revising the second sentence of the introductory text, paragraphs (a) introductory text, (a)(1), (b) introductory text, (b)(1), (c) introductory text, (d) introductory text, (e) introductory text, (f) introductory text, and (g) introductory text to read as follows:

§ 35.2040 Grant Application.

* * * In addition to the information required in 2 CFR parts 200 and 1500, applicants shall provide the following information: * * *

(a) *Step 2+3: Combined design and building of a treatment works and building related services and supplies.* An application for Step 2+3 grant assistance shall include:

(1) A facilities plan prepared in accordance with this subpart; * * *

(b) *Step 3: Building of a treatment works and related services and supplies* An application for Step 3 grant assistance shall include:

(1) A facilities plan prepared in accordance with this subpart; * * *

(c) *Training facility project.* An application for a grant for construction and support of a training facility, facilities or training programs under section 109(b) of the Act shall include: * * *

(d) *Advances of allowance.* State applications for advances of allowance to small communities shall be on government wide Application for Federal Assistance (SF-424). The application shall include: * * *

(e) *Field Testing of Innovative and Alternative Technology.* An application for field testing of I/A projects shall include a field testing plan containing: * * *

(f) *Marine CSO Fund Project.* An application for marine CSO grant assistance under § 35.2024(b) shall include: * * *

(g) *Design/build project grant (Step 7).* An application for a design/build project grant shall include: * * *

■ 35. Section 35.2042 is amended by revising paragraph (c) to read as follows:

§ 35.2042 Review of grant applications.

(c) Applications for assistance for training facilities funded under section 109(b) and for State advances of allowance under section 201(l)(1) of the Act and § 35.2025 will be reviewed in accordance with 2 CFR parts 200 and 1500. * * *

■ 36. Section 35.2105 is revised to read as follows:

§ 35.2105 Debarment and suspension.

The applicant shall indicate whether it used the services of any individual, organization, or unit of government for facilities planning or design work whose name appears on the master list of debarments, suspensions, and voluntary exclusions. See 2 CFR 200.113 and 2 CFR part 1532. If the applicant indicates it has used the services of a debarred individual or firm, EPA will closely examine the facilities plan, design drawings and specifications to determine whether to award a grant. EPA will also determine whether the applicant should be found non-responsible under 2 CFR parts 200 and 1500 or be the subject of possible debarment or suspension under 2 CFR part 1532.

■ 37. Section 35.2200 is revised to read as follows:

§ 35.2200 Grant conditions.

In addition to the EPA General Grant Conditions (<http://www.epa.gov/ogd/tc.htm>), each treatment works grant shall be subject to the conditions under §§ 35.2202 through 35.2218.

■ 38. Section 35.2212 is amended by revising paragraph (a) second sentence, and paragraph (d) to read as follows:

§ 35.2212 Project initiation.

(a) * * * Failure to promptly initiate and complete a project may result in the imposition of sanctions under 2 CFR 200.338. * * *

(d) The grantee shall notify the Regional Administrator immediately upon award of the subagreement(s) for building all significant elements of the project. * * *

■ 39. Section 35.2250 is revised to read as follows:

§ 35.2250 Determination of allowable costs.

The Regional Administrator will determine the allowable costs of the project based on applicable provisions of laws and regulations, the scope of the approved project, 2 CFR part 200, subpart E—Cost Principles and Appendix A of this subpart.

■ 40. Section 35.2300 is amended by revising paragraph (a) and paragraph (d) second sentence to read as follows:

§ 35.2300 Grant payments.

* * * *

(a) * * * The Regional Administrator may at any time review and audit request for payment and payments and make appropriate adjustments as provided in 2 CFR 200.305.

* * * *

(d) * * * The requirements in 2 CFR 200.305 apply to any advances of funds for assistance payments.

* * * *

■ 41. Appendix A to Subpart I of Part 35—Determination of Allowable Costs is amended by revising paragraphs (a), A.1.b., A.1.c., A.1.g.(2)(ii) and E.2.a to read as follows:

Appendix A to Subpart I of Part 35—Determination of Allowable Costs

(a) * * * The information in this appendix represents Agency policies and procedures for determining the allowability of project costs based on the Clean Water Act, EPA policy, appropriate Federal cost principles of 2 CFR part 200 and reasonableness.

* * * *

A. * * *

1. * * *

b. The costs of complying with the procurement standards in 2 CFR 200.317 through 200.326 and 2 CFR 1500.9 and 1500.10.

c. The cost of legal and engineering services incurred by grantees in deciding procurement protests and defending their decisions in protest appeals in 2 CFR 200.318.

* * * *

g. * * *

(2) * * *

(ii) Costs of equitable adjustments under Clause 4, Differing Site Conditions, of the model subagreement clauses required under § 33.1030 of this subchapter.

* * * *

E. * * *

2. * * *

a. The costs of equipment or material procured in violation of the procurement standards in 2 CFR 200.317 through 2 CFR 200.326 and 2 CFR 1500.9 and 1500.10.

* * * *

Subpart J—Construction Grants Program Delegation to States

■ 42. Section 35.3025 is amended by revising paragraph (c) sixth sentence to read as follows:

§ 35.3025 Overview of State performance under delegation.

(c) * * * The Regional Administrator may terminate or annual any section 205(g) financial assistance for cause in accordance with 2 CFR 200.338 through 2 CFR 200.342 Remedies for Noncompliance.

* * * *

■ 43. Section 35.3030 is amended by revising paragraph (c) to read as follows:

§ 35.3030 Right of review of State decision.

* * * *

(c) The Region shall determine whether the State's review is comparable to a dispute decision official's (DDO) review pursuant to 2 CFR part 1500, subpart E. If the State's review is comparable, Regional review of the State's decision will be conducted by the Regional Administrator. If the State's review is not comparable, the DDO will review the State's decision and issue a written decision. Review of either a Regional Administrator or DDO decision may be requested pursuant to 2 CFR part 1500, subpart E.

* * * *

Subpart K—State Water Pollution Control Revolving Funds

■ 44. Section 35.3105 is amended by revising the introductory text to read as follows:

§ 35.3105 Definitions.

Words and terms that are not defined below and that are used in this rule shall have the same meaning they are given in 2 CFR part 200 Subpart A—Acronyms and Definitions and 40 CFR part 35, subpart I.

* * * *

■ 45. Section 35.3140 is amended by revising paragraph (b) second sentence to read as follows:

§ 35.3140 Environmental review requirements.

* * * *

(b) * * * The State may elect to apply the procedures at 40 CFR part 6, subpart I and related subparts, or apply its own "NEPA-like" SERP for conducting environmental reviews, provided that the following elements are met.

* * * *

Subpart L—Drinking Water State Revolving Funds

■ 46. Section 35.3500 is amended by revising paragraph (b) second sentence to read as follows:

§ 35.3500 Purpose, policy, and applicability.

* * * *

(b) * * * This subpart also supplements EPA general assistance regulations in 2 CFR parts 200 and 1500 which contain administrative requirements that apply to governmental recipients of Environmental Protection Agency (EPA) grants and subgrants.* * *

* * * *

■ 47. Section 35.3510 is amended by revising paragraph (b) second sentence to read as follows:

§ 35.3510 Establishment of the DWSRF program.

* * * *

(b) * * * The State agency that is awarded the capitalization grant (*i.e.*, grantee) is accountable for the use of the funds provided in the capitalization grant agreement under 2 CFR part 200 and the EPA general assistance regulations in 2 CFR part 1500.

* * * *

■ 48. Section 35.3540 is amended by revising paragraph (a) to read as follows:

§ 35.3540 Requirements for funding set-aside activities.

(a) * * * If a State makes a grant or enters into a cooperative agreement with an assistance recipient to conduct set-aside activities, the recipient must comply with 2 CFR part 200 and the EPA general assistance regulations in 2 CFR part 1500.

* * * *

■ 49. Section 35.3550 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.3550 Specific capitalization grant agreement requirements.

(a) * * * A State must agree to comply with this subpart, 2 CFR part 200, the EPA general assistance regulations in 2 CFR part 1500 and the specific conditions of the grant.* * *

* * * *

■ 50. Section 35.3570 is amended by revising paragraph (a)(3)(xiv) and (b)(1) to read as follows:

§ 35.3570 Reports and audits.

(a) * * *

(3) * * *

(xiv) Complied with 2 CFR part 200, the EPA general assistance regulations

in 2 CFR part 1500 and the specific conditions of the grant.

* * * * *

(b) * * *

(1) A State must comply with the provisions of the Single Audit Act Amendments of 1996, 31 U.S.C. 7501–7, 2 CFR part 200 and the Office of Management and Budget’s Compliance Supplement.

* * * * *

■ 51. Section 35.3585 is amended by revising paragraphs (a) and (d) to read as follows:

§ 35.3585 Compliance assurance procedures.

(a) * * * The RA may take action under this section and the remedies of noncompliance of 2 CFR 200.338 through 200.342, if a determination is made that a State has not complied with its capitalization grant agreement, other requirements under section 1452 of the Act, this subpart, 2 CFR parts 200 and 1500, or has not managed the DWSRF program in a financially sound manner (e.g., allows consistent and substantial failures of loan repayments).

* * * * *

(d) * * * A State or an assistance recipient that has been adversely affected by an action or omission by EPA may request a review of the action or omission under 2 CFR part 1500, subpart E.

Subpart M—Grants for Technical Assistance

■ 52. Section 35.4011 is revised to read as follows:

§ 35.4011 Do the general grant regulations apply to TAGs?

Yes, the regulations at 2 CFR part 200 and 2 CFR Part 1500 apply to TAGs. 2 CFR part 200, as supplemented by 2 CFR part 1500, establishes the uniform administrative requirements for Federal grants.

■ 53. Section 35.4012 is revised to read as follows:

§ 35.4012 If there appears to be a difference between the requirements of 2 CFR Parts 200 and 1500 and this subpart, which regulations should my group follow?

You should follow the regulations in 2 CFR part 200 and 2 CFR part 1500, except for the following provisions from which this subpart deviates:

(a) 2 CFR 200.305(b)(1) and (2), Payment

(b) 2 CFR 200.324(b)(2), Federal awarding agency or pass-through entity review

(c) 2 CFR part 1500 Subpart E—Disputes.

■ 54. Section 35.4020 is amended by revising paragraph (a)(2) to read as follows:

§ 35.4020 Is my community group eligible for a TAG?

(a) * * *

(2) Your group meets the minimum administrative and management capability requirements found in 2 CFR 200.302 by demonstrating you have or will have reliable procedures for record keeping and financial accountability related to managing your TAG (you must have these procedures in place before your group incurs any expenses); and

* * * * *

■ 55. Section 35.4050 is amended by revising paragraph (b) first sentence to read as follows:

§ 35.4050 Must my group contribute toward the cost of a TAG?

* * * * *

(b) Under 2 CFR 200.306, your group may use “cash” and/or “in-kind contributions” (for example, your board members can count their time toward your matching share) to meet the matching funds requirement. * * *

■ 56. Section 35.4075 is amended by revising paragraphs (d), (e) and (i)(2) to read as follows:

§ 35.4075 Are there things my group can’t spend TAG money for?

* * * * *

(d) Political activity and lobbying that is unallowable under 2 CFR part 200 Subpart E—Cost Principles, (this restriction includes activities such as attempting to influence the outcomes of any Federal, State or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, or publicity, or attempting to influence the introduction or passage of Federal or state legislation; this regulation is available at <http://www.ecfr.gov>.)

(e) Other activities that are unallowable under the cost principles stated in 2 CFR part 200 Subpart E—Cost Principles (such as costs of amusement, diversion, social activities, fund raising and ceremonies);

* * * * *

(i) * * *

(2) Disputes with EPA under its dispute resolution procedures set forth 2 CFR Part 1500 Subpart E (see § 35.4245); and

* * * * *

■ 57. Section 35.4125 is amended by revising paragraph (c) first sentence to read as follows:

§ 35.4125 What else does my group need to do?

* * * * *

(c) Assurances, certifications and other preaward paperwork as 2 CFR part 200 requires. * * *

■ 58. Section 35.4175 is amended by revising paragraph (c) to read as follows:

§ 35.4175 What other reporting and record keeping requirements are there?

* * * * *

(c) Comply with any reporting and record keeping requirements in 2 CFR parts 200 and 1500.

■ 59. Section 35.4210, paragraph (a), is amended by revising entry (4) of the table to read as follows:

§ 35.4210 Must my group solicit and document bids for our procurements?

(a) * * *

If the aggregate amount of the.	Then your group.
*	* *
(4) proposed contract is greater than \$100,000.	must follow the procurement regulations in 2 CFR Parts 200 and 1500 (these regulations outline the standards for your group to use when contracting for services with Federal funds; they also contain provisions on: codes of conduct for the award and administration of contracts; competition; procurement procedures; cost and price analysis; procurement records; contract administration; and contracts generally).
*	* * *

* * * * *

■ 60. Section 35.4230 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 35.4230 What are my group’s contractual responsibilities once we procure a contract?

* * * * *

(a) Is responsible for resolving all contractual and administrative issues arising out of contracts you enter into under a TAG; you must establish a procedure for resolving such issues with your contractor which complies with the provisions of 2 CFR 200.318 (k). * * *

* * * * *

■ 61. Section 35.4235 is amended by revising paragraphs (f) and (g) to read as follows:

§ 35.4235 Are there specific provisions my group's contract(s) must contain?

(f) The following clauses from 2 CFR part 200 Appendix II—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which are available at <http://www.ecfr.gov>:

(g) The following clauses from 2 CFR part 200:

(1) Remedies for breaches of contract (2 CFR part 200 Appendix II—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards)

(2) Termination by the recipient (2 CFR part 200 Appendix II—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards); and

(3) Access to records (2 CFR 200.336); and

■ 62. Section 35.4245 is revised to read as follows:

§ 35.4245 How does my group resolve a disagreement with EPA regarding our TAG?

The regulations at 2 CFR part 1500 Subpart E will govern disputes except that, before you may obtain judicial review of the dispute, you must have requested the Regional Administrator to review the dispute decision official's determination under 2 CFR 1500.17.

■ 63. Section 35.4250 is amended by revising paragraph (b) to read as follows:

§ 35.4250 Under what circumstances would EPA terminate my group's TAG?

(b) EPA may also terminate your grant with your group's consent in which case you and EPA must agree upon the termination conditions, including the effective date as 2 CFR 200.339 describes.

■ 64. Section 35.4260 is amended by revising the introductory text to read as follows:

§ 35.4260 What other steps might EPA take if my group fails to comply with the terms and conditions of our award?

EPA may take one or more of the following actions, under 2 CFR 200.338, depending on the circumstances:

■ 65. Section 35.4270 is amended by revising the definition "Allowable cost" to read as follows:

§ 35.4270 Definitions.

Allowable cost means those project costs that are: eligible, reasonable, allocable to the project, and necessary to

the operation of the organization or the performance of the award as provided in the appropriate Federal cost principles, in most cases 2 CFR part 200 Subpart E—Cost Principles, and approved by EPA in the assistance agreement.

■ 66. Section 35.4275 is amended by revising the section heading to read as follows:

§ 35.4275 Where can my group get the documents this subpart references (for example Whitehouse OMB circulars, eCFR and tag Web site, EPA HQ/Regional offices, grant forms)?

Subpart O—Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

■ 67. Section 35.6005 is amended by revising paragraph (b) to read as follows:

§ 35.6005 Purpose and scope.

(b) 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities," establishes consistency and uniformity among Federal agencies in the administration of grants and Cooperative Agreements to non-federal entities. For CERCLA-funded Cooperative Agreements, this subpart supplements the requirements contained in 2 CFR parts 200 and 1500 for States, political subdivisions thereof, and Indian Tribes. This subpart references those sections of 2 CFR parts 200 and 1500 that are applicable to CERCLA-funded Cooperative Agreements.

■ 68. Section 35.6015 is amended by revising paragraph (b) to read as follows:

§ 35.6015 Definitions.

(b) Those terms not defined in this section shall have the meanings set forth in section 101 of CERCLA, 2 CFR part 200, and 40 CFR part 300 (the National Contingency Plan).

■ 69. Section 35.6020 is revised to read as follows:

§ 35.6020 Requirements for both applicants and recipients.

Applicants and recipients must comply with the applicable requirements of 2 CFR part 1532, "Nonprocurement Debarment and Suspension and of 2 CFR part 1536, "Requirements for Drug-Free Workplace (Financial Assistance)."

■ 70. Section 35.6025 is amended by revising the second sentence to read as follows:

§ 35.6025 Deviation from this subpart.

* * * Refer to the requirements regarding additions and exceptions described in 2 CFR 1500.3.

■ 71. Section 35.6055 is amended by revising paragraphs (a)(3) and (b)(2)(i) to read as follows:

§ 35.6055 State-lead pre-remedial Cooperative Agreements.

(a) * * *
(3) *Other applicable forms and information* authorized by 2 CFR part 200 Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

(b) * * *
(2) * * *

(i) The recipient must comply with the quality assurance requirements described in 2 CFR 1500.11.

■ 72. Section 35.6105 is amended by revising paragraphs (a)(2)(vi)(A), (a)(3) and (b)(5) to read as follows:

§ 35.6105 State-lead remedial Cooperative Agreements.

(a) * * *
(2) * * *

(vi) * * * (A) * * * If the project involves environmentally related measurements or data generation, the recipient must comply with the requirements regarding quality assurance described in 2 CFR 1500.11.

(3) *Other applicable forms and information* authorized by 2 CFR part 200 Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

(b) * * *
(5) * * * If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR 300.510(f) of the NCP. The State must provide this assurance even if it intends to transfer this interest to a third party, or to allow a political subdivision to accept transfer on behalf of the State. If the political subdivision is accepting the transferred interest in real property, the State must guarantee that it will accept transfer of such interest in the event of default by the political subdivision. If the State or political subdivision

disposes of the transferred real property, it shall comply with the requirements for real property in 2 CFR 200.311. (See § 35.6400 for additional information on real property acquisition requirements.)

■ 73. Section 35.6230 is amended by revising paragraph (d) to read as follows:

§ 35.6230 Application requirements.

(d) Other applicable forms and information authorized by 2 CFR part 200 Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

■ 74. Section 35.6270 is amended by revising paragraph (a)(1) third sentence, paragraph (a)(2) and paragraph (b)(3) second sentence to read as follows:

§ 35.6270 Standards for financial management systems.

(a)(1) The recipient must allow an EPA review of the adequacy of the financial management system as described in 2 CFR 200.302.

(2) The recipient's systems must comply with the appropriate allowable cost principles described in 2 CFR part 200 Subpart E—Cost Principles.

(b) (3) The recipient must comply with the requirements regarding source documentation described in 2 CFR 200.302.

■ 75. Section 35.6275 is amended by revising paragraph (a) to read as follows:

§ 35.6275 Period of availability of funds.

The recipient must comply with the requirements regarding the availability of funds described in 2 CFR parts 200 and 1500.

■ 76. Section 35.6280 is amended by revising paragraphs (a) introductory text, (a)(2), paragraph (b)(1) first sentence, paragraph (b)(2) second sentence and paragraph (b)(3) fourth sentence to read as follows:

§ 35.6280 Payments.

(a) In addition to the following requirements, the recipient must comply with the requirements regarding payment described in 2 CFR 200.305.

(2) The interest a recipient earns on an advance of EPA funds is subject to the requirements of 2 CFR 200.305.

(1) In order to receive payment by the letter of credit method, the recipient must comply with the

requirements regarding letter of credit described in 2 CFR 200.305.

(2) The recipient must comply with the requirements regarding reimbursement described in 2 CFR 200.305.

(3) In such cases, the recipient must comply with the requirements regarding working capital advances described in 2 CFR 200.305.

■ 77. Section 35.6285 is amended by revising paragraph (b) second sentence and paragraph (e) first sentence to read as follows:

§ 35.6285 Recipient payment of response costs.

(b) The recipient must comply with the requirements regarding in-kind and donated services described in 2 CFR 200.306.

(e) The recipient must comply with the requirements regarding cost sharing described in 2 CFR 200.306.

■ 78. Section 35.6290 is amended by revising the first sentence to read as follows:

§ 35.6290 Program income.

The recipient must comply with the requirements regarding program income described in 2 CFR 200.307 and 2 CFR part 1500.

■ 79. Section 35.6405 is revised to read as follows:

§ 35.6405 Use.

The recipient must comply with the requirements regarding real property described in 2 CFR 200.311.

■ 80. Section 35.6450 is amended by revising the first sentence to read as follows:

§ 35.6450 General requirements.

The recipient must comply with the requirements regarding copyrights described in 2 CFR part 200.315.

■ 81. Section 35.6550 is amended by revising paragraph (a)(1) first sentence, paragraph (a)(3), paragraph (a)(6) first sentence and paragraph (a)(7) to read as follows:

§ 35.6550 Procurement system standards.

(a)(1) In addition to the procurement standards described in 2 CFR 200.317 through 200.326 and 2 CFR part 1500, the State shall comply with the requirements in the following: Paragraphs (a)(5), (a)(9), and (b) of this section, §§ 35.6555(c), 35.6565 (the first sentence in this section, the first sentence in paragraph (b) of this section,

and all of paragraph (d) of this section), 35.6570, 35.6575, and 35.6600.

(3) The recipient must comply with the requirements of 2 CFR 200.318 (c)(1) which describes standards of conduct for employees, officers, and agents of the recipient.

(6) The recipient may award a contract only to a responsible contractor, as described in 2 CFR 200.318 (h) and must ensure that each contractor performs in accordance with all the provisions of the contract. (See also § 35.6020.)

(7) The recipient must comply with the requirements described in 2 CFR 200.318 (k) regarding protest procedures.

■ 82. Section 35.6555 is amended by revising paragraph (b)(2) to read as follows:

§ 35.6555 Competition.

(2) Any contract or subcontract awarded by an Indian Tribe or Indian intertribal consortium shall comply with the requirements of the Indian Self Determination Act.

■ 83. Section 35.6565 is amended by revising the first sentence of the introductory text to read as follows:

§ 35.6565 Procurement methods.

The recipient must comply with the requirements for payment to consultants described in 2 CFR 1500.9.

■ 84. Section 35.6570 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 35.6570 Use of the same engineer during subsequent phases of response.

(i) That it complied with the procurement requirements in § 35.6565 when it selected the engineer and the code of conduct requirements described in 2 CFR 200.318(c)(1).

■ 85. Section 35.6590 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.6590 Bonding and insurance.

(a) The recipient must meet the requirements regarding bonding described in 2 CFR 200.325.

■ 86. Section 35.6595 is amended by revising paragraph (b)(2) second sentence and paragraph (b)(3) to read as follows:

§ 35.6595 Contract provisions.

* * * * *

(b) * * *

(2) * * * This notice shall also include EPA requirements and regulations pertaining to copyrights and rights to data contained in 2 CFR 200.315.

(3) * * * The recipient must comply with Appendix II to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

* * * * *

■ 87. Section 35.6610 is amended by revising paragraph (e) to read as follows:

§ 35.6610 Contracts awarded by a contractor.

* * * * *

(e) The Federal cost principles in 2 CFR part 200 subpart E.

* * * * *

■ 88. Section 35.6650 is amended by revising paragraph (a) second sentence to read as follows:

§ 35.6650 Progress reports.

(a) * * * Notwithstanding the requirements of 2 CFR 200.327 and 200.328, the reports shall be due within 60 days after the reporting period.

* * * * *

■ 89. Section 35.6670 is amended by revising paragraph (a) and paragraph (b)(2)(i) second sentence to read as follows:

§ 35.6670 Financial reports.

(a) * * * The recipient must comply with the requirements regarding financial reporting described in 2 CFR 200.327.

(b) * * *

(2) * * *

(i) * * * If quarterly or semiannual Financial Status Reports are required, reports are due in accordance with 2 CFR 200.327;

* * * * *

■ 90. Section 35.6705 is amended by revising paragraph (d) to read as follows:

§ 35.6705 Records retention.

* * * * *

(d) * * * The recipient must comply with the requirements regarding the starting dates for records retention described in 2 CFR 1500.6.

■ 91. Section 35.6710 is amended by revising paragraphs (a) and (c) to read as follows:

§ 35.6710 Records access.

(a) * * * The recipient must comply with the requirements regarding records access described in 2 CFR 200.336.

* * * * *

(c) * * * The recipient must require its contractor to comply with the requirements regarding records access described in 2 CFR 200.336.

* * * * *

■ 92. Section 35.6750 is revised to read as follows:

§ 35.6750 Modifications.

The recipient must comply with the requirements regarding changes to the Cooperative Agreement described by subject in 2 CFR part 200.

■ 93. Section 35.6755 is revised to read as follows:

§ 35.6755 Monitoring program performance.

The recipient must comply with the requirements regarding program performance monitoring described in 2 CFR 200.328.

■ 94. Section 35.6760 is revised to read as follows:

§ 35.6760 Enforcement and termination.

The recipient must comply with all terms and conditions in the Cooperative Agreement, and is subject to the requirements regarding enforcement of the terms of an award and termination described in 2 CFR 200.338 and 200.339.

■ 95. Section 35.6765 is revised to read as follows:

§ 35.6765 Non-Federal audit.

The recipient must comply with the requirements regarding non-Federal audits described in 2 CFR part 200 subpart F.

■ 96. Section 35.6770 is revised to read as follows:

§ 35.6770 Disputes.

The recipient must comply with the requirements regarding dispute resolution procedures described in 2 CFR part 1500 subpart E.

■ 97. Section 35.6780 is amended by revising paragraph (b) to read as follows:

§ 35.6780 Closeout.

* * * * *

(b) The recipient must comply with the closeout requirements described in 2 CFR 200.343 and 200.344.

* * * * *

■ 98. Section 35.6785 is revised to read as follows:

§ 35.6785 Collection of amounts due.

The recipient must comply with the requirements described in 2 CFR

200.345 regarding collection of amounts due.

■ 99. Section 35.6790 is revised to read as follows:

§ 35.6790 High risk recipients.

If EPA determines that a recipient is not responsible, EPA may impose specific conditions on the award as described in 2 CFR 200.207 or restrictions on the award as described in 2 CFR 200.338.

■ 100. Section 35.6815 is amended by revising paragraph (a)(2) to read as follows:

§ 35.6815 Administrative requirements.

* * * * *

(a) * * *

(2) * * * The State and/or political subdivision must comply with the requirements described in 2 CFR 200.345 regarding collection of amounts due.

* * * * *

Subpart P—Financial Assistance for the National Estuary Program

■ 101. Section 35.9000 is amended by revising the second sentence to read as follows:

§ 35.9000 Applicability.

* * * These provisions supplement the EPA general assistance regulations in 2 CFR parts 200 and 1500.

■ 102. Section 35.9040 is amended by revising the second sentence to read as follows:

§ 35.9040 Application for assistance.

* * * In addition to meeting applicable requirements contained in 2 CFR parts 200 and 1500, a complete application must contain a discussion of performance to date under an existing award, the proposed work program, and a list of all applicable EPA-approved State strategies and program plans, with a statement certifying that the proposed work program is consistent with these elements.* * *

■ 103. Section 35.9045 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.9045 EPA action on application.

(a) * * * The Regional Administrator will approve the application only if it satisfies the requirements of CWA section 320; the terms, conditions, and limitations of this subpart; and the applicable provisions of 2 CFR parts 200 and 1500, and other EPA assistance regulations.* * *

* * * * *

■ 104. Section 35.9055 is amended by revising the sixth sentence to read as follows:

§ 35.9055 Evaluation of recipient performance.

* * * If agreement is not reached, the Regional Administrator may impose sanctions under the applicable provisions of 2 CFR parts 200 and 1500.

PART 40—RESEARCH AND DEMONSTRATION GRANTS

■ 105. The authority citation for part 40 is revised to read as follows:

Authority: 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2609 *et seq.*; 33 U.S.C. 1254 *et seq.* and 1443; 42 U.S.C. 241 *et seq.*, 300f *et seq.*, 1857 *et seq.*, 1891 *et seq.*, and 6901 *et seq.*, 2 CFR part 200.

■ 106. Section 40.105 is revised to read as follows:

§ 40.105 Applicability and scope.

This part establishes mandatory policies and procedures for all EPA research and demonstration grants. The provisions of this part supplement the EPA general grant regulations and procedures in 2 CFR parts 200 and 1500. Accordingly, all EPA research and demonstration grants are awarded subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (2 CFR part 200) and to the applicable provisions of this part 40.

■ 107. Section 40.125–2 is amended by revising the introductory text to read as follows:

§ 40.125–2 Limitations on assistance.

In addition to the cost-sharing requirements pursuant to 2 CFR 200.306, research and demonstration grants shall be governed by the specific assistance limitations listed below:

* * * * *

■ 108. Section 40.130 is amended by revising the introductory text to read as follows:

§ 40.130 Eligibility.

Except as otherwise provided below, grants for research and demonstration projects may be awarded to any responsible applicant in accordance with 2 CFR part 200.

* * * * *

■ 109. Section 40.135–2 is amended by revising the introductory text to read as follows:

§ 40.135–2 Application requirements.

All applications for research and demonstration grants shall be submitted to the Environmental Protection Agency, in accordance with 2 CFR 200.206.

* * * * *

■ 110. Section 40.145 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 40.145 Supplemental grant conditions.

In addition to the EPA General Grant Conditions (<http://www.epa.gov/ogd/tc.htm>), all grants are awarded subject to the following requirements:

* * * * *

(b) In addition to the notification of project changes required pursuant to 2 CFR 200.308, prior written approval by the grants officer is required for project changes which may alter the approved scope of the project, substantially alter the design of the project, or increase the amount of Federal funds needed to complete the project. No approval or disapproval of a project change pursuant to 2 CFR 200.308 or this section shall commit or obligate the United States to an increase in the amount of the grant or payments thereunder, but shall not preclude submission or consideration of a request for a grant amendment pursuant to 2 CFR 200.308.

* * * * *

■ 111. Section 40.145–3 is amended by revising paragraph (k) to read as follows:

§ 40.145–3 Projects involving construction.

* * * * *

(k) In addition to the notification of project changes pursuant to 2 CFR 200.308, a copy of any construction contract or modifications thereof, and of revisions to plans and specifications must be submitted to the grants officer.

■ 112. Section 40.155 is amended by revising paragraph (b) and (c) to read as follows:

§ 40.155 Availability of information.

* * * * *

(b) An assertion of entitlement to confidential treatment of part or all of the information in an application may be made using the procedure described in 2 CFR 200.211. See also §§ 2.203 and 2.204 of this chapter.

(c) All information and data contained in the grant application will be subject to external review unless deviation is approved for good cause pursuant to 2 CFR 1500.3.

■ 113. Section 40.160–2 is revised to read as follows:

§ 40.160–2 Financial status report.

A financial status report must be prepared and submitted within 90 days after completion of the budget and project periods in accordance with 2 CFR 200.327.

■ 114. Section 40.160–3 is amended by revising introductory text to read as follows:

§ 40.160–3 Reporting of inventions.

Immediate and full reporting of all inventions to the Environmental Protection Agency is required. In addition:

* * * * *

PART 45—TRAINING ASSISTANCE

■ 115. The authority citation for part 45 is revised to read as follows:

Authority: Sec. 103 of the Clean Air Act, as amended (42 U.S.C. 7403), secs. 104(g), 109, and 111 of the Clean Water Act, as amended (33 U.S.C. 1254(g), 1259, and 1261), secs. 7007 and 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6977 and 6981); sec. 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1). 2 CFR 200.

■ 116. Section 45.100 is revised to read as follows:

§ 45.100 Purpose and scope.

This part establishes the policies and procedures for the award of training assistance by the Environmental Protection Agency (EPA). The provisions of this part supplement EPA’s general grant regulations and procedures 2 CFR parts 200 and 1500.

■ 117. Section 45.115 is amended by revising the introductory text to read as follows:

§ 45.115 Definitions.

The following definitions supplement the definitions in 2 CFR part 200, subpart A.

* * * * *

■ 118. Section 45.130 is amended by revising paragraph (a) introductory text to read as follows:

§ 45.130 Evaluation of applications.

(a) Consistent with 2 CFR 200.204, the appropriate EPA program office staff will review training applications in accordance with the following criteria:

* * * * *

■ 119. Section 45.145 is amended by revising paragraph (a) to read as follows:

§ 45.145 Allocability and allowability of costs.

(a) Allocability and allowability of costs will be determined in accordance with 2 CFR part 200, subpart E.

* * * * *

■ 120. Section 45.150 is amended by revising paragraph (a) to read as follows:

§ 45.150 Reports.

(a) Recipients must submit the reports required in 2 CFR 200.327 and 200.328.

* * * * *

PART 46—FELLOWSHIPS

■ 121. The authority citation for part 46 is revised to read as follows:

Authority: Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5)); sections 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B)); section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j-1); section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981); section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609); section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r); sections 104(k)(6) and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660). 2 CFR part 200.

Subpart D—During the Fellowship

■ 122. Section 46.205 is amended by revising the second sentence to read as follows:

§ 46.205 Intangible property.

* * * EPA's requirements for dealing with such intangible property are found at 2 CFR 200.315.

■ 123. Section 46.220 is amended by revising paragraph (b) third sentence to read as follows:

§ 46.220 Disputes.

* * * * *

(b) * * * The dispute procedures outlined at 2 CFR part 1500 subpart E, will apply.

PART 47—NATIONAL ENVIRONMENTAL EDUCATION ACT GRANTS

■ 124. The authority citation for part 47 is revised to read as follows:

Authority: 20 U.S.C. 5505. 2 CFR part 200.

■ 125. Section 47.100 is amended by revising the third sentence to read as follows:

§ 47.100 Purpose and scope.

* * * Projects funded under this part are also subject to 2 CFR parts 200 and 1500. * * *

■ 126. Section 47.105 is amended by revising paragraph (g) to read as follows:

§ 47.105 Definitions.

* * * * *

(g) Refer to 2 CFR part 200, subpart A and 40 CFR 35.6015 for definitions for budget period, project period, cooperative agreement, grant agreement, and other Federal assistance terms.

■ 127. Section 47.130 is amended by revising paragraph (c) to read as follows:

§ 47.130 Performance of grant.

* * * * *

(c) Procurement procedures for all recipients are described in 2 CFR part 200 subpart D—Post Federal Award Requirements, Procurement Standards

(2 CFR 200.317 through 200.326). These procedures include provisions for small purchase procedures.

■ 128. Section 47.135 is revised to read as follows:

§ 47.135 Disputes.

Disputes arising under these grants shall be governed by 2 CFR part 1500 subpart E.

Gina McCarthy,
Administrator.

National Aeronautics and Space Administration

For the reasons set forth in the common preamble, Part 1800 of Title 2, Chapter XVIII of the Code of Federal Regulations is added and 14 CFR parts 1260 and 1273 are removed to read as follows:

Title 2—Grants and Agreements

CHAPTER XVIII—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

- 1800.1 Authority.
- 1800.2 Purpose.
- 1800.3 Applicability.
- 1800.4 Amendment.
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Subpart A—Acronyms and Definitions

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- 1800.208 Certifications and representations.
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- 1800.305 Payment.
- 1800.306 Cost sharing or matching.

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- 1800.312 Federally-owned and exempt property.
- 1800.315 Intangible property.

Remedies for Noncompliance

- 1800.339 Termination.
- 1800.400 Policy guide.
- Appendix A to Part 1800—Certifications, Assurances, and Representations
- Appendix B to Part 1800—Terms and Conditions

Authority: 51 U.S.C. 20113 (e), Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

§ 1800.1 Authority.

The National Aeronautics and Space Administration (NASA) awards grants and cooperative agreements under the authority of 51 U.S.C. 20113 (e), the National Aeronautics and Space Act. This part 1800 is issued under the authority of 51 U.S.C. 20113 (e), Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

§ 1800.2 Purpose.

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through F of 2 CFR part 200, as supplemented by this part, as the NASA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards. It thereby gives regulatory effect for NASA to the OMB guidance as supplemented by this part.

§ 1800.3 Applicability.

(a) This part establishes policies and procedures for grants and cooperative agreements awarded by NASA to non-Federal entities, commercial firms (when cost sharing is not required), and foreign organizations as allowed by 2 CFR 200.101 Applicability.

(b) Throughout this Part, the term “grant” includes “cooperative agreement” unless otherwise indicated.

(c) When commercial firms are required to provide cost sharing pursuant to 2 CFR 200.306, Cost Sharing, the terms and conditions of 14 CFR part 1274 apply.

(d)(1) In general, research with foreign organizations will not be conducted through grants, but instead will be accomplished on a no-exchange-of-funds basis. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. NASA policy on performing research with foreign organizations on a no-exchange-of-funds basis is set forth at NASA FAR Supplement (NFS) 1835.016-70. In rare instances, NASA may enter into an international agreement under which funds will be transferred to a foreign recipient.

(2) Grants to foreign organizations are made on an exceptional basis only. Awards require the prior approval of the Headquarters Office of International and Interagency Relations and the Headquarters Office of the General Counsel. Requests to award grants to foreign organizations are to be coordinated through the Office of Procurement, Program Operations Division.

(3) The requirements of this section do not apply to the purchase of supplies or services from non-U.S. sources by grant to U.S. recipients, when necessary to support research efforts.

(Authority: 14 CFR 1260.4(b), 14 CFR 1260.12(e)(1), 14 CFR 1260.12(e)(2), 14 CFR 1260.12(e)(3), and 14 CFR 1260.12(e)(5))

§ 1800.4 Amendment.

This Part 1800 will be amended by publication of changes in the **Federal Register**. Changes will be issued as final rules.

§ 1800.5 Publication.

The official site for accessing the NASA Grant and Cooperative Agreement Regulation, including current Grant Notices and internal guidance, is on the internet at: <http://www.hq.nasa.gov/office/procurement/grants/index.html>.

§ 1800.6 Deviations.

(a) A deviation is required for any of the following:

(1) When prescribed term or condition set forth verbatim in this Part 1800 is modified or omitted.

(2) When a term or condition is set forth in this Part, but not for use verbatim, and the Center substitutes a term or condition which is inconsistent with the intent, principle, and substance of the term or condition.

(3) When a form prescribed by this Part is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a grant term or condition, form, procedure, or any other grant action, are changed.

(5) When a form is created for recipient use that constitutes a "Collection of Information" within the meaning of the Paperwork Reduction Act (44 U.S.C. 35) and its implementation in 5 CFR part 1320.

(b) Requests for authority to deviate from this Part shall be submitted to the Office of Procurement, NASA Headquarters, Program Operations Division. Requests, signed by the procurement officer, shall contain:

(1) A full description of the deviation, the circumstances in which it will be used, and identification of the requirement from which a deviation is sought;

(2) The rationale for the request, pertinent background information, and the intended effect of the deviation;

(3) The name of the recipient, identification of the grant affected, and the dollar value;

(4) A statement as to whether the deviation has been requested previously, and, if so, details of that request; and

(5) A copy of legal counsel's concurrence or comments.

(c) Where it is necessary to obtain an exception from 2 CFR part 200, the Program Operations Division will process all necessary documents. (See 2 CFR 200.102.)

(Authority: 14 CFR 1260.7)

Subpart A—Acronyms and Definitions

§ 1800.10 Acronyms.

AO Announcement of Opportunity
 CAN Cooperative Agreement Notice
 HBCU Historically Black Colleges and Universities
 NASA National Aeronautics and Space Administration
 NFS NASA FAR Supplement
 NPR NASA Procedural Requirements
 NRA NASA Research Announcement
 OMB Office of Management and Budget
 ONR Office of Naval Research
 RPPR Research Performance Progress Report
 STI Program NASA Scientific and Technical Information Program

§ 1800.11 Definitions.

(a) The following definitions are a supplement to the subpart A definitions set forth at 2 CFR 200.2 through 200.99.

Administrative grant officer means a Federal employee delegated responsibility for grant administration; e.g., a NASA grant officer who has retained grant administration responsibilities, or an Office of Naval Research (ONR) grant officer delegated grant administration by a NASA grant officer.

Commercial firm means any corporation, trust or other organization which is organized primarily for profit.

Effective date means the date work can begin. This date is the beginning of the period of performance and can be earlier or later than the date of signature on a basic award. Expenditures made prior to award of a grant are incurred at the recipient's risk.

Historically Black Colleges and Universities (HBCUs) means any historically Black college or university that was established prior to 1964, whose principal mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation.

Minority Institutions (MIs) means an institution of higher education whose enrollment of a single minority or a

combination of minorities (minority meaning American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group under-represented in science and engineering.) exceeds 50 percent of the total enrollment.

Research misconduct is defined in 14 CFR 1275.101. NASA policies and procedures regarding Research misconduct are set out in 14 CFR part 1275, "Investigation of Research Misconduct."

Summary of research means a document summarizing the results of the entire project, which includes bibliographies, abstracts, and lists of other media in which the research was discussed.

Subpart B—Pre-Federal Award Requirements and Contents of Federal Awards

§ 1800.208 Certifications and representations.

The certifications and representations for NASA may be found at Appendix A of this Part and <http://www.hq.nasa.gov/office/procurement/grants/index.html>.

§ 1800.209 Pre-award costs.

NASA waives the approval requirement for pre-award costs of 90 days or less.

(Authority: 14 CFR 1260.125(3)(1))

§ 1800.210 Information contained in a Federal award.

The terms and conditions for NASA may be found at Appendix B of this Part and <http://www.hq.nasa.gov/office/procurement/grants/index.html>.

Subpart C—Post Federal Award Requirements

Standards for Financial and Program Management

§ 1800.305 Payment.

Payments under grants with commercial firms will be made based on incurred costs. Standard Form 425 is not required. Commercial firms shall not submit invoices more frequently than quarterly. Payments to be made on a more frequent basis require the written approval of the grant officer.

(Authority: 14 CFR 1260.4(b)(5))

§ 1800.306 Cost sharing or matching.

Where statute or section of NASA's Code of Federal Regulations requires cost sharing or matching, recipients must secure matching funds to receive the Federal award.

(Authority: 14 CFR 1260.54)

Property Standards

§ 1800.312 Federally owned and exempt property.

Under the authority of the Childs Act, 31 U.S.C. 6301 to 6308, NASA has determined to vest title to property acquired with Federal funds in the recipient without further obligation to NASA, including reporting requirements.

(Authority: 14 CFR 1260.133(b))

§ 1800.315 Intangible property.

Due to the substantial involvement on the part of NASA under a cooperative agreement, intellectual property may be produced by Federal employees and NASA contractors tasked to perform NASA assigned activities. Title to intellectual property created under the cooperative agreement by NASA or its contractors will initially vest with the creating party. Certain rights may be exchanged with the recipient.

(Authority: 14 CFR 1260.136(f))

Remedies for Noncompliance

§ 1800.339 Termination.

NASA reserves the ability to terminate a Federal award in accordance with 2 CFR 1800.921, Incremental Funding.

(Authority: 14 CFR 1260.52)

§ 1800.400 Policy guide.

Payment of fee or profit is consistent with an activity whose principal purpose is the acquisition of goods and services for the direct benefit or use of the United States Government, rather than an activity whose principal purpose is assistance. Therefore, the grants officer shall use a procurement contract, rather than assistance instrument, in all cases where fee or profit is to be paid to the recipient of the instrument or the instrument is to be used to carry out a program where fee or profit is necessary to achieving program objectives. Grants and cooperative agreements shall not provide for the payment of fee or profit to the recipient.

(Authority: 14 CFR 1260.4(b)(2); 1260.10(b)(1)(iv); 1260.14(e))

Appendix A to Part 1800— Certifications, Assurances, and Representations

A.1 Certifications, assurances, and representations.

A.2 Certification of Compliance on Proposal Cover Page.

A.3 Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs.

A.4 Certification Regarding Lobbying.

A.5 Certification Regarding Debarment, Suspension, and Other Matters of Responsibility.

A.6 Certifications to Implement Restrictions in Appropriations Acts.

A.1 Certifications, assurances, and representations.

Unless prohibited by statute or codified regulation, NASA will allow recipients to submit certain certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements. Recipients determine how annual representations affect their responsibility to obtain required certifications from pass-through entities.

A.2 Certification of Compliance on Proposal Cover Page.

(This certification is required for all awards.)

CERTIFICATION OF COMPLIANCE WITH APPLICABLE EXECUTIVE ORDERS AND U.S. CODE (MON/YEAR)

By submitting the proposal identified in the Cover Sheet/Proposal Summary in response to this Research Announcement, the Authorizing Official of the proposing organization (or the individual Proposer if there is no proposing organization) as identified below:

(a) Certifies that the statements made in this proposal are true and complete to the best of his/her knowledge;

(b) agrees to accept the obligation to comply with NASA award terms and conditions if an award is made as a result of this proposal; and

(c) confirms compliance with all applicable terms and conditions, rules, and stipulations set forth in the Certifications, Assurances, and Representations contained in this NRA or CAN. Willful terms and conditions of false information in this proposal and/or its supporting documents, or in reports required under an ensuing award, is a criminal offense (U.S. Code, Title 18, Section 1001).

A.3 Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs.

(This certification is required for all awards.)

ASSURANCE OF COMPLIANCE WITH THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION REGULATIONS PURSUANT TO NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MON/YEAR)

“The Organization, corporation, firm, or other organization on whose behalf this assurance is made, hereinafter called “Applicant:”

“HEREBY acknowledges and agrees that it must comply (and require any subgrantees, contractors, successors, transferees, and assignees to comply) with applicable provisions of National laws and policies prohibiting discrimination, including but not limited to:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin (42 U.S.C. 2000d *et seq.*), as implemented by NASA Title VI regulations, 14 CFR part 1250. As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, the Applicant must take reasonable steps to ensure that LEP persons have meaningful access to its programs in accordance with NASA Title VI LEP Guidance to Grant Recipients (68 FR 70039). Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The Applicant is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. Assistance and information regarding LEP obligations may be found at <http://www.lep.gov>.

2. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs or activities (20 U.S.C. 1681 *et seq.*) as implemented by NASA Title IX regulations, 14 CFR part 1253. If the Applicant is an educational institution:

a. The Applicant is required to designate at least one employee to serve as its Title IX coordinator (14 CFR 1253.135(a)).

b. The Applicant is required to notify all of its program beneficiaries of the name, office, address, and telephone number of the employee(s) designated to serve as the Title IX coordinators (14 CFR 1253.135(a)).

c. The Applicant is required to publish internal grievance procedures to promptly and equitably resolve complaints alleging illegal discrimination in its programs or activities (14 CFR 1253.135(b)).

d. The Applicant is required to take specific steps to regularly and consistently notify program beneficiaries that The Applicant does not discriminate in the operation of its programs and activities (14 CFR 1253.140).

3. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits The Applicant from discriminating on the basis of disability (29 U.S.C. 794) as implemented by NASA Section 504 regulations, 14 CFR part 1251.

a. The Applicant is required to designate at least one employee to serve as its Section 504 coordinator (14 CFR 1251.106(a)).

b. The Applicant is required to notify all its program beneficiaries of the name, office, address, and telephone number of the employee(s) designated to serve as the Section 504 coordinator (14 CFR 1251.106(a)).

c. The Applicant is required to publish internal grievance procedures to promptly and equitably resolve complaints alleging illegal discrimination in its programs or activities (14 CFR 1251.106(b)).

d. The Applicant is required to take specific steps to regularly and consistently

notify program beneficiaries that the Applicant does not discriminate in the operation of its programs and activities (14 CFR 1251.107).

4. The Age Discrimination Act of 1975, as amended, which prohibits the Applicant from discriminating on the basis of age (42 U.S.C. 6101 *et seq.*) as implemented by NASA Age Discrimination Act regulations, 14 CFR part 1252.

The Applicant also acknowledges and agrees that it must cooperate with any compliance review or complaint investigation conducted by NASA and comply (and require any subgrantees, contractors, successors, transferees, and assignees to comply) with applicable terms and conditions governing NASA access to records, accounts, documents, information, facilities, and staff. The Applicant must keep such records and submit to the responsible NASA official or designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible NASA official or his designee may determine to be necessary to ascertain whether the Applicant has complied or is complying with relevant obligations and must immediately take any measure determined necessary to effectuate this agreement. The Applicant must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The United States shall have the right to seek judicial enforcement of these obligations. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign on behalf of the Applicant."

Under penalty of perjury, the undersigned officials certify that they have read and understand their obligations as herein described, that the information submitted in conjunction with this document is accurate and complete, and that the recipient is in compliance with the nondiscrimination requirements set out above.

[End of Assurance]

A.4 Certification Regarding Lobbying.
(This certification is required for all awards.)

CERTIFICATION REGARDING LOBBYING (MON/YEAR)

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of

Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000 for each such failure.

[End of Certification]

A.5 Certification Regarding Debarment, Suspension, and Other Matters of Responsibility.

(This certification is required for all awards.)

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER MATTERS OF RESPONSIBILITY (MON/YEAR)

Pursuant to Executive Order 12549, Debarment and Suspension, and implemented at 2 CFR parts 180 and 1880:

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[End of Certification]

A.6 Certifications to Implement Restrictions in Appropriations Acts. The text of these certifications is found at <http://www.hq.nasa.gov/office/procurement/grants/index.html>.

Appendix B to Part 1800—Terms and Conditions

- 1800.900 Terms and Conditions.
- 1800.901 Compliance with OMB Guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.
- 1800.902 Technical publications and reports.
- 1800.903 Extensions.
- 1800.904 Termination and enforcement.
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- 1800.929 Electronic funds transfer payment methods.
- 1800.900 Terms and Conditions
 - (a) Unless otherwise noted in the prescriptive language grants with Non-Federal entities shall incorporate by reference the terms and conditions set forth in sections 1800.901 through 1800.920 of this appendix. Certain of these terms and conditions are prescribed on a "substantially as" basis. For example, the grant officer shall substitute § 1800.902, Technical Publications and Reports, with reporting requirements specified by the program office.
 - (b) Additional special terms and conditions may be included to the extent they are required and are not inconsistent with the other terms and conditions in this Appendix B. A deviation in accordance with 2 CFR 1800.6 is required before an inconsistent new term and condition can be included in a grants.
 - (c) Whenever the word "grant" appears in this Appendix, it shall be deemed to include, as appropriate, the term "cooperative agreement."

(d) Terms and conditions for research grants awarded to foreign organizations, when approved by Headquarters, will be provided in full text. Referenced handbooks, statutes, or other regulations, which the recipient may not have access to, must be made available when requested by the foreign organization.

(e) Grants awarded by NASA to commercial organizations where cost sharing is not required shall incorporate the terms and conditions set forth in this appendix.

(Authority: 14 CFR 1260.20)

1800.901 Compliance With OMB Guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

(This Term and Condition implements 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards herein referred to as the "OMB Uniform Guidance." This term and condition shall be included in all grants with Recipients that are other than commercial firms. Alternate I to this term and condition shall be included in grants with commercial firms.)

COMPLIANCE WITH OMB GUIDANCE (MON/YEAR)

This grant is subject to the requirements set forth in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards as adopted by NASA in Part 1800 of Title 2 of the Code of Federal Regulations. Specific terms and conditions set forth in this award document are provided to supplement and clarify, not replace, the OMB Uniform Guidance, except in circumstances where a waiver from OMB Uniform Guidance requirements has been obtained by NASA.

(End of Term and Condition)

COMPLIANCE WITH OMB GUIDANCE Alternate I (MON/YEAR)

(a) With the exception of Subpart E and F, this grant is subject to the requirements set forth in OMB Guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards at 2 CFR Chapter 1, and Chapter II Part 200 as adopted by NASA in Part 1800 of Title 2 of the Code of Federal Regulations. Specific terms and conditions set forth in this award document are provided to supplement and clarify, not replace, the Guidance, except in circumstances where a waiver from the Guidance requirements has been obtained by NASA.

(b) In lieu of Subparts E and F of 2 CFR part 200, the expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient shall be governed by the FAR cost principles implemented by FAR Parts 30, 31, and 48 CFR part 99. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined by the OMB Guidance at Subpart E and F of 2 CFR 200.)

(Authority: 14 CFR 1260.21)

(End of Term and Condition)

1800.902 Technical Publications and Reports

(This Term and Condition implements paragraph (d) of § 200.210 and shall be included on a "substantially as" basis in all grants. The requirements set forth under this Term and Condition may be modified by the grant officer based on specific report needs for the grant.)

TECHNICAL PUBLICATIONS AND REPORTS (MON/YEAR)

(a) NASA encourages the widest practicable dissemination of research results at any time during the course of the investigation.

(1) All information disseminated as a result of the grant shall contain a statement which acknowledges NASA's support and identifies the grant by number (e.g., "the material is based upon work supported by NASA under award No(s) GRNASM99G000001, etc.").

(2) Except for articles or papers published in scientific, technical, or professional journals, the exposition of results from NASA supported research should also include the following disclaimer: "Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration."

(3) As a courtesy, any release of a NASA photograph or illustration should list NASA first on the credit line followed by the name of the Principal Investigator's Institution. An example follows: "Photograph <or illustration, figure, etc.> courtesy of NASA <or NASA Center managing the mission or program> and the <Principal Investigator's institution>."

(b) Reports shall be in the English language, informal in nature, and ordinarily not exceed three pages (not counting bibliographies, abstracts, and

lists of other media). The recipient shall submit the following reports:

(1) A Progress Report for all but the final year of the grant. Each report is due 60 days before the anniversary date of the grant and shall briefly describe what was accomplished during the reporting period. A term or condition specifying more frequent reporting may be required.

(2) A Summary of Research or Educational Activity Report is due within 90 days after the expiration date of the grant, regardless of whether or not support is continued under another grant. This report shall be a comprehensive summary of significant accomplishments during the duration of the grant.

(c) Progress Reports, Summaries of Research, and Educational Activity Reports shall include the following on the first page:

- (1) Title of the grant.
- (2) Type of report.
- (3) Name of the principal investigator.
- (4) Period covered by the report.
- (5) Name and address of the recipient's institution.

(6) Grant number.

(d) Progress Reports, Summaries of Research, and Educational Activity Reports shall be distributed as follows:

(1) The original report, in both hard copy and electronic format, to the Technical Officer.

(2) One copy to the NASA Grant Officer, with a notice to the Administrative Grant Officer, (when administration of the grant has been delegated to ONR), that a report was sent.

(Authority: 14 CFR 1260.23)

(End of Term and Condition)

1800.903 Extensions

(This Term and Condition shall be included in all grants. This Term and Condition does not have to be included in grants with commercial firms, and if included it may be used on a substantially as basis.)

EXTENSIONS (MON/YEAR)

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research and educational activities, therefore, grants may be extended for additional periods of time when necessary to complete work that was part of the original award. NASA generally only approves such extensions within funds already made available. Any extension that would require additional funding must be supported by a proposal submitted at least three months in advance of the expiration date of the grant.

(b) Recipients may extend the expiration date of a grant if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, the recipient may make a one-time no-cost extension, not to exceed 12 months, prior to the established expiration date. Written notification of such an extension, with the supporting reasons, must be received by the NASA Grant Officer at least ten days prior to the expiration of the award. A copy of the extension must also be forwarded to cognizant Office of Naval Research (ONR) office. NASA reserves the right to disapprove the extension if the requirements set forth at § 200.308(d)(2) are not met.

(c) Requests for approval for all other no-cost extensions must be submitted in writing to the NASA Grant Officer. Copies are to be forwarded to the cognizant ONR office.

(Authority: 14 CFR 1260.23)

(End of Term and Condition)

1800.904 Termination and Enforcement

(This Term and Condition implements § 200.338 through § 200.342 and shall be included in all grants.)

TERMINATION AND ENFORCEMENT (MON/YEAR)

Termination and enforcement conditions of this award are specified in §§ 200.338 through 200.342.

(Authority: 14 CFR 1260.24)

(End of Term and Condition)

1800.905 Change in Principal Investigator or Scope

(This Term and Condition shall be used in all grants. The section regarding changes in scope may be used if the Recipient is a commercial firm.)

CHANGE IN PRINCIPAL INVESTIGATOR OR SCOPE (MON/YEAR)

(a) The Recipient shall obtain the approval of the NASA Grant Officer for a change of the Principal Investigator, or for a significant absence of the Principal Investigator from the project, defined as a three month absence from the program or a 25 percent reduction in time devoted to the project. Significantly reduced availability of the services of the Principal Investigator(s) named in the grant instrument could be grounds for termination, unless alternative arrangements are made and approved in writing by the Grant Officer.

(b) Prior written approval is required from NASA if there is to be a significant change in the objective or scope.

(Authority: 14 CFR 1260.25)

(End of Term and Condition)

1800.906 Financial Management

(This Term and Condition implements § 200.302 and shall be included in all grants except when the recipient is a commercial firm.)

FINANCIAL MANAGEMENT (MON/YEAR)

(a) Advance payments will be made by the Financial Management Office of the NASA Center assigned financial cognizance of the grant, using the Department of Health and Human Services' Payment Management System (DHHS/PMS), in accordance with procedures provided to the Recipient. The Recipient shall submit a Federal Cash Transactions Report (SF 425), and, when applicable, a Continuation Sheet (SF 425) electronically to DHHS/PMS within 30 working days following the end of each Federal Fiscal quarter (*i.e.*, December 31, March 31, June 30, and September 30).

(b) In addition, the Recipient shall submit a final SF 425 in electronic or paper form to NASA within 90 calendar days after the expiration date of the grant. The final SF 425 shall pertain only to the completed grant and shall include total disbursements from inception through completion. The report shall be marked "Final." The final SF 425 shall be submitted to NASA per Exhibit G, Required Publications and Reports.

(c) By signing any report delivered under the grant, the authorizing official for the Recipient certifies to the best of his or her knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. The authorizing official by signing the report also certifies he or she is aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31 Section 3729-3733 and 3801-3812.)

(d) Unless otherwise directed by the Grant Officer, any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. This

includes allowing the carryover of funds to the second and subsequent years of a multiple year grant. This Term and Condition also applies to subcontractors performing substantive work under the grant. For grant renewals, the estimated amount of unexpended funds shall be identified in the grant budget section of the Recipient's renewal proposal. NASA reserves the right to remove unexpended balances from grants when insufficient efforts have been made by the grantee to liquidate funding balances in a timely fashion.

(Authority: 14 CFR 1260.26, 2 CFR 200.415)

(End of Term and Condition)

1800.907 Equipment and Other Property

(This Term and Condition shall be included in all grants except when recipient is a commercial firm.)

EQUIPMENT AND OTHER PROPERTY (MON/YEAR)

(a) NASA permits acquisition of special purpose and general purpose equipment specifically required for use exclusively for research activities.

(1) Acquisition of special purpose or general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the Recipient) and not included in the approved proposal budget, requires the prior approval of the NASA Grant Officer. Grant awards under the Federal Demonstration Partnership are exempt from this requirement. Requests to the NASA Grant Officer for the acquisition of equipment shall be supported by written documentation setting forth the description, purpose, and acquisition value of the equipment, and including a written certification that the equipment will be used exclusively for research, activities. (A change in the model number of a prior approved piece of equipment does not require resubmission for that item.)

(2) Special purpose and general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the Recipient) acquired by the recipient under a grant for the purpose of research shall be titled to the Recipient as "exempt" without further obligation to NASA, including reporting of the equipment, in accordance with § 200.312(c). Special purpose or general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the Recipient) acquired by the Recipient under a grant for non-research work shall be titled to the Recipient in accordance with § 200.313.

(3) Special purpose or general purpose equipment acquired by the Recipient with grant funds, valued under \$5,000 (unless a lower threshold is established by the Recipient) are classified as “supplies,” do not require the prior approval of the NASA Grant Officer, shall vest in the Recipient and will be titled to the Recipient in accordance with § 200.314.

(4) Grant funds may be expended for the acquisition of land or interests therein or for the acquisition and construction of facilities only under a facilities grant.

(b) The Recipient shall submit an annual Inventory Report, to be received no later than October 15 of each year, which lists all reportable (non-exempt equipment and/or Federally owned property) in its custody as of September 30. Negative responses for annual Inventory Reports (when there is no reportable equipment) are not required. A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, will be submitted by the Recipient no later than 60 days after the expiration date of the grant. Negative responses for Final Inventory Reports are required.

(1) All reports will include the information listed in paragraph (d)(1) of § 200.313, Equipment. No specific report form or format is required, provided that all necessary information is provided.

(2) The original of each report shall be submitted to the Deputy Chief Financial Officer (Finance). Copies shall be furnished to the Center Industrial Property Officer and to ONR.

(Authority: 14 CFR 1260.27)

(End of Term and Condition)

1800.908 Patent Rights

(This Term and Condition shall be included in all grants except grants with large businesses.)

PATENT RIGHTS (MON/YEAR)

As stated at § 200.315, this award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 “Patent Rights (Small Business Firms and Nonprofit Organizations)” and the following:

(a) Where the term “contract” or “Contractor” is used in the “Patent Rights” clause, the term shall be replaced by the term “grant” or “Recipient,” respectively.

(b) In each instance where the term “Federal Agency,” “agency,” or “funding Federal agency” is used in the “Patent Rights” clause, the term shall be replaced by the term “NASA.”

(c) The following item is added to the end of paragraph (f) of the “Patent Rights” clause: “(5) The Recipient shall include a list of any Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal. A complete list (or a negative statement) for the entire award period shall be included in the summary of research.”

(d) The term “subcontract” in paragraph (g) of the “Patent Rights” clause shall include purchase orders.

(e) The NASA implementing regulation for paragraph (g)(2) of the “Patent Rights” clause is at 48 CFR 1827.304–3.

(f) The following requirement constitutes paragraph (l) of the “Patent Rights” clause:

“(l) Communications. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the NASA Grant Officer in addition to any other submission requirements in the grant terms and conditions. If any reports contain information describing a “subject invention” for which the recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the Recipient identify the information and the “subject invention” to which it relates at the time of submittal. If required by the NASA Grant Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any “subject invention” in any country in which the Recipient has applied for patents.”

(g) NASA Inventions. NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this agreement and, upon timely request, will use reasonable efforts to grant the Recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

(h) In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by Contractor employees, the Contractor will normally retain title to its employee

inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and Executive Order 12591. In the event the Contractor decides not to pursue rights to title in any such invention and NASA obtains title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will use reasonable efforts to grant the Recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

(Authority: 14 CFR 1260.28)

(End of Term and Condition)

1800.909 Rights in Data

(The grant officer may revise the language under this Term and Condition to modify each party’s rights based on the particular circumstances of the program and/or the recipient’s need to protect specific proprietary information. Any modification to the standard language set forth under the Term and Condition requires the concurrence of the Center’s Patent Counsel and that the Term and Condition be printed in full text.)

RIGHTS IN DATA (MON/YEAR)

(a) Fully funded efforts.

(1) “Data” means recorded information, regardless of form, the media on which it may be recorded, or the method of recording, created under the grant. The term includes, but is not limited to, data of a scientific or technical nature, and any copyrightable work, including computer software and documentation thereof, in which the recipient asserts copyright, or for which copyright ownership was purchased, under the grant.

(2) The Recipient grants to the Federal Government, a royalty-free, nonexclusive and irrevocable license to use, reproduce, distribute (including distribution by transmission) to the public, perform publicly, prepare derivative works, and display publicly, data in whole or in part and in any manner for Federal purposes and to have or permit others to do so for Federal purposes only.

(3) In order that the Federal Government may exercise its license rights in data, the Federal Government, upon request to the Recipient, shall have the right to review and/or obtain delivery of data resulting from the performance of work under this grant, and authorize others to receive data to use for Federal purposes.

(b) Cost Sharing and/or Matching Efforts. When the Recipient cost shares

with the Government on the effort, the following paragraph applies:

“(1) In the event data first produced by Recipient in carrying out Recipient’s responsibilities under an agreement is furnished to NASA, and Recipient considers such data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and its Contractors (under suitable protective conditions) only for experimental, evaluation, research and development purposes, by or on behalf of the Government for an agreed to period of time, and thereafter for Federal purposes as defined in § 1800.909(a)(2).”

(c) For Cooperative Agreements the following paragraph applies:

“(1) As to data first produced by NASA in carrying out NASA’s responsibilities under a cooperative agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it has been obtained from the Recipient, such data will be marked with an appropriate legend and maintained in confidence for 5 years (unless a shorter period has been agreed to between the Government and Recipient) after development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such data to any third party without NASA’s written approval until the aforementioned restricted period expires.”

(Authority: 14 CFR 1260.30)

(End of Term and Condition)

1800.910 National Security

(This Term and Condition implements Executive Order 12829 and shall be included in all grants.)

NATIONAL SECURITY (MON/YEAR)

NASA grants do not involve classified information. However, if it is known in advance that a grant involves classified information or if the work on the grant is likely to develop classified information, individuals performing on the grant who will have access to the information must obtain the appropriate security clearance in advance of performing on the grant, in accordance

with NASA Procedural Requirements (NPR) 1600.1, NASA Classified National Security Information (CNSI) w/Change 2. When access to classified information is not originally anticipated in the performance of a grant, but such information is subsequently sought or potentially developed by the grant Recipient, the NASA Grant Officer who issued the grant shall be notified immediately, and prior to work under the grant proceeding, to implement the appropriate clearance requirements.

(Authority: 14 CFR 1260.31)

(End of Term and Condition)

1800.911 Nondiscrimination

(This Term and Condition implements Executive Order 11246 and shall be included in all grants or awards with foreign recipients.)

NONDISCRIMINATION (MON/YEAR)

(a) To the extent provided by law and any applicable agency regulations, this award and any program assisted thereby are subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), Title IX of the Education Amendments of 1972 (Pub. L. 92–318, 20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (Pub. L. 94–135), the implementing regulations issued pursuant thereto by NASA, and the assurance of compliance which the recipient has filed with NASA.

(b) The Recipient shall obtain from each organization that applies or serves as a subrecipient, Contractor or subcontractor under this award (for other than the Term and Condition of commercially available supplies, materials, equipment, or general support services) an assurance of compliance as required by NASA regulations.

(c) Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, 1252, and 1253).

(Authority: 14 CFR 1260.32)

(End of Term and Condition)

1800.912 Clean Air and Water

(This Term and Condition implements the Clean Air Act at 42 U.S.C. 7401 *et seq.* It is applicable only if the award exceeds \$150,000, or a facility to be used has been the subject of a conviction under the Clean Air Act

(42 U.S.C. 1857c–8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)), and is listed by EPA, or if the award is not otherwise exempt.)

CLEAN AIR AND WATER (MON/YEAR)

The Recipient agrees to the following:

(a) Comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) and of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

(b) Ensure that no portion of the work under this award will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date that this award was effective unless and until the EPA eliminates the name of such facility or facilities from such listings.

(c) Use its best efforts to comply with clean air standards and clean water standards at the facility in which the award is being performed.

(d) Insert the substance of the terms and conditions of this clause into any nonexempt subaward or contract under the award.

(e) Report violations to NASA and to EPA.

(Authority: 14 CFR 1260.34)

(End of Term and Condition)

1800.913 Investigative Requirements

(This Term and Condition implements Executive Order 12829 and shall be included in all grants. The Term and Condition must be augmented to conform to the requirements of OMB Guidance M–05–24 “Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors” when a Recipient will require routine access to a Federal-controlled facility and/or information system.)

INVESTIGATIVE REQUIREMENTS (MON/YEAR)

(a) NASA reserves the right to perform security checks and to deny or restrict access to a NASA Center, facility, or computer system, or to NASA technical information, as NASA deems appropriate. To the extent the Recipient needs such access for performance of the work; the Recipient shall ensure that individuals needing such access provide the personal background and biographical information requested by NASA. Individuals failing to provide the requested information may be denied such access.

(b) All requests to visit a NASA Center or facility must be submitted in a timely manner in accordance with

instructions provided by that Center or facility.

(Authority: 14 CFR 1260.35)

(End of Term and Condition)

1800.914 Travel and Transportation

(This Term and Condition implements The Fly American Act, 49 U.S.C. 1517 and the Department of Transportation regulations on Hazardous materials. This Term and Condition shall be included in all grants.)

TRAVEL AND TRANSPORTATION (MON/YEAR)

(a) The Fly American Act, 49 U.S.C. 1517, requires the Recipient to use U.S. flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern Recipient shipment of hazardous materials and other items.

(Authority: 14 CFR 1260.36)

(End of Term and Condition)

1800.915 Safety

(This Term and Condition implements NPR 8715.3C or its successor requirements document and shall be in all grants.)

SAFETY (MON/YEAR)

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this grant. The Recipient shall comply with all applicable federal, state, and local laws relating to safety. The Recipient shall maintain a record of, and will notify the NASA Grant Officer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property in performing this grant. The Recipient will immediately (within one workday) advise NASA of hazards that come to its attention as a result of the work performed.

(b) Where the work under this grant involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Recipient. Compliance with this Term and Condition by subcontractors shall be the responsibility of the Recipient.

(Authority: 14 CFR 1260.37)

(End of Term and Condition)

1800.916 Buy American Encouragement

(This Term and Condition implements section 319 of Public Law

106–391, the NASA Authorization Act, and shall be included in all grants except awards with foreign recipients.)

BUY AMERICAN ENCOURAGEMENT (MON/YEAR)

As stated in Section 319 of Public Law 106–391, the NASA Authorization Act of 2000, Recipients are encouraged to purchase only American-made equipment and products.

(Authority: 14 CFR 1260.39)

(End of Term and Condition)

1800.917 Investigation of Research Misconduct

(This implements § 200.336 and shall be included in all grants.)

INVESTIGATION OF RESEARCH MISCONDUCT (MON/YEAR)

Recipients of this grant are subject to the requirements of 14 CFR part 1275, “Investigation of Research Misconduct.”

(Authority: 14 CFR 1260.40)

(End of Term and Condition)

1800.918 Allocation of Risk/Liability

(This term and condition shall be included in all grants.)

ALLOCATION OF RISK/LIABILITY (MON/YEAR)

(a) With respect to activities undertaken under this agreement, the Recipient agrees not to make any claim against NASA or the U.S. Government with respect to the injury or death of its employees or its contractors and subcontractor employees, or to the loss of its property or that of its Contractors and subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) In addition, the Recipient agrees to indemnify and hold the U.S. Government and its Contractors and subcontractors harmless from any third party claim, judgment, or cost arising from the injury to or death of any person, or for damage to or loss of any property, arising as a result of its possession or use of any U.S. Government property.

(Authority: 14 CFR 1260.61)

(End of Term and Condition)

1800.919 Cooperative Agreement Special Condition

(This special term and condition shall apply when NASA awards a cooperative agreement.)

COOPERATIVE AGREEMENT SPECIAL CONDITION (MON/YEAR)

(a) This award is a cooperative agreement as it is anticipated there will

be substantial NASA involvement during performance of the effort. NASA and the Recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort:

(Reference the approved proposal that contains a detailed description of the work and insert a concise statement of the exact nature of the cooperative interactions NASA will provide.)

(b) The terms “grant” and “Recipient” mean “cooperative agreement” and “Recipient of cooperative agreement,” respectively, wherever the language appears in terms and conditions included in this agreement.

(c) NASA’s ability to participate and perform its collaborative effort under this cooperative agreement is subject to the availability of appropriated funds and nothing in this cooperative agreement commits the United States Congress to appropriate funds therefor.

(Authority: 14 CFR 1260.51)

(End of Term and Condition)

1800.920 Multiple Year Grant

(This term and condition shall be included when a multiple year grant is awarded. This term and conditions may be used on a “substantially as” basis.)

MULTIPLE YEAR GRANT OR (MON/YEAR)

This is a multiple-year grant Contingent on the availability of funds, scientific progress of the project, and continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year \$____, Anticipated funding date ____.

Third year \$____, Anticipated funding date ____.

(Periods may be added or omitted, as applicable)

(Authority: 14 CFR 1260.52)

(End of Term and Condition)

1800.921 Incremental Funding

(This term and condition shall be included when incremental funding is used. This may be used on a substantially as basis.)

INCREMENTAL FUNDING (MON/YEAR)

(a) Only \$____ of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making additional allotments of funds during performance of this effort. It is anticipated that these funds will be obligated as appropriated funds become available without any action required by

the Recipient. The Recipient will be given written notification by the NASA Grant Officer.

(b) The recipient agrees to perform work up to the point at which the total amount paid or payable by the Government approximates but does not exceed the total amount actually allotted to this grant. NASA is not obligated to reimburse the Recipient for the expenditure of amounts in excess of the total funds allotted by NASA to this grant. The Recipient is not authorized to continue performance beyond the amount allotted to this award.

(Authority: 14 CFR 1260.53)

(End of Term and Condition)

1800.922 Cost Sharing

(This term and condition shall be included when a grant involves cost sharing. This may be used on a substantially as basis.)

COST SHARING (MON/YEAR)

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a _____ percent Recipient basis.

(b) The funding and non-cash contributions by both parties are represented by the following dollar amounts:

Government Share

Recipient Share

Total Amount

(c) Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by § 200.306, Cost Sharing or Matching. The applicable Federal cost principles are cited in Subpart E.

(d) The Recipient's share shall not be charged to the Government under this agreement or under any other contract or grant.

(Authority: 14 CFR 1260.54)

(End of Term and Condition)

1800.923 New Technology

(This Term and Condition shall be inserted in all grants with commercial firms other than those with small businesses, in place of the term and condition at § 1800.908, Patent Rights.)

NEW TECHNOLOGY (MON/YEAR)

(a) Definitions.

Administrator, as used in this term and condition, means the Administrator

of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Grant, as used in this term and condition, means any actual or proposed grant, cooperative agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, as used in this term and condition, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of grant performance.

Nonprofit organization, as used in this term and condition, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application, as used in this term and condition, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Reportable item, as used in this term and condition, means any invention, discovery, improvement, or innovation of the grantee, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA grant or in the performance of any work that is reimbursable under any Term and Condition in any NASA grant providing for reimbursement of costs incurred before the effective date of the grant. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable

or otherwise protectable under Title 17 of the United States Code.

Small business firm, as used in this term and condition, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations (see 13 CFR 121.401 *et seq.*) of the Administrator of the Small Business Administration.

Subject invention, as used in this term and condition, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(b) Allocation of principal rights.

(1) Presumption of title.

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (A) or (B) of section 20135(b)(1) of the National Aeronautics and Space Act of 1958 (51 U.S.C. 20135) (hereinafter called "the Act"), and that presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Grant Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (A) or (B) of section 20135(b)(1) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Recipient may nevertheless file the statement described in paragraph (b)(1)(i) of this term and condition. The Administrator will review the information furnished by the Recipient in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Recipient whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (A) or (B) of section 20135(b)(1) of the Act.

(2) Property rights in subject inventions. Each subject invention for which the presumption of paragraph (b)(1)(i) of this term and condition is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (A) or (B) of section 20135(b)(1) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this term and condition.

(3) Waiver of rights.

(i) Section 20135(g) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (A) or (B) of section 20135(b)(1) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Recipients may petition, either prior to execution of the grant or within 30 days after execution of the grant, for advance waiver of rights to any or all of the inventions that may be made under a grant. If such a petition is not submitted, or if after submission it is denied, the Recipient (or an employee inventor of the Recipient) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of the invention in accordance with paragraph (e)(2) of this term and condition, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

(1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Recipient.

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this term and condition. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate

structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) Invention identification, disclosures, and reports.

(1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this New Technology term and condition within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this grant. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed.

Upon request, the Recipient shall furnish the Grant Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Grant Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this New Technology term and condition or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the grant under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Grant Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Grant Officer) from the date of the grant, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this term and condition have been followed.

(ii) A final report, within 3 months after completion of the grant work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Grant Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a

patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this term and condition.

(f) Examination of records relating to inventions.

(1) The Grant Officer or any authorized representative shall, until 3 years after final payment under this grant, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this grant to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph (e)(1) of this term and condition; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Grant Officer learns of an unreported Recipient grantee invention that the Grant Officer believes may be a subject invention, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this grant, the Grant Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this grant, whichever is less, shall have been set aside if, in the Grant Officer's opinion, the Recipient fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this term and condition;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this term and condition;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this term and condition; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this term and condition.

(2) Such reserve or balance shall be withheld until the Grant Officer has determined that the Recipient has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by the grant.

(3) Final payment under the grant shall not be made before the Recipient delivers to the Grant Officer all disclosures of reportable items required by paragraph (e)(2) of this provision, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this provision.

(4) The Grant Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (g)(1) of this term and condition. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other terms and conditions of the grant. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) Unless otherwise authorized or directed by the Grant Officer, the Recipient shall—

(i) Include the clause at NASA FAR Supplement (NFS) 1852.227-70, New Technology, (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Grant Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Grant Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Recipient agree that the mutual obligations of the parties created by this term and condition constitute a contract between the subcontractor and NASA with respect to those matters covered by this grant.

(4) The Recipient shall promptly notify the Grant Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Grant Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Recipient in paragraph (h)(1)(i) or (ii) of this term and condition, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) Preference for United States industry. Unless provided otherwise, no Recipient that receives title to any subject invention and no assignee of any such Recipient shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Recipient or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(Authority: 14 CFR 1260.57)

(End of Term and Condition)

1800.924 Designation of New Technology Representative and Patent Representative

(This Term and Condition shall be inserted in all grants with commercial firms other than those with small businesses, in place of the term and condition at § 1800.908, Patent Rights.)

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (MON/YEAR)

(a) For purposes of administration of the term and condition of this grant entitled "New Technology," the following named representatives are hereby designated by the Grant Officer to administer such term and condition: Title, Office Code, Address (including zip code)

New Technology
Representative
Patent Representative

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the term and condition, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquires or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This term and condition shall be included in any subcontract hereunder requiring a "New Technology" Term and Condition or "Patent Rights—Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Grant Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305–270 of the NASA FAR Supplement.

(Authority: 14 CFR 1260.58)

(End of Term and Condition)

1800.925 Invention Reporting and Rights

INVENTION REPORTING AND RIGHTS
(MON/YEAR)

(a) As used in this term and condition:

(1) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(b) The Recipient shall report promptly to the grant officer each invention made in the performance of work under this grant. The report of such invention shall—

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) Reporting shall be made on NASA Form 1679 Disclosure of Invention and New Technology (Including Software).

(d) The Recipient hereby grants to the Government of the United States of

America, as represented by the Administrator of the National Aeronautics and Space Administration, the full rights, title, and interest in and to each such invention throughout the world.

(Authority: 14 CFR 1260.59)

(End of Term and Condition)

1800.926 Equipment and Other Property Under Grants With Commercial Firms

(This term and condition shall be included in grants with commercial firms that have property.)

EQUIPMENT AND OTHER PROPERTY
UNDER GRANTS WITH COMMERCIAL
FIRMS (MON/YEAR)

(a) This grant permits acquisition of special purpose equipment required for the conduct of research. Acquisition of special purpose equipment costing in excess of \$5,000 and not included in the approved proposal budget requires the prior approval of the Grant Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) Recipients may not purchase, as a direct cost to the grant, items of general purpose equipment, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the Recipient requests an exception, the Recipient shall submit a written request for Grant Officer approval, prior to purchase by the Recipient, stating why the Recipient cannot charge the general purpose equipment to indirect costs.

(c) Under no circumstances shall grant funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR (FAR) 45.301), or to procure passenger carrying vehicles.

(d) The Government shall have title to equipment and other personal property acquired with Government funds. Such property shall be disposed of pursuant to 48 CFR (FAR) 45.603.

(e) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government prior to completion of the work) will remain with the Government.

(f) The Recipient shall establish and maintain property management standards for Government property and otherwise manage such property as set forth in 48 CFR (FAR) 45.5 and 48 CFR (NFS) 1845.5.

(g) Recipients shall submit annually a NASA Form 1018, NASA Property in

the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer (Finance) with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. Negative reports (*i.e.* no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement.

(h) The requirements set forth in this term and condition supersedes grant Term and Condition 1800.907, Equipment and Other Property.

(Authority: 14 CFR 1260.67)

(End of Term and Condition)

1800.927 Listing of reportable equipment and other property.

(This term and condition shall be included in grants with property.)

LISTING OF REPORTABLE
EQUIPMENT AND OTHER PROPERTY
(MON/YEAR)

(a) Title to federally-owned property provided to the Recipient remains vested in the Federal Government, and shall be managed in accordance with § 200.312. The following items of federally-owned property are being provided to the recipient for use in performance of the work under this grant:

{List property or state "not applicable."}

(b) The following specific items of equipment acquired by the Recipient have been identified by NASA for transfer of title to the Government when no longer required for performance under this grant. This equipment will be managed in accordance with 200.313, and shall be transferred to NASA or NASA's designee in accordance with the procedures set forth at 200.313(e):

{List property or state "not applicable."}

(Authority: 14 CFR 1260.66)

(End of Term and Condition)

1800.928 Invoices and Payments Under Grants With Commercial Firms

(This term and condition shall be included in all grants with commercial firms.)

INVOICES AND PAYMENTS UNDER GRANTS WITH COMMERCIAL FIRMS (MON/YEAR)

(a) Invoices for payment of actual incurred costs shall be submitted by the Recipient no more frequently than on a XX basis.

(b) Invoices shall be submitted by the Recipient to the following offices:

(1) The original invoice shall be sent directly to the payment office designated on the grant cover page.

(2) Copies of the invoice shall be sent to the NASA Technical Officer and NASA Grant Officer.

(c) All invoices shall reference the grant number.

(d) The final invoice shall be marked "Final" and shall be submitted within 90 days of the expiration of the grant.

(e) The requirements set forth in this term and condition supersedes grant Term and Condition 1800.906, Financial Management.

(Authority: 14 CFR 1260.68)

(End of Term and Condition)

1800.929 Electronic Funds Transfer Payment Methods

(This term and condition shall be included in all grants with commercial firms.)

ELECTRONIC FUNDS TRANSFER PAYMENT METHODS (MON/YEAR)

(a) Payments under this grant will be made by the Government by electronic funds transfer through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Grant Officer or other Government official, as directed.

(b) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(c) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Recipient is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(d) In the event the Recipient, during the performance of this grant, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(e) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and grant number.

(f) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(g) The requirements set forth in this term and condition supersedes grant Term and Condition 1800.906, Financial Management.

(Authority: 14 CFR 1260.69)

(End of Term and Condition)

Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

Title 14—Aeronautics and Space

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1260 [REMOVED AND RESERVED]

■ 1. Part 1260 is removed and reserved.

PART 1273 [REMOVED AND RESERVED]

■ 2. Part 1273 is removed and reserved.

William P. McNally,

Assistant Administrator for Procurement.

Corporation for National and Community Service

For the reasons set forth in the common preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR Chapter XXII, and 45 CFR Chapters XII and XXV, are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXII—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

■ 1. Part 2205 is added to Title 2, Chapter XXII to read as follows:

PART 2205—IMPLEMENTATION OF AND EXEMPTIONS TO 2 CFR

PART 200

Sec.

2205.100 Adoption of 2 CFR part 200.

2205.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

2205.306 Cost sharing or matching.

2205.332 Fixed amount subawards.

2205.414 Indirect (F&A) costs.

Authority: 42 U.S.C. 12571(d), 12571(e)(2)(B), 12581(l), 12581a(a), 12616(c)(2), 12651c(c), 12651d(h), 12651g(b), 12653(a), 12653(h), 12653o(a), and 12657(a); 2 CFR part 200; 45 CFR 2521.95, and 2540.110.

§ 2205.100 Adoption of 2 CFR Part 200.

Under the authority listed above, the Corporation for National and Community Service adopts the Office of Management and Budget's (OMB) Guidance in 2 CFR part 200, except as specified in this part. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance for recipients of awards from the Corporation.

§ 2205.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The Corporation will determine the appropriate instrument in accordance with its authorities under the national service laws, and in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308), as appropriate.

(b) The Corporation and pass through entities may also provide fixed amount awards in the manner and in the amounts permitted under the national service laws.

§ 2205.306 Cost sharing or matching.

(a) Shared costs or matching funds must meet the criteria of 2 CFR 200.306(b), with the exception of 2 CFR 200.306(b)(5). Federal funds from other agencies may be used as match or cost sharing as authorized by 42 U.S.C. 12571(e) under the national service laws.

§ 2205.332 Fixed amount subawards.

Fixed amount subawards may be made in the manner and in amounts determined under the national service laws, as authorized by the Corporation, without respect to the Simplified Acquisition Threshold.

§ 2205.414 Indirect (F&A) costs.

Administrative costs for programs funded under subtitles B and C of the National and Community Service Act of 1990, as amended, shall be subject to 45 CFR 2521.95 and 2540.110.

Title 45—Public Welfare**CHAPTER XII—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE****PART 1235—LOCALLY GENERATED CONTRIBUTIONS IN OLDER AMERICAN VOLUNTEER PROGRAMS**

■ 2. The authority citation for part 1235 continues to read as follows:

Authority: 42 U.S.C. 5024; 42 U.S.C. 5060.

■ 3. Revise § 1235.2(c) to read as follows:

§ 1235.2 Implementation guidance.

* * * * *

(c) That all expenditures in support of a Federal award can be audited by the responsible Federal Agency or by independent auditors performing audits pursuant to 2 CFR part 200.

■ 4. Remove the Appendix to Part 1235

CHAPTER XXV—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**PART 2510—OVERALL PURPOSES AND DEFINITIONS**

■ 5. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12511

■ 6. Revise § 2510.20 revise the definition of “Administrative Costs” to read as follows:

§ 2510.20 Definitions.

* * * * *

Administrative costs. The term *administrative costs* means general or centralized expenses of overall administration of an organization that receives assistance under the Act and does not include program costs.

(1) For organizations that have an established indirect cost rate for Federal

awards, administrative costs mean those costs that are included in the organization’s indirect cost rate. Such costs are generally identified with the organization’s overall operation and are further described in 2 CFR part 200.

(2) For organizations that do not have an established indirect cost rate for Federal awards, administrative costs include:

(i) Costs for financial, accounting, auditing, contracting, or general legal services except in unusual cases when they are specifically approved in writing by the Corporation as program costs.

(ii) Costs for internal evaluation, including overall organizational management improvement costs (except for independent evaluations and internal evaluations of a program or project).

(iii) Costs for general liability insurance that protects the organization(s) responsible for operating a program or project, other than insurance costs solely attributable to a program or project.

* * * * *

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

■ 7. The authority citation for part 2520 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 8. Revise § 2520.60 to read as follows:

§ 2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?

You must follow OMB Guidance published at 2 CFR part 200 and Corporation implementing regulations at 2 CFR Chapter XXII. In particular, see 2 CFR 200.442—Fundraising and Investment Management Costs.

PART 2541—[REMOVED AND RESERVED]

■ 9. Remove and reserve Part 2541, consisting of §§ 2541.10 to 2541.520.

PART 2543—[REMOVED AND RESERVED]

■ 10. Remove and reserve Part 2543, consisting of §§ 2543.1 to 2543.88.

PART 2551—SENIOR COMPANION PROGRAM

■ 11. The authority citation for part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 12. Revise § 2551.93 to read as follows:

§ 2551.93 What are grants management requirements?

What rules govern a sponsor’s management of grants?

(a) A sponsor shall manage a grant in accordance with:

- (1) The Act;
- (2) Regulations in this part;
- (3) 2 CFR part 200 and 2 CFR part 2205; and
- (4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers’ own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for the following changes in the approved grant:

- (1) Reduction in budgeted volunteer service years.
- (2) Change in the service area.
- (3) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 80 percent volunteer cost reimbursement ratio is maintained.

PART 2552—FOSTER GRANDPARENT PROGRAM

■ 13. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 14. Revise § 2552.93 to read as follows:

§ 2552.93 What are grants management requirements?

What rules govern a sponsor’s management of grants?

(a) A sponsor shall manage a grant in accordance with:

- (1) The Act;
- (2) Regulations in this part;
- (3) 2 CFR part 200 and 2 CFR part 2205; and
- (4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at

the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

(3) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 80 percent volunteer cost reimbursement ratio is maintained.

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

■ 15. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

■ 16. Revise § 2553.73 to read as follows:

§ 2553.73 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205; and

(4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a

settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for a change in the approved service area.

Valerie Green,
General Counsel.

Social Security Administration

For the reasons set forth in the common preamble, 2 CFR chapter XXIII is amended and, under the authority of 5 U.S.C. 301, parts 435 and 437 of title 20, chapter III of the Code of Federal Regulations are removed to read as follows:

Title 2—Grants and Agreements

Subtitle B—Federal Agency Regulations for Grants and Agreements

CHAPTER XXIII—SOCIAL SECURITY ADMINISTRATION

■ 1. Part 2300 of title 2 of the Code of Federal Regulations is added to read as follows:

PART 2300—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301; 2 CFR part 200, and as noted in specific sections.

§ 2300.10 Applicable regulations.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to the Social Security Administration.

§§ 2300.11–2300.2335 [Reserved]

Title 20—Employee Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION

PART 435—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 435.

PART 437—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 437.

Carolyn W. Colvin,
Acting Commissioner of Social Security.

Department of Housing and Urban Development

For the reasons described in the common preamble, and under the authority of 42 U.S.C. 3535(d), HUD amends the Code of Federal Regulations, Title 2, Subtitle B, chapter XXIV, and Title 24 CFR parts 84 and 85, as follows:

Title 2—Grants and Agreements

CHAPTER XXIV—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■ 1. Add new part 2400 in Subtitle B, Chapter XXIV, to read as follows:

PART 2400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 42 U.S.C. 3535(d); 2 CFR part 200.

§ 2400.101 Applicable regulations.

Unless excepted under 24 CFR chapters I through IX, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 CFR part 200, shall apply to Federal Awards made by the Department of Housing and Urban Development to non-Federal entities.

Title 24—Housing and Urban Development

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

■ 2. The authority citation for part 84 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 3. Remove the heading of subpart A.

■ 4. Revise § 84.1 to read as follows:

§ 84.1 Applicability of and cross reference to 2 CFR part 200.

(a) Federal awards to institutions of higher education, hospitals and other non-profit organizations are subject to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200.

(b) Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 CFR part 84 (2013 edition) or as provided under the terms of the Federal award. Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200.

§§ 84.2 through 84.5 [Removed]

■ 5. Remove §§ 84.2 to 84.5.

Subpart B [Removed]

- 6. Remove subpart B, consisting of §§ 84.10 through 84.17.

Subpart C [Removed]

- 7. Remove subpart C, consisting of §§ 84.20 through 84.62.

Subpart D [Removed]

- 8. Remove subpart D, consisting of §§ 84.70 through 84.73.

Subpart E [Removed]

- 9. Remove subpart E, consisting of §§ 84.80 through 84.87.

Appendix A to part 84 [Removed]

- 10. Remove Appendix A to part 84.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBES

- 11. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

- 12. Remove the heading of subpart A.
- 13. Revise § 85.1 to read as follows:

§ 85.1 Applicability of and cross reference to 2 CFR part 200.

(a) Federal awards with State, local and Indian tribal governments are subject to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200.

(b) Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 CFR part 85 (2013 edition) or as provided by the terms of the Federal award. Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200.

§§ 85.2 through 85.6 [Removed]

- 14. Remove §§ 85.2 to 84.6.

Subpart B [Removed]

- 15. Remove subpart B, consisting of §§ 85.10 through 85.12.

Subpart C [Removed]

- 16. Remove subpart C, consisting of §§ 85.20 through 85.44.

Subpart D [Removed]

- 17. Remove subpart D, consisting of §§ 85.50 through 85.52.

Subpart E [Removed]

- 18. Remove subpart E.

Julián Castro,
Secretary.

National Science Foundation

For the reasons set forth in the common preamble, under the authority of 42 U.S.C. 1861, *et seq.* and 2 CFR part 200, the National Science Foundation (NSF) amends Part 2500 of Title 2, Chapter XXV, and Part 602 of Title 45, chapter VI of the Code of Federal Regulations as follows:

Title 2—Grants and Agreements**CHAPTER XXV—NATIONAL SCIENCE FOUNDATION**

- 1. Part 2500 is added to Title 2 Chapter XXVI is revised to read as follows:

PART 2500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

2500.100 Adoption of 2 CFR Part 200.

Authority: 42 U.S.C. 1861, *et seq.*; 2 CFR part 200.

§ 2500.100 Adoption of 2 CFR Part 200.

Under the Authority cited above, NSF has formally adopted 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“the Uniform Guidance”). The Foundation’s implementation document, the NSF Proposal & Award Policies & Procedures Guide, may be found at: http://www.nsf.gov/publications/pub_summ.jsp?ods_key=papp.

NSF’s implementation includes the following deviation from the Uniform Guidance:

Award Cash Management System—NSF is continuing collection of award financial information through the implementation of the Award Cash Management Service (ACM\$) and the Program Income Worksheet. ACM\$ replaced the NSF Federal Financial Report (FFR) and the NSF FastLane Cash Request process with a single web based user interface. ACM\$ is used to collect award level detail financial information at the time of each payment request submitted by the awardee institution. The Program Income Worksheet is used to collect program income financial information from awardee institutions on an annual basis. ACM\$ and the Program Income Worksheet utilize approved government-wide data elements from the FFR for the collection of financial

information as provided for in the Uniform Guidance paragraph 505(c) and prescribed in 2 CFR 200.327. The requirement for Federal agencies to use the FFR data elements for cash management and financial reporting was publically announced in **Federal Register** on August 13, 2008.

Title 45—Public Welfare**CHAPTER VI—NATIONAL SCIENCE FOUNDATION****PART 602—[Removed]**

- 2. Remove 45 CFR part 602.

Lawrence Rudolph,
General Counsel.

National Archives and Records Administration

For the reasons set forth in the common preamble, NARA amends 2 CFR Chapter XXVI and 36 CFR Chapter XII as follows:

Title 2—Grants and Agreements**CHAPTER XXVI—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

- 1. Part 2600 of Title 2, Chapter XXVI, is revised to read as follows:

PART 2600—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

2600.100 Adoption of 2 CFR part 200.

2600.101 Indirect costs exception to 2 CFR 200.414.

2620.102 Additional NARA grant administration policies.

Authority: 5 U.S.C. 301; 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506; 75 FR 66317 (Oct. 28, 2010); 2 CFR 200.

§ 2600.100 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Archives and Records Administration (NARA), through its National Historical Publications and Records Commission (NHPRC), adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except regarding indirect costs (see § 2600.101). Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for NARA and NHPRC.

§ 2600.101 Indirect costs exception to 2 CFR 200.414.

As approved by the Archivist of the United States, the National Archives does not permit grant recipients to use allocated funds from NARA or NHPRC for indirect costs. Grant recipients may use cost sharing to cover indirect costs

instead. NARA's policies on indirect costs are located at <http://www.archives.gov/nhprc>, and are included in grant opportunity announcements.

(Authority: 44 U.S.C. 2103-04, 2 CFR part 200)

§ 2600.102 Additional NARA grant administration policies.

Grant recipients must also follow NARA grant administration policies and procedures set out in 36 CFR parts 1202, 1206, 1208, 1211, and 1212.

Title 36—Parks, Forests, and Public Property

CHAPTER XII—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

■ 2. Revise the authority citation for part 1206 to read as follows:

Authority: 5 U.S.C. 301; 44 U.S.C. 2104(a); 44 U.S.C. 2501-2506; 2 CFR 200, and as noted in specific sections.

§ 1206.3 [Amended]

■ 3. Amend § 1206.3 by adding the sentence “For a more detailed definition, see 2 CFR 306.” at the end of the definition paragraphs for “Cost sharing,” “Indirect costs,” and “State”.

§ 1206.8 [Amended]

■ 4. Amend § 1206.8(c) by adding a comma and the words “available on the NHPRC Web site at <http://www.archives.gov/nhprc>” to the end of the paragraph.

§ 1206.12 [Amended]

■ 5. Amend § 1206.12(a) by adding the phrase “and 2 CFR part 200” to the end of the sentence.

§ 1206.24 [Amended]

■ 6. Amend § 1206.24(b) by adding the phrase “and the NHPRC Web site” to the end of the sentence.

§ 1206.45 [Amended]

■ 7. Amend § 1206.45(b) by adding a comma and the words “including those in 2 CFR parts 230 and 2600” to the end of the sentence.

§ 1206.50 [Amended]

■ 8. Amend § 1206.50 by revising paragraph (b)(3) to read as follows:

§ 1206.50 What types of funding and cost sharing arrangements does the Commission make?

* * * * *

(b) * * *

(3) As indicated in 2 CFR part 2600, we do not pay indirect costs from grant

funds, but allow indirect costs to be used for cost sharing.

§ 1206.72 [Amended]

■ 9. Revise § 1206.72 to read as follows:

§ 1206.72 Where can I find the regulatory requirements that apply to NHPRC grants?

(a) In addition to this Part 1206, NARA has issued other regulations that apply to NHPRC grants in 36 CFR parts 1202, 1208, 1211, 1212 and 2 CFR part 2600 (which incorporates OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards guidance at 2 CFR part 200).

(b) The Commission provides additional policy guidance related to Title VI of the Civil Rights Act of 1964, regarding persons with limited English proficiency, at <http://www.archives.gov/nhprc/> and from the NHPRC staff.

PART 1207 [Removed]

■ 10. Remove 36 CFR part 1207.

PART 1210 [Removed]

■ 11. Remove 36 CFR part 1210.

David S. Ferriero,

Archivist of the United States.

Small Business Administration

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, Part 2701 of Title 2, Chapter XXVII of the Code of Federal Regulations is added and 13 CFR chapter I is amended to read as follows:

Title 2—Grants and Agreements

CHAPTER XXVII—SMALL BUSINESS ADMINISTRATION

PART 2701—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

2701.1 Adoption of 2 CFR part 200.

2701.74 Pass-through entity.

2701.92 Subaward.

2701.93 Subrecipient.

2701.112 Conflict of Interest.

2701.414 Indirect (F&A) Costs.

2701.503 Relation to other audit requirements.

2701.513 Responsibilities.

2701.600 Other regulatory guidance.

Authority: 15 U.S.C. 634(b)(6), 2 CFR part 200.

§ 2701.1 Adoption of 2 CFR Part 200.

(a) Under the authority listed above, the U.S. Small Business Administration adopts the Office of Management and

Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.74, 200.92, and 200.93. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Administration.

§ 2701.74 Pass-through entity.

SBA will only make awards to pass-through entities where expressly authorized by statute.

§ 2701.92 Subaward.

SBA will only permit pass-through entities to make awards to subrecipients where expressly authorized by statute.

§ 2701.93 Subrecipient.

SBA will only permit non-Federal entities to receive subawards where expressly authorized by statute.

§ 2701.112 Conflict of Interest.

The following conflict of interest policies apply to all SBA awards of financial assistance:

(a) Where an employee or contractor of a non-Federal entity providing assistance under an SBA award also provides services in exchange for pay in her or his private capacity, that employee or contractor may not accept as a client for her or his private services any individual or firm she or he assists under an SBA award.

(b) No non-Federal entity providing assistance under an SBA award (nor any subrecipient, employee, or contractor of such an entity) may give preferential treatment to any client referred to it by an organization with which it has a financial, business, or other relationship.

(c) Except where otherwise provided for by law, no non-Federal entity may seek or accept an equity stake in any firm it assists under the auspices of an SBA award. Additionally, no principal, officer, employee, or contractor of such an entity (nor any of their Close or Secondary Relatives as those terms are defined by 13 CFR 108.50) may seek or accept an equity stake or paid position in any firm the entity assists under an SBA award.

§ 2701.414 Indirect (F&A) Costs.

(a) When determining whether a deviation from a negotiated indirect cost rate is justified, SBA will consider the following factors:

(1) The degree to which a non-Federal entity has been able to defray its overhead expenses via those indirect costs it has recovered under other, concurrent SBA awards;

(2) The amount of funding that must be devoted to conducting program activities in order for a project to result in meaningful outcomes; and

(3) The amount of project funds that will remain available for conducting program activities after a negotiated rate is applied.

(b) After conducting the analysis required in paragraph (a) above, the head of each SBA grant program office will determine in writing whether there is sufficient justification to deviate from a negotiated indirect cost rate.

(c) Where SBA determines that deviation from a negotiated rate is justified, it will provide a copy of that determination to OMB and will inform potential applicants of the deviation in the corresponding funding announcement.

§ 2701.503 Relation to other audit requirements.

Non-Federal entities that are not subject to the requirements of the Single Audit Act and that are performing projects under SBA awards will be required to submit copies of their audited financial statements for their most recently completed fiscal year. Costs associated with the auditing of a non-Federal entity's financial statements may be included in its negotiations for an indirect cost rate agreement in accordance with 2 CFR 200.425.

§ 2701.513 Responsibilities.

For SBA, the Single Audit Senior Accountable Official is the Chief Administrative Officer. The Single Audit Liaison is the Director, Office of Grants Management.

§ 2701.600 Other regulatory guidance.

(a) In addition to the general regulations set forth above and those contained in 2 CFR part 200, the program-specific regulations governing the operation of SBA's individual grant programs may be found in title 13 of the Code of Federal Regulations beginning at the sections noted below:

(1) New Markets Venture Capital program—13 CFR 108.2000.

(2) Program for Investment in Microentrepreneurs (PRIME)—13 CFR 119.1.

(3) Microloan program—13 CFR 120.700.

(4) 7(j) Management and Technical Assistance program—13 CFR 124.701.

(5) Small Business Development Center program—13 CFR 130.100.

(b) [Reserved]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

PART 143—[REMOVED AND RESERVED]

- 2. Remove and reserve part 143.

Maria Contreras-Sweet,
Administrator, U.S. Small Business Administration.

Department of Justice

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter XXVIII and 28 chapter I are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXVIII—DEPARTMENT OF JUSTICE

- 1. Part 2800 is added to Title 2, Chapter XXVIII of the Code of Federal Regulations to read as follows:

PART 2800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS BY THE DEPARTMENT OF JUSTICE

Sec.

2800.101 Adoption of 2 CFR part 200.

2800.313 Equipment.

2800.314 Supplies.

Authority: 5 U.S.C. 301; 28 U.S.C. 509; 28 U.S.C. 530C(a)(4); 42 U.S.C. 3789; 2 CFR part 200.

§ 2800.101 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Justice adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.313 and 2 CFR 200.314, which are supplemented by the corresponding sections (*e.g.*, § 2800.313 supplements § 200.313) of this part. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

§ 2800.313 Equipment.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, section 808 (42 U.S.C. 3789), creates a special rule for disposition and use of equipment and supplies purchased by funds made available under that Title, which rule, where applicable, supersedes any conflicting provisions of 2 CFR 200.313. Section 808 currently provides that such equipment and supplies shall vest in the criminal justice agency or nonprofit organization that purchased the

property if such agency or nonprofit certifies to the appropriate State office (as indicated in the statute) that it will use the property for criminal justice purposes, and further provides that, if such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

§ 2800.314 Supplies.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, section 808 (42 U.S.C. 3789) creates a special rule for disposition and use of equipment and supplies purchased by funds made available under that Title, which rule, where applicable, supersedes any conflicting provisions of § 200.314. Section 808 currently provides that such equipment and supplies shall vest in the criminal justice agency or nonprofit organization that purchased the property if such agency or nonprofit certifies to the appropriate State office (as indicated in the statute) that it will use the property for criminal justice purposes, and further provides that, if such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PARTS 66 and 70 [Removed]

- 2. Remove Parts 66 and 70.

James M. Cole,
Deputy Attorney General.

Department of Labor

For the reasons set forth in the common preamble, the Department of Labor (DOL) establishes Chapter XXIX (consisting of Part 2900) in Title 2, of the Code of Federal Regulations to read as follows:

CHAPTER XXIX—DEPARTMENT OF LABOR

PART 2900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions

Sec.

2900.1 Budget.

2900.2 Non-Federal entity.

2900.3 Questioned cost.

Subpart B—General Provisions

2900.4 Adoption of 2 CFR part 200.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

2900.5 Federal awarding agency review of merit of proposals.

Subpart D—Post Federal Award Requirements

2900.6 Advance Payment.

2900.7 Payment.

2900.8 Cost sharing or matching.

2900.9 Revision of budget and program plans.

2900.10 Prior approval requests.

2900.11 Revision of budget and program plans including extension of the period of performance.

2900.12 Revision of budget and program plans approval from Grant Officers.

2900.13 Intangible property.

2900.14 Financial reporting.

2900.15 Closeout.

Subpart E—Cost Principles

2900.16 Prior written approval (prior approval)

2900.17 Adjustment of negotiated IDC rates.

2900.18 Contingency provisions.

2900.19 Student activity costs.

Subpart F—Audit Requirements

2900.20 Federal Agency Audit Responsibilities.

2900.21 Management decision.

2900.22 Audit Requirements, Appeal Process for Department of Labor Recipients.

Authority: 5 U.S.C. 301; 2 CFR 200.

Subpart A—Acronyms and Definitions**§ 2900.1 Budget.**

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal Awarding agency specifies as requiring prior approval. See § 200.407 for more information about prior approval. (See 2 CFR 200.8)

§ 2900.2 Non-Federal entity.

In the DOL, *Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient. (See 2 CFR 200.69)

§ 2900.3 Questioned cost.

In the DOL, in addition to the guidance contained in 2 CFR 200.84, a *Questioned cost* means a cost that is questioned by an auditor, Federal Project Officer, Grant Officer, or other authorized Awarding agency representative because of an audit finding:

(a) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(b) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(c) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Subpart B—General Provisions**§ 2900.4 Adoption of 2 CFR Part 200.**

Under the authority listed above, the Department of Labor adopts the Office of Management and Budget (OMB) Guidance in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by this part, as the Department of Labor policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part. The DOL also has programmatic and administrative regulations located in 20 and 29 CFR.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards**§ 2900.5 Federal awarding agency review of merit of proposals.**

In the DOL, audits and monitoring reports containing findings, issues of non-compliance or questioned costs are in addition to reports and findings from audits performed under Subpart F—Audit Requirements of this Part or the reports and findings of any other available audits; and (See 2 CFR 200.205(c)(4))

Subpart D—Post Federal Award Requirements**§ 2900.6 Advance Payment.**

In the DOL, except as authorized under 2 CFR 200.207, specific conditions, the non-Federal entity must be paid in advance. (See 2 CFR 200.305(b)(1))

§ 2900.7 Payment.

In addition to the guidance set forth in 2 CFR 200.305 (b)(2), for Federal awards from the Department of Labor, the non-Federal entity should liquidate existing advances before it requests additional advances.

§ 2900.8 Cost sharing or matching.

In addition to the guidance set forth in 2 CFR 200.306(b), for Federal awards from the Department of Labor, the non-Federal entity accounts for funds used for cost sharing or match within their accounting systems as the funds are expended.

§ 2900.9 Revision of budget and program plans.

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal awarding agency specifies as requiring prior approval (see 2 CFR 200.407 and 2 CFR 200.308(a))

§ 2900.10 Prior approval requests.

In addition to the guidance set forth in 2 CFR 200.308(c), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval actions at least 30 days prior to the effective date of the requested action.

§ 2900.11 Revision of budget and program plans including extension of the period of performance.

In addition to the guidance set forth in 2 CFR 200.308(c), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval for an extension to the period of performance.

§ 2900.12 Revision of budget and program plans approval from Grant Officers.

In the DOL, unless otherwise noted in the Grant Agreement, prior written approval must come from the Grant Officer (See 2 CFR 200.308(d))

§ 2900.13 Intangible property.

In addition to the guidance set forth in 2 CFR 200.315(d)(3), the Department of Labor requires intellectual property developed under a competitive Federal award process to be licensed under a Creative Commons Attribution license. This license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the grantee.

§ 2900.14 Financial reporting.

In addition to the guidance set forth in 2 CFR 200.327, for Federal awards from the Department of Labor, the DOL awarding agency will prescribe whether the report will be on a cash or an accrual basis. If the DOL awarding agency requires reporting on an accrual basis and the recipient's accounting system is not on the accrual basis, the recipient will not be required to convert its accounting system, but must develop

and report such accrual information through best estimates based on an analysis of the documentation on hand.

§ 2900.15 Closeout.

In addition to the guidance set forth in 2 CFR 200.343(b), for Federal awards from the Department of Labor, the non-Federal entity must liquidate all obligations and/or accrued expenditures incurred under the Federal award.

Subpart E—Cost Principles

§ 2900.16 Prior written approval (prior approval).

In addition to the guidance set forth in 2 CFR 200.407, for Federal awards from the Department of Labor, the non-Federal entity must request prior written approval which should include the timeframe or scope of the agreement and be submitted not less than 30 days before the requested action is to occur. Unless otherwise noted in the Grant Award, the Grant Officer is the only official with the authority to provide prior written approval (prior approval). Items included in the statement of work or budget as awarded does not constitute prior approval.

§ 2900.17 Adjustment of negotiated IDC rates.

In the DOL, in addition to the requirements under 2 CFR 200.411(a)(2), adjustments to indirect cost rates resulting from a determination of unallowable costs being included in the rate proposal may result in the reissuance of negotiated rate agreement.

§ 2900.18 Contingency provisions.

In addition to the guidance set forth in 2 CFR 200.433(c), for Federal awards from the Department of Labor, excepted citations include 2 CFR 200.333 Retention requirements for records, and 2 CFR 200.334 Requests for transfers of records.

§ 2900.19 Student activity costs.

In the Department of Labor, the provisions of 2 CFR 200.469 apply unless the activities meet a program requirement and have prior written approval from the Federal awarding agency.

Subpart F—Audit Requirements

§ 2900.20 Federal Agency Audit Responsibilities.

In the DOL, in addition to 2 CFR 200.513 the department employs a collaborative resolution process with non-federal entities.

(a) *Department of Labor Cooperative Audit Resolution Process.* The DOL official(s) responsible for resolution shall promptly evaluate findings and

recommendations reported by auditors and the corrective action plan developed by the recipient to determine proper actions in response to audit findings and recommendations. The process of audit resolution includes at a minimum an initial determination, an informal resolution period, and a final determination.

(1) *Initial determination.* After the conclusion of any comment period for audits provided the recipient/contractor, the responsible DOL official(s) shall make an initial determination on the allowability of questioned costs or activities, administrative or systemic findings, and the corrective actions outlined by the recipient. Such determination shall be based on applicable statutes, regulations, administrative directives, or terms and conditions of the grant/contract award instrument.

(2) *Informal resolution.* The recipient/contractor shall have a reasonable period of time (as determined by the DOL official(s) responsible for audit resolution) from the date of issuance of the initial determination to informally resolve those matters in which the recipient/contractor disagrees with the decisions of the responsible DOL official(s).

(3) *Final determination.* After the conclusion of the informal resolution period, the responsible DOL official(s) shall issue a final determination that:

(i) As appropriate, indicate that efforts to informally resolve matters contained in the initial determination have either been successful or unsuccessful;

(ii) Lists those matters upon which the parties continue to disagree;

(iii) Lists any modifications to the factual findings and conclusions set forth in the initial determination;

(iv) Lists any sanctions and required corrective actions; and

(v) Sets forth any appeal rights.

(4) *Time limit.* Insofar as possible, the requirements of this section should be met within 180 days of the date the final approved audit report is received by the DOL official(s) responsible for audit resolution.

§ 2900.21 Management decision.

In the DOL, ordinarily, a management decision is issued within six months of receipt of an audit from the audit liaison of the Office of the Inspector General. The pass-through entity responsible for issuing a management decision must do so within twelve months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and should begin corrective action no

later than upon receipt of the audit report. (See 2 CFR 200.521(d))

§ 2900.22 Audit Requirements—Appeal Process for Department of Labor Recipients.

In the DOL, the DOL grantor agencies shall determine which of the two appeal options set forth in paragraphs (a) and (b) of this section the recipient may use to appeal the final determination of the grant officer. All awards within the same Federal financial assistance program shall follow the same appeal procedure.

(a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted.

(1) *Jurisdiction.* (i) Request for hearing. Within 21 days of receipt of the grant officer's final determination, the recipient may transmit, by certified mail, return receipt requested, a request for hearing to the head of the grantor agency, or his/her designee, as noted in the final determination. A copy must also be sent to the grant officer who signed the final determination.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The grantor agency shall establish procedures for the conduct of hearings by the head of the grantor agency, or his/her designee.

(3) *Decision of the head of the grantor agency, or his/her designee.* The head of the grantor agency, or his/her designee, should render a written decision no later than 90 days after the closing of the record. This decision constitutes final action of the Secretary.

(b) *Appeal to the DOL Office of Administrative Law Judges.* (1)

Jurisdiction. (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street NW., Suite 400, Washington, DC 20001, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall

designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, shall govern the conduct of hearings under paragraph (b) of this section.

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Secretary of Labor.* Any case accepted for review by the Secretary shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary.

T. Michael Kerr,
Assistant Secretary for Administration and Management.

Department of Homeland Security

For the reasons set forth in the common preamble, Part 3002 is added to Title 2, Subtitle B, Chapter XXX of the Code of Federal Regulations to read as follows:

Title 2—Grants and Agreements

CHAPTER XXX—DEPARTMENT OF HOMELAND SECURITY

PART 3002—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 31 U.S.C. 503, 2 CFR part 200, and as noted in specific sections.

§ 3002.10 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Homeland Security adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

Department of Homeland Security

Federal Emergency Management Agency

For the reasons discussed in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, the Federal Emergency Management Agency amends 44 CFR Chapter I as follows:

Title 44—Emergency Management and Assistance

CHAPTER I—FEDERAL EMERGENCY MANAGEMENT AGENCY

PART 13—[REMOVED AND RESERVED]

- 1. Remove and reserve part 13.

PART 78—FLOOD MITIGATION ASSISTANCE

- 2. The authority citation for part 78 continues to read as follows:

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

- 3. Section 78.3 is amended by revising paragraphs (b)(5) and (c)(4) as follows:

§ 78.3 Responsibilities.

- (b) * * *
(5) Submit performance and financial reports to FEMA in compliance with 2 CFR 200.327 and 200.328.

- (c) * * *
(4) Comply with FEMA requirements, 2 CFR parts 200 and 3002, the grant agreement, applicable Federal, State and local laws and regulations (as applicable); and

* * * * *

- 4. Section 78.13 is amended by revising the last sentence of paragraph (a) and revising paragraph (b) as follows:

§ 78.13 Grant administration.

- (a) * * * Allowable costs will be governed by 2 CFR parts 200 and 3002.
- (b) The grantee must submit performance and financial reports to FEMA and must ensure that all subgrantees are aware of their responsibilities under 2 CFR parts 200 and 3002.

* * * * *

PART 79—FLOOD MITIGATION GRANTS

- 5. The authority citation for part 79 continues to read as follows:

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

- 6. Section 79.3 is amended by revising paragraphs (b)(6) and (d)(4) as follows:

§ 79.3 Responsibilities.

- (b) * * *
(6) Comply with program requirements under this part, grant management requirements identified under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, tribal and local laws and regulations.

- (d) * * *
(4) Comply with program requirements under this part, grant management requirements identified under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, tribal and local laws and regulations.

- 7. Section 79.8 is amended by revising paragraph (a) introductory text and revising the last sentence of paragraph (a)(2) to read as follows:

§ 79.8 Allowable costs.

- (a) *General.* General policies for allowable costs are addressed in 2 CFR 200.101, 200.102, 200.400–200.475.

* * * * *

- (2) * * * In addition, all costs must be in accordance with the provisions of 2 CFR parts 200 and 3002.

* * * * *

- 8. Section 79.9 is amended by revising the last sentence of paragraph (a) as follows:

§ 79.9 Grant administration.

- (a) * * * In addition, grantees are responsible for ensuring that all subgrantees are aware of and follow the

requirements contained in 2 CFR parts 200 and 3002.

* * * * *

PART 152—ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

■ 9. The authority citation for part 152 continues to read as follows:

Authority: Federal Fire Protection and Control Act, 15 U.S.C. 2201 *et seq.*

■ 10. Section 152.7 is amended by revising the third sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 152.7 Grant payment, reporting and other requirements.

(a) * * * Grantees may request funds from FEMA as reimbursement for expenditures made under the grant program or they may request funds for immediate cash needs under 2 CFR 200.305. * * *

(c) All grantees must follow their own established procurement process when buying anything with Federal grant funds as provided in 2 CFR 200.317–200.326. * * *

* * * * *

PART 201—MITIGATION PLANNING

■ 11. The authority citation for part 201 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 12. Section 201.4 is amended by revising paragraph (c)(7) to read as follows:

§ 201.4 Standard State Mitigation Plans.

* * * * *

(c) * * *

(7) *Assurances.* The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, including 2 CFR parts 200 and 3002.

* * * * *

■ 13. Section 201.7 is amended by revising paragraph (c)(6) to read as follows:

§ 201.7 Tribal Mitigation Plans.

* * * * *

(c) * * *

(6) *Assurances.* The plan must include assurances that the Indian Tribal government will comply with all

applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, including 2 CFR parts 200 and 3002.

* * * * *

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

■ 14. The authority citation for part 204 continues to read as follows:

Authority: 42 U.S.C. 5121 through 5207; 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1.

■ 15. Section 204.42 is amended by revising paragraph (a)(3) to read as follows:

§ 204.42 Eligible Costs.

(a) * * *

(3) Grantees will award Federal funds to subgrantees under State law and procedure and complying with 2 CFR parts 200 and 3002.

* * * * *

■ 16. Section 204.53 is amended by revising paragraph (b)(2) to read as follows:

§ 204.53 Certifying costs and payments.

(b) * * *

(2) In compliance with 2 CFR 200.305 and U.S. Treasury 31 CFR part 205, Cash Management Improvement Act.

■ 17. Section 204.63 is revised to read as follows:

§ 204.63 Allowable costs.

2 CFR part 200, subpart E—Cost Principles establishes general policies for determining allowable costs.

(a) FEMA will reimburse direct costs for the administration of a fire management assistance grant under 2 CFR part 200.

(b) FEMA will reimburse indirect costs for the administration of a fire management assistance grant in compliance with the Grantee's approved indirect cost rate under 2 CFR part 200.

(c) Management costs as defined in 44 CFR part 207 do not apply to this section.

■ 18. Section 204.64 is amended by revising paragraph (b)(1) to read as follows:

§ 204.64 Reporting and audit requirements.

(b) * * *

(1) *Audit.* Audits will be performed, for both the Grantee and the subgrantees, under 2 CFR 200.500–200.520.

* * * * *

PART 206—FEDERAL DISASTER ASSISTANCE

■ 19. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

■ 20. Section 206.16 is amended by revising paragraph (a) to read as follows:

§ 206.16 Audit and investigations.

(a) Subject to the provisions of chapter 75 of title 31, United States Code, and 2 CFR parts 200 and 3002, relating to requirements for single audits, the Administrator, the Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator shall conduct audits and investigations as necessary to assure compliance with the Stafford Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

* * * * *

■ 21. Section 206.120 is amended by revising paragraphs (f)(2)(i), (f)(6), and the first sentence of paragraph (f)(7) to read as follows:

§ 206.120 State administration of other needs assistance.

* * * * *

(f) * * *

(2) *Reporting requirements.* (i) The State shall provide financial status reports as required by 2 CFR 200.327.

* * * * *

(6) *Audit requirements.* Pursuant to 2 CFR 200.500–200.520, uniform audit requirements apply to all grants provided under this subpart.

(7) *Document retention.* Pursuant to 2 CFR 200.333–200.337, States are required to retain records, including source documentation, to support expenditures/costs incurred against the grant award, for 3 years from the date of submission to FEMA of the Financial Status Report. * * *

■ 22. Section 206.171 is amended by revising paragraphs (f)(4)(v) and (g)(3) to read as follows:

§ 206.171 Crisis counseling assistance and training.

* * * * *

(f) * * *

(4) * * *

(v) Any funds granted pursuant to an immediate services program, paragraph (f) of this section, shall be expended solely for the purposes specified in the approved application and budget, these

regulations, the terms and conditions of the award, and the applicable principles prescribed in 2 CFR parts 200 and 3002.

* * * * *

(g) * * *

(3) *Reporting requirements.* The State shall submit the following reports to the Regional Administrator, the Secretary, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Administrator or the Secretary, due 30 days after the end of the reporting period. This is consistent with 2 CFR 200.328, Monitoring and Reporting Program Performance;

(ii) A final program report, to be submitted within 90 days after the end of the program period. This is also consistent with 2 CFR 200.328, Monitoring and Reporting Program Performance;

(iii) An accounting of funds, in accordance with 2 CFR 200.327, Financial Reporting, to be submitted with the final program report; and
(iv) Such additional reports as the Regional Administrator, Secretary, or SCO may require.

* * * * *

■ 23. Section 206.200 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 206.200 General.

* * * * *

(b) * * *

(2) The regulations entitled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published at 2 CFR parts 200 and 3002, place requirements on the State in its role as Grantee and gives the Grantee discretion to administer federal programs under their own procedures. * * *

■ 24. Section 206.202(a) is amended by revising the last sentence as follows:

§ 206.202 General.

(a) *General.* * * * As Grantee you are responsible for processing subgrants to applicants under 2 CFR parts 200 and 3002, and 44 CFR part 206, and your own policies and procedures.

* * * * *

■ 25. Section 206.204(b) is revised to read as follows:

§ 206.204 Project performance.

* * * * *

(b) *Advances of funds.* Advances of funds will be made in accordance with 2 CFR 200.305.

* * * * *

■ 26. Section 206.205(b)(1) is amended by removing the second sentence and adding a sentence in its place to read as follows:

§ 206.205 Payment of claims.

* * * * *

(b) *Large projects.* (1) * * * In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 2 CFR 200.305.

* * * * *

■ 27. Section 206.207 is amended by revising paragraphs (a), (b)(1)(iii)(G) and (H), and (c) as follows:

§ 206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 2 CFR parts 200 and 3002 apply to all disaster assistance grants and subgrants.

(b) * * *

(1) * * *

(iii) * * *

(G) Compliance with the administrative requirements of 2 CFR parts 200 and 3002 and 44 CFR part 206;

(H) Compliance with the audit requirements of 2 CFR parts 200 and 3002;

* * * * *

(c) *Audit*—(1) *Nonfederal audit.* For grantees or subgrantees, requirements for nonfederal audit are contained in 2 CFR parts 200 and 3002.

(2) *Federal audit.* In accordance with 2 CFR part 200 and 3002, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

■ 28. Section 206.436 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 206.436 Application procedures.

(a) * * * Under the HMGP, the State or Indian tribal government is the grantee and is responsible for processing subgrants to applicants in accordance with 2 CFR parts 200 and 3002. * * *

* * * * *

■ 29. Section 206.437 is amended by revising paragraph (b)(4)(xi) as follows:

§ 206.437 State administrative plan.

* * * * *

(b) * * *

(4) * * *

(xi) Comply with the administrative and audit requirements of 2 CFR parts 200 and 3002 and 44 CFR part 206.

* * * * *

■ 30. Section 206.438 is amended by revising the first sentences of paragraphs (a) and (e) as follows:

§ 206.438 Project management.

(a) *General.* The State serving as grantee has primary responsibility for project management and accountability of funds as indicated in 2 CFR parts 200 and 3002 and 44 CFR part 206. * * *

(e) *Audit requirements.* Uniform audit requirements as set forth in 2 CFR parts 200 and 3002 and 44 CFR part 206 apply to all grant assistance provided under this subpart. * * *

* * * * *

■ 31. Section 206.439(a) is revised to read as follows:

§ 206.439 Allowable costs.

(a) General requirements for determining allowable costs are established in 2 CFR part 200, Cost Principles. Exceptions to those requirements as allowed in 2 CFR 200.101 and 2 CFR 200.102 are explained in paragraph (b) of this section.

* * * * *

PART 207—MANAGEMENT COSTS

■ 32. The authority citation for part 207 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 33. Section 207.4 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 207.4 Responsibilities.

(a) * * * These responsibilities are unique to the administration of this part and are in addition to common Federal Government requirements of grantees and subgrantees, consistent with OMB circulars and other applicable requirements, such as 2 CFR parts 200 and 3002.

* * * * *

■ 34. Section 207.6 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 207.6 Use of funds.

(a) The grantee or subgrantee must use management cost funds provided under this part in accordance with 2 CFR part 200, subpart E—Cost Principles, and only for costs related to administration of PA or HMGP, respectively. * * *

* * * * *

■ 35. Section 207.8 is amended by revising the first sentence of paragraph (a), the last sentence of (b)(3), (e), and

the first sentence of (f) to read as follows:

§ 207.8 Management cost funding oversight.

(a) *General.* The grantee has primary responsibility for grants management activities and accountability of funds provided for management costs as required by 2 CFR parts 200 and 3002, especially 2 CFR 200.301–200.304 and 200.317–200.326. * * *

(b) * * *

(3) * * * FEMA will deobligate any funds not liquidated by the grantee in accordance with 2 CFR 200.309 and 200.343(b).

(e) *Audit requirements.* Uniform audit requirements in 2 CFR 200.500–200.520 apply to all assistance provided under this part.

(f) *Document retention.* In compliance with State law and procedures and with 2 CFR 200.333–200.337, grantees must retain records, including source documentation to support expenditures/ costs incurred for management costs, for 3 years from the date of submission of the final Financial Status Report to FEMA that is required for PA and HMGP. * * *

■ 36. Section 207.9 is amended by revising the first sentences of paragraph (b) introductory text and (b)(1)(ii), and revising paragraph (c)(1) to read as follows:

§ 207.9 Declarations before November 13, 2007.

* * * * *

(b) *Eligible direct costs.* Eligible direct costs to complete approved activities are governed by 2 CFR parts 200 and 3002. * * *

(1) * * *

(ii) *State management administrative costs.* Except for the items listed in paragraph (b)(1)(i) of this section, other administrative costs will be paid in accordance with 2 CFR part 200, subpart E—Cost Principles. * * *

(c) *Eligible indirect costs:* (1) *Grantee.* Indirect costs of administering the disaster program are eligible in accordance with the provisions of 2 CFR parts 200 and 3002 if the grantee provides FEMA with a current Indirect Cost Rate Agreement approved by its Cognizant Agency. * * * * *

■ 37. Section 207.10 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 207.10 Review of management cost rates.

* * * * *

(b) In order for FEMA to review the management cost rates established, and

in accordance with 2 CFR parts 200 and 3002, the grantee and subgrantee must document all costs expended for management costs (including cost overruns). * * *

PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

■ 38. The authority citation for part 208 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 39. Section 208.7 is amended by revising paragraphs (a) and (b) to read as follows:

§ 208.7 Enforcement.

(a) *Remedies for noncompliance.* In accordance with the provisions of 2 CFR 200.338, 200.341, and 200.342, if a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member materially fails to comply with a term of a Cooperative Agreement, Memorandum of Agreement, System directive or other Program Directive, the Assistant Administrator may take one or more of the actions provided in 2 CFR 200.338(a)–(f). Any such enforcement action taken by the Assistant Administrator will be subject to the hearings, appeals, and effects of suspension and termination provisions of 2 CFR 200.341 and 200.342.

(b) The enforcement remedies identified in this section, including suspension and termination, do not preclude a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member from being subject to “Debarment and Suspension” under E.O. 12549, as amended, in accordance with 2 CFR 200.338(d). * * * * *

■ 40. Section 208.23 introductory text is revised to read as follows:

§ 208.23 Allowable costs under Preparedness Cooperative Agreements.

System Members may spend Federal funds that DHS provides under any Preparedness Cooperative Agreement and any required matching funds under 2 CFR part 200, subpart E—Cost Principles, and this section to pay reasonable, allowable, necessary and allocable costs that directly support

System activities, including the following:

* * * * *

■ 41. Section 208.26 is revised to read as follows:

§ 208.26 Accountability for use of funds.

The Sponsoring Agency is accountable for the use of funds as provided under the Preparedness Cooperative Agreement, including financial reporting and retention and access requirements according to 2 CFR 200.327 and 200.333–200.337.

■ 42. Section 208.27 is revised to read as follows:

§ 208.27 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Preparedness Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 2 CFR 200.313(e)(3), for example, when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

■ 43. Section 208.33(c) is revised to read as follows:

§ 208.33 Allowable costs.

* * * * *

(c) *Normal or predetermined practices.* Consistent with 2 CFR parts 200 and 3002, Sponsoring Agencies and Participating Agencies must adhere to their own normal and predetermined practices and policies of general application when requesting reimbursement from DHS except as it sets out in this subpart. * * * * *

■ 44. Section 208.46 is revised to read as follows:

§ 208.46 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Response Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 2 CFR 200.313(e)(3), when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

PART 304—CONSOLIDATED GRANTS TO INSULAR AREAS

■ 45. The authority citation for part 304 continues to read as follows:

Authority: 50 U.S.C. app. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

■ 46. Section 304.5 is revised to read as follows:

§ 304.5 Audits and records.

(a) Audits. FEMA will maintain adequate auditing, accounting and review procedures as outlined in FEMA guidance material and 2 CFR parts 200 and 3002.

(b) Records. Financial records, supporting documents, statistical records, and all other records pertinent to a consolidated grant shall be retained for a period of three years from submission of final billing and shall be available to the Administrator, FEMA, and the Comptroller General of the United States, all as prescribed in FEMA guidance material and in accordance with 2 CFR parts 200 and 3002.

PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

■ 47. The authority citation for part 360 continues to read as follows:

Authority: Reorganization Plan No. 3 (3 CFR, 1978 Comp., p. 329); E.O. 12127 (44 FR 19367); E.O. 12148 (44 FR 43239).

■ 48. Section 360.4(c)(3)(iii) is revised to read as follows:

§ 360.4 Administrative procedures.

* * * * *

(c) * * *

(3) * * *

(iii) Standard Form 270 "Request for Advance or Reimbursement" as required by 2 CFR parts 200 and 3002 and FEMA General Provisions for Cooperative Agreements.

* * * * *

PART 361—NATIONAL EARTHQUAKE HAZARDS REDUCTION ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

■ 49. The authority citation for part 361 continues to read as follows:

Authority: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 et seq.; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12381, 47 FR 39795, 3 CFR, 1982 Comp., p. 207.

■ 50. Section 361.5(c)(8) is revised to read as follows:

§ 361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.

* * * * *

(c) * * *

(8) Consistent with 2 CFR parts 200 and 3002.

* * * * *

Jeh Charles Johnson, Secretary, Department of Homeland Security.

Institute of Museum and Library Services

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301, 20 U.S.C. 9103(h), and the authorities listed below, 2 CFR chapter XXXI and 45 CFR chapter XI are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXXI—INSTITUTE OF MUSEUM AND LIBRARY SERVICES

■ 1. Part 3187 is added to Chapter XXXI to read as follows:

PART 3187—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

3187.1 Adoption of 2 CFR part 200.

Subpart A—Definitions and Eligibility

3187.2 Applicable regulations and scope of this part.

3187.3 Definition of a museum.

3187.4 Other definitions.

3187.5 Museum eligibility and burden of proof—Who may apply.

3187.6 Related institutions.

3187.7 Basic materials which an applicant must submit to be considered for funding.

Subpart B—General Application, Selection and Award Procedures

Applications

3187.8 Deadline date and method for submitting applications.

Selection and Award Procedures

3187.9 Rejection of an application.

3187.10 Rejection for technical deficiency—appeal.

Subpart C—General Conditions Which Must Be Met

Compliance with Legal Requirements

3187.11 Compliance with statutes, regulations, approved application and Federal award.

Nondiscrimination

3187.12 Federal statutes and regulations on nondiscrimination.

Evaluation

3187.13 Federal evaluation—Cooperation by a non-Federal entity.

Allowable Costs

3187.14 Subawards

3187.15 Allowable costs.

Authority 20 U.S.C. 9101–9176, 9103(h); 20 U.S.C. 80r–5; 2 CFR part 200.

§ 3187.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Institute of Museum and Library Services (IMLS) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, with the additions that are provided below. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for IMLS.

Subpart A—Scope, Definitions, and Eligibility

§ 3187.2 Applicable regulations and scope of this part.

(a) Except as set forth in this 2 CFR part 3187, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to awards from funds appropriated to the Institute of Museum and Library Services (the "Institute" or "IMLS").

(b) The IMLS authorizing statutes, including 20 U.S.C. 9101 et seq. and 20 U.S.C. 80r–5, ("IMLS Statutes") are controlling in the event of any conflict between the IMLS Statutes and the regulations in 2 CFR part 200.

§ 3187.3 Definition of a museum.

For the purpose of this part:

(a) Museum means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff:

- (1) Owns or uses tangible objects, either animate or inanimate;
(2) Cares for these objects; and
(3) Exhibits them to the general public on a regular basis.

(i) An institution that exhibits objects to the general public for at least 120 days a year shall be deemed to meet this requirement.

(ii) An institution that exhibits objects by appointment may meet this requirement if it can establish, in light of the facts under all the relevant circumstances, that this method of exhibition does not unreasonably restrict the accessibility of the institution's exhibits to the general public.

(b) The term "museum" in paragraph (a) of this section includes museums that have tangible and digital collections. Museums include, but are not limited to, the following types of institutions, if they otherwise satisfy the provisions of this section:

- (1) Aquariums;
(2) Arboretums;
(3) Botanical gardens;
(4) Art museums;
(5) Children's museums;
(6) General museums;

- (7) Historic houses and sites;
- (8) History museums;
- (9) Nature centers;
- (10) Natural history and anthropology museums;
- (11) Planetariums;
- (12) Science and technology centers;
- (13) Specialized museums; and
- (14) Zoological parks.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the fulltime equivalent, whether paid or unpaid primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution.

(d)(1) Except as set forth in paragraph (d)(2) of this section, an institution exhibits objects to the general public for the purposes of this section if such exhibition is a primary purpose of the institution.

(2) An institution that does not have as a primary purpose the exhibition of objects to the general public but which can demonstrate that it exhibits objects to the general public on a regular basis as a significant, separate, distinct, and continuing portion of its activities, and that it otherwise meets the requirements of this section, may be determined to be a museum under this section. In order to establish its eligibility, such an institution must provide information regarding the following:

(i) The number of staff members devoted to museum functions as described in paragraph (a) of this section.

(ii) The period of time that such museum functions have been carried out by the institution over the course of the institution's history.

(iii) Appropriate financial information for such functions presented separately from the financial information of the institution as a whole.

(iv) The percentage of the institution's total space devoted to such museum functions.

(v) Such other information as the Director requests.

(3) The Director uses the information furnished under paragraph (d)(2) of this section in making a determination regarding the eligibility of such an institution under this section.

(e) For the purpose of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

§ 3187.4 Other definitions.

The following other definitions apply in this part:

Act means The Museum and Library Services Act, Pub. L. 104–208 (20 U.S.C. 9101–9176), as amended.

Collection includes objects owned, used or loaned by a museum as well as those literary, archival and documentary resources specifically required for the study and interpretation of these objects.

Director means the Director of the Institute of Museum and Library Services.

Institute or *IMLS* means the Institute of Museum and Library Services established under Section 203 of the Act.

Museum services means services provided by a museum, primarily exhibiting objects to the general public, and including but not limited to preserving and maintaining its collections, and providing educational and other programs to the public through the use of its collections and other resources.

§ 3187.5 Museum eligibility and burden of proof—Who may apply.

(a) A museum located in any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau may apply for a Federal award under the Act.

(b) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(c) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(d) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

§ 3187.6 Related institutions.

(a) If two or more institutions are under the common control of one agency or institution or are otherwise organizationally related and apply for assistance under the Act, the Director determines under all the relevant circumstances whether they are separate museums for the purpose of establishing eligibility for assistance under these regulations. *See* § 3187.5 (Museum eligibility and burden of proof—Who may apply).

(b) IMLS regards the following factors, among others, as showing that a related institution is a separate museum:

(1) The institution has its own governing body;

(2) The institution has budgetary autonomy; and

(3) The institution has administrative autonomy.

§ 3187.7 Basic materials which an applicant must submit to be considered for funding.

(a) *Application*. To apply for an IMLS Federal award, an applicant must submit the designated application form containing all information requested.

(b) *IRS letter*. An applicant applying as a private, nonprofit institution must submit a copy of the letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the applicable provision of the Internal Revenue Code of 1954, as amended.

Subpart B—General Application, Selection and Award Procedures

Applications

§ 3187.8 Deadline date and method for submitting applications.

(a) The notice of funding opportunity sets the deadline date and method(s) for applications to be submitted to the Institute.

(b) If the application notice permits mailing of an application, an applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director.

(c) If the application notice permits mailing of an application, and the application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not date cancelled by the U.S. Postal Service.

Selection and Award Procedures

§ 3187.9 Rejection of an application.

(a) The Director rejects an application if:

(1) The applicant is not eligible;

(2) The applicant fails to comply with procedural rules that govern the submission of the application;

(3) The application does not contain the information required;

(4) The application cannot be funded under the authorizing statute or implementing regulations.

(b) If the Director rejects an application under this section, the Director informs the applicant and explains why the application was rejected.

§ 3187.10 Rejection for technical deficiency—appeal.

An applicant whose application is rejected because of technical deficiency may appeal such rejection in writing to the Director within 10 business days of electronic or postmarked notice of rejection, whichever is earlier.

Subpart C—General Conditions Which Must Be Met

Compliance With Legal Requirements

§ 3187.11 Compliance with statutes, regulations, approved application and Federal award.

(a) A recipient and subrecipient, as applicable, shall comply with the relevant statutes, regulations, and the approved application and Federal award, and shall use Federal funds in accordance therewith.

(b) No act or failure to act by an official, agent, or employee of the

Institute can affect the authority of the Director to enforce regulations.

(c) In any circumstance for which waiver is provided, the determination of the Director shall be final.

Nondiscrimination

§ 3187.12 Federal statutes and regulations on nondiscrimination.

(a) Each recipient and subrecipient, as applicable, shall comply with the relevant nondiscrimination statutes and public policy requirements including, but not limited to, the following:

Subject	Statute
Discrimination on the basis of race, color or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).
Discrimination on the basis of age	The Age Discrimination Act (420 U.S.C. 8101 <i>et. seq.</i>)

(b) *Regulations under section 504 of the Rehabilitation Act of 1973.* The Institute applies the regulations in 45 CFR part 1170, issued by the National Endowment for the Humanities and relating to nondiscrimination on the basis of handicap in federally assisted programs and activities, in determining the compliance with section 504 of the Rehabilitation Act of 1973 as it applies to recipients of Federal financial assistance from the Institute. These regulations apply to each program or activity that receives such assistance. In applying these regulations, references to the *Endowment* or the *agency* shall be deemed to be references to the Institute and references to the *Chairman* shall be deemed to be references to the Director.

Evaluation

§ 3187.13 Federal evaluation—Cooperation by a non-Federal entity.

A non-Federal entity shall cooperate in any evaluation by the Director of the particular IMLS Federal financial assistance program in which the non-Federal entity has participated.

Allowable Costs

§ 3187.14 Subawards.

(a) A recipient may not make a subaward unless expressly authorized by the Institute. In the event the Institute authorizes a subaward, the recipient shall:

- (1) Ensure that the subaward includes any clauses required by Federal law as well as any program-related conditions imposed by the Institute;
- (2) Ensure that the subrecipient is aware of the applicable legal and program requirements; and

(3) Monitor the activities of the subrecipient as necessary to ensure compliance with Federal law and program requirements.

(b) A recipient may contract for supplies, equipment, and services, subject to applicable law, including but not limited to applicable Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200.

§ 3187.15 Allowable costs.

(a) Determination of costs allowable under a Federal award is made in accordance with the government-wide cost principles in the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200.

(b) No costs shall be allowed for the purchase of any object to be included in the collection of a museum, except library, literary, or archival material specifically required for a designated activity under a Federal award under the Act.

Title 45—Public Welfare

CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Subchapter E—Institute of Museum and Library Services

PART 1180—[REMOVED AND RESERVED]

- 2. Remove and reserve part 1180.

PART 1183—[REMOVED AND RESERVED]

- 2. Remove and reserve part 1183.

Nancy E. Weiss,
General Counsel.

National Endowment for the Arts

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter XXXII and 45 CFR chapter XI are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXXII—NATIONAL ENDOWMENT FOR THE ARTS

- 1. Part 3255 is added to Title 2, Chapter XXXII of the Code of Federal Regulations to read as follows:

PART 3255—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301, 20 U.S.C. 954, 2 CFR part 200.

§ 3255.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Endowment for the Arts (NEA) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the NEA.

Title 45—Public Welfare**CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES****Subchapter B—National Foundation for the Arts****PART 1157—[REMOVED AND RESERVED]**

- 2. Remove and reserve 45 CFR part 1157.

India J. Pinkney,
General Counsel.

National Endowment for the Humanities

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter XXXIII and 45 CFR chapter XI are amended as follows:

Title 2—Grants and Agreements**CHAPTER XXXIII—NATIONAL ENDOWMENT FOR THE HUMANITIES**

- 1. Part 3374 is added to Title 2, Chapter XXXIII to read as follows:

PART 3374—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301, 20 U.S.C. 956, 2 CFR part 200.

§ 3374.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Endowment for the Humanities (NEH) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for NEH.

Title 45—Public Welfare**CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES****Subchapter D—National Endowment for the Humanities****PART 1174—[REMOVED AND RESERVED]**

- 2. Remove and reserve 45 CFR part 1174.

Michael P. McDonald,
General Counsel.

Department of Education

For the reasons discussed in the preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, the Secretary amends chapter XXXIV of title 2 of the Code of Federal Regulations and amends subtitle A and

chapters I, II, III, IV, V, and VI of title 34 of the Code of Federal Regulations as follows.

Title 2—Grants and Agreements**Subtitle B—Federal Agency Regulations for Grants and Agreements****CHAPTER XXXIV—DEPARTMENT OF EDUCATION**

- 1. Part 3474 is added to read as follows.

PART 3474—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

3474.1 Adoption of 2 CFR part 200.

3474.5 How exceptions are made to 2 CFR part 200.

3475.10 Clarification regarding 2 CFR 200.207.

Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200, unless otherwise noted.

§ 3474.1 Adoption of 2 CFR part 200.

(a) The Department of Education adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.102(a) and 2 CFR 200.207(a). Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

(b) The authority for all of the provisions in 2 CFR part 200 as adopted in this part is listed as follows.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200.)

§ 3474.5 How exceptions are made to 2 CFR part 200.¹

(a) With the exception of Subpart F—Audit Requirements of 2 CFR part 200, the Secretary of Education, after consultation with OMB, may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances.

(b) Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at www.whitehouse.gov/omb.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200)

¹C. Ref. 2 CFR 200.102.

§ 3474.10 Clarification regarding 2 CFR 200.207.²

The Secretary or a pass-through entity may, in appropriate circumstances, designate the specific conditions established under 2 CFR 200.207 as “high-risk conditions” and designate a non-Federal entity subject to specific conditions established under § 200.207 as “high-risk”.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200)

Title 34—Education**Subtitle A—Office of the Secretary, Department of Education****PART 74 [REMOVED]**

- 2. Part 74 is removed.

PART 75—DIRECT GRANT PROGRAMS

- 3–4. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

- 5. Section 75.118 is amended by:

- A. Revising paragraph (a).
- B. Revising the cross-reference at the end of the section.

The revisions read as follows:

§ 75.118 Requirements for a continuation award.

(a) A recipient that wants to receive a continuation award shall submit a performance report that provides the most current performance and financial expenditure information, as directed by the Secretary, that is sufficient to meet the reporting requirements of 2 CFR 200.327 and 200.328 and 34 CFR 75.590 and 75.720.

* * * * *

CROSS-REFERENCE: See 2 CFR 200.327, Financial reporting, and 200.328, Monitoring and reporting program performance; and 34 CFR 75.117, Information needed for a multi-year project, 75.250 through 75.253, Approval of multi-year projects, 75.590, Evaluation by the grantee, and 75.720, Financial and performance reports.

- 6. Section 75.135 is amended by:
- A. Revising the introductory text of paragraph (a).
- B. Revising paragraph (e).

The revisions read as follows:

§ 75.135 Competition exception for proposed implementation sites, implementation partners, or service providers.

(a) When entering into a contract with implementation sites or partners, an applicant is not required to comply with

²C. Ref. 2 CFR 200.205, 200.207.

the competition requirements in 2 CFR 200.320(c) and (d), if—

* * * * *

(e) The exceptions in paragraphs (a) and (b) of this section do not extend to the other procurement requirements in 2 CFR part 200 regarding contracting by grantees and subgrantees.

* * * * *

■ 7. The cross-reference following § 75.236 is revised to read as follows:

§ 75.236 Effect of the grant.

* * * * *

CROSS-REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

■ 8. Section 75.253 is amended by:

■ A. Revising paragraph (a)(5).

■ B. Revising the introductory text to paragraph (d)(1).

■ C. Revising paragraph (d)(1)(ii).

■ D. Revising the Note that follows paragraph (d)(1)(ii).

The revisions read as follows:

§ 75.253 Continuation of a multi-year project after the first budget period.

(a) * * *

(5) The grantee has maintained financial and administrative management systems that meet the requirements in 2 CFR 200.302, Financial management, and 200.303, Internal controls.

* * * * *

(d)(1) Notwithstanding any regulatory requirements in 2 CFR part 200, a grantee may expend funds that have not been obligated at the end of a budget period for obligations of the subsequent budget period if—

* * * * *

(ii) ED regulations, including those in title 2 of the CFR, statutes, or the conditions of the grant do not prohibit the obligation.

Note: See 2 CFR 200.308(d)(2).

* * * * *

■ 9. Section 75.261 is amended by:

■ A. Revising paragraph (a).

■ B. Revising the introductory text to paragraph (c).

The revisions read as follows:

§ 75.261 Extension of a project period.

(a) *General rule.* A grantee may extend the project period of an award one time for a period up to twelve months without the prior approval of the Secretary, if—

(1) The grantee meets the requirements for extension in 2 CFR 200.308(d)(2); and

(2) ED statutes, regulations other than those in 2 CFR part 200, or the conditions of an award do not prohibit the extension.

* * * * *

(c) *Other regulations.* If ED regulations other than the regulations in 2 CFR part 200 or the conditions of the award require the grantee to obtain prior approval to extend the project period, the Secretary may permit the grantee to extend the project period if—

* * * * *

§ 75.263 [Removed and Reserved]

■ 10. Section 75.263 is removed and reserved.

■ 11. Section 75.264 is revised to read as follows:

§ 75.264 Transfers among budget categories.

A grantee may make transfers as specified in 2 CFR 200.308 unless—

(a) ED regulations other than those in 2 CFR part 200 or a statute prohibit these transfers; or

(b) The conditions of the grant prohibit these transfers.

(Authority: 20 U.S.C. 1221e–3, 3474, 2 CFR part 200)

■ 12. The cross-reference following § 75.511 is revised to read as follows:

§ 75.511 Waiver of requirement for a full-time project director.

* * * * *

CROSS-REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

§ 75.517 [Removed and Reserved]

■ 13. Section 75.517 is removed and reserved.

■ 14. Section 75.524 is amended by revising paragraphs (b) and (c) to read as follows:

§ 75.524 Conflict of interest: Purpose of § 75.525.

* * * * *

(b) These conflict of interest regulations do not apply to a “local government,” as defined in 2 CFR 200.64, or a “State,” as defined in 2 CFR 200.90.

(c) The regulations in § 75.525 do not apply to a grantee’s procurement contracts. The conflict of interest regulations that cover those procurement contracts are in 2 CFR part 200.

* * * * *

■ 15. Section 75.530 and the cross-reference that follows that section are revised to read as follows:

§ 75.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are specified at 2 CFR part 200, subpart E—Cost Principles.

(Authority: 20 U.S.C. 1221e–3 and 3474)

CROSS-REFERENCE: See 2 CFR part 200, subpart D—Post Federal Award Requirements.

■ 16. Section 75.560 is amended by revising paragraph (a) to read as follows:

§ 75.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E—Cost Principles;

(2) Hospitals, at 45 CFR part 75, Appendix XI—Principles for Determining Cost Applicable to Research and Development Under Awards and Contracts with Hospitals; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31 Contract Cost Principles and Procedures.

* * * * *

■ 17. Section 75.562 is amended by revising paragraph (c)(2)(iv) and (c)(4) to read as follows:

§ 75.562 Indirect cost rates for educational training projects.

* * * * *

(c) * * *

(2) * * *

* * * * *

(iv) Equipment, as defined in 2 CFR 200.33.

* * * * *

(4) The eight percent limit does not apply to agencies of Indian tribal governments, local governments, and States as defined in 2 CFR 200.54, 200.200.64, and 200.90, respectively.

* * * * *

■ 18. The cross-reference that follows the undesignated center heading “Construction” is revised to read as follows:

CROSS-REFERENCE: See 2 CFR part 200.317–200.326 for procurement requirements.

■ 19. The cross-reference that follows the undesignated center heading “Equipment and Supplies” and before § 75.618 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.311, Real property; 200.313, Equipment; 200.314, Supplies; and 200.59, Intangible property; and 200.315, Intangible property.

§ 75.621 [Removed and Reserved].

■ 20. Section 75.621 is removed and reserved.

■ 21. The cross-reference following former § 75.621 and before § 75.622 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.305, Payment; 200.307, Program income; and 200.315, Intangible property.

■ 22. The cross-reference following the undesignated center heading “Inventions and Patents” and before § 75.626 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.307, Program income.

■ 23. The cross-reference following the undesignated center heading “Other

Requirements for Certain Projects” and before § 75.650 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.302, Financial management, and 200.326, Contract provisions.

■ 24. Section 75.702 is revised and the cross-reference that follows that section is removed to read as follows:

§ 75.702 Fiscal control and fund accounting procedures.

A grantee shall use fiscal control and fund accounting procedures that insure proper disbursement of, and accounting

for, Federal funds as required in 2 CFR part 200, subpart D—Post Federal Award Requirements.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 25. Section § 75.707 is amended by revising paragraph (h) to read as follows:

§ 75.707 When obligations are made.

* * * * *

If the obligation is for—

The obligation is made—

(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, Subpart E—Cost Principles. On the first day of the project period.

■ 26. Section 75.708 is amended by revising paragraph (e) to read as follows:

§ 75.708 Subgrants.

* * * * *

(e) A grantee may contract for supplies, equipment, construction, and other services, in accordance with 2 CFR part 200, subpart D—Post Federal Award Requirements (2 CFR 200.317–200.326, Procurement Standards).

* * * * *

■ 27. The cross-reference after the undesignated center heading “Reports” and before § 75.720 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.327–200.337, which appear after the undesignated center heading “Performance and Financial Monitoring and Reporting.”

■ 28. Section 75.720 is revised to read as follows:

§ 75.720 Financial and performance reports.

(a) This section applies to the reports required under—

- (1) 2 CFR 200.327 (Financial reporting); and
- (2) 2 CFR 200.328 (Monitoring and reporting program performance).

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) The Secretary may require a grantee to report more frequently than annually, as authorized under 2 CFR 200.207, Specific conditions, and may impose high-risk conditions in appropriate circumstances under 2 CFR 3474.10.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 29. The cross-reference after the undesignated center heading “Records” and before § 75.730 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.333–200.337, which follow the undesignated center heading “Record Retention and Access.”

■ 30. The cross-reference after § 75.732 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

■ 31. The cross-reference after the heading for subpart G and before § 75.900 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.338–200.342 which follow the undesignated center heading “Remedies for Noncompliance.”

■ 32. Section 75.901 is revised to read as follows:

§ 75.901 Suspension and termination.

The Secretary may use the Office of Administrative Law Judges to resolve disputes that are not subject to other procedures. See, for cross-reference, the following:

- (a) 2 CFR 200.338 (Remedies for noncompliance).
- (b) 2 CFR 200.339 (Termination).
- (c) 2 CFR 200.340 (Notification of termination requirement).
- (d) 2 CFR 200.341 (Opportunities to object, hearings and appeals).
- (e) 2 CFR 200.342 (Effects of suspension and termination).
- (f) 2 CFR 200.344 (Post-closeout adjustments and continuing responsibilities).

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 33. Section 75.903 is amended by revising paragraph (c) to read as follows:

§ 75.903 Effective date of termination.

* * * * *

(c) The date of a final decision of the Secretary under part 81 of this title.

* * * * *

§ 75.910 [Removed and Reserved].

■ 34. Section 75.910 is removed and reserved.

PART 76—STATE-ADMINISTERED PROGRAMS

■ 35. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 36. Section 76.132 is amended by revising paragraph (a)(5) to read as follows:

§ 76.132 What assurances must be in a consolidated grant application?

(a) * * *

(5) Submit an annual report to the Secretary containing information covering the program or programs for which the grant is used and administered, including the financial and program performance information required under 2 CFR 200.327 and 200.328.

* * * * *

■ 37. Section 76.530 is revised to read as follows:

§ 76.530 General cost principles.

The general principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants are specified at 2 CFR part 200, subpart E—Cost Principles.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 38. Section 76.560 is amended by revising paragraph (a) to read as follows:

§ 76.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E—Cost Principles;

(2) Hospitals, at 45 CFR part 75, Appendix XI, Principles for

Determining Costs Applicable to Research and Development Under Awards and Contracts With Hospitals; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31, Contract Cost Principles and Procedures.

* * * * *

■ 39. Section 76.564 is amended by revising the introductory text in paragraph (c) to read as follows:

§ 76.564 Restricted indirect cost rate; formula.

* * * * *

(c) Under the programs covered by § 76.563, a subgrantee of an agency of a State or a local government (as those terms are defined in 2 CFR 200.90 and 200.64, respectively), or a grantee subject to 34 CFR 75.563 that is not a State or local government agency may use—

* * * * *

■ 40. Section § 76.707 is amended by revising paragraph (h) to read as follows:

§ 76.707 When obligations are made.

* * * * *

If the obligation is for—

The obligation is made—

(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, Subpart E—Cost Principles. On the first day of the grant or subgrant performance period.

■ 41. Section 76.708 is amended by revising paragraph (c) to read as follows:

§ 76.708 When certain subgrantees may begin to obligate funds.

* * * * *

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles in 2 CFR part 200, subpart E—Cost Principles.

* * * * *

■ 42. Section 76.720 is amended by:

- A. Revising paragraph (a).
- B. Revising paragraph (b)(2).

The revisions read as follows:

§ 76.720 State reporting requirements.

(a) This section applies to a State's reports required under 2 CFR 200.327 (Financial reporting) and 2 CFR 200.328 (Monitoring and reporting program performance), and other reports required by the Secretary and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

(b) * * *

(2) The Secretary requires a State to report more frequently than annually, including reporting under 2 CFR 3474.10 and 2 CFR 200.207 (Specific conditions) and 2 CFR 3474.10 (Clarification regarding 2 CFR 200.207) or 2 CFR 200.302 Financial management and 200.303 Internal controls.

* * * * *

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

■ 43. The authority citation for part 77 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 44. Section 77.1 is amended by:

- A. Revising paragraph (b).
- B. Revising, in paragraph (c), the definitions of “EDGAR” and “Grantee.”
- C. Adding to paragraph (c), in alphabetical order, the definitions of “Award,” “Direct grant program,” “Grant,” “Project Period,” “Subgrant,” and “Subgrantee.”

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(b) Unless a statute or regulation provides otherwise, the following definitions in 2 CFR part 200 apply to the regulations in title 34 of the Code of Federal Regulations. The section of 2 CFR part 200 that contains the definition is given in parentheses as well as references to the term or terms used in title 34 that are consistent with the term defined in title 2.

Contract (2 CFR 200.22).

Equipment (2 CFR 200.33).

Federal award (2 CFR 200.38) (The terms “award,” “grant,” and “subgrant,” as defined in paragraph (c) of this section, have the same meaning, depending on the context, as “Federal award” in 2 CFR 200.38.)

Period of performance (2 CFR 200.77) (For discretionary grants, ED uses the term “project period,” as defined in paragraph (c) of this section, instead of “period of performance” to describe the

period during which funds can be obligated.)

Personal property (2 CFR 200.78).

Real property (2 CFR 200.85).

Recipient (2 CFR 200.86).

Subaward (2 CFR 200.92) (The term “subgrant,” as defined in paragraph (c) of this section, has the same meaning as “subaward” in 2 CFR 200.92).

Supplies (2 CFR 200.94).

(c) * * *

Award has the same meaning as the definition of “Grant” in this paragraph (c).

Direct grant program means any grant program of the Department other than a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

CROSS-REFERENCE: See 34 CFR 75.1(b).

EDGAR means the Education Department General Administrative Regulations (34 CFR parts 75, 76, 77, 79, 81, 82, 84, 86, 97, 98, and 99).

* * * * *

Grant means financial assistance, including cooperative agreements, that provides support or stimulation to accomplish a public purpose. 2 CFR part 200, as adopted in 2 CFR part 3474, uses the broader, undefined term “Award” to cover grants, subgrants, and other agreements in the form of money or property, in lieu of money, by the Federal Government to an eligible recipient. The term does not include—

- (1) Technical assistance, which provides services instead of money;
- (2) Other assistance in the form of loans, loan guarantees, interest subsidies, or insurance;

- (3) Direct payments of any kind to individuals; and
- (4) Contracts that are required to be entered into and administered under procurement laws and regulations.

* * * * *

Grantee means the legal entity to which a grant is awarded and that is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award notice (GAN). For example, a GAN may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually intends, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations that may be only components of a legal entity.) The term “grantee” does not include any secondary recipients, such as subgrantees and contractors, that may receive funds from a grantee pursuant to a subgrant or contract.

* * * * *

Project period means the period established in the award document during which Federal sponsorship begins and ends (See, 2 CFR 200.77 Period of performance).

* * * * *

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual or any other form of legal agreement, but does not include procurement purchases, nor does it include any form of assistance that is excluded from the definition of “grant or award” in this part (See 2 CFR 200.92, “Subaward”).

Subgrantee means the government or other legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of the funds provided.

* * * * *

PART 80—[REMOVED AND RESERVED]

- 45. Part 80 is removed and reserved.

Subtitle B—Regulations of the Offices of the Department of Education

CHAPTER I—OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 101—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 100 OF THIS TITLE

§ 101.43 [Amended]

- 46. Section 101.43 is amended by removing the phrase “part 80 of this title” and adding, in its place, the phrase “part 100 of this chapter.”

CHAPTER II—OFFICE OF ELEMENTARY AND SECONDARY EDUCATION, DEPARTMENT OF EDUCATION

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

- 47. The authority citation for part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

- 48. Section 206.4 is amended by:

- A. Removing and reserving paragraphs (a)(1) and (a)(7).
- B. Adding a new paragraph (c).
The addition reads as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474, and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

- 49. Section 206.5 is amended by:

- A. Revising paragraph (a).
- B. Revising paragraph (b).
The revisions read as follows:

§ 206.5 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1(c) (EDGAR, Definitions):

- Applicant
- Application
- Award
- Elementary school
- EDGAR
- Facilities
- Grant
- Grantee

- Minor remodeling
- Nonprofit
- Private
- Project
- Public
- Secondary school
- Secretary
- State

(b) *Definitions in the grants administration regulations.* The following terms used in this part are defined in 2 CFR part 200, as adopted in 2 CFR part 3474:

- Budget
- Equipment
- Supplies

* * * * *

PART 222—IMPACT AID PROGRAMS

- 50. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

- 51. Section 222.19 is amended by:

- A. Removing and reserving paragraphs (b)(3) and (b)(5).
- B. Adding new paragraph (c).
The addition reads as follows:

§ 222.19 What other statutes and regulations apply to this part?

* * * * *

(c) The following regulations in title 2 of the CFR:

(1) 2 CFR part 200, as adopted in part 3474 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) for payments under sections 8003(d) (payments for federally connected children with disabilities), 8007 (construction), and 8008 (school facilities).

(2) 2 CFR part 180, as adopted in 2 CFR part 3485 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)).

* * * * *

§ 222.194 [Amended]

- 52. Section 222.194, paragraph (c), is amended by removing the citation “34 CFR 80.24” and adding, in its place, the citation “2 CFR 200.306.”

PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

- 53. The authority citation for part 225 continues to read as follows:

Authority: 20 U.S.C. 7223, unless otherwise noted.

- 54. Section 225.3 is amended by:

- A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(9).
- B. Adding a new paragraph (c).

The addition reads as follows:

§ 225.3 What regulations apply to the Credit Enhancement for Charter School Facilities Program?

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

PART 226—STATE CHARTER SCHOOL FACILITIES INCENTIVE PROGRAM

■ 55. The authority citation for part 226 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 7221d(b), unless otherwise noted.

- 56. Section 226.3 is amended by:
■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(9).
■ B. Adding a new paragraph (c).
The addition reads as follows:

§ 226.3 What regulations apply to the State Charter School Facilities Incentive program?

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

PART 270—DESEGREGATION OF PUBLIC EDUCATION

■ 57. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 2000c-2000c-2 and 2000-5, unless otherwise noted.

- 58. Section 270.2 is amended by:
■ A. Revising paragraph (a).
■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 270.2 What regulations apply to these programs?

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), and part 81 (General Education Provisions Act—

Enforcement), except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR part 271 and 34 CFR 75.232 (relating to the cost analysis) does not apply to grants under 34 CFR part 272.

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

■ 59. The authority citation for part 280 continues to read as follows:

Authority: 20 U.S.C. 7231-7231j, unless otherwise noted.

- 60. Section 280.3 is amended by:
■ A. Revising paragraph (a).
■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 280.3 What regulations apply to this program?

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 75 (Direct Grant Programs), 77 (Definitions that Apply to Department Regulations), 79 (Intergovernmental Review of Department of Education Programs and Activities) and 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in part 3485.

PART 299—GENERAL PROVISIONS

■ 61. The authority citation for part 299 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 6511(a), and 7373(b), unless otherwise noted.

- 62. Section 299.1 is amended by revising paragraph (b) to read as follows:

§ 299.1 What are the purpose and scope of these regulations?

(b) If an ESEA program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent applicable, title IX of the ESEA, the General Education Provisions Act, the regulations in this part, EDGAR (34 CFR parts 75 through 99), and 2 CFR parts 180, as adopted at 2 CFR part 3485, and 200, as adopted at part 3474, that are not inconsistent with specific statutory provisions of the ESEA.

- 63. Section 299.2 is amended by:
■ A. Revising the introductory text of the section.
■ B. Revising paragraph (a).
■ C. Revising paragraph (b).

The revisions read as follows:

§ 299.2 What general administrative regulations apply to ESEA programs?

Title 2 of the CFR, part 200, as adopted at 2 CFR part 3474, applies to the ESEA programs except for title VIII programs (Impact Aid) (in addition to any other specific implementing regulations) as follows:

(a) 2 CFR part 200 applies to grantees under direct grant programs (as defined in 34 CFR 75.1(b)).

(b) 2 CFR part 200 also applies to grantees under all other programs under the ESEA unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies (SEAs) and local educational agencies (LEAs) under the ESEA. If a State adopts its own alternative requirements, the requirements must be available for inspection upon the request of the Secretary or the Secretary's representatives and must—

CHAPTER III—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 64. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1221e-3, 1406, and 1411-1419, unless otherwise noted.

- 65. Section 300.154 is amended by revising paragraph (g)(1) to read as follows:

§ 300.154 Methods of ensuring services.

(g) (1) Proceeds from public benefits or insurance or private insurance will not

be treated as program income for purposes of 2 CFR 200.307.

* * * * *

■ 66. Section 300.609 is revised to read as follows:

§ 300.609 Rule of construction.

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, and 81 and 2 CFR part 200 to monitor and enforce the requirements of the Act, including the imposition of special or high-risk conditions under 2 CFR 200.207 and 3474.10.

(Authority: 20 U.S.C. 1416(g))

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

■ 67. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1431–1444, unless otherwise noted.

■ 68. Section 303.3 is amended by:

■ A. Revising paragraph (a)(2).

■ B. Adding a new paragraph (a)(3).

The revision and addition read as follows:

§ 303.3 Applicable regulations.

(a) * * *

(2) EDGAR, including 34 CFR parts 76 (except for § 76.103), 77, 79, 81, 82, 84, and 86.

(3) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in part 3474, and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

■ 69. Section 303.121 is amended by revising paragraph (b) to read as follows:

§ 303.121 Policy for contracting or otherwise arranging for services.

* * * * *

(b) Be consistent with 2 CFR part 200, as adopted at 2 CFR part 3474.

* * * * *

■ 70. Section 303.416 is amended by revising paragraph (a) to read as follows:

§ 303.416 Destruction of information.

(a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f,

EDGAR, 34 CFR part 76, and 2 CFR part 200, as adopted in 2 CFR part 3474.

* * * * *

■ 71. Section 303.520 is amended by:

■ A. Revising paragraph (d)(1).

■ B. Revising paragraph (e).

The revisions read as follows:

§ 303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services.

* * * * *

(d) * * *

(1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 2 CFR 200.307.

* * * * *

(e) *Funds received from a parent or family member under a State's system of payments.* Funds received by the State from a parent or family member under the State's system of payments established under § 303.521 are considered program income under 2 CFR 200.307. These funds—

(1) Are not deducted from the total allowable costs charged under part C of the Act (as set forth in 2 CFR 200.307(e)(1));

(2) Must be used for the State's part C early intervention services program, consistent with 2 CFR 200.307(e)(2); and

(3) Are considered neither State nor local funds under § 303.225(b).

* * * * *

§ 303.521 [Amended]

■ 72. Section 303.521 is amended by removing the citation “34 CFR 80.25” in paragraph (d)(1) and adding, in its place, the citation “2 CFR 200.307.”

■ 73. Section 303.707 is revised to read as follows:

§ 303.707 Rule of construction.

Nothing in this subpart may be construed to restrict the Secretary from utilizing any authority under GEPA, 20 U.S.C. 1221 *et seq.*, the regulations in 34 CFR parts 76, 77, and 81, and 2 CFR part 200, to monitor and enforce the requirements of the Act, including the imposition of special or high-risk conditions under 2 CFR 200.207 and 3474.5(e).

(Authority: 20 U.S.C. 1416(g), 1442)

PART 350—DISABILITY AND REHABILITATION RESEARCH PROJECTS AND CENTERS PROGRAM

■ 74. The authority citation for part 350 continues to read as follows:

Authority: Sec. 204; 29 U.S.C. 761–762, unless otherwise noted.

■ 75. Section 350.4 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(4), and (a)(7).

■ B. Adding a new paragraph (d).

The addition reads as follows:

§ 350.4 What regulations apply?

* * * * *

(d) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474, and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

■ 76. The authority citation for part 361 continues to read as follows:

Authority: 29 U.S.C. 709(c), unless otherwise noted.

■ 77. Section 361.4 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).

■ B. Adding a new paragraph (e).

The addition reads as follows:

§ 361.4 Applicable regulations.

* * * * *

(e)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

§ 361.60 [Amended]

■ 78. Section 361.60 is amended by:

■ A. In paragraph (b)(1), removing the citation “34 CFR 80.24” and adding, in its place, the citation “2 CFR 200.306.”

■ B. In paragraph (b)(2), removing the citation “34 CFR 80.24(a)(2)” and adding, in its place, the citation “2 CFR 200.306(b).”

■ 79. Section 361.63 is amended by:

■ A. Revising paragraph (c)(3)(i).

■ B. Revising paragraph (c)(3)(ii).

■ C. Revising the authority citation.

The revisions read as follows.

§ 361.63 Program income.

* * * * *

(c) * * *

(3) * * *

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2); or

(ii) A deduction from total allowable costs, in accordance with 2 CFR 200.307(e)(1).

* * * * *

(Authority: Section 108 of the Act; 29 U.S.C. 728)

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

■ 80. The authority citation for part 363 continues to read as follows:

Authority: 29 U.S.C. 795j-q, unless otherwise noted.

■ 81. Section 363.5 is amended by:

■ A. Removing and reserving paragraphs (a)(4) and (a)(7).

■ B. Adding a new paragraph (d) after the note following paragraph (c).

The addition reads as follows:

§ 363.5 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 364—STATE INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM: GENERAL PROVISIONS

■ 82. The authority citation for part 364 is revised to read as follows:

Authority: 29 U.S.C. 796–796f-5, unless otherwise noted.

■ 83. Section 364.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(6), and (a)(9).

■ B. Adding a new paragraph (d).

The addition reads as follows:

§ 364.3 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

■ 84. Section 364.5 is amended by revising paragraph (c)(2) to read as follows:

§ 364.5 What is program income and how may it be used?

* * * * *

(c) * * *

(2) A service provider is authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2)

* * * * *

■ 85. Section 364.21 is amended by revising paragraph (l) to read as follows:

§ 364.21 What are the requirements for the Statewide Independent Living Council (SILC)?

* * * * *

(l) *Conflict of interest.* The code of conduct provisions in 2 CFR 200.318 and the conflict of interest provisions in 34 CFR 75.524 and 75.525 apply to members of the SILC. For purposes of this paragraph and 2 CFR 200.318 and 34 CFR 75.524, and 75.525, a SILC is not considered a government, governmental entity, or governmental recipient.

* * * * *

§ 364.34 [Amended]

■ 86. Section 364.34 is amended by removing from the introductory text the word “EDGAR” and adding in its place the citation “2 CFR part 200”.

§ 364.35 [Amended]

■ 87. Section 364.35 is amended by removing from the introductory text the word “EDGAR” and adding in its place the citation “2 CFR part 200”.

PART 365—STATE INDEPENDENT LIVING SERVICES

■ 88. The authority citation for part 365 continues to read as follows:

Authority: 29 U.S.C. 796e–796e-2, unless otherwise noted.

■ 89. Section 365.13 is amended by

revising the introductory text to paragraph (a) to read as follows:

§ 365.13 What requirements apply if the State’s non-Federal share is in cash?

(a) Except as further limited by paragraph (b) of this section, expenditures that meet the requirements of 2 CFR 200.306 may be used to meet the non-Federal share matching requirement under section 712(b) of the Act if—

* * * * *

■ 90. Section 365.15 is amended by revising paragraph (a) to read as follows:

§ 365.15 What requirements apply if the State’s non-Federal share is in kind?

* * * * *

(a) Used to meet the matching requirement under section 712(b) of the Act if the in-kind contributions meet the

requirements of 2 CFR 200.306 and if the in-kind contributions would be considered allowable costs under this part, as determined by the cost principles in 2 CFR part 200, subpart E—Cost Principles; and

* * * * *

■ 91. Section 365.23 is amended by:

■ A. Revising paragraph (b).

■ B. Revising paragraph (c).

The revisions read as follows:

§ 365.23 How does a State make a subgrant or enter into a contract?

* * * * *

(b) The provisions concerning the administration of subgrants and contracts in 34 CFR parts 76 and 2 CFR part 200 apply to the State.

(c) Cross-reference: See 34 CFR part 76 and 2 CFR part 200.

* * * * *

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

■ 92. The authority citation for part 367 continues to read as follows:

Authority: 29 U.S.C. 796k, unless otherwise noted.

■ 93. Section 367.4 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(6), and (a)(9).

■ B. Adding a new paragraph (e).

The addition reads as follows:

§ 367.4 What regulations apply?

* * * * *

(e)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

■ 94. The authority citation for part 369 continues to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 777(a)(1), 777b, 777f, and 795g, unless otherwise noted.

■ 95. Section 369.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).

■ B. Adding a new paragraph (d).

The addition reads as follows.

§ 369.3 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment

and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 370—CLIENT ASSISTANCE PROGRAM

■ 96. The authority citation for part 370 continues to read as follows:

Authority: 29 U.S.C. 732, unless otherwise noted.

■ 97. Section 370.5 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).
■ B. Revising the note after paragraph (c).

■ C. Adding a new paragraph (d), to follow the revised note.

The revision and addition read as follows:

§ 370.5 What regulations apply?

* * * * *

Note: Any funds made available to a State under this program that are transferred by a State to a designated agency do not constitute a subgrant, as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, in these circumstances a subgrantee, as that term is defined in that section and used in 34 CFR part 76.

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

■ 98. Section 370.30 is amended by revising paragraph (c) to read as follows:

§ 370.30 How does the Secretary allocate funds?

* * * * *

(c) Unless prohibited or otherwise provided by State law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a) or (b) of this section, the amount specified in the State's approved request. Because the designated agency is the eventual, if not the direct, recipient of the CAP funds, 34 CFR part 81 applies to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. However, because it is the State that submits an application for and receives the CAP grant, the State remains the grantee for purposes of 34 CFR parts 76 and 77 and the recipient

under 2 CFR 200.86. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

* * * * *

■ 99. Section 370.40 is amended by:

■ A. Revising paragraph (a).
■ B. Removing and reserving paragraph (b).

■ C. Revising paragraph (c).

The revisions read as follows:

§ 370.40 What are allowable costs?

(a) The designated agency shall apply the cost principles in accordance with 2 CFR part 200, subpart E—Cost Principles.

* * * * *

(c) In addition to those allowable costs established in 2 CFR part 200, and consistent with the program activities listed in § 370.4, the cost of travel in connection with the provision to a client or client applicant of assistance under this program is allowable. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

* * * * *

§ 370.44 [Amended]

■ 100. Section 370.44 is amended by removing from the introductory text, the term “EDGAR” and adding, in its place, the citation “2 CFR part 200.”

PART 373—SPECIAL DEMONSTRATION PROGRAMS

■ 101. The authority citation for part 373 continues to read as follows:

Authority: 29 U.S.C. 773(b), unless otherwise noted.

■ 102. Section 373.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).
■ B. Adding a new paragraph (d).

The addition reads as follows:

§ 373.3 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 103. Section 373.23 is amended by revising paragraph (b) to read as follows:

§ 373.23 What additional requirements must be met?

* * * * *

(b) A grantee may not make a subgrant under this part. However, a grantee may

contract for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D—Post Federal Award Requirements, Procurement Standards.

* * * * *

PART 377—DEMONSTRATION PROJECTS TO INCREASE CLIENT CHOICE PROGRAM

■ 104. The authority citation for part 377 is revised to read as follows:

Authority: 29 U.S.C. 773(a), unless otherwise noted.

■ 105. Section 377.4 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).
■ B. Adding a new paragraph (d).

The addition reads as follows:

§ 377.4 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

■ 106. Section 377.5 is amended by revising paragraph (b) to read as follows.

§ 377.5 What definitions apply?

* * * * *

(b) *Definitions in EDGAR and 2 CFR part 200.* (1) The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Grant
Grantee
Nonprofit
Project
Public
Secretary

(2) The following terms used in this part are defined in 2 CFR part 200:

Federal Award
Recipient
* * * * *

PART 380—[REMOVED AND RESERVED]

■ 107. Part 380 is removed and reserved.

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

■ 108. The authority citation for part 381 continues to read as follows:

Authority: 29 U.S.C. 794e, unless otherwise noted.

- 109. Section 381.4 is amended by:
 - A. Removing and reserving paragraphs (a)(1), (a)(6), and (a)(9).
 - B. Adding a new paragraph (d).
The addition reads as follows:

§ 381.4 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

PART 385—REHABILITATION TRAINING

- 110. The authority citation for part 385 is revised to read as follows:

Authority: 29 U.S.C. 709(c) and 772, unless otherwise noted.

- 111. Section 385.3 is amended by:
 - A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).
 - B. Adding a new paragraph (d).
The addition reads as follows:

§ 385.3 What regulations apply to these programs?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

- 112. The authority citation for part 396 is revised to read as follows:

Authority: 29 U.S.C. 709(c) and 772(f), unless otherwise noted.

- 113. Section 396.3 is amended by:
 - A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).
 - B. Adding a new paragraph (d).
The addition reads as follows:

§ 396.3 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

- 114. The heading of Chapter IV is revised to read as follows:

CHAPTER IV—OFFICE OF CAREER, TECHNICAL, AND ADULT EDUCATION, DEPARTMENT OF EDUCATION

PART 400—CAREER, TECHNICAL, AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

- 115. The authority citation for part 400 continues to read as follows:

Authority: 20 U.S.C. 2301 et seq., unless otherwise noted.

- 116. The heading of part 400 is revised to read as set forth above.
- 117. Section 400.3 is amended by:
 - A. Removing and reserving paragraphs (a)(1), (a)(6), and (a)(9).
 - B. Adding a new paragraph (e).
The addition reads as follows:

§ 400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

* * * * *

(e)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

- 118. Section 400.4 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

(a) General definitions. The following terms used in regulations for the Vocational and Applied Technology Education Programs are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 426—[REMOVED AND RESERVED]

- 119. Part 426 is removed and reserved.

PART 460—[REMOVED AND RESERVED]

- 120. Part 460 is removed and reserved.

PART 464—[REMOVED AND RESERVED]

- 121. Part 464 is removed and reserved.

PART 491—[REMOVED AND RESERVED]

- 122. Part 491 is removed and reserved.

CHAPTER V—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS, DEPARTMENT OF EDUCATION

PART 535—[REMOVED AND RESERVED]

- 123. Part 535 is removed and reserved.

CHAPTER VI—OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION

PART 606—DEVELOPING HISPANIC-SERVING INSTITUTIONS PROGRAM

- 124. The authority citation for part 606 continues to read as follows:

Authority: 20 U.S.C. 1101 et seq., unless otherwise noted.

- 125. Section 606.6 is amended by:
 - A. Removing and reserving paragraphs (a)(1) and (a)(6).
 - B. Adding a new paragraph (c).
The addition reads as follows:

§ 606.6 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

- 126. The authority citation for part 607 is revised to read as follows:

Authority: 20 U.S.C. 1057–1059g, 1067q, 1068–1068h unless otherwise noted.

- 127. Section 607.6 is amended by:
 - A. Removing and reserving paragraphs (a)(1) and (a)(6).
 - B. Adding a new paragraph (c).
The addition reads as follows:

§ 607.6 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

■ 128. The authority citation for part 608 is revised to read as follows:

Authority: 20 U.S.C. 1060 through 1063a, 1063c, 1067q and 1068–1068h, unless otherwise noted.

■ 129. Section 608.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1) and (a)(6).

■ B. Adding a new paragraph (c).
The addition reads as follows.

§ 608.3 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 130. Section 608.4 is amended by revising the introductory text in paragraph (a) to read as follows:

§ 608.4 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

■ 131. The authority citation for part 609 continues to read as follows:

Authority: 20 U.S.C. 1063b and 1063c, unless otherwise noted.

■ 132. Section 609.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1) and (a)(6).

■ B. Adding a new paragraph (c).
The addition reads as follows:

§ 609.3 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for

Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 133. Section 609.4 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 609.4 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

■ 134. The authority citation for part 611 continues to read as follows:

Authority: 20 U.S.C. 1021 *et seq.* and 1024(e), unless otherwise noted.

■ 135. Section 611.61 is amended by revising the introductory text to read as follows:

§ 611.61 What is the maximum indirect cost rate that applies to a recipient's use of program funds?

Notwithstanding 34 CFR 75.560–75.562 and 2 CFR 200.414, Indirect (F&A) costs, the maximum indirect cost rate that any recipient of funds under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of—

* * * * *

PART 614—PREPARING TOMORROW'S TEACHERS TO USE TECHNOLOGY

■ 136. The authority citation for part 614 continues to read as follows:

Authority: 20 U.S.C. 6832, unless otherwise noted.

■ 137. Section 614.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a) (8).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 614.3 What regulations apply to this program?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for

Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

■ 138. The authority citation for part 628 continues to read as follows:

Authority: 20 U.S.C. 1065, unless otherwise noted.

■ 139. Section 628.5 is amended by:

■ A. Removing and reserving paragraphs (b)(1)(i) and (b)(1)(ii).

■ B. Adding new paragraphs (b)(1)(v), (b)(1)(vi), and (b)(1)(vii).

■ C. Revising paragraph (b)(2).

■ D. Adding a new paragraph (c).

The revision and additions read as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

* * * * *

(b)(1) * * *

(v) 34 CFR part 82 (New Restrictions on Lobbying).

(vi) 34 CFR part 84 (Governmentwide Requirements For Drug-Free Workplace (Financial Assistance)).

(vii) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(2) Except as specifically indicated in paragraph (b)(1) and (c) of this section, the Education Department General Administrative Regulations and the regulations in 2 CFR part 200 do not apply.

(c) The following regulations in title 2 of the CFR apply to the Endowment Challenge Grant Program:

(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(2) 2 CFR 200.328 (Monitoring and reporting program performance), as adopted at 2 CFR part 3474.

(3) 2 CFR part 200, subpart F (Audit Requirements), as adopted by ED at 2 CFR part 3474.

* * * * *

■ 140. Section 628.47 is amended by:

■ A. Revising paragraph (d).

■ B. Revising paragraph (e).

The revisions read as follows:

§ 628.47 What shall a grantee record and report?

* * * * *

(d) Carry out the audit required in 2 CFR part 200, subpart F;

(e) Comply with the reporting requirements in 2 CFR 200.512; and

* * * * *

PART 636—[REMOVED AND RESERVED]

■ 141. Part 636 is removed and reserved.

PART 637—MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAM

■ 142. The authority citation for part 637 continues to read as follows:

Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b, unless otherwise noted.

■ 143. Section 637.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1) and (a)(6).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 637.3 What regulations apply to the Minority Science and Engineering Improvement Program?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 642—TRAINING PROGRAM FOR FEDERAL TRIO PROGRAMS

■ 144. The authority citation for part 642 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–17, unless otherwise noted.

■ 145. Section 642.5 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The addition and revision read as follows:

§ 642.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 146. Section 642.6 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 642.6 What definitions apply?

(a) *General definitions.* The following terms are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 643—TALENT SEARCH

■ 147. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

■ 148. Section 643.6 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 643.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 149. Section 643.7 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 643.7 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or in 34 CFR 77.1:

* * * * *

■ 150. Section 643.30 is amended by revising the introductory text to read as follows:

§ 643.30 What are allowable costs?

The cost principles that apply to the Talent Search program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

■ 151. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

■ 152. Section 644.6 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The addition and revision read as follows:

§ 644.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 153. Section 644.7 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 644.7 What definitions apply?

* * * * *

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or in 34 CFR 77.1:

* * * * *

■ 154. Section 644.30 is amended by revising the introductory text to read as follows:

§ 644.30 What are allowable costs?

The cost principles that apply to the Educational Opportunity Centers program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

* * * * *

PART 645—UPWARD BOUND PROGRAM

■ 155. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

■ 156. Section 645.5 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 645.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 157. Section 645.6 is amended by revising the heading and introductory text in paragraph (a) to read as follows.

§ 645.6 What definitions apply to the Upward Bound Program?

* * * * *

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

■ 158. Section 645.40 is amended by revising the introductory text to read as follows:

§ 645.40 What are allowable costs?

The cost principles that apply to the Upward Bound Program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

* * * * *

PART 646—STUDENT SUPPORT SERVICES PROGRAM

■ 159. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

■ 160. Section 646.6 is amended by:

- A. Revising paragraph (a).
- B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 646.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 161. Section 646.7 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 646.7 What definitions apply?

* * * * *

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

■ 162. Section 646.30 is amended by revising the introductory text to read as follows:

§ 646.30 What are allowable costs?

The cost principles that apply to the Student Support Services Program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

* * * * *

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

■ 163. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–15, unless otherwise noted.

■ 164. Section 647.6 is amended by:

- A. Revising paragraph (a).
- B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 647.6 What regulations apply?

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 165. Section 647.7 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 647.7 What definitions apply?

* * * * *

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

■ 166. Section 647.30 is amended by revising the introductory text to read as follows:

§ 647.30 What are allowable costs?

The cost principles in 2 CFR part 200, subpart E, may include the following costs reasonably related to carrying out a McNair project:

* * * * *

PART 648—GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

■ 167. The authority citation for part 648 is revised to read as follows:

Authority: 20 U.S.C. 1135–1135e, unless otherwise noted.

■ 168. Section 648.8 is amended by:

- A. Removing and reserving paragraphs (a)(1) and (a)(6).
- B. Adding a new paragraph (c).

The addition reads as follows:

§ 648.8 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 169. Section 648.9 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 648.9 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 650—JACOB K. JAVITS FELLOWSHIP PROGRAM

■ 170. The authority citation for part 650 continues to read as follows:

Authority: 20 U.S.C. 1134–1134d, unless otherwise noted.

■ 171. Section 650.3 is amended by:

- A. Removing and reserving paragraphs (b)(1) and (b)(5).
- B. Adding a new paragraph (c).

The addition reads as follows:

§ 650.3 What regulations apply to the Jacob K. Javits Fellowship Program?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

■ 172. The authority citation for part 654 continues to read as follows:

Authority: 20 U.S.C. 1070d-31-1070d-41, unless otherwise noted.

- 173. Section 654.4 is amended by:
A. Removing and reserving paragraphs (a)(5) and (a)(7).
B. Adding a new paragraph (c).
The addition reads as follows:

654.4 What regulations apply?

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

PART 655-INTERNATIONAL EDUCATION PROGRAMS-GENERAL PROVISIONS

- 174. The authority citation for part 655 is revised to read as follows:

Authority: 20 U.S.C 1132-1132-7, unless otherwise noted.

- 175. Section 655.3 is amended by:
A. Removing and reserving paragraphs (a)(1) and (a)(6).
B. Adding a new paragraph (d).
The addition reads as follows:

655.3 What regulations apply to the International Education Programs?

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

- 176. Section 655.4 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

655.4 What definitions apply to the International Education Programs?

(a) General definitions. The following terms used in this part and 34 CFR parts 656, 657, 658, 660, 661, and 669 are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

PART 661-BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

- 177. The authority citation for part 661 continues to read as follows:

Authority: 20 U.S.C. 1130-1130b, unless otherwise noted.

- 178. Section 661.4 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

661.4 What definitions apply to the Business and International Education Program?

(a) General definitions. The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

PART 662-FULBRIGHT-HAYS DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM

- 179. The authority citation for part 662 continues to read as follows:

Authority: Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

- 180. Section 662.6 is amended by:
A. Revising paragraph (b).
B. Adding a new paragraph (c).
The revision and addition read as follows:

662.6 What regulations apply to this program?

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

- 181. Section 662.7 is amended by revising the introductory text in paragraph (a) to read as follows:

662.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 2 CFR part 200, subpart A, or 34 CFR part 77:

PART 663-FULBRIGHT-HAYS FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

- 182. The authority citation for part 663 continues to read as follows:

Authority: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

- 183. Section 663.6 is amended by:
A. Revising paragraph (b).
B. Adding a new paragraph (c).
The revision and addition read as follows:

663.6 What regulations apply to this program?

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

- 184. Section 663.7 is amended by revising the introductory text in paragraph (a) to read as follows:

663.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 2 CFR part 200, subpart A, or 34 CFR part 77:

PART 664-FULBRIGHT-HAYS GROUP PROJECTS ABROAD PROGRAM

- 185. The authority citation for part 664 continues to read as follows:

Authority: 22 U.S.C. 2452(b)(6), unless otherwise noted.

- 186. Section 664.4 is amended by:
A. Revising paragraph (b).
B. Adding a new paragraph (c).
The revision and addition read as follows:

664.4 What regulations apply to the Fulbright-Hays Group Projects Abroad Program?

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

■ 187. Section 664.5 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 664.4 What definitions apply to the International Education Programs?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR part 77:

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 188. The authority citation for part 682 is revised to read as follows:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

■ 189. Section 682.305 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

* * * * *

(c) * * *

(2) * * *

(v) A lender must conduct the audit required by this paragraph in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.¹

* * * * *

■ 190. Section 682.410 is amended by:

■ A. Removing and reserving paragraph (b)(1)(i).

■ B. Revising paragraph (b)(1)(ii).

The revision reads as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(1) * * *

(ii) A guaranty agency must conduct an audit in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.² If a nonprofit guaranty agency meets the criteria in 2 CFR part 200, subpart F—Audit Requirements to have a program specific audit, and chooses that option, the program-specific audit must meet the following requirements:

* * * * *

■ 191. Section 682.416 is amended by:

■ A. Revising paragraph (e)(3).

■ B. Removing and reserving paragraph (e)(4).

The revision reads as follows:

§ 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

* * * * *

(e) * * *

(3) A third-party servicer must conduct the audit required by this paragraph in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.³

* * * * *

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

■ 192. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

■ 193. Section 692.3 is amended by:

■ A. Removing and reserving paragraph (b)(5).

■ B. Revising paragraph (b)(7).

■ C. Adding a new paragraph (d).

The revision and addition read as follows:

§ 692.3 What regulations apply to the LEAP Program?

* * * * *

(b) * * *

(7) 34 CFR part 84 (Governmentwide Requirements For Drug-Free Workplace (Financial Assistance)).

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

■ 194. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070a–21–1070a–28.

³ None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F—Audit Requirements, apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

■ 195. Section 694.11 is amended by revising the introductory text to read as follows:

§ 694.11 What is the maximum indirect cost rate for an agency of a State or local government?

Notwithstanding 34 CFR 75.560–75.562 and 2 CFR part 200, subpart E—Cost Principles, the maximum indirect cost rate that an agency of a State or local government receiving funds under GEAR UP may use to charge indirect costs to these funds is the lesser of—

* * * * *

Subtitle C—Regulations Relating to Education

CHAPTER XI—[REMOVED AND RESERVED]

■ 197. Chapter XI, consisting of Part 1100, is removed and reserved.

Arne Duncan,

Secretary of Education.

Executive Office of the President

Office of National Drug Control Policy

For the reasons set forth in the common preamble and under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter XXXVI is established and 21 CFR chapter III is amended as follows:

Title 2—Grants and Agreements

■ 1. In Title 2, Chapter XXXVI, consisting of part 3603, is established to read as follows:

CHAPTER XXXVI—OFFICE OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT

PART 3603—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 21 U.S.C. 1706; 21 U.S.C. 1703(d), 1703(f), 21 U.S.C. 1701, 21 U.S.C. 1521–1548, 21 U.S.C. 2001–2003, Office of National Drug Control Policy Reauthorization Act of 2006, P.L. 109–469 (2006), 2 CFR part 200.

§ 3603.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Executive Office of the President, Office of National Drug Control Policy (ONDCP) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for ONDCP.

¹ None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F—Audit Requirements, apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

² None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F—Audit Requirements, apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

Title 21—Food and Drugs**CHAPTER III—OFFICE OF NATIONAL DRUG CONTROL POLICY****PARTS 1403, 1404, AND 1405—
[REMOVED AND RESERVED]**

- 1. Remove and reserve parts 1403, 1404 and 1405.

Daniel S. Rader,

Deputy General Counsel.

Gulf Coast Ecosystem Restoration Council

For the reasons set forth in the common preamble, Chapter LIX consisting of Part 5900 is established in

Title 2 of the Code of Federal Regulations to read as follows:

Title 2 Grants and Agreements**CHAPTER LIX—GULF COAST ECOSYSTEM RESTORATION COUNCIL****PART 5900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

Authority: 5 U.S.C. 301; 33 U.S.C. 1321(t)(2); 38 U.S.C. 501; 2 CFR part 200.

§ 5900.101 Adoption of 2 CFR Part 200.

Under the authority listed above, the Gulf Coast Ecosystem Restoration Council adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Council.

Jeffrey K. Roberson,

Senior Counsel, Department of Commerce.

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